



ENVIRONMENT REPORTER



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The author of this article provides an overview of key developments in the criminal enforcement of environmental laws during 2008. He notes that the leadership of the environmental criminal program at the Environmental Protection Agency has and will continue to be overseen by career enforcement personnel. Similarly, at the Department of Justice for the past eight years, the criminal program has been in the hands of independent and experienced career prosecutors. He says the Justice Department's Environmental Crime Section and U.S. Attorneys Offices across the country continued to bring many of the same kinds of cases that had been prosecuted during previous administrations. He cites other developments that merit attention, including climate change issues, criminal sanctions for failing to meet security requirements, pollution related to ships, and the expanding law of obstruction of justice. The author also provides summaries of 75 criminal cases brought around the country last year.

The State of Environmental Crime Enforcement: A Survey of Developments in 2008

BY STEVEN P. SOLOW

Change

Change has come to Washington, D.C. It is predicted that the change will be deep, wide and profound. However, it remains to be seen whether this means that there will be change for the federal environmental crime program. There are some things that won't change. The leadership of the environmental criminal program at the Environmental Protection

Agency has and will continue to be overseen by experienced career enforcement personnel.

Similarly, at the Department of Justice for the past eight years, the criminal program has been in the hands of independent and experienced career prosecutors. For most of the Bush administration the chief of the Justice Department's Environmental Crime Section (ECS) was David Uhlmann. Uhlmann's many years of government service were entirely within the Environmental Crime Section, first as a trial attorney, then a senior trial attorney, assistant chief and chief. His replacement, Stacey Mitchell, after working for the Manhattan

District Attorney's Office, joined the department during the Clinton administration and followed a similar route up through the ranks to her appointment last year to succeed Uhlmann.

During these past eight years the number of Environmental Crime Section prosecutors grew to the largest number in the history of the program. This was due, in part, to the movement of several prosecutors from the Wildlife and Marine Resources Section at the Justice Department, but also to the hiring of a significant new group of both new and experienced prosecutors, including career prosecutors from the U.S. Attorneys Offices. As this year's summary of cases demonstrates, the Environmental Crime Section and U.S. Attorneys Offices across the country continued to bring many of the same kinds of cases that had been prosecuted during previous administrations.

In addition, the department began to move into new areas of prosecution, as evidenced by the trial that has just begun in Montana against W.R. Grace and six former Grace corporate officers. The Grace prosecution is the natural outgrowth of an effort spearheaded by Uhlmann to bring environmental criminal enforcement to bear in connection with worker safety issues. Uhlmann was one of the trial attorneys in the well-known prosecution against Alan Elias.

In August 1996, Elias had ordered an employee to clean out a tank containing arsenic, and had denied the employee's request for appropriate confined space safety equipment.¹ The result for the employee was permanent brain damage; the result for Elias was the longest prison sentence in the history of the environmental crime program—17 years.²

Under Uhlmann's leadership, the Environmental Crime Section continued to pursue such cases, including the still-continuing prosecutions involving McWane, Inc. Over a several-year period, McWane and eight of its officers were convicted in several federal districts of over 100 criminal counts involving violations of the Clean Water Act, Clean Air Act, false statements and conspiracy.

Uhlmann pioneered these cases, the first of their kind by the Environmental Crime Section, and as Mitchell became chief, the section was deep into its investigation and prosecution of W.R. Grace & Co. The 155-year-old company and six of its former executives have been charged with contaminating the Montana town of Libby with asbestos and, as a result, having sickened or killed local residents. Grace, which is currently in bankruptcy, could face fines of up to one-quarter of a billion dollars, and the former Grace officers face potential prison sentences akin to that meted out to Alan Elias.

After some lower court rulings unfavorable to the government were reversed on appeal, the trial is beginning as this article goes to print.³ Whatever the outcome of the trial, the past eight years (and the cases summarized below and in previous annual reviews) should make clear that it is the career investigators and prosecutors who have thus far largely determined the

course of criminal investigations and prosecutions by the federal government.

Not Just More of the Same?

Mitchell's closest counterpart at EPA is the Director of Office of Criminal Enforcement Forensics and Training. The current director of the criminal enforcement office is Fred Burnside, a long-term career EPA investigator who has served in numerous positions across the country as a Special Agent and a Special Agent-in-Charge, and who has a considerable background in environmental science.

The political appointees that would be above Mitchell and Burnside, the assistant attorney general for the environment division and the assistant EPA administrator for enforcement and compliance assistance respectively, have not yet been named. Both positions are filled in acting capacities by experienced career employees (Catherine McCabe at EPA and John Cruden at Justice).

Of course, EPA is now headed by Lisa Jackson, who worked her way up through the ranks of EPA and served as the head of New Jersey's Department of Environmental Protection, and who can be expected to work well and closely with the career employees at EPA and the Justice Department.

In light of the new areas of enforcement undertaken during the Bush administration, and the growth in the number of prosecutors at the Justice Department, what can be expected from the Obama administration? At a minimum, certainly, more of the same.

Corporate compliance and risk managers would do well to monitor the budgets of Justice and especially EPA to see whether additional resources are provided to the criminal program. Perhaps most important is whether EPA is again able to expand its number of criminal investigators. Although there were some ups and downs over the past eight years, the downs ultimately exceeded the ups in terms of the number of field agents, and an increase in funding for agents would be the surest sign of a coming uptick in criminal investigations and prosecutions.

Moreover, there are a few efforts underway that warrant note. These include:

Criminal Prosecution and Climate Change. EPA is currently leading an international law enforcement effort to identify new areas of criminal enforcement associated with climate change issues. The key to this effort appears to be identifying and expanding opportunities to use criminal sanctions to reduce unpermitted discharges or permit violations related to air pollutants that can contribute to the increase of greenhouse gases.

Criminal Sanctions for Failing to Meet Security Standards? Many businesses have long been required by Section 112r of the Clean Air Act to develop, implement and document a Risk Management Plan to protect workers, reduce the risk of accidental releases, and provide for clear procedures to respond to a release of certain substances. For the past two years, under the Chemical Facility Anti-Terrorism Standards, all facilities that possess listed chemicals are required to comply with related requirements set out in 6 C.F.R. § 27. The process includes completing a screening process (known as a "Top-Screen") for potentially dangerous materials, identifying vulnerabilities through a security

¹ See, "The Cyanide Canary" Joseph Hilldorfer and Robert Dugoni, Free Press, 2004.

² "Supreme Court Declines to Review Businessman's Conviction in Poisoning Case," 33 ER 2207, 10/11/02.

³ "Prosecutors in W.R. Grace Case Say Actions by Executives Endangered Town's Residents," 40 ER 427, 2/27/09.

vulnerability assessment, and developing a site security plan.⁴

In November 2008, the EPA and the U.S. Attorneys Office for the Middle District of Pennsylvania, obtained a guilty plea from the Hershey Creamery Co. to a one-count criminal information for failing to develop and implement Risk Management Plans for two of its facilities, while twice certifying to the EPA that it had such programs in place.⁵

The case is notable in that it represents perhaps the first time that a company has been criminally sanctioned for a Risk Management Plan violation. Given the obvious similarity between the Chemical Facility Anti-Terrorism Standards and the Risk Management Plan program requirements, it may not be long before the failure of businesses to properly undertake their new anti-terror regulatory responsibilities become the subject of criminal enforcement sanctions.

Vessel Cases Continue. In one recent appellate case from the Fifth Circuit, the court supported an expanded view as to the government's jurisdictional reach in vessel cases. In another, the Second Circuit has reaffirmed the broad reach of corporate criminal liability for the acts of non-managerial employees.

Since the mid-1990s hundreds of vessels entering United States ports have been prosecuted for environmental crimes. Criminal fines have exceeded \$250 million and the total years of incarceration for the various defendants is almost 25 years. Nearly one out of every four criminal cases brought by the Environmental Crime Section involves a vessel prosecution.

Previous cases had charged the actual presentation of a false log to the United States Coast Guard as the source of both U.S. jurisdiction and as the substantive violation as well. In *United States v. Jho*, 534 F. 2d 398 (5th Cir. 2008), the U.S. Court of Appeals for the Fifth Circuit concluded that liability for false entries in a ship log related to oil discharges included entries and releases of oil made *outside* of U.S. waters. The court's ruling in *Jho* means that, regardless of whether a false document is presented to the Coast Guard, a vessel entering a U.S. port with a false record book commits a separate offense at each port of entry. The lower court had held that federal law could not reach acts that occurred in waters outside the jurisdiction of the United States, but the appellate court reversed, holding that a continuing duty to maintain an accurate record made each port call a potential crime, whether or not the false record was presented to or relied upon by the Coast Guard.

In *United States v. Ionia Management, S.A.* (2009 WL 16966) (2nd Cir.), the Second Circuit affirmed the criminal liability of a company, under the theory of respondeat superior, for the criminal acts of non-managerial employees who are acting contrary to corporate policy and practice.⁶

The court affirmed the notion of liability, rooted in the Supreme Court's 1909 decision in *New York Cen-*

*tral*⁷, that employees acting within the scope of their employment can create criminal liability for the corporation. The court left open the possibility of a defense on the grounds that the employees were acting without the knowledge and direction of managerial employees, but found that the evidence in this particular case was "overwhelming" that managerial employees had specifically directed the crew in violative conduct. *Id.* at *5.

The Expanding Law of Obstruction of Justice

As has been noted for some time, the Sarbanes-Oxley obstruction of justice provision, 18 U.S.C. § 1519, expanded the reach of potential criminal liability for the destruction or alteration of records, to some circumstances where a federal inquiry was not yet underway. Section 1519 did so by eliminating the requirement that the person have knowledge of a federal inquiry at the time the records were altered or destroyed, and instead expanded liability to circumstances when such an inquiry was "contemplated" by the person at the time of the conduct deemed to have been carried out with the intent to obstruct.⁸

In a recent case, a church choir master was permitted to resign after allegations that the choir master had saved pornography on his church computer. The attorney for the church retrieved the choir master's computer and then was alleged to have been involved in the deletion of the pornography. The government subsequently indicted the attorney for obstruction under, among other things, Section 1519. Notable is that the indictment does not allege that the attorney had any knowledge of a federal investigation or inquiry of the choir master or the contents of the computer at the time the records were destroyed. Thus, as drafted, the government's case could be seen as limited to the narrow claim that the attorney destroyed the pornography in circumstances under which the attorney should have known a federal inquiry would occur.

Although the government ultimately dismissed these charges when the attorney agreed to plead guilty to a one-count information charge under 18 U.S.C. § 4 (Misprison of Felony), the drafting of the indictment should serve as a further caution to both attorneys and their clients to take tremendous care in the handling and disposition of records which, perhaps in the future, could become the subject of a federal inquiry.

The late Murray Kempton, a singularly well-informed New York City journalist, once remarked about organized crime, "those that know don't say, and those that say don't know." With Murray's sound advice, the most we can say today about the federal environmental criminal program is to look at what has come before, see the players now before us, and make what amount to guesses as to what will come next. We will see in a year's time what ensues.

Cases of Note

⁷ *New York Central & Hudson River Railroad v. United States*, 212 U.S. 481 (1909)

⁸ "The Other Shoe Drops: Using Sarbanes-Oxley Criminal Provision, DOJ Indicts Attorney for Destroying Evidence in Advance of a Proceeding," by W. Warren Hamel and Lowell M. Rothschild, BNA's White Collar Crime Report, June 8, 2007, p. 318.

⁴ "Department Issues 'Chemicals of Interest' as Final Part of Plant Security Regulation," 38 ER 2521, 11/23/07.

⁵ "Creamery Sentenced in First Criminal Case Over Clean Air Act Risk Management Plans," 39 ER 2219, 11/7/08.

⁶ "Second Circuit Affirms \$4.9 Million Fine Against Tanker Operator in Oil Waste Case," 40 ER 236, 1/30/09.

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Clean Water Act

United States v. Allens, Inc. (W.D. La., No. 1:07-cr-16604-DDD-JDK, *sentence entered* 10/28/2008)—A Louisiana food processor was sentenced to a fine of \$175,000 and three years' supervised release for negligently discharging pollutants in violation of the Clean Water Act. Allens, Inc. (formerly, the Allen Canning Co.) was also required to dredge containment ponds at its facility, put in place environmental standards and protocols, establish a training program, and provide \$75,000 in food products to hurricane relief efforts. The company was found to have negligently discharged wastewater into the German Bayou in violation of the conditions specified in its Louisiana Pollutant Discharge Elimination System permit.

United States v. Archer Daniels Midland Co. (E.D. Tenn., No. 1:08-c-00017-1, *plea entered* 3/5/2008)—The Archer Daniels Midland Co. pleaded guilty to negligently violating the Clean Water Act at a cellulose facility by discharging process water into Chattanooga Creek on four separate occasions. The company agreed to pay a \$100,000 fine, in addition to a \$100,000 payment to equip and train forensic sampling teams and an alliance of regulatory and law enforcement agencies. Prosecutors said the company's "lax compliance effort and sloppy operations" gave rise to serious and avoidable violations. Since the violation, the company has spent more than \$350,000 to upgrade its facility to avoid future violations.

United States v. Atlantic Wire Co. (D. Conn., No.3:08-cr-00266-CFD, *plea entered* 12/30/2008)—A steel wire and processed rod manufacturer pleaded guilty to violating the Clean Water Act and submitting false statements to the Connecticut Department of Environmental Protection. In its manufacturing process, Atlantic Wire Co. generated highly acidic or caustic wastewater that was treated on-site before being discharged into the Branford River. The facility operated under a permit that required the company to operate and maintain wastewater treatment systems and to fulfill monitoring requirements. After the company's environmental manager retired, the company assigned his responsibilities to a recent college graduate who was already fully employed as the product metallurgist, and who had no idea how to deal with environmental operations or reporting. During the summer of 2007, the necessary procedures required by the wastewater treatment system were not being carried out, and the company was repeatedly warned by consultants that problems existed. Authorities were ultimately tipped off by a crab fisherman who encountered dead crabs near the company's discharge pipe. The company faces five years of probation and up to \$500,000 in fines on each of three counts.

United States v. Bowling (E.D. Ky., No. 7:07-cr-00013-GFVT, *sentence entered* 2/26/2008)—The owner and operator of a concrete company was sentenced to a year and a day in prison and fined \$260,000 for violating the Clean Water Act by illegally discharging septic waste into the Burnt Cabin Branch Creek. David L. Bowling, Sr., pleaded guilty to using a tanker truck to dump raw sewage directly into a river. Separately, his company, Dave's Concrete, Inc., was sentenced to five years' probation and ordered to pay a \$130,000 fine.

United States v. Citgo Petroleum Corp. (W.D. La., No. 2:08-cr-77-PM-KK, *sentence entered* 9/17/2008)—Citgo Petroleum Corp. was sentenced to pay \$13 million for violations of the Clean Water Act, perhaps the largest fine ever assessed for a criminal misdemeanor violation of the act. At a facility in Sulphur, La., Citgo maintained a tank system for handling wastewater. In an effort to trim costs, the company constructed only two stormwater tanks, despite advice that a third tank was needed. In addition, the company's failure to follow standard maintenance procedures resulted in the buildup of a significant amount of oil in the tanks. During a heavy rainstorm, oil was forced out into two nearby rivers, which curtailed commercial transportation for 10 days. Along with the fine, the company was required to implement an environmental compliance plan to ensure that similar spills will not recur, and to build a third tank.

United States v. Comprehensive Environmental Solutions, Inc. (E.D. Mich., No. 2:07-cr-20037, *sentence entered* 9/4/2008)—The operator of an industrial waste treatment and disposal facility near Detroit was ordered to pay \$600,000 in fines after pleading guilty to violating the Clean Water Act by dumping raw sewage into the Detroit sewer system. The company also agreed to develop and implement an employee training and compliance program. Comprehensive Environmental Solutions, Inc., and three former employees were indicted after accepting about 13 million gallons of liquid waste that the facility did not have the capacity to store. Employees bypassed the treatment system and discharged untreated waste directly into the sanitary sewer system in violation of pretreatment regulations, the facility's permit, and the consent order under which the facility operated. In addition, the company was ordered to pay \$150,000 to fund a community service project to benefit the ecosystems in the Rouge and Detroit rivers.

United States v. Dakota Pork Industries, Inc. (D. S.D., No. CR-08-4001, *sentence entered* 8/4/2008)—A South Dakota pork products company was ordered to pay a \$50,000 fine after pleading guilty to tampering with a pH monitor at a meatpacking plant. Pursuant to its permit, Dakota Pork Industries, Inc., was required to pretreat its wastewater and to monitor its alkalinity. Employees would readjust the calibration screw on the pH monitor in order to reflect that discharges were within required limits. They would also put the monitoring probe into a beaker of clean water in order to cause false data to be recorded. These activities had the potential of causing stress to the city's wastewater treatment system. The company was also required to pay \$175,000 in restitution to the city of Mitchell, S.D.

United States v. Driggers (M.D. Fla., No. 8:07-CR-452, *sentence entered* 3/18/2008)—A Florida company and two employees were sentenced for knowingly violating the Clean Water Act by dumping diesel fuel into a storm drain, resulting in environmental damage to McKay Bay Preserve, a part of Tampa Bay. Cyprus Gulf Development Corp. was ordered to pay \$39,000 in fines and cleanup costs. James Driggers, the employee who moved a fuel storage tank over a storm drain and allowed the contents to drain, was sentenced to 15 months in prison and a year of supervised release. Driggers' supervisor, William Styers, was sentenced to a year of probation, plus a \$2,500 fine and community service.

United States v. Ecosolve, LLC (W.D. N.C., No. 3:07-cr-98, *sentence entered* 3/25/2008)—Employees of a grease-hauling operation, along with the company, were sentenced on 10 felony counts of violating the Clean Water Act. Ecosolve, LLC, was retained by restaurants and food outlets to remove, haul, pre-treat, and dispose of waste from grease traps. The company trained its drivers to discharge waste back into its customers' grease traps and into the public sewer system, potentially causing serious backups of the sewer system. The company was fined \$160,000 and given three years of probation. The company's former president was sentenced to 12 months of home confinement, probation, and \$7,200 in fines. Another former employee was ordered to serve a year and a day in jail, followed by supervised release. Four other company officials were separately sentenced.

United States v. ExxonMobil Pipeline Co. (D. Mass., No. 1:08-cr-10404-PBS, *plea entered* 12/23/2008)—A subsidiary of ExxonMobil agreed to pay more than \$6.2 million in fines and cleanup costs for violating the Clean Water Act in connection with a spill of diesel fuel and kerosene from its oil terminal in Everett, Mass. ExxonMobil operates a marine distribution terminal at the confluence of the Island End River and the Mystic River, just above Boston Harbor. There, oil tankers deliver petroleum products, which are sent via pipeline to an inland tank farm. According to a criminal information filed with the court, ExxonMobil negligently failed to provide adequate resources and oversight to the maintenance and operation of the terminal. Specifically, the company did not replace a leaking valve and a badly corroded coupling in the transfer area; when those elements failed, some 2,500 gallons of kerosene and 12,700 gallons of diesel fuel overflowed a containment pan and spilled into the Mystic River. The company agreed to pay cleanup costs of \$179,634; the maximum fine of \$359,018 (twice the cost of the cleanup); and a community service payment of more than \$5.6 million to the North American Wetlands Conservation Act fund to be used for wetlands restoration projects.

United States v. Johnson (E.D. Mo., No. 4:07-CR-760, *sentence entered* 4/29/2008)—A Missouri real estate developer was sentenced to 15 months in prison and ordered to pay \$100,000 in restitution for violating the Clean Water Act at two construction sites. Eric Johnson, the owner and operator of two real estate developments, obtained construction storm water permits from the state. EPA inspectors observed numerous permit violations, including lack of inspections and failure to evaluate, maintain and implement runoff controls, resulting in off-site migration of a significant amount of sediment into Dry Branch Creek. Johnson also pleaded guilty to one felony count of bank fraud in connection with misuse of escrow funds.

United States v. Johnson Matthey, Inc. (D. Utah, No. 06-CR-169, *plea entered* 9/3/2008)—The operator of a Utah gold and silver refining facility pleaded guilty to felony violations of the Clean Water Act and agreed to pay \$3 million in fines. Johnson Matthey, Inc., which operated the facility near Salt Lake City, was required to treat its wastewater at several steps to remove pollutants, such as selenium, before discharging the wastewater to a sewer. Because the company had difficulty consistently limiting selenium discharges to meet its permit limit, employees screened samples before submitting them for analysis. The facility's former plant

manager and its former general manager admitted to making false statements and were sentenced to probation, fines, and community service.

United States v. Lakota (E.D. Tenn., No. 3:07-cr-163, *plea entered* 6/18/2008)—The environmental compliance manager at a Fujicolor Processing facility pleaded guilty to violating the Clean Water Act by falsifying wastewater discharge monitoring reports. The facility generated a significant amount of process wastewater containing small amounts of silver and other chemicals. Gerald Lakota selectively "cherry-picked" samples of the facility's wastewater effluent, and submitted those samples as representative of the facility's discharge. The company earlier agreed to pay a \$200,000 criminal fine after disclosing the findings of an internal investigation that revealed violations of the facility's pretreatment permit.

United States v. Lucas (5th Cir., No. 06-60289, *conviction upheld* 2/1/2008)—The U.S. Court of Appeals for the Fifth Circuit rejected the appeals of a Mississippi developer, his daughter, an engineer, and two corporations who together were convicted of illegally filling wetlands, knowingly violating the Clean Water Act, and committing mail fraud. The defendants were sentenced in 2005 for selling house lots that included septic systems on wetlands without Clean Water Act permits. Relying on the plurality opinion in the U.S. Supreme Court's *Rapanos* ruling, the court rejected the defendants' argument that Clean Water Act jurisdiction does not exist on wetlands that are adjacent to tributaries of navigable waters. In October, the Supreme Court declined to review the Fifth Circuit's ruling.

United States v. M&N Foods, Inc. (E.D. La., No. 2:8-cr-00086-SRD-ALC, *plea entered* 4/3/2008)—A Louisiana food company pleaded guilty to misdemeanor Clean Water Act violations for failing to file required discharge monitoring reports for more than two years. M&N Foods manufactured spaghetti sauce and salad dressing. Its permit required samples to be taken every six months and reports to be sent to state environmental authorities. After an inspection, it was determined that the company had not sampled, analyzed, or forwarded reports for the monitoring periods of 2003, 2004, and the first half of 2005.

United States v. Novozymes Biologicals, Inc. (W.D. Va., No. 7:08-cr-00056-SGW, *plea entered* 12/18/2008)—A subsidiary of a Danish biotechnology firm pleaded guilty to violating the Clean Water Act by illegally discharging pollutants into a tributary of the Roanoke River without a permit. At its Salem, Va., plant, Novozymes Biologicals, Inc., manufactures, packages, stores, and distributes industrial microbiological products for wastewater treatment, soil remediation, and other uses. The company dumped more than 4,000 gallons of off-specification or outdated products through a floor drain into a nearby creek. Children playing near the creek suffered skin rashes and eye irritation, and more than 6,600 fish were killed along the stream. The company agreed to serve three years of probation and pay \$525,000 in fines and community service payments.

United States v. Oak Mill, Inc. (W.D. Mo., No. 5:08-CR-06016, *indictment returned* 12/2/2008)—A company that recycles soybean oil was indicted for violating the Clean Water Act after discharging pollutants into a municipal wastewater treatment system. Missouri-based Oak Mill, Inc., reclaims soybean oil for resale and, in

the process, uses acid to remove vegetable oil from tanker trucks. It violated its wastewater permit on six occasions by discharging low-pH wastewater in violation of the pretreatment standard for wastewater. The company's vice president was separately charged in connection with two of the alleged violations.

United States v. Ortiz (D. Colo., No. 03-CR-113, *sentence entered* 5/30/2008)—The operator of a company that distills propylene glycol for use as an airplane deicer was resentenced to two years in prison for violating the Clean Water Act. David Enriquez Ortiz, the operator of Chemical Specialties in Grand Junction, Colo., was sentenced in 2003 to a year in prison for knowingly and negligently discharging pollutants into the Colorado River. He later fled from authorities and was subsequently apprehended. The court departed from the federal sentencing guidelines in imposing a prison sentence that was twice as long as the original sentence.

United States v. Raulerson (E.D. Mo., No. 1:08-CR-0019, *sentence entered* 11/24/2008)—James Raulerson, the owner of a Missouri farm, was sentenced to two years of probation and fined \$10,000 for violating the Clean Water Act by dumping biodiesel waste products into a ditch. After an anonymous caller reported a tanker truck discharging its contents into a ditch, state and federal responders discovered glycerin that was generated from a biodiesel operation. State authorities estimated that at least 30,000 fish were killed as a result. Raulerson admitted to the discharge of glycerin, methanol, and oil into the ditch.

United States v. Rosenblum (D. Minn., No. 0:07-cr-00294-JRT-FLN, *sentence entered* 10/22/2008)—The president and CEO of a metal finishing business was sentenced to 15 months in prison and two years of supervised release in connection with violating the Clean Water Act. Keith David Rosenblum was also required to pay a \$250,000 fine and community service. The charges stemmed from the company's failure to properly treat wastewater to meet the metal and cyanide discharge parameters set forth in its discharge permit. The violations were uncovered after a company environmental manager reported compliance deficiencies and an investigation revealed that the company was in the practice of altering its production and wastewater treatment practices when regulators were conducting on-site compliance testing.

United States v. Schultz (D. Idaho, No. 4:08-cr-00101-BLW, *sentence entered* 9/8/2008)—A campground owner who violated a dredge and fill permit issued by the U.S. Army Corps of Engineers was fined \$30,000 and sentenced to three years of probation, including six months' home detention. Abner J. Schultz, owner of the Wagonhammer Campground in North Fork, Idaho, violated the Clean Water Act when he discharged dredge and fill material below the ordinary high water mark of both the Salmon River and a spring-fed tributary that flows across the campground. Schultz had obtained a permit to fill a small, specific area along the banks of the tributary as long as the work was performed during a specific time period when the river is in low flow. However, in completing the work, Schultz disregarded the express directions in the permit. In addition, he was required to remove the dirt dumped into the Salmon River, which destroyed habitat critical to endangered salmon.

United States v. Sturgeon (W.D. Mo., No. 2:08-CR-04032, *plea entered* 9/31/2008)—A central Missouri mu-

nicipality pleaded guilty to violating the Clean Water Act by discharging untreated sewage into the Lake of the Ozarks. Staff members from the state Department of Natural Resources observed an overflow at a lift station operated by Lake Ozark, Mo., which resulted in the discharge of 10,000 to 15,000 gallons of sewage into the lake and caused fecal coliform bacteria to exceed the level safe for swimming. As part of its plea, the city agreed to pay a fine of \$50,000, to upgrade and maintain its wastewater treatment system, and to report future bypasses as required by its permits and state regulations. In a separate proceeding, the facility's former public works director pleaded guilty to failing to report the discharge of raw sewage into the lake.

Wildlife

United States v. Alaska Electric Light and Power (D. Alaska, No. 3:08-cr-00022-DMS, *plea entered* 7/16/2008)—The utility company that provides power to Juneau, Alaska, pleaded guilty to violating the Bald and Golden Eagle Protection Act by destroying a nest during a blasting operation. Alaska Electric Light and Power had requested to "take" the eagle, which was located in a known bald eagle site, but the request was denied. The company nonetheless destroyed the nest, along with an historic cabin, during blasting as part of a hydroelectric construction project. The company was fined \$50,000 and ordered to serve 18 months of probation, and agreed to pay an additional \$50,000 in raptor rehabilitation and \$25,000 in restitution to the U.S. Forest Service. It also agreed to update a study of area raptors and to put an education program in place for employees, agents, and contractors.

United States v. Halcomb (W.D. Ky., No. 1:07-mj-00050-ERG, *sentence entered* 8/20/2008)—A Kentucky man was sentenced to six months of home incarceration and five years of probation for violating the Federal Insecticide, Fungicide and Rodenticide Act by lacing deer carcasses with the deadly pesticide Carbofuran. Donnie Holcomb's intent was to poison coyotes. He also poisoned dozens of other animals, including dogs, opossums, and migratory birds such as owls, hawks and vultures. In addition, Holcomb was ordered to pay a \$50,000 fine.

Drinking Water

United States v. All County Water Association, Inc. (S.D. Fla., No. 0:07-CR-60208C, *sentence entered* 2/21/2008)—A South Florida company was ordered to pay \$1.85 million in restitution to some 500 victims of a scheme to sell unnecessary water purification systems. All County Water Association, Inc., told South Florida residents that their drinking water was contaminated with a range of dangerous toxins and carcinogens, including mercury, E. coli, and anthrax. They then sold, financed, installed, and maintained water purification systems that they falsely represented as "EPA Approved." The company's president was earlier sentenced to 41 months in prison and a \$25,000 fine after pleading guilty to conspiracy, mail and wire fraud, and misuse of a government seal.

United States v. Miritello (S.D. N.Y., No. 07-CR-603, *sentence entered* 6/12/2008)—The third employee of the New York City Department of Environmental Protection convicted on charges of falsifying records at the city's Catskill Lower Effluent Chamber facility was sentenced to two years of probation. Nicholas Miritello ad-

mitted to making false entries in the city's drinking water monitoring records by indicating in a log book that he had performed each step of the multi-step turbidity testing process required by EPA, when he had not performed all of the steps.

United States v. Site Concrete, Inc. (E.D. Texas, No. 4:07-cr-192, *sentence entered* 2/19/2008)—A Texas contracting company was sentenced to pay a \$30,000 fine for making false statements to conceal microbiological contamination in new drinking water lines at a construction site. Site Concrete, Inc., was required to ensure that water in new lines was free of contamination before putting the lines into service. The company submitted false water samples to the EPA to conceal the presence of contamination.

Resource Conservation and Recovery Act

United States v. Atwater (D. Utah, No. 1:08-CR-114, *indictment returned* 10/1/2008)—The owner of a furniture restoration business was indicted on three counts of violating the Resource Conservation and Recovery Act by dumping hazardous solvents into a public sewer system. Jay Bert Atwater and others at his company, Heritage Restoration, used a solution containing 70 percent to 76 percent methylene chloride to strip paint from furniture. They then dumped the water into subsurface soil, or discharged the solution down a sink that led to facilities of the municipal sewer district. It is a violation of RCRA to knowingly dispose of a solution containing more than 10 percent methylene chloride.

United States v. Babbit (W.D. Mich., No. 1:07-cr-00152-JTN, *sentence entered* 06/30/2008)—The owner of a furniture and metal parts stripping business was sentenced to six months of home detention, 200 hours of community service, restitution of over \$28,000, a fine of \$6,000, and three years of probation for violating RCRA by illegally storing hazardous waste. Michael Lee Babbit, owner of The Stripper, Inc., used environmentally hazardous solvents as part of his business. When he ceased business operations, he left behind numerous drums and tanks containing methylene chloride, toluene and lead. State environmental officials removed and disposed of the materials.

United States v. Becks (E.D. Mo., No. 4:08-CR-198, *sentence entered* 8/7/2008)—A professional waste hauler was sentenced to a year and a day in prison after pleading guilty to a felony violation of RCRA. Jason Becks was hired to complete an environmental site assessment at a tire company in St. Louis. After observing several drums of paint and solvent waste inside the facility, Becks agreed to remove and dispose of the material for \$600. He then illegally transported and disposed of six drums by abandoning them in Jefferson County, Mo. Becks was also ordered to pay \$29,000 in restitution.

United States v. Jacobs (N.D. Ill., No. 1:07-cr-00527, *sentence entered* 7/17/2008)—The owner of a metal finishing business was sentenced to 46 months in prison after pleading guilty to violating RCRA and embezzling funds from an employee pension fund. David Jacobs, owner of Northwestern Plating Works, Inc., improperly stored and disposed of hazardous wastes used in electroplating processes—including cyanides, acid, corrosives, brass, copper, zinc and nickel—without a permit. He was also ordered to serve 200 hours of community service, pay more than \$800,000 in restitution to the

employees in the fund, and pay nearly \$1.3 million in restitution to the U.S. EPA.

United States v. Jagielo (W.D. N.Y., No. 1:07-cr-00190-WMS, *sentence entered* 6/30/2008)—A New York man was sentenced to 21 months in jail and three years of supervised release, and ordered to pay \$1 million in restitution to the U.S. EPA, after being convicted of criminally disposing of hazardous wastes used in and around the MRS Electroplating facility in Lockport, N.Y. Ronald Jagielo caused the dumping of hazardous wastes including cadmium, chromium and corrosive liquids. He and the company are repeat environmental criminals.

United States v. Lawrence Aviation Industries, Inc. (E.D. N.Y., No. 2:06-cr-00596-DRH-AKT-2, *plea entered* 7/10/2008)—A manufacturer of titanium sheets used in the aeronautics industry, along with the company's owner, pleaded guilty to violating RCRA by improperly storing 12 tons of hazardous waste. The owner, Gerald Cohen, faces up to five years in prison; both defendants face fines that could total over \$35 million. Lawrence Aviation Industries has operated on the site in question since 1959. Part of its manufacturing process required the use of large tanks of corrosive acid and base liquids. Two of the tanks were later used to store corrosive hazardous waste. Cohen is also the defendant in a civil suit under the Superfund statute to recover over \$8 million in clean-up costs.

United States v. Mazoch (E.D. Texas, No. 1:07-cr-86, *sentence entered* 8/28/2008)—The owner of a welding supply company was sentenced to eight months in prison for violating RCRA by conspiring with others to store, transport, and dispose of hazardous wastes without a permit. Environmental authorities discovered some 555 compressed gas cylinders containing industrial gases in a self-storage facility. The unit had been rented by James Herbert, a former employee of Coastal Welding Supply. The company's owner, John Charles Mazoch, had paid Herbert \$30,000 to take possession of the cylinders. Mazoch was also ordered to pay a \$500,000 fine and over \$700,000 in restitution. Herbert and another co-conspirator were separately sentenced to home confinement, probation, and fines.

United States v. McNair (E.D. Texas, No. 6:07-cr-00088, *sentence entered* 11/6/2008)—The owner of a metal plating business was sentenced to serve 37 months in prison for illegally storing hazardous waste without a permit. Dile Kent McNair, the owner of Extreme Metal Finishing, Inc., stored thousands of gallons of hazardous wastes at a facility. He later moved his operations to a new facility, but continued to store the wastes at the former facility. McNair and his companies had extensive histories of civil environmental noncompliance, and two of his former companies were the subject of prior criminal investigations. The sentence also includes a bribery charge stemming from McNair's attempt to bribe an assistant district attorney for dismissing a DWI charge.

United States v. Parker (N.D. Ga., No. 3:07-cr-11, *sentence entered* 2/26/2008)—A Georgia man was sentenced to 16 months in jail for transporting flammable and potentially explosive hazardous wastes in the back of his truck without a permit. Deryl Parker transported at least 17 55-gallon drums of paint thinner and waste paint to a disposal company without a permit. Parker has a prior conviction for improperly transporting and

storing hazardous waste, which resulted in a Superfund site that cost \$1.6 million to clean up.

United States v. Pridemore (S.D. Miss., No. 5:06-CR-43, *sentence entered* 2/7/2008)—The owner of a waste recycling facility was sentenced to 41 months in prison for illegally storing and disposing of hazardous waste contaminated with the heavy metals cadmium, chromium and lead. Dennie Eugene Pridemore was the owner and operator of Hydromex, Inc., which ostensibly recycled hazardous wastes into useful products. Instead, however, the wastes were buried in trenches or turned into products designed to create the illusion that the company was legitimately recycling hazardous waste. The products the company produced leached heavy metals into the surrounding soil and groundwater. To conceal the improper handling of the waste, Pridemore created false documents making it appear to regulators that he had customers for the products he claimed to be making.

United States v. Reese (S.D. Ind., No. 1:07-cr-00036-LJM-KPF, *sentence entered* 5/7/2008)—The owner of a proposed electroplating business was sentenced to six months in a community confinement facility and an additional six months of home confinement, after pleading guilty to felony violations of RCRA. Richard Reese acquired chemicals for a proposed electroplating company, but never began operations. Over several years, the chemicals were stored in two trailers, and transported first to a vacant lot and later abandoned in a parking lot in an industrial park.

United States v. Rubashkin (E.D. Pa., No. 2:07-cr-00498-JKG, *sentence entered* 11/6/2008)—The owner of a textile dyeing, bleaching, and weaving business was sentenced to 16 months in prison for illegally storing hazardous waste. When Moshe Rubashkin's business, Montex Textiles, ceased operations, he left numerous containers of hazardous waste at the site. A major cleanup of the property was undertaken by the EPA and the City of Allentown after two fires broke out at the facility and the chemicals were discovered. Rubashkin's son pleaded guilty to making a false statement to the EPA. The two were ordered to pay restitution in the amount of \$450,000.

United States v. Simply Aquatics (E.D. Texas, No. 1:08-cr-00067-RC-ESH, *plea entered* 8/12/2008)—The owner of a Texas company faces up to five years in prison and a fine of up to \$250,000 for violating RCRA by disposing of hazardous waste without a permit. Kevin Wayne Hester, president of Simply Aquatics, Inc., buried 113 compressed gas cylinders on his residential and ranching property. In an investigation by state environmental authorities, it was determined that 33 of the cylinders were under high pressure and contained a total of 952 pounds of chlorine gas. Hester's father, Lyle Hester, who served as shop foreman at his son's company, separately pleaded guilty to the same charges and faces the same penalties.

United States v. Southern Union Co. (D. R.I., No. 07-134-S, *verdict returned* 10/15/2008)—After a 12-day jury trial, Southern Union Co. was found guilty of illegally storing mercury at a facility without a permit. The company had initiated a program to remove mercury-containing gas regulators from customers' homes; after a contract for removal of the mercury expired, the mercury was stored in various containers at the site. Youths broke into the facility and spilled the mercury at the site and at a local apartment complex. The company was ac-

quitted of a second count of illegal storage, as well as a charge of failing to notify emergency officials of a hazardous waste release.

United States v. Spencer (D. Ore., No. CR-07-00381, *sentence entered* 6/5/2008)—The owner of a recycling and wastewater treatment facility was sentenced to six months in prison and one year of supervised release after pleading guilty to felony violations of RCRA. Donald M. Spencer's company, Spencer Environmental, Inc., contracted with industrial companies to collect, recycle, and dispose of wastewater, used oil, and antifreeze. The company violated RCRA standards by spilling used oil, overfilling a waste pit, and failing to properly clean up spills when they occurred. After the facility was sold, a fire on the property ignited oil-soaked parts of the facility and contaminated a nearby creek. The company was also ordered to pay a \$150,000 fine.

United States v. Usona Metal Finishing Co. (E.D. Mo., No. 4:08-CR-00565, *plea entered* 12/2/2008)—The owner of three metal-plating plants in the St. Louis area pleaded guilty to violating RCRA by illegally storing hazardous waste. Paul Fredericks, owner of the Usona Metal Finishing Co., operated three facilities: an anodizing plant, a wet-paint plant, and a powder-coating plant. When the powder-coating plant ceased operations, Fredericks arranged for 100 drums of hazardous waste to be transported from that facility to the anodizing plant, where they were improperly stored without a permit.

United States v. Webb (D. Idaho, No. 2:08-cr-00216-EJL, *sentence entered* 12/16/2008)—The operator of a company that performed methamphetamine lab cleanups under contracts with the Drug Enforcement Administration was sentenced to a year and a day in prison for knowingly storing hazardous waste without a permit. Robert Wayne Webb, owner of Aalliance Environmental, Inc., failed to properly store the wastes accumulated from lab cleanups, instead storing them at an unpermitted facility and in a garage in a residential neighborhood. Webb was also ordered to pay over \$71,000 in restitution, serve three years of supervised release, and perform community service.

Clean Air Act

United States v. Azizi (N.D. Calif., No. 3:06-cr-548, *verdict returned* 5/14/2008)—After a seven-day trial, a jury convicted a demolition business owner of violating the Clean Air Act when destroying a commercial building that contained significant amounts of asbestos. Wassim Mohammad Azizi hired an unlicensed handyman to demolish a building, and dumped the debris in a trash container behind the building. The CAA requires any activity involving asbestos-containing material to be performed in compliance with work practice standards, including contacting environmental authorities prior to the activity, properly labeling bags containing asbestos, wetting the material, keeping it in leak-tight containers, and disposing of it at an authorized disposal site.

United States v. Burghoff (E.D. Mo., No. 4:08-cr-00199-DJS, *plea entered* 10/1/2008)—The owner and developer of a building renovation company pleaded guilty to violating the Clean Air Act by using unqualified personnel to remove asbestos-insulated piping. After receiving an anonymous tip, state environmental authorities inspected a building being renovated by Matthew Burghoff. There, they observed asbestos debris

swept into piles and some 60 black bags that contained dry asbestos material. Burghoff also pleaded guilty to one count of bank fraud for converting money intended for renovations to his own use.

United States v. Deleon (D. Mass., No. 1:07-cr-10277-NMG, *verdict returned* 11/19/2008)—The owner of Massachusetts' largest asbestos training school was convicted on charges that she sold training certificates to hundreds of illegal aliens who had not taken the training course, and sent them out to perform asbestos removal work, paying them under the table. Albania Deleon, owner and operator of Environmental Compliance Training, a certified asbestos training school, issued training certificates to hundreds of migrant laborers. She then employed them through Methuen Staffing, her temporary employment agency that specialized in asbestos demolition. She was convicted by a jury of making false statements to the EPA, procuring false payroll tax returns, and mail fraud, among other charges.

United States v. Ecker (D. Mont., No. 1:08-cr-00045-RFC, *sentence entered* 8/21/2008)—Randal J. Ecker, a high school vocational education teacher, was given a year of probation and a \$100 assessment after pleading guilty to violating the Clean Air Act. Ecker used vocational education students to renovate school property, including the removal of asbestos-containing floor tiles, on two occasions. The tiles were put in garbage cans and hauled to a landfill, despite the fact that Ecker had known they contained asbestos. CAA regulations would have required notice to the EPA, work-site precautions, and treatment of the waste as a hazardous material.

United States v. George (D. V.I., No. 3:03-cr-00020-RLF, *sentence entered* 2/26/2008)—Two Virgin Island asbestos removal contractors were sentenced to 33 months in prison and three years of supervised release for violating the Clean Air Act in connection with the illegal removal of asbestos-containing materials and making false statement to federal environmental authorities. Cleve Allen George, owner of the Virgin Islands Asbestos Removal Co., and Dylan C. Starnes, president of Environmental Contracting Co., were hired to remove asbestos in a low-income housing project scheduled for demolition. Rather than following asbestos work practice regulations, the two used a power washer to strip thousands of square feet of asbestos-containing material from ceilings, and allowed the material to wash into sewers. George was also required to pay for baseline x-rays for exposed workers.

United States v. Hershey Creamery Co. (M.D., Pa., No. 08-cr-353, *sentence entered* 10/31/2008)—In the nation's first Clean Air Act prosecution involving risk management programs, an ice cream manufacturer was sentenced to pay a \$100,000 fine and serve one year of probation. Under the Clean Air Act, facilities that use regulated substances in amounts exceeding specified thresholds must develop and implement risk management programs in order to protect workers and the community, and must put prevention and emergency response plans in place. The Hershey Creamery Co. twice certified to EPA that it had a risk management program in place for its two Pennsylvania facilities, which used anhydrous ammonia in amounts over the thresholds. An EPA inspection, however, concluded that the company had no functioning program at either plant.

United States v. Langill (D. Md., No. 8:-7-cr-00425-PJM, *sentence entered* 1/10/2008)—The project supervisor on a Navy asbestos removal project was sentenced to 60 days in prison, followed by home detention and supervised release, after pleading guilty to violating the Clean Air Act. Robert Langill was employed by a company hired to remove asbestos-containing material from buildings at the U.S. Naval Air station, Patuxent River, Md. The project was conducted in a manner that violated federal asbestos abatement work practice standards, in that notice was not given to state authorities, and the material was not properly handled and stored. Specifically, workers were directed to remove transit panels by smashing them with hammers and crowbars, rendering the asbestos friable and causing a release of asbestos fibers.

United States v. Lazic (E.D. Pa., No. 2:07-cr-00324-JS, *sentence entered* 1/11/2008)—The supervisor on an asbestos removal project at an elementary school was sentenced to six months of home confinement, probation, community service, and fines for violating the Clean Air Act. Branko Lazic and his company were hired to remove 600 asbestos-insulated pipe elbows from Mattison Elementary School in Ambler, Pa. Lazic allowed another individual to supervise a part of the project, knowing that there was a high probability that the asbestos would be removed without proper containment and with no water to suppress airborne asbestos particles.

United States v. Lenar Equipment, Inc. (D. Ore., No. CR-08-281, *plea entered* 10/9/2008)—In the nation's first criminal prosecution of a company for violating the Clean Air Act's Transition Program for Equipment Manufacturers, an Oregon company admitted to knowingly importing 10 Chinese-made tractors that did not comply with the act's emission standards. Lenar Equipment, Inc., was sentenced to a \$20,000 fine and three years of probation; the tractors were also forfeited.

United States v. Parkway Village Equity Corp. (E.D. N.Y., No. 1:08-mj-00669-CLP, *complaint unsealed* 8/18/2008)—A Queens, N.Y., residential cooperative and its superintendent were charged with conspiring to violate the Comprehensive Environmental Response, Compensation, and Liability Act by illegally removing and disposing of asbestos on the co-op's grounds. The 109 residential buildings in the complex were heated by a series of asbestos-insulated steam pipes. From 2002 to 2006, the property superintendent, Layton Cervantes, and the property manager, George Halpin, directed employees to remove the asbestos with their bare hands and bury it on the grounds. Two former handymen tipped off federal authorities to the illegal asbestos removal. The complaint against the cooperative was put in abeyance pursuant to a deferred prosecution agreement requiring the removal of the asbestos, future compliance with environmental laws, and payment of nearly \$500,000 to cover the cost of the remediation.

United States v. Terry (E.D. Mo., No. 4:08-CR-00563, *indictment returned* 9/24/2008)—Three St. Louis auto emissions inspectors were indicted on charges that they violated the Clean Air Act by falsifying emissions tests. Michael Terry, Mark Bankster, and James Dubose, all employees of Sure State Batteries and Tires, connected emissions testing equipment to vehicles that they knew would pass inspection, in exchange for the payment of inflated charges to pass the emissions test. They face prison and fines.

United States v. Victoria (W.D. Pa., No. 2:06-cr-00230-GLL, *sentence entered* 9/12/2008)—A licensed asbestos removal supervisor was sentenced to six months of home detention and three years of probation after being convicted of a conspiracy to violate environmental laws and obstruction of an administrative proceeding. Charles Victoria was hired to oversee the removal of asbestos from a former state hospital property, which included 38 buildings served by a steam line that was insulated with asbestos-containing materials. Victoria removed the asbestos in violation of work practice standards, and made misrepresentations to government officials in connection with the investigation of the cleanup.

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

United States v. B. Navi Ship Management Services (S.D. Texas, No. 4:08-cr-00033, *sentence entered* 7/9/2008)—An Italian shipping company was sentenced to pay a \$1.5 million fine and serve three years of probation for violating APPS by illegally dumping oily sludge, bilge waste, and oily ballast water from the *M/V Windsor Castle*. When the Coast Guard boarded the bulk carrier in the Port of Houston, the vessel's chief engineer, Dushko Babukchiev, ordered crew members to dump the wastes into the shipping channel and falsify the vessel's oil record book to conceal the discharges. With the assistance of low-level crew members, Coast Guard inspectors discovered and seized the bypass hose and pipes that were used. The company was also ordered to implement and follow an environmental compliance program that includes a court-appointed monitor and compliance audits. In a separate action, Babukchiev pleaded guilty to making materially false statements and was sentenced to three years of probation.

United States v. Brown (D. Md., No. 1:07-cr-00339-WMN, *plea entered* 2/28/2008)—The former chief engineer of the *M/V Fidelio* admitted to using a bypass pipe to discharge oily waste overboard between 1994 and 2003. The permanently installed bypass pipe—part of the ship's original construction—was discovered during a Coast Guard inspection. Patrick Brown acknowledged that the ship's oily water separator was "rarely if ever used" except during Coast Guard inspections. He was employed by Pacific Gulf Marine, Inc., which was earlier sentenced to pay \$1.5 million in fines and community service for discharging waste from four of its giant car-carrier ships, including the *Fidelo*. Brown is the fifth chief engineer at the company to plead guilty or be convicted by a jury in the continuing investigation.

United States v. Canal Barge Co., Inc. (W.D. Ky., No. 4:07-cr-00012-JHM-ERO, *verdict returned* 3/25/2008)—After a 10-day jury trial, a New Orleans marine transportation company and three of its employees were found guilty of criminal violations of the Ports and Waterway Safety Act. The defendants were accused of failing to report to the Coast Guard that they had experienced a leak of benzene. After a leak was discovered in a 562,800-gallon barge load, deckhands were instructed to temporarily patch the crack with a bar of soap, and later with "red hand" patching materials. The barge was transferred to another barge company, whose crew was not advised about the crack. The patch failed, and three crew members—along with two

responders—were exposed to the benzene, a known carcinogen.

United States v. Casilda Shipping, Ltd. (N.D. Calif., No. CR-08-00448 CW, *sentence entered* 10/22/2008)—The owner of a cargo ship was fined \$750,000 after admitting to falsifying the oil record book for the cargo ship *Rio Gold*. Casilda Shipping Ltd., along with the ship operator and the vessel's chief engineer, admitted to using a "magic pipe" to bypass anti-pollution equipment. The operator was also ordered to comply with a three-year environmental compliance plan. Four members of the ship's crew reported the illegal dumping to Coast Guard authorities, and will receive a portion of the fine.

United States v. Clipper Wonsild Tankers Holding A/S (D. N.J., No. 07-cr-264-PGS, *plea entered* 6/19/2008)—A Danish shipping company agreed to pay a \$4.75 million fine and install state-of-the-art monitoring equipment to detect oily waste discharges. Clipper Marine Services A/S, which operates 28 tankers for Clipper Wonsild Tankers Holding A/S, pleaded guilty in connection with illegal discharges of oily waste from the *M/T Clipper Trojan*. The company acknowledged that the discharges were attributable to its failure to manage the vessel to ensure compliance with international and U.S. law. The company agreed to install remote monitoring systems on five of its ships, allowing the Coast Guard and onshore employees to monitor waste levels and the use of oily waste processing equipment. The company also agreed to implement an environmental compliance plan that includes annual environmental audits, compliance policies and practices, and compliance training. The ship's chief engineer was earlier sentenced to five months in prison, supervised release, and a fine after pleading guilty to falsifying documents and obstructing a Coast Guard investigation.

United States v. Fairport Shipping, Ltd. (D. Alaska, No. 3:04-cr-00130-JWS, *plea entered* 6/23/2008)—A Greek shipping company pleaded guilty in connection with bypassing the pollution control system on the refrigerated cargo vessel *M/V Asahi* with the use of a seven-foot section of plastic hose, and falsifying an oil record book. Fairport Shipping, Ltd., agreed to pay a \$250,000 fine, with \$150,000 of the fine suspended on condition that it commit no further violations.

United States v. Fleet Management, Ltd. (N.D. Calif., No. CR-08-160, *indictment returned* 7/23/2008)—The Hong Kong-based ship management company that operated the *Cosco Busan*, a ship that struck the San Francisco Bay Bridge in heavy fog and spilled 58,000 gallons of heavy fuel oil, was indicted by a federal grand jury for negligently violating the Clean Water Act and the Migratory Bird Treaty Act. Fleet Management, Ltd., is also alleged to have falsified documents after the accident, failed to properly train its crew, and failed to post an adequate lookout. In a separate action, the pilot of the ship, John Joseph Cota, was indicted for lying to the Coast Guard about the medications he was taking. The fuel discharge contributed to the death of some 2,000 birds. The company has also been named in a civil action seeking damages for the spill.

United States v. General Maritime Management, L.D.A. (S.D. Texas, No. C-08-393, *verdict returned* 11/25/2008)—After a jury trial, a Portuguese shipping company and two of its officers were found guilty of

making false statements to the Coast Guard and failing to maintain an accurate oil record book. General Maritime Management, L.D.A., operated the tanker *M/T Genmar Defiance*. The ship's first engineer directed engine room crew to pump oily bilge waste overboard through a flexible hose. He and the ship's chief engineer also ordered crew members to connect a hose from the ship's fresh water supply to the oil content meter in order to prevent a valve from shutting that would recirculate oily water to the bilge tank. Crewmen secretly photographed the illegal connection and provided the photos to the Coast Guard during a routine boarding.

United States v. Hiong Guan Navegacion (M.D. Fla., No. 8:08-cr-00494-SDM-EAJ, *plea entered* 11/11/2008)—Hiong Guan Navegacion Japan Co. Ltd., pleaded guilty to conspiracy and agreed to pay a \$1.75 million fine after using a bypass pipe to discharge oily water and sludge from the commercial cargo ship *Balsa 62*. The discharges were not recorded in the vessel's oil record book. Two chief engineers were separately charged. In addition to the fine, the company was ordered to implement a fleet-wide environmental compliance plan, which requires the monitoring of its operations over a three-year period.

United States v. Jho (5th Cir., No. 06-41749, 6/30/2008)—Maintaining an accurate oil record book is a continuing duty rather than a one-time obligation to make correct entries in the book, the U.S. Court of Appeals for the Fifth Circuit held, reversing the district court below. Accordingly, the chief engineer of an oil tanker violated that duty each time the ship called in a U.S. port, despite the fact that the fraudulent entries were made in the book on the high seas, outside the jurisdiction of the United States. Further, the court held that the violations were consummated by each port call, despite the fact that the oil record book was "presented" to Coast Guard officials on only two of eight occasions when they boarded during port calls. The case arose after a whistleblower led authorities to a "magic pipe" used to discharge oily waste water directly into the ocean, bypassing the ship's pollution control equipment. After each improper discharge, chief engineer Kun Yun Jho made an entry indicating that the waste had been processed in the ship's oily water separator. The district court held that U.S. law could not reach the violations that occurred on the high seas, and dismissed the charges relating to the failure to maintain an oil record book. The Fifth Circuit reversed.

United States v. Karas (D. Md., No. 1:06-cr-00299-WMN-2, *sentence entered* 1/10/2008)—The former chief engineer of a car-carrier was sentenced to six months in prison after being convicted by a jury for making illegal discharges of oily waste and making false entries in the ship's oil record book. Mark Humphries directed a removable bypass pipe on the *M/V Tanabata* to be hidden from Coast Guard inspectors when the ship was in port. The pipe was used to discharge oily waste and bypass the vessel's oily water separator. The ship's other chief engineer earlier pleaded guilty to similar charges. The ship's operator, Pacific Gulf Marine, Inc., also pleaded guilty to charges of making illegal discharges after voluntarily disclosing the results of an internal investigation, and was sentenced to pay \$1.5 million in fines and community service payments.

United States v. Kinder Morgan Bulk Terminals Inc. (D. Ore., No. 3:08-cr-00185-KI, *sentence entered*

8/13/2008)—The operator of a Portland, Ore., bulk terminal vessel loading facility was sentenced to pay \$240,000 after admitting to violations of the Ocean Dumping Act. Kinder Morgan Bulk Terminals, Inc., received a shipment of potash that had been ruined by contact with water. The company's night superintendent paid the master of the vessel *J/A Aladdin Dream II* \$1,250 to load the wet potash onto the vessel's deck for later disposal into the ocean, and an interview with the retired master in Japan, and review of the logbooks supported the government's claim of disposal at sea.

United States v. Krajacic (D. N.J., No. 1:08-cr-00824-JBS, *plea entered* 11/3/2008)—The Croatian chief engineer of the refrigerated ship the *M/V Snow Flower* faces prison and fines after pleading guilty to attempting to cover up the illegal dumping of oily waste in international waters. Igor Krajacic admitted to ordering crew members to dump oily waste overboard, and intentionally failed to record the discharges in oil record books that were presented to Coast Guard inspectors. The Swedish corporation that operates the ship, Holy House Shipping AB, earlier pleaded guilty on related counts, agreeing to pay a \$1.4 million fine and community service payment, and to implement an environmental compliance plan.

United States v. National Navigation Co. (D. Ore., No. 3:08-cr-198, *sentence entered* 4/29/2008)—Egypt's largest shipping company was ordered to pay \$7.25 million for illegally dumping waste oil—the largest penalty ever assessed for such a violation in the Pacific Northwest. The National Navigation Co. pleaded guilty to violations of APPS and making false statements, after Coast Guard inspectors found evidence of illegal dumping of waste oil during a routine inspection of a cargo vessel, the *M/V Wadi Al Arish*. A subsequent investigation conducted by the Coast Guard and EPA uncovered evidence of violations aboard six vessels in the company's fleet. The company will also serve a four-year probation and implement a fleet-wide compliance program that includes a court-appointed monitor and outside independent auditing.

United States v. Oria (D. Mass., No. 08-10274, *indictment returned* 10/2/2008)—The chief engineer of the chemical tanker *M/T Nautilus*, along with the Spanish company that owns it and the Cypriot company that operates it, were indicted for violating APPS, failing to maintain an accurate oil record book, and making false statements to Coast Guard authorities. Chief Engineer Carmelo Oria allegedly directed crew members to use a "magic pipe" to bypass the ship's oily water separator and discharge oil-contaminated waste directly overboard. It was also alleged that the discharges were not recorded in the ship's oil record book, and that false statements were made to Coast Guard authorities.

United States v. Paccship Ltd. (E.D. N.C., No. 4:08-cr-00016, *plea entered* 4/4/2008)—A company that operates and manages ships that carry goods between the United States and Asia pleaded guilty to obstructing justice and falsifying records to conceal illegal discharges of oily waste from two of its vessels. Paccship, Ltd., was ordered to pay a \$1.7 million criminal fine, along with a \$400,000 community service penalty. The case stemmed from charges that crew members improperly disposed of oil-contaminated waste, made false statements in the ship's oil record book, and lied to inspectors during an investigation.

United States v. Reederei Karl Schlueter GmbH & Co. (E.D. Pa., No. 08-cr-341, *plea entered 6/16/2008*)—A ship management company and one of its officers agreed to pay \$1 million in fines for falsifying an oil record book to cover up illegal discharges of oily waste from the commercial vessel *M/V MSC Uruguay*. Reederei Karl Schlueter GmbH & Co. also agreed to pay \$200,000 in community service, serve a three-year probation, and implement an environmental compliance plan. The case arose when crew members tipped off Coast Guard authorities that Chief Engineer Nikola Ilijic directed crew to discharge bilge waste directly overboard using a bypass hose. The ship's oil record book indicated that the waste had been processed through the oily water separator.

United States v. STX Pan Ocean Co., Ltd. (W.D. Wash., No. CR08-5653BHS, *plea entered 10/3/2008*)—A South Korean shipping company pleaded guilty to violating APPS by disposing of oil-contaminated grain from the bulk carrier *M/V Pan Voyager*. The case arose when two whistleblowers reported the incident to Coast Guard authorities. During a voyage from Korea, crew members discovered that a substantial amount of grain

had spilled into a hole in a vent leading to a fuel oil tank. Crew members used buckets and dustpans to remove the waste and place it into drums and plastic-lined rice sacks. Then, under the cover of darkness, they used the ship's cargo crane to dump the waste overboard. A false garbage record book was later presented to authorities. The company, STX Pan Ocean Co., agreed to pay \$1 million in fines and \$250,000 in community service payments. Each of the whistleblowers was awarded \$125,000.

United States v. Williams (D. Hawaii, No. 1:07-cr-376-JMS-1, *Plea entered 5/01/2008*)—A Coast Guard officer faces jail time and fines after pleading guilty to making false statements about his knowledge of the improper discharge of bilge waste from a ship on which he was stationed. Chief Warrant Officer David Williams oversaw the maintenance of the engines on the Coast Guard Cutter *RUSH*. He knew that personnel had configured equipment to pump bilge waste directly into Honolulu Harbor, bypassing the ship's oily water separator. Williams initially stated that he was unaware of the improper waste disposal.

