



ENVIRONMENT REPORTER



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This article provides a brief overview of some key developments in the area of criminal enforcement of environmental laws. It includes policy and legislative matters as well as summaries of almost 70 criminal cases brought around the country, including some appellate decisions from 2006. At the end of the article are the responses of Granta Nakayama, EPA's assistant administrator for enforcement, to 10 questions posed by the author.

The State of Environmental Crime Enforcement: Survey of Developments in 2006

BY STEVEN P. SOLOW

Environmental criminal enforcement may be on the verge of a leap forward in reach and visibility. A realignment in the Department of Justice has expanded the total number of prosecutors in the Environmental Crimes Section (ECS), and there are now more prosecutors at ECS than ever before. Moreover, as the cases summarized at the end of this article attest, criminal enforcement is increasingly moving into new areas, including areas of the Clean Air Act that had rarely before been the basis for criminal prosecution, and the government has expanded efforts to build environmen-

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tal criminal cases from Occupational Safety and Health Administration and Department of Transportation regulatory violations. (Notably, the Justice Department lobbied for and obtained an increase in the Sentencing Guidelines base-offense level for hazardous materials prosecutions.¹) Also of note, vessel pollution cases and fishery-related prosecutions continue to be aggressively investigated and prosecuted.

"Air pollution harms public health and the environment, which warrants criminal enforcement for knowing violations of the Clean Air Act," said David M. Uhlmann, Chief of the Justice Department's Environmental Crimes Section. "We are increasing our prosecutions under the Clean Air Act, and expanding our worker endangerment initiative, to demonstrate anew the significant public health risks associated with environmental crime."

The Environmental Protection Agency continues to implement change—in policy, programs, and even in physical accommodations—that have moved the crimi-

¹ See United States Sentencing Commission, *Guidelines Manual* § 2Q1.2 (November 2006).

nal program from the status of a self-described “poor stepchild” to a position of prominence in the Office of Compliance.

Much of this prominence can be tied to the appointment, 18 months ago, of Granta Nakayama as EPA’s assistant administrator for enforcement. Nakayama entered the government after a long career in the private sector, most recently as an environmental lawyer with the law firm of Kirkland & Ellis.

Nakayama quickly picked up on an internal EPA effort to enhance public reporting of environmental violations. With his active support, beginning in January 2006, EPA’s Internet homepage now contains a prominent replica of a criminal investigator’s badge. The badge invites users to “Report Environmental Violations,” and immediately links the user to an easy-to-use reporting form.

The results? EPA says that in the past year, more than 4,000 reports have flowed in, from employees, neighbors, competitors, and community groups. Of the total, more than 500 were related to possible criminal violations, and EPA has allowed that as many as seven current criminal investigations are underway as a result.

Last year Nakayama fought for and obtained an end to the decline in criminal investigators assigned to EPA. Instead, for the first time in three years, EPA is increasing, not reducing, the number of new criminal investigators. The reference to physical accommodations flows from Nakayama’s January 2006 pledge to physically co-locate civil and criminal offices in EPA’s regions, facilitating their coordination and cooperation. Moreover, Nakayama has obtained millions in new budget dollars to enhance equipment and training for EPA’s criminal program.

Perhaps most significant was Nakayama’s instructions to the regional enforcement offices across the country to evaluate all cases to determine whether they are best handled as civil or criminal matters. This means that many large civil cases are getting at least an initial review for possible criminal investigation. In the past, in the context of a large civil case, it was unlikely that a referral would be made for criminal investigation unless something extraordinary was revealed in the course of the civil investigation. That has changed. EPA has stated publicly on several occasions that all significant civil matters will be considered for possible criminal investigation. As a result, an unscientific survey of civil cases across the country shows that a wide variety of cases are being subject to investigation as possible criminal cases in direct response to this directive from Nakayama.

This means that EPA’s civil enforcement priorities take on increased meaning as possible indicators of areas of criminal enforcement. At Nakayama’s direction, on Feb. 9, 2007, Michael Stahl, the Director of the Office of Compliance at EPA issued a *Federal Register* notice as to the national enforcement priorities for EPA for FY 2008-2010.²

These enforcement priorities included the following statutes and substantive issues:

- Clean Water Act—Stormwater

- Clean Water Act—Combined Sewer Overflow
- Clean Water Act—Sanitary Sewer Overflow
- Clean Water Act—Concentrated Animal Feeding Operations
- Clean Air Act—New Source Review/Prevention of Significant Deterioration
- Clean Air Act—Air Toxics
- RCRA & CERCLA—Financial Assurance
- RCRA—Mining & Mineral Processing

What does this mean for the regulated community? It means that it behooves those concerned about possible criminal enforcement to attend to these statements about EPA’s civil enforcement priorities, because with the new policies in place, and some of the new criminal enforcement efforts to date, criminal enforcement cases that mirror these priorities may soon end up populating the list of cases that accompany this annual review.

When Parallel Matters Converge

When Nakayama indicated he would push for greater coordination regarding civil and criminal investigations, the immediate concern was about the possible use and abuse of civil and criminal investigative tools. An EPA criminal investigator was quoted as saying, “The perception that criminal [investigators] would be directing civil inspectors without a federal search warrant could be problematic.” Others have observed that greater coordination could mean that matters being investigated as criminal cases where there was little to support criminal culpability, could be more swiftly resolved by a civil resolution. EPA has indicated that it is revisiting its parallel proceedings policy, and it will be important for the regulated community to follow these developments closely.

Attorney-Client Privilege

For the past few years, a highly charged debate has gone on between federal prosecutors and the regulated community and its outside counsel. The debate focused on to what extent federal prosecutors should seek privileged or work-product materials in the course of criminal investigations. Prosecutors said such requests were rare, while the regulated community and the defense bar described the requests as routine. Each side produced data favorable to its position. But a series of events shifted the debate from whether the department would address the issue to how it would do so.

A key event occurred on April 5, 2006, when the U.S. Sentencing Commission voted to remove language from the sentencing guidelines that identified waiver of the attorney client privilege as a part of “meaningful cooperation” with a government investigation or prosecution. The Commission did so in the face of opposition to this change by the Department of Justice.

Then Congress began to focus on the issue. A coalition of civil liberties and business groups made common cause on the issue and lobbied extensively for legislation to protect the attorney-client privilege. The lobbying efforts were remarkably successful and brought bipartisan support to their position. Notably, on Sept. 7, 2006, Reps. William Delahunt (D-Mass.) and Dan Lungren (R-Calif.), politically poles apart on most issues, published a joint op-ed in *The Hill* newspaper in which they asked the Department of Justice to “not consider any company or other entity to be ‘non-cooperative’ for protecting its right to consult confidentially with its at-

² Stakeholder Comment on Proposed National Enforcement and Compliance Assurance; Priorities for Fiscal Years 2008, 2009, and 2010, 72 Fed. Reg. 6239 (Feb. 9, 2007) (38 ER 379, 2/16/07).

torneys,” and said that if they “refuse to do so, Congress should act.”³

Congressional concerns with the department’s position were crystallized in early December 2006, when Sen. Arlen Specter (R-Pa.), the outgoing chairman of the Senate Judiciary Committee, introduced legislation designed to protect the attorney-client privilege by broadly prohibiting prosecutors from determining that a target is not cooperating with a government investigation based on a valid assertion of privilege.

Five days later, on Dec. 12, 2006, the Justice Department issued new guidance that will require federal prosecutors to seek approval from senior officials in the department before requesting a waiver of attorney-client privilege and work product protection in corporate criminal investigations. The new guidance supersedes the existing language on waiver in the “Thompson memo” issued by then-Deputy Attorney General Larry D. Thompson in January 2003.

The Thompson memo, formally titled “Principles of Federal Prosecution of Business Organizations,” provided nine factors for prosecutors to consider when deciding whether to bring criminal charges against a corporation. Included among those factors is a consideration of whether the corporation indicated a “willingness to cooperate” with the investigation by, among other things, disclosing complete results of internal investigations and waiving attorney-client and work product protection.

The new guidance continues to require consideration of the factors from the Thompson memo, but adds new restrictions. Specifically, it requires prosecutors to establish a legitimate need for privileged information and to seek approval before requesting it from a company. To seek privileged attorney-client communications or legal advice, prosecutors must obtain approval directly from the deputy attorney general. If prosecutors want to obtain privileged factual information, such as facts uncovered during a company’s own internal investigation of misconduct, the prosecutor must seek the approval of the U.S. Attorney in his or her local district who must, in turn, consult with the assistant attorney general of the criminal division.

Counsel for Employees Under Investigation

The new Department of Justice guidelines also instruct prosecutors not to “take into account whether a corporation is advancing attorneys’ fees to employees or agents under investigation and indictment,” except in the “extremely rare case” where the totality of the circumstances shows the company intended to impede the investigation.

The guidance leaves to the discretion of the government the decision whether the company “shield[ed] . . . culpable employees” during an investigation, and sanction accordingly, placing companies in the position of having to predict whom the government will ultimately determine to be “culpable.” For fear of guessing wrong, companies may fear providing counsel to protect the rights and interests of their employees.

The response to the department’s change of position in the private bar and the regulated community has

³ “The Importance of Keeping Attorney-Client Privilege,” by Reps. Lungren and Delahunt is available at <http://thehill.com/thehill/export/TheHill/Comment/OpEd/090706.html>.

been skeptical. Many have pointed to the fact that the new guidance does not eliminate waiver of privilege protections as a sign of cooperation, resulting in subtle pressure to waive even when not sought specifically by the department. The department responds by saying it would be foolish to stop prosecutors from benefiting companies which make extensive disclosures, including waivers.

Other practitioners note that the guidance applies to a formal “request” for waiver as a condition of leniency, meaning that the guidance might not apply if a prosecutor simply raised the issue during a discussion with a company or counsel. Moreover, there is no limit on requests by agency attorneys who are often involved in complex white collar investigations. The test for regulated businesses will be how this new guidance is used by the department.

Specter’s Proposal to Protect Privilege

In any event, Sen. Specter was not convinced. Describing the department’s new guidance as “a day late and a dollar short,” on Jan. 4, 2007, Specter reintroduced his bill (S. 186), the Attorney-Client Privilege Protection Act of 2007. The bill would amend Title 18 of the U.S. Code by adding a new section, § 3014, prohibiting any agent or attorney of the U.S. government in any criminal or civil case to demand, request, or condition treatment on the disclosure of any communication protected by the attorney-client privilege or attorney work product. Nor can charges or treatment be conditioned on whether the organization pays attorneys’ fees for its employees or signs a joint defense agreement.

Speaking on the floor of the Senate, Specter stated, “The Department of Justice will not prevent corporate misconduct if it continues to inadvertently discourage the types of internal investigations and dialogues corporate officials need to detect and prevent corporate fraud.”

“Cases should be prosecuted based on their merits, not based on how well an organization works with the prosecutor,” Specter remarked.

Cases of Note

Asbestos

United States v. Air Power Enterprises Inc. (E.D. Va., No. 05-00074, sentence entered 3/31/06)—Two companies and their presidents were sentenced to significant jail time and fines after buying fake training certificates for employees working on asbestos and lead abatement projects. Individuals working on such projects are required to undergo extensive training for certification. James Schaubach, president of ACS Environmental, Inc. and vice president of Air Power Enterprises, Inc., was sentenced to 21 months in prison, three years of supervised release, and fined \$1.5 million. Nicanor Lotuaco, president of Air Power, was separately sentenced to five months in jail, five months of home detention, three years of supervised release, and fined \$1 million. The companies were sentenced to five years of probation and fined \$500,000. In a statement, Sue Ellen Wooldridge, Assistant Attorney General for the Justice Department’s Environment and Natural Resources Division, said “Today’s sentence sends a strong message that the department will aggressively prosecute companies that intentionally and persistently violate our environmental laws and workplace standards.”

United States v. Azizi (N.D. Calif., No. 3:06-cr-00548-MMC, indictment returned 9/22/06)—The owner of a demolition business faces a maximum of five years in prison and \$250,000 fine on each of four felony Clean Air Act violations for failing to contain asbestos-containing materials. Wassim Mohammad Azizi failed to notify air authorities that he was demolishing a building that contained significant amounts of asbestos. In addition, he failed to wet down the material as it was being removed, did not contain the material to prevent release, failed to label the debris as containing asbestos, and improperly disposed of the material in a dumpster.

United States v. InStar Services Group Inc. (S.D. Fla., No. 06-60284, sentence entered 11/8/06)—A company that was restoring a condominium complex damaged by Hurricane Wilma in 2005 will pay more than \$3 million and serve five years of probation after pleading guilty to asbestos violations. InStar Services Group, a subsidiary of The ServiceMaster Co., disturbed some 144,000 square feet of asbestos-containing materials while restoring the Hawaiian Gardens condo complex in Lauderdale Lakes, Fla. In doing so, the company violated the Clean Air Act by failing to file an advance notification and failing to meet workplace standards in the National Emission Standards for Hazardous Air Pollutants.

United States v. Parkland Town Center (S.D. Fla., No. 05-cr-80173, 5/9/06)—A subcontractor renovating a commercial building was convicted of violating the Clean Air Act by improperly handling and disposing of asbestos-containing materials. Terry Dykes, the project's demolition and renovations subcontractor and on-site supervisor, failed to file required advance notice, directed workers to remove asbestos-containing insulation without adequate wetting, did not provide required respiratory equipment, and did not have a trained asbestos onsite supervisor. He also failed to properly dispose of the debris.

United States v. Riecke (N.D. Texas, No. 3:06-cr-109G, 8/24/06)—A Texas demolition contractor was convicted of Clean Air Act violations after failing to comply with asbestos disposal standards. Melvin Eugene Riecke, the general manager of a company that recycles roofing shingles, faces up to \$1.25 million in fines and a maximum prison sentence of 25 years. His company had contracted to demolish a commercial building that contained asbestos-containing materials. Riecke knowingly violated work practice standards for asbestos by failing to adequately wet the material during the stripping and collection processes, and failing to have a trained representative on site while the material was handled.

United States v. San Diego Gas & Electric (S.D. Calif., No. 06-cr-0065, indictment returned 1/11/06)—A San Diego utility company, two employees, and an outside contractor were charged with conspiracy, unlawful removal of asbestos, and making false statements. The charges stem from the alleged illegal removal of asbestos along a 9.2-mile stretch of piping at a facility in Lemon Grove, Calif. Jacquelyn McHugh, a supervisor in the company's environmental department, and David Williamson, an environmental specialist, along with outside contractor Kyle Rhuebottom, were accused of conspiring to violate the asbestos work practice standards of the Clean Air Act by improperly removing the underground piping that contained asbestos in its protective coating.

United States v. Springer (D. Ariz., No. 05-cr-01065, sentence entered 3/20/06)—The former owner of an industrial facility was sentenced to three years of probation, \$2,000 in fines, and \$75,000 in restitution after pleading guilty to violating the Clean Air Act by failing to comply with work practice standards for asbestos during the demolition of a commercial building. Springer hired workers to demolish industrial buildings, but failed to perform a required site survey prior to the demolition. Some 2,550 square feet of asbestos was found to exist at the site, and Springer did not follow requirements for asbestos removal.

United States v. Tarragon Management Inc. (S.D. Fla., No. 06-cr-60116-ALL, 6/19/06)—Tarragon Management, Inc. was ordered to pay \$500,000 in criminal fines as well as \$500,000 to an environmental task force after pleading guilty to asbestos violations during the demolition and renovation of an apartment complex. In addition, the company was ordered to develop, implement, and enforce a nationwide comprehensive environmental compliance plan overseen by an independent consultant. The charges stemmed from the demolition and renovation of the Pine Crest Village Apartment Complex, where some 6,000 feet of asbestos-containing materials were removed without following the Clean Air Act's work practice standards for asbestos. In a separate action, the company's managing director, Richard Schaffer, was ordered to serve six months of home detention, to pay a \$25,000 criminal fine, to serve 250 hours of community service, and to complete a 40-hour training course.

Chlorofluorocarbons

United States v. Shellef (E.D. N.Y., No. 2:03-cr-00723, sentenced entered 3/22/06)—Two New York men who failed to pay excise taxes on chlorofluorocarbons were ordered to serve prison time and pay fines. Importation and production of CFCs was banned by the Clean Air Act in 1996, although manufacturers were permitted to sell or export CFCs that were stockpiled prior to the ban. However, domestic sales are subject to substantial excise taxes to discourage their use. Dov Shellef and William Rubenstein, who each owned businesses that traded in CFCs, were convicted of purchasing the chemicals and representing to manufacturers that they planned to export the product, thereby avoiding the excise taxes. The two men then illegally diverted the product to a number of domestic customers. Shellef was sentenced to 70 months and Rubenstein was sentenced to 18 months. Both were ordered to pay \$1.9 million in taxes and fines (37 ER 606, 3/24/06).

Clean Air Act

United States v. Amitech USA Ltd. (M.D. La., No. 06-96, plea entered 7/18/06); **United States v. McCann** (M.D. La., No. 06-97, plea entered 7/18/06)—The former plant manager of a Louisiana pipe manufacturing company faces up to a year in prison and as much as \$100,000 in fines after pleading guilty to criminal violations of the Clean Air Act. Amitech USA, which manufactures glass-fiber reinforced plastic pipe and polymer concrete pipe, held a permit that authorized a specified amount of styrene emissions each year, provided that the facility used a condenser to limit emissions. Plant manager William S. McCann was aware that the plant was operating without the required condenser, illegally emitting styrene into the air. Neither he nor the com-

pany reported the unpermitted emissions to the EPA (37 ER 1560, 7/28/06).

United States v. Citgo Petroleum Corp. (S.D. Texas, No. 06-cr-00563, indictment returned 8/9/06)—A federal grand jury in Texas returned a 10-count indictment charging a refinery and its environmental manager with criminal violations of the Clean Air Act and the Migratory Bird Treaty Act. At its Corpus Christi refinery, Citgo used two large, open-top tanks as oil/water separators, without the emission controls required by regulators. According to the indictment, more than 57 megagrams of benzene—a hazardous air pollutant—was exposed to the air. Federal regulations limit refineries to operating with no more than six megagrams. In addition, the tanks were not fitted with nets or other equipment to prevent protected birds from landing in the oil. The refinery faced five counts of violating the MBTA after birds were found coated with oil in the tanks. The company faces fines up to \$500,000 or twice the gross economic gain, and five years of probation. The company's environmental manager, Philip Vrazel, faces fines of up to \$500,000 and up to five years in prison (37 ER 1788, 8/25/06).

United States v. K.S. Inc. (D. Hawaii, No. 06-cr-00113, 3/31/06)—K.S., Inc., of Pago Pago American Samoa, agreed to pay a \$40,000 criminal fine and \$12,000 in community service after violating the Clean Air Act by improperly emptying cylinders filled with anhydrous ammonia. The company was directed by local environmental officials to remove or properly dispose of the cylinders under the direct supervision of emergency response agencies. Instead, an employee of the company vented the ammonia from the cylinders into a 55-gallon drum of water. He was eventually stopped by police responding to a complaint about an odor. Forty people in the area were subsequently evacuated.

United States v. McWane Inc. (D. Utah, No. 2:05-cr-00811, sentence entered 6/12/06)—Charles Matlock, a former vice president and general manager of McWane Inc., was sentenced to a year in prison and a \$20,000 fine after pleading guilty to violating the Clean Air Act by submitting false emissions tests. In addition, the company pled guilty and was ordered to pay a \$3 million fine and serve three years of probation. Pacific States Cast Iron Pipe Co., a division of McWane in Provo, Utah, manufactures cast iron pipe for the water and sewer industry. As part of its operations, it melts ferrous scrap metal in a large "cupola" furnace. Under the Clean Air Act, the company is required to perform a stack test every three years to measure the amount of particulate matter pollution being emitted from the stack. Prior to a September 2000 compliance test, Matlock ordered pig iron to be melted in the cupola instead of shredded scrap metal in order to improperly lower the amount of emissions. The company then submitted false emissions documents based on the inaccurate test (37 ER 1264, 6/16/06).

Clean Water Act

United States v. Austin (D. Alaska, No. A05-111-cr, sentence entered 4/7/06)—A lab technician who pled guilty to falsifying wastewater data was sentenced to three years of probation and fined \$1,100. Thomas Austin, who worked for Alyeska Pipeline Services Co., improperly changed results for 102 data samples of wastewater at the Valdez marine terminal of the Trans Alaska Pipeline System. EPA investigators found no evidence

that Austin made any attempt to conceal the falsifications or benefit from them. Rather, he sought only to avoid conflicts and problems with management (37 ER 905, 4/28/06).

United States v. Chief Ethanol Fuels Inc. (D. Neb., No. 4:06-cr-03153, plea entered 10/25/06)—An ethanol producer was sentenced to a year of probation and ordered to pay a \$100,000 fine—as well as a \$100,000 contribution to an environmental educational non-profit group—for violating the Clean Water Act. Chief Ethanol Fuels, Inc. admitted to falsely reporting the temperature of wastewater discharges into the Blue River on three occasions. The water discharged into the river was between 90 degrees and 94 degrees, though the company reported that the temperatures were within the 90 degree limit set by the company's discharge permit. The government did not allege that the river was harmed by the discharges. In fact, the company later received a new permit allowing for discharges up to 104 degrees (37 ER 2247, 11/3/06).

United States v. ConAgra Foods Inc. (D. Minn., No. 05-cr-00257, sentence entered 1/20/06)—A Minnesota food ingredient and flour mill was sentenced to fines and community service after pleading guilty to Clean Water Act violations. ConAgra Foods, Inc. discharged water, used in the company's Hastings, Minn. plant to cool compressors, into the Vermillion River, a tributary of the Mississippi River. By permit, the water was not to exceed an average daily temperature of 86 degrees. However, during an inspection, it was determined that the readings, higher than allowed, were not reported in required discharge monitoring reports. The company was ordered to pay a \$138,513 criminal fine, and to pay \$110,000 in community service to the National Parks Foundation and the Friends of the Mississippi River. In a statement, the chief of the Justice Department's Environmental Crimes Section said, "When companies fail to honor their legal obligation to report discharges accurately, and seek to conceal Clean Water Act violations, criminal prosecution is appropriate."

United States v. Evans (M.D. Fla., No. 3:05-cr-159, 8/25/06)—The operator of a Florida labor camp for migrant and seasonal agricultural workers was found guilty of violating the Clean Water Act by piping human waste directly into a creek. Ronald Evans directed that a large PVC pipe be connected to the septic tanks of a labor camp in East Palatka, Fla. The pipe carried raw sewage underground for some distance and then deposited it directly into Cow Creek, which is a primary tributary of the St. Johns River. The result was severe contamination of the creek.

United States v. Great Pacific Seafoods Inc. (D. Alaska, No. A01-15, 9/7/06)—A Seattle-based seafood processor admitted to violating the Clean Water Act at its plant in Whittier, Alaska. The company acknowledged six violations of its discharge permits, including leaking of waste water into a storm ditch, failure to conduct daily inspections of waste systems, and failure to complete a best-management practices plan. The violations prompted a two-year extension of the probation the company received five years earlier on unrelated Clean Air Act violations for illegal asbestos removal. Under a condition of the probation, the company agreed not to violate any state or federal laws.

United States v. Greg Street Plating Inc. (D. Nevada, No. 06-cr-00081, indictment returned 5/17/06)—An electroplating, metal plating and finishing company was

charged with violating the Clean Water Act by discharging highly acidic waste into a municipal sewer system. As part of its operations, Greg Street Plating Inc. generated hundreds of gallons of highly acidic rinse wastewater each week that was contaminated with heavy metals. The water was supposed to be treated in a closed loop evaporation system. Late one night, an employee allegedly dumped highly acidic water into the sewer system. Warning alarms were set off when the water reached the Truckee Meadows Sewage Treatment Facility, and employees there were able to neutralize the waste and avoid damage to the facility.

United States v. Hajduk (D. Colo., No. 04-cr-0346, 9/29/06)—Albert David Hajduk, the operating manager of a Colorado electroplating company, was sentenced to five years in prison and five months of home detention after pleading guilty to making false statements and violating the Clean Water Act. Luxury Wheels O.E. Plating, Inc. used various chemicals for its electroplating process, and maintained an on-site waste treatment plant. It had been issued a permit to discharge wastewater, subject to certain requirements, into the Grand Junction, Colo., sewer system. On occasion, Hajduk would treat electroplating process wastes in a manner that overburdened the treatment system and rendered treatment ineffective. The company also determined when the city was sampling wastewater and attempted to interfere with efforts to obtain representative samples. On one occasion, the company discharged a pollutant, which generated a toxic gas and injured a city worker. The company was sentenced to two years of probation, a \$40,000 fine, and restitution of \$350,000 to the injured worker (37 ER 2048, 10/6/06).

United States v. Holden (M.D. Tenn., No. 1:05-cr-11, 9/25/06)—A father and son who are both public works officials in Mount Pleasant, Tenn., face significant jail time after being found guilty of submitting fraudulent sewage treatment reports. James Larry Holden, the director of the city's public works department, and his son, James Michael Holden, the licensed operator of a sewage treatment plant, were convicted of a felony count of falsely representing that water quality testing required under the Clean Water Act was being performed when it was not. James Michael Holden was found guilty of a second felony count for instructing an employee to fill in historical documents reflecting that testing had been performed. The first count carries a five-year maximum sentence; the second count carries a 20-year maximum (37 ER 2006, 9/29/06).

United States v. Hubenka (10th Cir., No. 05-8006, 2/21/06)—A Wyoming man was properly convicted of violating the Clean Water Act by illegally building three earthen dikes on the Wind River. John Hubenka, manager of the LeClair Irrigation District, faces up to three years in prison and fines up to \$50,000 for each of the three felony violations. Hubenka hired a man to construct the three dikes by pushing river cobbles with a bulldozer. The dikes changed the flow of the river to carve out a 300-acre parcel from the Wind River Indian reservation. A District Court found Hubenka guilty of discharging dredge-and-fill material for the construction of the dams without a permit. On appeal, the Tenth Circuit affirmed, rejecting Hubenka's assertion that the river cobbles and sand used for the dikes did not amount to the addition of pollutants, because the construction did not add materials from outside the river banks (37 ER 446, 3/3/06).

United States v. Inskeep (C.D. Ill., No. 1:05-cr-10070, sentence entered 7/13/06)—The former manager of an Illinois dairy was sentenced to 30 days in prison, one year supervised release, and a \$3,000 fine after pumping cow manure and waste water from the dairy's barns into the West Fork of Kickapoo Creek. David Inskeep was warned by state environmental officials that the waste level in the dairy's waste lagoon was near capacity, and that the pump should be turned off to prevent an overflow into the creek. Inskeep refused to turn off the pump; nor did he hire waste haulers to remove the waste. Ultimately, he used a hose to pump millions of gallons of waste into the creek (37 ER 690, 3/31/06).

United States v. Johnson Matthey Inc. (D. Utah, No. 2:06-cr-00169, indictment returned 3/22/06)—A gold and silver refining company and two of its officers were charged with violating the Clean Water Act by releasing wastewater contaminated with selenium into sewers, and then attempting to cover up the illegal discharges. Johnson Matthey, Inc. operates a facility in Utah where it refines gold and silver. During the refining process, certain impurities, including selenium, are separated out and accumulate in the plant's wastewater. The plant held a permit to discharge wastewater into the municipal system, provided the amount of selenium was limited to 3.47 parts per million. An investigation revealed that the company and two of its employees—the director of the company's gold and silver operations for North America and Europe, and the former plant manager—conspired to conceal the selenium discharges by shutting off wastewater discharges to the sampling point when inspectors came on site; providing samples of wastewater with low selenium content to submit to labs for testing; and diluting the wastewater with fresh water from a hose. The operations director was charged with 12 counts of discharging pollutants in excess of permit levels; the plant manager was charged with 11 counts. They face maximum penalties of five years in prison for each count and \$250,000 in fines. The company faces a \$500,000 fine. In December 2006, the company's parent, UK-based Johnson Matthey PLC, was charged in a superseding indictment (37 ER 2581, 12/22/06).

United States v. New York City DEP (S.D. N.Y., No. 01-cr-836, 2/7/06)—The New York City Department of Environmental Protection had three additional years of probation added to an earlier sentence for Clean Water Act violations. During the New York blackout of August 2003, some 30 million gallons of untreated sewage was discharged into the East River. The discharge was caused by the city's failure to properly maintain and repair the emergency electrical system at its Red Hook Water Pollution Control Plant in Brooklyn. More than five years earlier, state regulators had urged the city to immediately address problems with inoperable generators there. In an earlier action in August 2001, the city pled guilty to Clean Water Act violations relating to mercury discharges. As a condition of its probation, it was required to implement a compliance program and submit to oversight by a court-appointed monitor. In the resentencing, the court extended the probationary period through February 2009 (37 ER 306, 2/10/06).

United States v. Peterson (8th Cir., No. 05-4248, 5/5/06)—The U.S. Court of Appeals for the Eighth Circuit upheld the conviction of North Dakota farmer Alvin Peterson, who violated the Clean Water Act by hiring contractors to drain wetlands on his property. In 1966,

his parents had granted wetlands easements to the United States. The Fish and Wildlife Service drew a map of the easements in 1973. In a per curiam opinion, the appeals court upheld the conviction, finding that the 1973 map clearly showed that Peterson's draining of the wetlands fell within the government easements (37 ER 1011, 5/12/06).

United States v. Puerto Rico Aqueduct and Sewer Authority (D. P.R., No. 06-1524, 6/22/06)—The Puerto Rico Aqueduct and Sewer Authority pled guilty to a 15-count felony indictment for Clean Water Act violations related to the illegal discharge of pollutants from its wastewater and drinking water treatment facilities. PRASA was ordered to pay a \$9 million fine, to make over \$100 million in capital improvements to its waste water treatment plants, to fund a study of operations at its drinking water facilities, and to serve five years of probation. As a condition of probation, PRASA must comply with the requirements of a civil consent decree, including spending more than \$1.7 billion on capital improvement projects over the next 15 years (37 ER 1330, 6/23/06).

United States v. Sinclair Tulsa Refining Co. (N.D. Okla., no. 4:06-cr-00214-CVE-ALL, 12/12/06)—Two managers of a Sinclair Oil subsidiary pled guilty to violations of the Clean Water Act by deliberately manipulating wastewater discharges during testing. John Kapura and Harmon Connell sought to influence testing results by limiting discharges with high concentrations of oil and grease during monitoring, in order to ensure passage of tests. The two men each face a maximum of three years of prison. Sinclair Tulsa Refining Co. agreed to pay a \$5 million criminal penalty and \$500,000 in community service (37 ER 2581, 12/22/06).

United States v. Storms (S.D. N.Y., No. 06-770, sentence entered 12/11/06)—A former employee of New York City's Department of Environmental Protection was sentenced to two years of probation after pleading guilty to making false entries in the department's drinking water monitoring records. Daniel Storms admitted to skipping steps in a required turbidity monitoring procedure and then making false entries to cover up the omissions. Storms was also prohibited from accepting in the future any position involving public health, safety, or welfare (37 ER 2553, 12/15/06).

United States v. Target Corp. (N.D. Fla., No. 3:06-MJ-166, sentence entered 9/26/06)—Target Corp. was fined \$75,000 after pleading guilty to violating the Clean Water Act by failing to report a spill of liquid roofing materials that were flushed into a storm sewer. The incident involved the spill of 275 gallons of liquid roof coating, which contained zinc oxide and ethylene glycol, in the parking lot of one of the company's stores in Pensacola, Fla. Workers allowed the material to flow into a storm drain, and then hosed down the parking lot. A citizen later reported the spill after finding the material in a bayou downstream (37 ER 2007, 9/29/06).

United States v. Tollison (N.D. Miss., No. 3:04-cr-158, sentence entered 2/9/06)—The operator of four sewage treatment plants was sentenced to a year in prison after pleading guilty to four counts of violating the Clean Water Act. Gordon T. Tollison, former owner of Environmental Utilities Services, operated plants that served about 900 homes. The plants discharged sewage that exceeded the limitations for fecal coliform bacteria, and Tollison lied to investigators about wastewater analyses he was required to perform. He was also

ordered to pay more than \$5,000 in fines and assessments (37 ER 355, 2/17/06).

United States v. Wayne County Airport Authority (E.D. Mich., No. 06-cr-20300, 6/13/06)—The Wayne County Airport Authority, which operates Detroit Metro Airport, will pay \$100,000 in fines and community service, and serve four years of probation, after pleading guilty to violating the Clean Water Act. As a condition of probation, the airport will undertake a multimillion-dollar project to improve the connection between a pond on the facility and the city's sewer lines. The airport maintains a number of ponds that collect runoff. One pond, designated Pond 3W, collects significant quantities of aircraft deicing fluids, primarily propylene glycol, and is connected to the sewer system. After the valve collecting Pond 3W to the sewer became clogged, some 25 million gallons of turbid and odorous water were discharged into a waterway that leads to the Detroit River. The discharge was discovered by authorities investigating a fish-kill two days later.

Federal Insecticide, Fungicide, Rodenticide Act

United States v. Wabash Valley Service Co. (S.D. Ill., No. 05-cr-40029, 3/16/06)—Criminal charges against a company for applying pesticides in a manner contrary to label directions were dismissed after a court found that a provision of FIFRA affecting pesticide labels was unconstitutionally vague. An employee of Wabash Valley Service Co. used an air flow application rig to apply fertilizer pellets impregnated with two pesticides. A neighbor, seeing the pellets drift onto her property, complained to authorities. The company was charged with violating a provision of FIFRA that makes it unlawful "to use any registered pesticide in a manner inconsistent with its labeling." One label provision stated that the product should not be applied in a way that would cause it to come into contact with people. That provision, the court said, did not provide "any reasonable notice of what conduct it proscribes." A second provision warned against applying under "windy conditions" to avoid spray drift. However, the court found that "spray drift" would reasonably apply only to liquid application—not the pellet application used by the defendant. Further, the court said, the term "windy" was too vague.

Hazardous Waste

United States v. Kahoolyzadeh (C.D. Calif., No. 021089, sentence entered 1/25/06)—A Los Angeles man who pled guilty to conspiracy to improperly store and transport dry cleaning chemicals was sentenced to serve 37 months in prison and to pay a \$1.29 million fine. Behzad Kahoolyzadeh was associated with one of the largest handlers of dry cleaning waste in California. The company was in the business of picking up, treating, and arranging for the disposal of perchloroethylene (PERC), a hazardous contaminant. In order to hide permit violations from inspectors, Kahoolyzadeh and his partners loaded drums of waste onto trucks before inspections, shipped them off-site, and stored them at other facilities that were not permitted to store hazardous wastes (37 ER 232, 2/3/06)

Hazardous Materials Transportation Act

United States v. Agrawal (C.D. Calif., No. 05-00819, sentence entered 5/18/06)—Krishna Lal Agrawal, the owner and chief engineer of Global Composites Inter-

national, Inc., was sentenced to 36 months of probation and ordered to pay over \$9,000 in fines and restitution for transporting untested gas cylinders. The carbon fiber-wrapped cylinders, which are highly compressed but light weight, are used in paintball guns. Under a permit issued by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the company was required to hire an independent inspection agency to conduct inspections and testing. The inspector became aware that the company itself was marking the cylinders as "tested" and offering them in transport, and notified the Transportation Department's Office of Inspector General.

United States v. DeGregory (S.D. Fla., No. 05-60201, sentence entered 8/4/06)—The president of a Florida company, convicted of illegally flying radioactive hazardous material between the Bahamas and the United States, was sentenced to two years in prison. Harold J. DeGregory, president of H&G Import Export, flew a container of the radioactive isotope iridium-192 in a private aircraft. The material, used in industrial radiography, was discovered by U.S. Customs officials hidden in the wing compartment of his aircraft. Neither DeGregory nor his company was licensed, trained, or certified to handle or transport hazardous radioactive material. In addition, DeGregory was ordered to forfeit two Piper Navajo aircraft, valued at about \$75,000 each (37 ER 1674, 8/11/06).

United States v. Udell (E.D. Pa., No. 05-402, sentence entered 2/14/06)—A Pennsylvania man who pled guilty to improperly shipping hazardous waste to The Netherlands was ordered to pay \$2 million in fines and restitution and to serve six months of home confinement. Joel D. Udell, the owner of Pyramid Chemical Sales Co., a surplus chemical brokerage business, was ordered to clean up a warehouse where he stored large quantities of flammable, corrosive, and toxic chemicals in deteriorating and leaking containers. After EPA ordered a cleanup of the warehouse, the company arranged to ship 20 sea containers to the Port of Rotterdam. The listed buyer had not agreed to purchase the chemicals. The Dutch government disposed of the chemicals at a cost of over \$1 million (37 ER 444, 3/3/06).

Occupational Safety and Health

United States v. Atlantic States Cast Iron Pipe Co. (D. N.J., No. 3:03-cr-00852, 4/26/06)—A New Jersey pipe manufacturing concern and four of its officials were found guilty of committing "flagrant" abuses of worker safety and environmental laws. Atlantic States Cast Iron Pipe Co., a subsidiary of McWane Inc., was convicted of violating worker safety laws by concealing serious worker injuries from Occupational Safety and Health Administration investigators, making false statements, and obstructing OSHA investigations. In addition, the company violated the Clean Water Act by dumping oil into the Delaware River. The individual corporate officers included the plant manager, maintenance supervisor, finishing superintendent, and human resources manager. In a statement, the Justice Department noted that the company has repeatedly "shown a disturbing indifference toward the health and safety of their workers and a blatant disregard for the natural environment we all share." Granta Nakayama, EPA's assistant administrator for enforcement and compliance assurance, added, "This manner of 'doing business' in-

dures workers, the public and our environment, and EPA will continue to deter such flagrant disregard of pollution laws by vigorously pursuing not only corporations but also the culpable individuals regardless of their position within the organization" (37 ER 967, 5/5/06).

Oil Spills/Ocean Dumping Act/ Act to Prevent Pollution from Ships

United States v. Abrogar (D. N.J., No. 05-00649, sentence entered 1/5/06)—Noel Abrogar, the chief engineer of the M/V Magellan Phoenix, was sentenced to a year and a day in prison and three years of probation for concealing discharges of oil waste from the ship by falsifying records. In March, Coast Guard inspectors boarded the Panamanian-flagged ship in Gloucester, N.J. They learned that bilge water contaminated with oil had been routinely discharged via a "magic pipe" that bypassed the ship's oil/water separator. Before entering port, Abrogar threw the bypass pipe overboard and ordered the repainting of the areas where the pipe was connected to the ship. He also failed to record the overboard discharges in the ship's oil record book, a required log that is inspected by the Coast Guard. In a statement, David M. Uhlmann, chief of the Environmental Crimes Section in the Justice Department's Environment and Natural Resources Division, remarked, "Deliberate vessel pollution and obstruction of justice are serious crimes, and today's sentence demonstrates that defendants who violate anti-pollution laws will be prosecuted and will serve time in prison" (37 ER 79, 1/13/06).

United States v. Chian Spirit Maritime Enterprises Inc. (D. Del., No. 06-00076, indictment returned 7/13/06)—A Greek shipping concern and several of its employees face significant fines and jail time if found guilty of charges that they conspired to commit environmental crimes and obstruct Coast Guard investigations. Chian Spirit Maritime Enterprises, Inc. and Venetico Marine operated the tanker vessel Irene E/M. Adrian Dragomere, the first engineer, allegedly ordered the discharge of untreated oily sludge and unprocessed bilge water into the ocean through a "magic pipe" that bypassed the ship's pollution control equipment. He also failed to record the discharges, as required by law, in the vessel's oil record book. In addition, Dragomere and other officers were charged with impeding and attempting to influence a Coast Guard vessel inspection. The companies each face up to \$2.5 million in criminal fines and probation. Dragomere faces up to 15 years in prison and fines and assessments of \$750,300. Three other employees face lesser penalties (38 ER 262, 2/2/07).

United States v. Corpus Christi Day Cruise Ltd. (S.D. Texas, No. 2:06-cr-0078, sentence entered 5/4/06)—The operator of the M/V Texas Treasure, a gambling boat, agreed to pay a \$300,000 criminal fine after pleading guilty to obstructing a Coast Guard investigation. During an inspection of the ship, Coast Guard officers discovered a significant amount of oil in the ship's oil/water separator, and suspected that the ship was discharging oil waste directly overboard. When the inspectors requested tank sounding records, the ship's chief engineer, Gojko Petovic, claimed they were only maintained for 30 days. A subsequent search of Petovic's computer found that the records had been deleted four days after the inspection. Petovic also pled guilty

and will serve three years of probation (37 ER 1017, 5/12/06).

United States v. Danaos Shipping Co. Ltd. (C.D. Calif., No. 06-cr-00502 PA, plea entered 8/14/06)—A Greek shipping company agreed to pay a criminal fine of \$500,000 after pleading guilty to obstructing a Coast Guard investigation into an oil leak from a ship. Oil leaked from the APL Guatemala while the vessel was anchored in Long Beach, Calif. Crew members reported the spill, but Coast Guard officials did not see the oily sheen, which had dissipated. The next day, the crew again saw oil leaking, but poured detergent into the water to hide the spill. Later, a diver hired to inspect the ship found oil was leaking from vent holes in the ship's sea chest. The company directed the diver to remove the oil and falsely state on his report that he had inspected valves, not the oil spill (37 ER 1786, 8/25/06).

United States v. Jho (E.D. Texas, No. 1:06-cr-65, 12/4/06)—Criminal charges against a Korean national who served as chief engineer on the M/T Pacific Ruby, owned by defendant Overseas Shipholding Group, Inc., were partially dismissed on the grounds that the offenses took place outside U.S. waters. Kun Yun Jho was charged with falsifying records in order to conceal deliberate discharges of oil-contaminated bilge water into the Gulf of Mexico. He allegedly used a screwdriver to force open a valve, allowing fresh water to flush the oil content meter in the ship's pollution control equipment so that it was unable to register the oil content of overboard discharges. Jho then presented a false oil record book to the Coast Guard during an inspection. The criminal charges alleging violation of the Coast Guard regulations were subsequently dismissed. The court concluded that, because the government did not charge the defendants with an act of pollution in U.S. waters, the government could only pursue civil penalties for violations by foreign-flag ship personnel. If, on appeal by the government, the district court's order is upheld, it would represent a set-back to the legal position the government has utilized in numerous foreign-flag vessel cases (37 ER 1122, 5/26/06).

United States v. Lindsey (W.D. La., No. 6:05-cr-60068-001, sentence entered 1/19/06)—Mark Lindsey, the production manager on an offshore oil platform in the Gulf of Mexico, pled guilty to the negligent discharge of oil and was sentenced to a one-day prison sentence, followed by a year of probation. Lindsey was in charge of production on a platform operated by Tri-Union Development Corp. After a sump pump on the platform malfunctioned, a quantity of oil overflowed into Gulf waters. The exact quantity of overflow oil could not be determined. Prior to the discharge, platform workers had requested containers to empty the fluids in the faulty pump but Lindsey denied the request, citing the additional expense (37 ER 245, 2/3/06).

United States v. MK Shipmanagement Co. Ltd. (D. N.J., No. 06-cr-00307, plea entered 4/12/06)—A Japanese shipping company that pled guilty to bypassing pollution prevention equipment and failing to enter discharges into an oil record book will pay a \$200,000 criminal fine and \$150,000 in community service. MK Shipmanagement Co., Ltd., operates a fleet of cargo vessels, including the M/V Magellan Phoenix. That ship regularly discharged oil sludge and bilge water directly into the ocean, and did not record the discharges. In a related action, the ship's chief engineer was sentenced to a year and a day in prison for concealing the dis-

charges (see *United States v. Abrogar*, supra) (37 ER 850, 4/21/06).

United States v. MSC Ship Management Ltd. (D. Mass., No. 05-cr-10351, 2/1/06)—A Hong Kong-based container ship company was ordered to pay a \$10 million criminal fine after pleading guilty to circumventing pollution prevention equipment by using a "magic pipe" to discharge sludge and contaminated water directly into the ocean. During a five-month period, the ship discharged some 10,640 gallons of sludge and an even larger volume of oil-contaminated bilge waste. The fine represents the largest fine involving a single vessel in Massachusetts history. In related prosecutions, the ship's chief engineer, Mani Singh, and its second engineer, Aman Mahana, pled guilty to making false statements to the Coast Guard, obstructing justice, concealing evidence, and concealing the discharges by keeping a falsified oil record book.

United States v. Overseas Shipholding Group Inc. (D. Mass., No. 06-cr-10408, 2/19/06)—One of the largest publicly traded tanker companies in the world agreed to plead guilty to 33 felony counts related to vessel pollution and false record book entries. The company will pay the largest-ever criminal penalty involving deliberate vessel pollution, including a \$27.8 million criminal fine and a \$9.2 million community service payment that will fund marine environmental programs. The company acknowledged that it was responsible for dumping overboard sludge at night, making discharges through a pipe that bypassed the ships' pollution control equipment, flushing an oil detecting sensor with water, and deliberately falsifying official ship records, including the oil record book (38 ER 28, 1/5/07).

United States v. Pacific Gulf Marine (D. Md., No. 06-cr-00302, 6/29/06)—A U.S. shipping company that operates four car carrier vessels was ordered to pay a \$1 million criminal fine and \$500,000 in community service after pleading guilty to violating the Act to Prevent Pollution from Ships. The ships regularly utilized a "magic pipe" to bypass pollution control equipment and discharge oil-contaminated bilge water. After learning of the government's investigation, the shipping company voluntarily disclosed the results of an internal investigation, comprising 50 interview reports with crew members. The government had been unaware of the internal investigation. "By waiving privilege claims and disclosing the results of its own internal investigation, PGM helped to ensure that others also will be held accountable. Just as we give consideration to individual criminals who tell us what they know about crimes by other people, so too we reward corporations that voluntarily disclose the results of their internal investigations," said U.S. Attorney Rod J. Rosenstein of the District of Maryland. Two former chief engineers were charged with various related crimes (37 ER 1424, 7/7/06).

United States v. Sun Ace Shipping Co. (D. N.J., docket no. unavailable, sentence entered 11/3/06)—A South Korean shipping company was sentenced to pay a \$400,000 criminal fine and \$100,000 in community service after pleading guilty to disposing of oil residue and bilge water into the ocean and failing to maintain an accurate oil record book. The government petitioned the court for an award under the Act to Prevent Pollution from Ships for three whistleblower crew members who reported the use of bypass hoses, and were key to the government's investigation and prosecution of the case. APPS gives the court discretion to award up to

half the criminal penalty to the whistleblowers (38 ER 262, 2/2/07).

United States v. Vafeas (C.D. Calif., No. 06-cr-00585 GPS, 8/16/06)—Ioannis Georgios Vafeas, the chief engineer of a Greek-flagged tanker ship, pled guilty to directing his crew to install a “magic pipe” to bypass the ship’s oil/water separator and discharge waste directly into the ocean. He also admitted to making fraudulent entries in the ship’s oil record book and to ordering the crew to toss the magic pipe overboard. He faces up to six months in prison (37 ER 1786, 8/25/06).

United States v. Wallenius (D N.J., No. 2:06-cr-00868, 3/23/06)—A Singapore shipping company that operates 12 car carrier vessels will pay a \$5 million criminal fine and \$1.5 million in community service after pleading guilty to using a “magic pipe” to discharge oily water directly into the ocean. Acting on a tip from a whistleblower, the Coast Guard inspected the M/V Breeze and found a multi-piece bypass system. Separately, the ship’s chief engineer, Nyi Nyi, pled guilty to making false statements in the ship’s oil record book (37 ER 690, 3/31/06).

Resource Conservation and Recovery Act

United States v. Wall (C.D. Calif., No. cr-04-00170, 3/27/06)—The former owner of a California boat repair and servicing facility was sentenced to a year in prison after pleading guilty to violating RCRA by improperly storing hazardous waste. Andrew Wall Jr. admitted to storing several drums of flammable and toxic wastes used by the San Pedro Boat Works, which were discovered by authorities after the company ceased operations. The waste included paint thinners, cleaning solvents, petroleum naphtha, hydraulic oil, and kerosene. In addition, Wall’s son, John Wall, a former superintendent at the boat yard, was sentenced to six months in a half-way house and probation for illegally discharging raw sewage into the ocean from a restroom on the wharf (37 ER 680, 3/31/06).

Rivers and Harbors Act

United States v. Hillyer (4th Cir., No. 05-4295, 8/1/06)—A U.S. District Court in North Carolina was too lenient in its sentencing of a bridge construction manager who pled guilty to directing unlawful dredging activity, the Fourth Circuit ruled. Under the federal sentencing guidelines, Michael Hillyer should have been sentenced to between 12 and 18 months in prison; rather, he was sentenced to probation, community service, and a \$100,000 fine. Hillyer served as project manager for Balfour Beatty Construction, Inc., a company that was hired to construct the Virginia Dare Memorial Bridge in North Carolina. In order to move in the equipment required to dismantle a temporary trestle, Hillyer ordered his crew to create a channel by using backwash from a tugboat. Despite his knowledge that creation of a channel requires a permit from the Army Corps of Engineers, Hillyer failed to obtain a permit and ignored requests by state transportation officials to cease the dredging. In all, the dredging activity affected some 8.2 acres of shallow water habitat (37 ER 1633, 8/4/06).

Water Pollution Control Act

United States v. Erman Corp. Inc. (D. Kan., No. 2:06-cr-20016, 2/3/06)—A Topeka scrap processor agreed to pay a \$50,000 fine after pleading guilty to violating the federal Water Pollution Control Act. Erman Corp. Inc.

specialized in reclaiming railroad freight cars for ferrous scrap processing. During the process of scrapping locomotives in the Burlington Northern Santa Fe rail yard, the company siphoned diesel fuel from the engines. Employees failed to remove the siphon hose from one engine, and several thousand gallons of diesel fuel drained into the nearby Shunganunga Creek. The company also paid \$72,000 in restitution to the railroad for cleaning up the creek, which required the removal of 80,000 tons of contaminated soil. In addition, it reimbursed the city of Topeka for the costs of providing police and fire department assistance (37 ER 307, 2/10/06).

Wildlife

United States v. Bonner (D. Ala., docket no. unavailable, indictment returned 11/14/06)—An Alabama boat builder and a charter-boat captain were charged with conspiracy and making false documents and writings, after an attempt to circumvent the provisions of the Magnuson-Stevens Fishery Conservation and Management Act. In an attempt to address concerns about overfishing, the act placed a moratorium on permits for certain vessels. To be eligible for a permit, individuals are required to show that a boat was under construction prior to March 29, 2001. Michael Bonner agreed to build two boats for Gerald Andrews. They submitted to the National Marine Fisheries Service sales agreements signed and dated March 2, 2001. However, the agreements were actually signed on or about May 1, 2003.

United States v. Estremar S.A. (D. Mass., No. 06-cr-10097, plea entered 6/15/06)—Estremar S.A., an Argentine company, pled guilty to violations of the Lacey Act for illegally exporting 30,000 pounds of Chilean seabass into the United States without the required documentation showing that it was legally harvested. The trade in Chilean seabass is regulated under the international Convention on the Conservation of Antarctic Marine Living Resources and its implementing laws. They require specific documentation to follow legally harvested seabass from the time it is caught until it reaches the country where it will be consumed. The company paid a fine of \$75,000, made a donation of \$10,000 to a conservation group, and forfeited assets of \$250,000—including \$158,000 representing the value of the fish confiscated by the National Marine Fisheries Service in Boston.

United States v. Garrison (W.D. Va., No. 06-cr-00046, indictment returned 12/13/06)—A Virginia man faces significant fines and prison time for shooting elk in New Mexico without permits, and for making false statements to federal investigators. William James Victor Garrison and members of his hunting party shot and killed elk on the Valles Caldera National Preserve in New Mexico. Strict regulations govern the hunting of these animals. At least one of the elk was transported through interstate commerce in violation of the Lacey Act. Eight other hunters and guides were separately convicted.

United States v. Nguyen et al. (S.D. Texas, No. 05-cr-00015, 2/10/06)—Tam Van Le, a crewmember on the commercial fishing vessel Thanh Tam, was sentenced to 21 months in prison and three years of supervised release after pleading guilty to illegally importing red snapper into the country. NOAA fisheries service officers boarded the vessel upon its return from a trip that began before the red snapper commercial fishing season had officially opened. During an inspection, they

found a hidden compartment holding more than 5,641 pounds of red snapper. More than 2,700 of the fish were less than the legal minimum size of 15 inches. Under the Magnuson-Stevens Fishery Conservation and Management Act, harvesting is limited to the open season, no vessel can take more than 2,000 pounds in a single trip, and each fish must measure at least 15 inches. In a related proceeding, Hoang Nguyen, captain of the vessel, was sentenced to 30 months in prison and three years of supervised release.

United States v. McMaster (S.D. Fla., No. 05-cr-14102, 4/28/06)—Kevin M. McMaster was ordered to spend 25 months in prison and to serve three years of supervised release after pleading guilty to marketing more than \$200,000 worth of endangered species. McMaster, the former operator of the website dead-zoo.com and an exotic gifts business, sold or offered to sell tiger, snow leopard, and jaguar skins, as well as a gorilla skull and baby tiger mounts. The court found the defendant was unable to pay any fine.

United States v. Sawyer (W.D. Wash., No. 05-cr-05344, sentence entered 3/10/06)—A Washington man was sentenced to 15 months in prison after pleading guilty to illegally importing and exporting rare reptiles. Jonathan Corey Sawyer pled guilty to smuggling more than 230 reptiles over an eight-month period. Sawyer, a licensed animal importer and exporter, was found to have knowingly violated the law after customs agents in Alaska found a package containing rare tortoises and lizards that were shipped from Thailand.

United States v. Weaver (N.D. Fla., No. 05-cr-00071, sentence entered 10/10/06)—The captain of a charter fishing boat was sentenced to a \$1,000 fine and two years of probation after pleading guilty to shooting at a dolphin. As a condition of his probation, he may not possess a firearm for two years. Christopher Weaver, captain of the Leo Too, shot at a dolphin with a handgun from the bridge of the boat after watching the dolphin grab a fish that one of his fishing clients had hooked. The Marine Mammal Protection Act makes it unlawful to “harass, hunt, capture or kill or attempt to harass, hunt, capture, or kill any marine mammal.”

Other

United States v. Earth Technology II LLC (D. Conn., No. 3:06-cr-00308-AWT, sentence entered 12/21/06)—An environmental services firm that overstated the cost of an environmental cleanup by about \$22,000 agreed to pay a \$500,000 criminal fine and to serve two years of probation. Earth Technology II pled guilty to mail fraud after submitting inflated invoices to the state Department of Environmental Protection for services provided by subcontractors at the Hull Dye site along the Housatonic River. The company was permitted to bill the actual cost of the subcontractors’ work, along with a 15 percent markup. However, the company submitted invoices that overstated the actual cost of the subcontractors’ work by about \$21,837. The company also paid more than \$26,000 in restitution (38 ER 40, 1/5/07).

United States v. Dibee (D. Ore., No. 6:06-cr-60011, indictment returned 1/19/06)—Eleven members of two environmental groups—the Earth Liberation Front and the Animal Liberation Front—were indicted on 65 counts of arson and property damage for incidents in five western states dating back to 1996. Incidents include allegations that the groups sabotaged a power

line, set fire to a slaughterhouse, and burned ranger stations. At a press conference, Attorney General Alberto Gonzales termed the activities of the group “a campaign of domestic terrorism” and asserted that the group attempted “to influence the conduct of government and private businesses through the use of coordinated force, violence, sabotage, intimidation, and coercion.” Two members of the group—Chelsea Dawn Gerlach and Stanislas Gregory Meyerhoff—subsequently pled guilty in connection with the fire-bombing of a restaurant and utility building on Vail Mountain, which caused \$12 million in damages. Meyerhoff faces a recommended sentence of 15 years and eight months in prison; Gerlach faces a 10-year term.

United States v. Johnson (S.D. Fla., No. 05-cr-10015, sentence entered 6/13/06)—A land consultant was ordered to serve two years in prison and to pay a \$50,000 fine for giving false testimony before a grand jury investigating illegal dumping into waters off the Florida Keys. Bertram Johnson was convicted of obstruction of justice, perjury, and making material false statements to federal agents in connection with questioning about the activities of another man, Jeffrey Balch. Balch, of Marathon Key, was sentenced to a five-month prison term after being found guilty of allowing a sewage contractor to dump excavated soil along the shoreline of his property in violation of the Clean Water Act.

United States v. McDavid (E.D. Calif., No. CR.S-06-35, indictment returned 1/25/06)—Three members of the Earth Liberation Front were indicted in connection with a plot to bomb a fish hatchery and a U.S. Forest Service facility. Eric McDavid recruited Zachary Jenson and Lauren Weiner at a gathering of anarchists in Philadelphia. The three, along with a fourth individual who was a government informant, met in California to scout locations for attacks. They were arrested after purchasing bomb-making materials. Weiner and Jenson, both 20, later admitted their involvement and agreed to cooperate with prosecutors in the case against McDavid. They face up to 20 years in prison and fines as high as \$250,000.

United States v. Orr (D. Colo., No. 06-cr-192, 5/18/06)—A Colorado man who received more than \$2 million in federal grants to develop an alternative fuel additive was indicted for fraud and making false statements to investors and federal officials. William Orr allegedly defrauded private investors and an EPA grants program by falsely representing the benefits of a fuel additive, called “vapor phase combustion.” The additive was represented as a clean-burning technology that would reduce air pollution. Orr lobbied members of Congress and federal officials to have millions in federal funds in an EPA grants program earmarked to develop VPC. In addition, he raised some \$559,200 in investments from private individuals by making false claims about the technology.

United States v. Reynolds (M.D. Pa., No. 05-00493, 10/3/05)—A Pennsylvania man faces more than 80 years of imprisonment and fines up to \$1.5 million after being indicted for attempting to provide support to a foreign terrorist group. Michael C. Reynolds solicited an individual who he believed to be a member of al-Qaeda to enlist help in carrying out violent attacks against pipelines and energy facilities. The individual was, in fact, cooperating with authorities. Reynolds was arrested when he arrived at a planned meeting point to collect a \$40,000 payment to carry out the attacks. The indict-

ment charged Reynolds with six counts, including providing material support to terrorists and soliciting crimes of violence.

United States v. Segal (C.D. Calif., No. 04-cr-379, 3/21/06)—Two related Los Angeles recycling companies and eight individuals face prison and fines after pleading guilty to bilking California's beverage container recycling program out of some \$3 million. In California,

consumers pay deposits on beverage containers and receive refunds of the deposits by redeeming the containers at recycling centers. Only cans and bottles sold in California are eligible for refunds. Errol Segal and his two businesses, Active Recycling Co. and Worldwide Recycling Co., obtained payments for recyclable goods that were not eligible for refunds (37 ER 611, 3/24/06).

Ten Questions with Granta Nakayama

1. *It has now been 18 months since you left private practice for the top enforcement post at EPA. What has been the most surprising aspect of your new job?*

Working at EPA is very different from private practice. The freedom to address significant environmental issues, without the constraints of the billable hour, has been a huge change. EPA employees also take the agency's mission seriously, and it's gratifying to be working with dedicated people who care about the environment.

Several other differences were immediately apparent—the larger size of meetings with many agency participants, the need for greater coordination among many stakeholders within the agency, and the greater process involved in arriving at final decisions. These differences are not necessarily bad. For example, the greater number of participants in meetings allows decisions and information to flow quickly and accurately through multiple layers of management. Coordination between the various EPA components (including EPA regions) is important, as is the need for the agency to proceed deliberatively with input from all stakeholders.

2. *What is the proper role of criminal enforcement in environmental law?*

Criminal enforcement is essential to ensuring that our environmental statutes and regulations are matched by the reality on the ground. The criminal enforcement power is uniquely suited to deal with violations that are willful or intentional, and for which civil penalties are not adequate. Nothing matches the deterrence impact of a jail sentence. We have seen a marked impact on the behavior of the regulated community in several industries after strong criminal enforcement efforts. It is somewhat analogous to the revolution in securities law after Sarbanes-Oxley and the criminal sentences imposed on several CEOs of major companies.

3. *Who is your favorite Regional Counsel?*

I love all of them. I'm lucky to have the opportunity to work with such talented people. The position of Regional Counsel is very important within EPA, one that is not fully appreciated within the regulated community. Regional Counsel are actually managing some of the largest environmental law firms in the country—the Office of Regional Counsel in each of our 10 regions.

Each Regional Counsel brings a great deal of experience working with their states and the major industries in their region. They are also great mentors for the young attorneys as well as great managers. It takes a deft and sure touch to successfully pursue those who violate the environmental laws and regulations and stay on top of numerous cases.

4. *Several months ago you announced an effort to have your criminal and civil offices around the country work more closely together, and to have all significant cases looked at for possible criminal investigation. How is that going?*

The shift has been going very well. We are now coordinating our civil and criminal programs—the “one enforcement” approach. Where that was not already the

case, we have physically co-located several of the Criminal Investigation Division offices with the regional offices, and have also located our regional lead CID offices in the same city as the regional office.

One important goal is to ensure that decisions as to whether matters are criminal or civil are reasoned decisions that focus on the behavior of the respondent.

Another important goal is to make the criminal enforcement program a full partner with our civil enforcement program. That means focusing on high impact cases (those with large environmental or human health impacts) and bringing cases in our national enforcement priority areas.

5. *How do you respond to those who question whether this new policy has made parallel proceedings into “intertwined” proceedings?*

The enforcement efforts are being coordinated. Of course, we are very careful to respect the legal restrictions on sharing of information between the civil and criminal enforcement programs. It is far better for both EPA's enforcement personnel and managers in the regulated community to consider both the potential civil and criminal implications of their activities.

6. *Have you read any good books lately?*

I have found time recently to read while waiting at airports during flight delays. I've read *Angela's Ashes, Fire in the Lake* (Frances FitzGerald's Pulitzer Prize-winning analysis of the Vietnam War—reread it after 20 years), and Gardner Dozois' excellent annual collection of the year's best science fiction.

7. *How many calls has the EPA gotten on the Crimes Hotline? How many have resulted in actual cases?*

Our “Report a Violation” website (accessed from EPA's homepage <http://www.epa.gov> by clicking on the badge icon) has been very successful, with over 4,000 tips in its first year. We refer the civil tips to the regions and states so I do not have exact figures on the resulting number of cases. On the criminal side alone, we have initiated several investigations and as these matters conclude, we will be able to provide details on these matters.

The “Report a Violation” website is an important tool for EPA. It enables 300 million Americans to partner with us to protect the environment. We are very encouraged by the public's initial response. Potentially, the website will bring more violators into compliance, encourage more self-disclosures by regulated entities, and help us prosecute willful and intentional violations.

8. *Have you personally reviewed any of the reports on the EPA “Report a Violation” website?*

I leave that to the very capable staff. I have the system tested occasionally (using test reports/tips) to ensure the reports from the public are reviewed promptly, and they are.

9. *What are your enforcement initiatives for the next year?*

We have proposed reducing air toxics and sewer overflows, addressing mineral processing, and ensuring that facilities have adequate financial assurance mechanisms in place to meet their cleanup obligations. We are very interested in hearing from the public about what they think of these initiatives. We have just published a

Federal Register notice requesting comment on these priorities for the next five years.

Personally, I am always looking for areas with the largest environmental footprint, which means the areas with the greatest potential to harm the environment and where enforcement can make a difference. These include industrial sectors where we believe there may be significant noncompliance with environmental regulations, such as New Source Review/Prevention of Significant Deterioration for the glass, cement and acid manufacturing industries, and topics that are broad in national and/or geographic scope, such as concentrated animal feeding operations (CAFOs) and stormwater runoff.

10. Do you recycle?

Yes, recycling is something we can all do that has a tremendously positive impact on the environment. I have even rooted through the trash can in my office to retrieve empty soda cans left by some agency visitors and carried them after the meeting to the recycling station just across the hall.

My colleagues in the Office of Solid Waste are working diligently to increase America's recycling rate from 32 percent to 35 percent, including working with citizens and commercial entities. In fact, EPA's Recycle on the Go initiative has been successful at outdoor events, including the Pro Bowl, the All Stars game, and the National Cherry Blossom Festival.