Endnotes

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of RCRA: Should Strict Liability be Applied to its Permit Requirement?  


See generally Barbara DiTata, Proof of Knowledge Under RCRA and Use of the Responsible Corporate Officer Doctrine, 7 FORDHAM ENV’T L. REV. 795, 806–14 (1996) (discussing the corporate officer doctrine regarding worker safety stating that corporate officers and company managers have the responsibility to protect their staff, and not negligently nor knowingly engage in actions that violate hazardous waste laws that put their works at risk; this creates a burden of knowledge and obligation). For an important discussion of “knowing” violations in environmental criminal prosecutions, see generally Karen M. Hansen, “Knowing” Environmental Crimes, 16 WM. MITCHELL L. REV. 987, 988–90 (1997) (indicating that a “knowing” state of mind is “conscious” of circumstance “but not necessarily [] purposeful . . .”).


RCRA Overview, supra note 3 (defining “cradle-to-grave” under RCRA to authorize the EPA to regulate the lifecycle of hazardous waste, including storage, treatment, transport, or export of hazardous waste).


In 1980, Congress passed the Hazardous and Solid Waste Disposal Act Amendments, Pub. L. No. 96-482, § 3001(b)(2)(A), (b)(3)(A) (codified as amended at 42 U.S.C. § 6921), exempting the extractive industry from much of RCRA’s reach. See also Special Wastes, EPA (June 22, 2022), https://www.epa.gov/hw/special-wastes (discussing the history of “special wastes” and noting the amendments are also known as Bentsen and Bevill amendments for their authors); David L. Hinnensteel, The RCRA Exemption for Oil and Natural Gas Exploration and Production Wastes—What you may not Know, 6 ENV’T GEOSCIENCES 106, 106–09 (1999); Lynn L. Bergeson, Re-Re-Re Defining RCRA Solid Wastes, 36 ENG’T 32 (2004).

RCRA Overview, supra note 3; see generally RCRA, 42 U.S.C. § 6901 (1976).

See, e.g., Michael R. Pendleton, Beyond the Threshold: The Criminalization of Logging, 10 SOC’V. & NAT. RES. 181, 181 (1997) (listing countries that demonstrate trend of establishing criminal sanctions for environmental crimes). The trend was also evident in states, including Ohio, for example, see Anthony J. Celebrezze, Jr., E. Dennis Muchnick, J. Michael Marous & Mary Kay Jenkins-Smith, Criminal Enforcement of State Environmental Laws: The Ohio Solution, 14 HARR. ENV’T L. REV. 217, 218, 225, 225 n.26 (1990), which discusses the importance of criminal enforcement of state environmental laws.


16 U.S.C. § 3372 (1900). This Act bans the unpermitted, interstate trade in wildlife.


It took more than half a century for policymakers and the public to understand the scope of the environmental problems that they faced, and that lead to the development of the major environmental statutes passed by Congress in the 1970s. Christopher C. Dykes & Daniel G. Donahue, Environmental Law: A Legal Research Guide 3 (2018). In the 1970s and 1980s, it became apparent that individuals and companies would commit serious environmental crimes or engage in willful violations of environmental law, which warranted stiffer penalties and the institutionalization of a system to police and prosecute criminal offenses. Id. See generally Raymond W. Musial, Up From the Sewers: 4 Perspective on the Evolution of The Federal Environmental Crimes Program, UTAR L. REV. 1103, 1109–14 (2009).

Prior to the 1980s, the general approach taken by the federal government to environmental enforcement was centered on securing injunctive relief or civil sanctions. Congress realized in the 1970s that environmental law needed sharper teeth and move to enhance penalties in federal statutes, rather than focusing only on civil enforcement. The passage of the CAA in 1970 was an important milestone, because it contained criminal enforcement provisions, but still only misdemeanor penalties for environmental crimes. It was not until the 1980s that Congress recognized the need to add felony provisions in most environmental laws to punish chronic and serious offenses. FIFRA, for example, does not contain felony provisions and scholars have argued the criminal enforcement of pesticide crimes lacks deterrent value as a result. See Robert I. McMurry & Stephen D. Ramsey, Environmental Crime: The Use of Criminal Sanctions in Enforcing Environmental Laws, 19 LOY. L.A. REV.


21 Mushal, supra note 18, at 1109.


26 Joseph B. Block, Environmental Criminal Enforcement in the 1990s, 3 VILL. ENV’T L.J. 33, 34 (1992); Historical Developments, supra note 17.


28 Id. Mushal, supra note 18, at 1103–07; EPA, OFF. OF CRIM. EN’T, FORENSICS & TRAINING, CEFT AT A GLANCE 1 (2017), https://www.epa.gov/sites/default/files/2019-05/documents/oeceft-at-a-glance-aug2017.pdf (stating that the seven signs of an environmental crime include: “Strong, offensive, or unusual chemical odors; Large numbers of dead birds, fish or other animals; Pipes or valves that bypass waste treatment systems; Tank trucks discharging into drains, manholes or surface waters; Oily sludge on water; Corroded, leaking waste containers; and Drums or containers dumped at odd hours in out-of-the-way places.”) According to EPA: “federal law enforcement agents - with full Federal authority to conduct investigations, carry firearms, make arrests, and execute search and arrest warrants, investigate environmental crimes, as do “specially trained investigators, chemists, engineers, technicians….and attorneys with environmental crimes expertise…EPA special agents talk and listen to suspects and witnesses, conduct surveillance, seize and analyze records, find people and information, work with forensics experts, prosecutors and other police involved, analyze evidence and data and testify in court.”


30 Id. at 10497; Michael Herz, Structures of Environmental Criminal Enforcement, 7 Fordham En’l J. 679, 702 (1986).

31 As an overarching enforcement philosophy, EPA seeks the regulated community to remain in compliance with the law. Most violations of environmental law do not lend themselves to criminal prosecution. In most cases violations are not significant or willful actions. For those that commit the latter, EPA may seek that criminal remedies are applied to violators, in order to punish offenders and deter future offenses. See Michael L. Rustad, Thomas H. Koenig, & Erica R. Ferreira, Restorative Justice to Supplement Deterrence-Based Punishment: An Empirical Study and Theoretical Reconceptualization of the EPA’s Power Plant Enforcement Initiative, 65 Okla. L. Rev. 427 (2013); Types of Approaches to CRCA Corrective Action Enforcement Actions, EPA, https://www.epa.gov/enforcement/types-and-approaches-rerca-corrective-action-enforcement-actions (last visited Oct. 22, 2022) (identifying the types of remedies available following a violation of environmental law such as administrative, civil, and criminal enforcement tools); see also Basic Information on Enforcement, EPA, https://www.epa.gov/enforcement/basic-information-enforcement (last visited Oct. 22, 2022) (noting civil administrative actions, civil judicial actions, and criminal action options as appropriate responses to varying degrees of violations and highlighting that criminal actions are “usually reserved for the most serious violations, those that are willful, or knowingly committed.”).

32 See generally Memorandum from Lawrence E. Starfield, Acting Assistant Adm’r, OFF. OF En’t, and Compliance Assurance, On Using All Appropriate Injunctive Relief Tools in Civil Enforcement Settlements (Apr. 26, 2021), https://www.epa.gov/enforcement/using-all-appropriate-injunctive-relief-tools-civil-enforcement-settlements (outlining the full array of injunctive relief tools that could provide a civil remedy in enforcement settlements).

33 Many of these tools are likely applied to companies or other organizations, rather than individuals, see generally Memorandum from Robert Van Heuvelen, Dir., OFF. OF Regul. En’t, On Guidance on Use of Penalty Policies in Administrative Litigation (Dec. 15, 1995), https://www.epa.gov/enforcement/guidance-use-penalty-policies-administrative-litigation (generally outlining the guidance for EPA on “how penalty amounts should be pled and argued in administrative litigation and how penalty policies should be used in this process”); Memorandum from Susan Shinkman, Dir., OFF. OF En’t, On Securing Mitigation as Injunctive Relief in Civil Enforcement Settlements (Nov. 14, 2012), https://www.epa.gov/enforcement/securing-mitigation-injunctive-relief-certain-civil-enforcement-settlements2nd-edition (defining the civil remedy of mitigation as an injunctive relief “sought by the government to remedy, reduce or offset past—and in some cases ongoing—harm caused by alleged violations in a particular case.”); SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs), EPA, https://www.epa.gov/enforcement/supplemental-environmental-projects-seps (last visited Oct. 22, 2022) (summarizing the use of supplemental environmental projects as a factor of an enforcement agreement in response to an alleged environmental violation that has affected a community or the environment). Cleaning up hazardous waste found under “imminent hazard” provisions of RCRA means that responsible parties are subject to strict and severable liability for the costs of such cleanup. See Ken neth K. Kilbert, Re-Exploring Contribution under RCRA’s Imminent Hazards Provisions, 87 NEV. L. Rev. 420, 422 (2008) (highlighting how RCRA is used to hold parties responsible for cleanup costs of a contaminated site, however, does not impose joint and several liability upon defendants).

34 EPA is authorized under RCRA to issue orders that are unilateral or on consent (i.e., with agreement) and unilateral orders demand that an entity comply with permit regulations under RCRA. EPA can issue administrative orders under RCRA or under enforcement authority granted under CERCLA. If a facility fails to comply with an order, EPA can seek to have it enforced in federal court and seek penalties for non-compliance. EPA also maintains authority to perform cleanup, remediation, or other work under the order and seek reimbursement for costs. Civil judicial actions can be sought by EPA or a state agency against a person or company that has not complied with a permit under RCRA, an administrative order, caused the release of hazardous waste, or caused substantial and imminent endangerment to a person(s) or the environment. Civil judicial actions tend to follow administrative actions or for cases of serious non-compliance, whereas criminal judicial actions can be sought for knowing violations. RCRA authorizes citizens to bring enforcement actions against violators or against EPA in federal court. Types and Approaches to CRCA Corrective Action Enforcement Actions, EPA, https://www.epa.gov/enforcement/types-and-approaches-rerca-corrective-action-enforcement-actions#type (last visited Oct. 22, 2022) (conveying a brief summary of options for civil judicial actions may be brought against an alleged violator in state and federal court). See generally Timothy O. Schimpf, Unleash RCRA! Letting Loose the Corrective Action Process of RCRA can Change the World, 29 Wm. & Mary Env’t L. & Pol’y Rev. 481, 484–85, 489–92 (2005) (outlining the details of RCRA corrective action procedure and the role of the EPA in holding alleged violators accountable under RCRA, including the authorization of citizen suits); Kundai Mufara, RCRA Facts: An Overview of the Hazardous Waste Management Law, ERA ENV’T MGMT., https://www.era-environmental.com/blog/rcra-facts-an-overview-of-the-hazardous-waste-management-law (explaining how the EPA utilizes various measures to enforce RCRA, including but not limited to the issuing of permits); Memorandum from Thomas T. Traceski, Dir., CRCRA/CERCLA Div., OFF. OF CRIM. EN’T, Guidance, On Comparison of the CRCA Corrective Action and CERCLA Remedial Action Processes (Feb. 15, 1994), https://www7.nau.edu/ipte/main/HasSubMap/docs/RCRA-CERCLA/DOE_RCRAsvsCERCLAs%20Comparison.pdf (providing a comprehensive overview of the CRCA Corrective Action and CERCLA’s remedial response programs). An individual may...
enter into a consent decree to avoid pleading guilty and to regain compliance, see Memorandum from Lawrence E. Starfield, supra note 32 (outlining the array of injunctive relief tools possible to enforce environmental laws and regulations such as advanced monitoring, audits and independent third-party verification, electronic reporting, and increased transparency of compliance data). Many cases are settled by administrative orders or consent decrees. For recent examples, see Civil Cases and Settlements, EPA, https://cfpub.epa.gov/enforcement/cases/ (last visited Oct. 22, 2022) (listing the numerous currently available cases utilizing administrative orders or consent decrees).

55 See Memorandum from Director Earl E. Devaney, supra note 5, at 2–3 (distinguishing how environmental criminal provisions target the most egregious violations and are “intended to prevent abuses of the permit system by those who obtain and then knowingly disregard them” while also punishing criminal wrongdoing). Enforcement staff are also more likely to pursue civil remedies for non-compliance, because the burden of proof is lower. Mushal, supra note 18, at 1105–06 (supporting the assertion that the lower burden of proof in civil court makes the judicial enforcement more likely to be civil rather than criminal). For research on state and local level environmental criminal enforcement, see generally Joshua C. Cochran, Michael J. Lynch, Elisa L. Toman & Ryan T. Shields, Court Sentencing Patterns for Environmental Crimes: Is there a “Green” Gap in Punishment?, 34 Butler L. Rev. 487, 493 (1990) (highlighting that the CRRA uses the “knowingly” standard to determine criminal culpability of alleged violators); Turner T. Smith Jr. & Rosszell D. Hunter, Hazardous Wastes: The Knowing Endangerment Offense, 262 J. Env’t L. 264 (1990) (explaining the implications of the United States Code’s “knowing” culpability standard within the CRRA); Hansen, supra note 6, at 989–90, 1017 (defining the “knowing” standard of criminal culpability and its implications under the CRRA).

56 Criminal Provisions of CRRA, supra note 36 (establishing that penalties for knowing endangerment include up to 15 years of incarceration and fines up to $250,000 for an individual violator).


58 This concern sparked a series of articles on the Responsible Corporate Officer Doctrine and related issues. McGovern, supra note 39, at 325–31 (discussing the Responsible Corporate Officer Doctrine); Fike, supra note 39, at 186, 195 (discussing the necessary level of intent for conviction under the CRRA); Barton, supra note 39, at 1548–52 (1991) (discussing the Responsible Corporate Officer Doctrine as a substitute for scienter); Ronald M. Boudry, CRRA and the Responsible Corporate Officer Doctrine: Getting Tough on Corporate Offenders by Sidestepping the Mens Rea Requirements, 80 KY. L.J. 1055, 1072 (1992) (discussing the circuit split regarding the application of the Responsible Corporate Officer Doctrine); Kevin A. Gaynor & Thomas R. Bartman, Criminal Enforcement of Environmental Laws, 10 Collo. J. Int’l Envt’l L. & Pol’y 39, 54–73 (1999) (discussing the Responsible Corporate Officer Doctrine and intent); Clare Condon, 7 CRRA Violations that Will Send you to Jail, EHS Daily Advisor (Aug. 22, 2017), https://ehsdailyadvisor.blr.com/2012/08/7-crrea-violations-that-will-send-you-to-jail/; Sidney M. Wolf, Finding an Environmental Felon Under the Corporate Veil: The Responsible Corporate Officer Doctrine and CRRA, 9 J. of Land Use & Envt’l L. 1, 1–58 (1993) (discussing the application of the Responsible Corporate Officer Doctrine).

59 For a discussion of CRRA criminal deterrence, see Maura M. Okamoto, CRRA’s Criminal Sanctions: A Deterrent Strong Enough to Compel Compli-ance, 19 U. Haw. L. Rev. 425 (1997). For a general discussion of deterrence and the value environmental law enforcement, see Larry D. Wynn, A Case for Criminal Enforcement of Federal Environmental Law, 38 Naval L. Rev. 105 (1989). For a discussion of deterrence, see Carole M. Billiet & Sandra Rousseau, How Real is the Threat of Imprisonment for Environmental Crime, 37 Ecol. L. J. and Econ. 183 (2014); Raymond Paternoster, How Much Do We Really Know about Criminal Deterrence, 100 J. Crim. L. & Criminology 765, 765–68 (2010). For a broad discussion of deterrence theory, see Five Things About Deterrence, Nat’l Inst. Just. (June 5, 2016), https://nij.ojp.gov/topics/articles/five-things-about-deterrence. Criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence. See Gary S. Becker, Crime and Punishment: An Economic Approach, in Essays in the Economics of Crime and Punishment 1,1 (1974); Richard A. Posner, An Economic Theory of the Criminal Law, 85 Colum. L. Rev. 1193, 1193-1200 (1985) (discussing criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence); 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. 1095 (2016) (discussing criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence); Michael J. Lynch, The Sentencing/Punishment of Federal Environmental/Green Offenders, 2000-2013, 38 Deviant Behav. 991 (2017) (discussing criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence); Joshua Ozmy & Melissa L. Jarrell, Sub-Optimal Deterrence and Criminal Sanctioning under The U.S. Clean Water Act, 24 Univ. Denv. Water L. Rev. 159 (2021) (discussing criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence). For companies, low fines and penalties can create incentives to see compliance as the cost of doing business, see Daniel P. Fernandez, Alex Figares & H. Wayne Cecil, Monetary Consequences of Environmental Regu-lations: Cost of Doing Business or Non-Deductible Penalties or Fines, 9 Am. U. Bus. L. Rev. 123 (2020) (discussing companies, low fines and penalties can create incentives to see compliance as the cost of doing business).

Mushal, supra note 18, at 1105–1200 (1985) (discussing criticisms levied against criminal enforcement focus on the lack of significant penalties, and resources to police and prosecute criminals effectively, the degree that these efforts provide for sufficient deterrence); Joshua Ozmy & Melissa L. Jarrell, Persistence or Partisanship: Exploring the Relationship between Presidential Administra-tions and Criminal Enforcement by the U.S. Environmental Protection Agency 1983-2019, 81 Pub. Admin. Rev. 49, 53–62 (2021); EPA’s Budget and Spending, EPA (May 16, 2022), https://www.epa.gov/planandbudget/budget.


See Joshua Ozmy and Melissa Jarrell, Why do Regulatory Agencies Punish? The Impact of Political Principals, Agency Culture, and Transaction Costs in Predicting Environmental Criminal Prosecution Outcomes in the United States, 33 Rev. of Pol’y. Econ. 71, 71–73 (2016); Ulhmann, Crime Redux, supra note 44, at 301–02, 307–10 (showing that prosecutors tend to pursue cases involving aggregating factors, such as willful conduct, criminal behaviors, and crimes with serious consequences).

For studies on CRRA criminal enforcement, see generally Brickey, supra note 7; Ozmy & Jarrell, Toxic Offenders, supra note 7; Ozmy & Jarrell, Case of CRRA, supra note 7 (discussing prosecution of and enforcement for environmental crimes under the CRRA).


These numbers, as with incarceration totals in the next figure, are affected by outliers discussed in the next section.

In these prosecutions, the heavy penalties assessed at sentencing are related to aggregating factors in addition to the environmental crimes that carry stiff punishments. These factors include drugs (M. Dorner), criminal conspiracy (C. Arcangelo), defrauding the United States (C. Callihan), and in the case of A. Elias, knowing endangerment. Summary of Criminal Prosecutions: Mark A. Dorner, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=1871 (last visited November 14, 2022) (defendant was sentenced to 953 months of incarceration, probation, and charged various fees for illegal disposal of hazardous waste without a permit under RCRA, along with violations of the Drug Control Prevention Act).


Summary of Criminal Prosecutions: Alan Elias, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=847 (last visited November 14, 2022) (defendant was convicted on three counts of violating RCRA and making false statements and was sentenced to 204 months of incarceration, 30 months of probation, and to pay $364,750 in restitution to the U.S. EPA and “almost $6 million” in restitution to his victims) Because the case summary is unclear about the actual amount of restitution, we do not include it in total monetary penalty figures in our analysis.


Summary of Criminal Prosecutions: Kenneth Gravitt, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3107 (last visited November 14, 2022) (defendant was sentenced to 36 months of incarceration and to pay over $5.5 million in restitution for crimes related to the handling of hazardous waste and one count of illegal storage of hazardous waste).

Summary of Criminal Prosecutions: John R. Cooke, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=1045 (last visited November 14, 2022) was sentenced to 36 months of incarceration, 60 months of supervised release, and over $4.8 million in restitution for illegally storing hazardous waste which led to a spillage.

Summary of Criminal Prosecutions: Thomas Toy, EPA, https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=3194 (last visited November 14, 2022) (defendant was ordered to pay $4.2 million in restitution, serve 30 days incarceration, and three years of supervised release after he was convicted for illegally storing waste at Superior Barrel and Drum Company’s facility without a permit which led to EPA conducting a removal of 1,800 drums of waste).


73 Joel A. Mintz, supra note 68, at 10510. A major drop occurred under Trump, when 700 EPA employees left the agency and were not replaced, dropping the number to 14,172 until the most recent budgetary appropriation. See generally 700+ Employees have Left the EPA Under Trump: Loss of Scientists, Staffers Undermines Agency’s Purpose, PUB. EMP’S FOR RESP. (Dec. 28, 2017).

74 EPA’s Budget and Spending, supra note 43; see also U.S. Inflation Calculator, https://www.usinflationcalculator.com/.


77 Mushal, supra note 18, at 1113–16.

78 The FY 2022 enacted budget was for $9.5 billion in funding and 14,581 staff for EPA and $133 million for ENRD, neither of which, when adjusted for inflation, is historically significant. See generally News Release, EPA, Statement by Administrator Regan on the President’s FY 2022 Budget (June 2, 2021) https://www.epa.gov/newsreleases/statement-administrator-regan-presidents-fy-2022-budget.
Ohio House Bills 168 and 110: Just Another Drop in the Bucket for Brownfield Redevelopment?

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27 Small Business Liability Relief and Brownfields Revitalization Act § 102(a)–(b), CERLA § 107, 42 U.S.C. § 9607.


30 Id. § 102(a)(o)(1)(A).

31 Id. § 102(a)(o)(1)(B).

32 Fox, supra note 28, at 21 (citing the Small Business Liability Relief and Brownfields Revitalization Act 42 U.S.C. § 102(a)(o)(2)(i)).


34 Id. § 102(a)(p)(1).

35 See, Id. § 102(a)(p)(1)(A).

36 Id. § 102(a)(p)(4).

37 Id. § 102(a)(p)(1)(A).

38 Id. § 102(a)(p)(1)(B).


40 Id.


42 See id. § 221, 222.

43 Id. § 221(q)(1)(A).

44 Fox, supra note 28, at 23.

45 Small Business Liability Relief and Brownfields Revitalization Act § 221(q)(1)(A).

46 Fox, supra note 28, at 24–25.


50 Id.

51 Id. at 2–3.

52 Id. at 3.

53 Id.

54 Id.


56 Id. (citing to Post-Closure Rule, 63 Fed. Reg. 56710 (Oct. 22, 1998)).

57 Id.

58 James T. O’Reily, Steps in a Brownfields Project, 1 Superfund & Brownfields Cleanup § 2.6 (2021).

59 Id.

60 Institutional Controls (“ICs”) are “various administrative and legal tools to help minimize the potential for exposure to residual contamination and to protect physical cleanup measures at contaminated sites. ICs work by limiting land or resource use or by providing information that helps modify or guide human behavior at a site.” O’Reily, supra note 59, at n.39 (citing EPA, INSTITUTIONAL CONTROLS: A GUIDE TO PLANNING, IMPLEMENTING, MAINTAINING, AND ENFORCING INSTITUTIONAL CONTROLS AT CONTAMINATED SITES (2012)).


63 Id.


65 Vera, supra note 13, at 815–16.


67 Jill J. McCluskey & Gordon C. Rauzer, Stigmatized Asset Value: Is it Temporary or Long-Term, 85 Rev. Econ. and Stat. 276, 285 (Rev. Econ. & Stat., 2003) (describing that in the years directly following cleanup, properties within a two-mile radius of the previously contaminated land sold at significantly lower prices than properties located farther away).

68 EPA, OFF. BROWNFIELD & LAND DEV., supra note 18, at 7.


70 EPA, OFF. BROWNFIELD & LAND DEV., supra note 18, at 2.

71 Vera, supra note 13, at 815–16.

72 Bartsch, supra note 7, at 16 (detailing examples of federal loans included in the EPA brownfield grant programs: (1) brownfield assessment grants, (2) brownfield job training and redevelopment grants, (3) brownfield cleanup grants, and (4) brownfield cleanup revolving loan fund grants).


74 EPA, supra note 73, at 2–3.

75 Small Business Liability Relief and Brownfields Revitalization Act, §§ 9601, 9604, 9605, 9607, 9622, 9628; EPA, supra note 73, at 2–3.

76 Small Business Liability Relief and Brownfields Revitalization Act § 102(b)(7).

77 Id.

78 Id. § 102(b).

79 Id. § 102(b)(7)(B).

80 Fox, supra note 28, at 22 (citing Brownfields Revitalization and Environmental Restoration Act § 102(b)(7)).

81 Id.

82 Id. at 211.

83 Id. § 211(b).

84 Id. § 211(b)(1)(A)–(C), (F).

85 Id. § 211(b)(4)(A)(ii).

86 Id. § 211(b)(5)(C)(i)–(x).

87 Vera, supra note 13, at 829.

88 Id.


91 Overview of EPA’s Brownfields Program, EPA (May 4, 2022), gov/brownfields/overview-epas-brownfields-program.

92 Id.

93 Bartsch, supra note 7, at 16.

94 Bartsch, supra note 7, at 16.


96 Id.

97 Id.


99 Wis. DEP’T NAT. RES., PUB. NO. RR-753, Wisconsin Ready for Reuse Program: Hazardous Substance Loans & Grants.

100 Id. at 1.
100 Id. at 1–2 (explaining that the federal definition is “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”).
101 Id.
103 Id. at 7–9.
104 Id. at 5.
107 Id.
109 Id.
112 Id. at 2 (explaining the volunteer process for obtaining a covenant not to sue).
113 Id. (noting that the bill protects purchasers by providing them with an affirmative defense).
117 42 U.S.C. § 9601(40) (defining “bona fide prospective purchaser” as “(i) a person who—(I) acquires ownership of the facility after January 11, 2002 (II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (b); and (ii) a person—(I) who acquires a leasehold interest in the facility after January 11, 2002; (II) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this chapter by any person; and (III) with respect to whom any of the following conditions apply: (aa) the owner of the facility that is subject to the leasehold interest is a person described in clause (i)(bb)(AA) the owner of the facility that is subject to the leasehold interest was a person described in clause (i) at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) due to circumstances unrelated to any action of the person who holds the leasehold interest; and (BB) the person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i), (iii), (iv), (v), (vi), (vii), and (viii) of subparagraph (B), (cc) the person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B).”).
118 Richardson, supra note 124 (acknowledging key limitations of House Bill 168).
120 See Richardson, supra note 124 (explaining when the affirmative defense may be asserted).
121 Id. at 2 (explaining the federal affirmative defense in Ohio).
122 Id. (acknowledging that developers seeking a CNS from the state of Ohio still have the option of going through the state’s voluntary action program).
125 Id.
126 Id.
128 See Clapper, supra note 116; see also New Opportunities for Ohio Brownfield and Site Demolition & Redevelopment, Vorys (July 26, 2021), https://www.vorys.com/publications-2969.html.
134 Id. § 122.6511(c)(2).
135 Id.
136 Justice, supra note 134.
139 Mike DeWine: GOVERNOR OF OHIO, supra note 132.
140 Id.
141 See Ohio Dep’t of Dev., supra note 138 (announcing that Round One applicants received the first awards in April and the second awards in June).
143 Vorys, supra note 137.
144 Id.
145 Id.
146 See discussion infra Sections IV.B.2, V.B., V.C
148 See discussion infra Section IV.B.2; N.Y. Dep’t of Tax’n and Fin., supra note 102, at 6; Vera, supra note 13, at 830–31 (citing EPA, EPA F-560-17-212, STATE BROWNFIELDS AND VOLUNTARY RESPONSE PROGRAMS 51 (2017)).
150 Env’t Data Viewer, NETRONLINE, https://environment.netronline.com/state/oh/acres/ (last visited Oct. 31, 2022); see also Ohio Brownfield Inventory Database, supra note 106.
Cleveland.com, supra note 158.

Id.

Lucas County, OH, Data USA, https://datausa.io/profile/geo/lucas-county-oh#:~:text=18.7%202025%2020of%2020the%2020population%20for,and%202020Females%202035%2020%202020D%202044 (last visited Feb. 26, 2022).


Id.

Id. at 221.

Id. at 222.

See infra Section V.A.

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LEARN MORE

STUDENTS GAIN A THOROUGH GROUNDING IN ENVIRONMENTAL AND ENERGY LAW
In addition to core environmental and energy law courses, we offer more than 20 specialty courses, including natural resources law, international and comparative environmental law, and animal law; an annual summer session on environmental law; and an LL.M. specialization in international environmental law.

ENGAGED EXPERT FACULTY
Our faculty engage actively in the broader environmental community, advising environmental NGOs, testifying on Capitol Hill, litigating cases, and writing on timely policy issues.

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