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This is the author's third annual article providing an overview of some key developments relevant to the criminal enforcement of environmental laws. It includes policy and legislative matters as well as summaries of almost 60 criminal cases brought around the country, including some appellate decisions from 2007. The article includes the responses to questions posed by the author to Stacey Mitchell, who was appointed last summer to be the chief of the Environmental Crimes Section at the Department of Justice.

The State of Environmental Crime Enforcement: Survey of Developments in 2007

BY STEVEN P. SOLOW

A New Top Prosecutor for the Environment

For the first time in seven years, the Environmental Crimes Section at the Department of Justice has a new chief.

David Uhlmann stepped down as chief in June 2007, ending by far the longest tenure in that position. Uhlmann had served in the Environmental Crimes Section for 10 years before becoming chief, three of those as an assistant chief. While he prosecuted dozens of cases and handled numerous trials, he is perhaps best known as one of the lead prosecutors in *United States v. Elias*, chronicled in *The Cyanide Canary* (Simon & Schuster, 2004), in which the defendant was sentenced to 17 years in prison, the longest-ever sentence for an environmental crime.

Steven P. Solow, a partner in the Washington, D.C., office of Katten Muchin Rosenman LLP, was chief of the Environmental Crimes Section at the Department of Justice from 1997 to 2000. His practice focuses on business crimes, internal investigations, corporate compliance and security programs, and environmental civil and criminal litigation.

The opinions expressed here do not represent those of BNA, which welcomes other points of view.

While chief, Uhlmann oversaw the integration of the department's wildlife prosecution unit into his own, increasing the size of the Environmental Crimes Section to over 40 attorneys. While debate raged over civil enforcement issues in the past seven years, under Uhlmann, the Environmental Crimes Section continued to operate at a consistent level while significantly expanding criminal prosecutions into new areas, including worker endangerment and stationary source Clean Air Act enforcement.

Uhlmann departed Justice for the University of Michigan Law School, which appointed Uhlmann as the Jeffrey F. Liss Professor from Practice and the inaugu-

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ral director of the law school's Environmental Law and Policy Program.

In July, Assistant Attorney General Ron Tenpas selected Stacey Mitchell as the new chief, making her the seventh person to hold that position. Mitchell had been a prosecutor in the Manhattan District Attorney's office before she joined the Environmental Crimes Section in 1997, where she served first as a trial attorney and then as an assistant chief. Mitchell was born in Colorado and received her law degree at Tulane University. She has three assistant chiefs, Kris Dighe, Andrew Goldsmith, and John Webb, all of whom have long and distinguished records as federal prosecutors.

Mitchell will be a featured speaker at the ABA Section of Environment, Energy, and Resources environmental law conference in Keystone, Colo., March 15, and recently provided the following answers to written questions:

1. How would you describe the mission of the Environmental Crimes Section?

Our mission is to facilitate the criminal prosecution of the federal environmental laws around the nation. We do that through three main functions. First, we handle environmental criminal cases, either alone or with an Assistant from a United States Attorney's Office. Second, we dedicate countless attorney hours to training federal and state inspectors, investigators and prosecutors on the law and recent trends in the field. Finally, we address policy issues that may implicate environmental crimes cases, including responding to inquiries on pending legislation.

2. In your first public appearances after becoming Chief, you made specific mention of the fact that you consider yourself an "environmentalist." Why was it important to you to say that, and how does this impact your decisionmaking as head of the Environmental Crimes Section?

I am an advocate for the protection and restoration of the environment. I believe changes come about through individual behavior, and one sure way to change individual behavior is with the criminal enforcement. Not every environmentalist gets to make it their job to do something about protecting the environment, and thus it is relevant to why I love my job. That said, I don't believe it impacts my decisionmaking on a case by case basis. For that, I look at the facts and the law, and if we have a meritorious case, we pursue it; if we don't, we move on.

3. Do you have priority areas of enforcement?

In no particular order, we do have a number of priority areas, but of course remain committed to working our core cases as well. We are still actively investigating and prosecuting cases under our Worker Endangerment Initiative, which is based upon the principle that employers, who are willing to ignore worker safety laws in their efforts to maximize production and cut costs, will ignore environmental laws as well.

The Environmental Crimes Section has a unique ability to protect the Nation's oceans by criminally enforcing both pollution and natural resources violations involving the waters. Through the section's vessel pollution enforcement, we have worked for nearly fifteen years to preserve the health of the oceans by criminally enforcing the pollution laws. More recently, through our fisheries enforcement project, we are simultaneously working to deter over-fishing, poaching, and illegal depletion of the ocean's resources that experts predict could lead to catastrophic loss of biodiversity and extinction of marine species in the coming years.

Finally, we are working jointly with the EPA to focus on their areas of priority. To that end, the Environmental Crimes Section is currently taking a closer look at stationary source Clean Air Act cases. Historically we've prosecuted a fair number of asbestos NESHAPS cases. We are now looking at enhancing our capacity to prosecute stationary sources for their violations of the Clean Air Act.

4. How do you think the effectiveness of the criminal program should (and/or should not) be measured?

Clearly our objective is deterrence, but deterrence is very difficult to measure. Many people look to sentencing, but in this post-*Booker*/*Gall*[1] world, that's not necessarily a reliable indicator. Others look to statistics—number of cases filed, number of cases/defendants prosecuted—but again, those don't tell the whole story. Our effectiveness should not be measured solely by an empirical analysis. For instance, a look at some of our work on initiatives is a good indicator. For a while, our section was handling a fair number of laboratory fraud cases. We worked with the EPA to put together a lab fraud initiative. Working in conjunction with the EPA, we prosecuted a number of cases against oil and gas testing companies and a number of high-ranking executives. During that series of cases, we actually heard in interviews that employees who were once willing to falsify reports were no longer willing to do so because of the threat of prosecution (which they knew from news reports to be real). We further heard that lower-level chemists and lab technicians were empowered by our work to say ''No'' to a heavy-handed supervisor's request for falsification. That is effectiveness.

5. Have you observed any change in sentencing in cases in your office since *Booker*? In what direction or in what way?

Whether there are any long term ramifications on sentencing really remains to been seen – even several years after the decision. Clearly, we have identifiable instances where a court has varied from the guidelines, and the potential for disparate sentencing remains a concern. However, the primary change we've seen as a result of *Booker* is a fairly notable up-tick in the number of cases going to trial. I think that's good news on a number of fronts. First, I believe it means we at the Environmental Crimes Section are not selling our cases short in fear of an unwelcoming court. Second, when it comes to sentencing there are very real benefits to trying a case. If a sentencing judge has observed a full trial, she has had the opportunity to learn about the law and the facts in a far more complete way that generally inures to the benefit of the prosecution at sentencing in that case. Finally, more environmental trials results in greater environmental education for the members of

[1] *Booker*/*Gall* refers to two U.S. Supreme Court decisions interpreting the application of the U.S. Sentencing Guidelines—*United States v. Booker*, 543 U.S. 220 (2005), which found the guidelines are advisory only and *Gall v. United States*, 128 S. Ct. 586 (2007), which found that district court sentencing decisions are reviewed under an abuse of discretion standard.

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the bench. Again, that is really very good news for our program overall.

6. What is your office's policy on requests by the government for waiver of attorney-client privilege?

Clearly our office is guided by the McNulty Memorandum, issued on Dec. 12, 2006, which governs any request for a waiver of the privilege of attorney-client privilege. We recognize the sanctity and importance of the attorney-client privilege. As has long been the case, we seek this material only in the rarest of circumstances. If there is an instance where an attorney believes the request is warranted, we will work within the guidelines set out in the memorandum to seek the proper approvals.

7. Should agency attorneys (such as EPA's Regional Criminal Enforcement Counsels) be bound by the same policy on attorney-client privilege waiver as attorneys in your office?

If an EPA attorney is working in conjunction with a Justice Department attorney on a case, or as a Special Assistant United States Attorney, then he/she would be bound by the McNulty Memorandum. If, however, the Regional Criminal Enforcement Counsel is working solely with agency personnel, then Department of Justice policy would not control.

8. What is your office's current level of staffing, and do you expect it to change? In a related question, approximately how many currently serving assistant U.S. attorneys have worked on environmental criminal matters around the country? How many assistant U.S. attorneys have received specialized environmental criminal enforcement training at the National Advocacy Center in the past two years?

The Environmental Crimes Section has a staffing level of 40 attorneys, the highest staffing number in the history of the Section. I have no indication that number will change any time soon.

While I cannot give you a number of assistant U.S. attorneys who have worked on environmental criminal matters around the country, I can tell you that the majority of environmental criminal cases prosecuted nationally are handled by U.S. attorney's offices. Nearly 100 assistant U.S. attorneys have attended the Environmental Crimes Seminar at the National Advocacy Center of the last two years, and each year the course has been full to capacity.

9. Other than the EPA, what federal agencies are most involved in environmental criminal investigations? And has the FBI, because of national security issues, dropped completely out of environmental criminal investigations?

Other than with the EPA Criminal Investigation Division, we frequently partner with the Coast Guard, and particularly the Coast Guard Investigative Service, the Fish and Wildlife Service, the Department of Transportation, and the Federal Bureau of Investigation. While we certainly have seen the FBI scale back on its involvement in environmental crimes cases, it is not accurate to say they've dropped out. Even after September 11th, we still had limited FBI involvement in a few cases. Recently, we've seen the FBI more involved on our larger cases. They are frequently partnering with other law enforcement agencies to bring their muscle to environmental cases.

* * *

Top Blog for Environmental Criminal Matters

Walter James has had an environmental crimes blog for a while now. But in November of last year his blog was selected by LexisNexis for listing as one of the ''Top Blogs'' for the LexisNexis Environmental Law and Climate Change Center. You can find Walt's blog at: http://environmentalblog.typepad.com/environmental_crimes_blog/.

* * *

Criminal Clean Water Prosecution After Rapanos

In the post-*Rapanos* world[2], two appellate cases, in the U.S. Court of Appeals for the Eleventh and Ninth Circuits, are worthy of note here. In *United States v. Robison*, 505 F.3d 1208, 65 ERC 1385 (11th Cir. 2007), a case that went to trial before *Rapanos* was decided, the circuit court reversed the convictions below. The court held that the jury instruction did not address the proper test for jurisdiction under the Clean Water Act contemplated by *Rapanos*. At trial, the district court had charged the jury that ''navigable waters'' include ''any stream which may eventually flow into a navigable stream or river,'' and that such stream may be man-made and flow ''only intermittently.'' The Appeals Court stated that prior law in the Eleventh Circuit (based upon *United States v. Eidson*, 108 F.3d 1336, 44 ERC 1550 (11th Cir. 1997)) had permitted an ''expansive definition'' of ''tributaries,'' but is now ''no longer good law.''

Now ''a 'mere hydrologic connection' will not necessarily be enough to satisfy the 'significant nexus' test'' of Justice Anthony M. Kennedy's concurrence in *Rapanos*, according to the Eleventh Circuit. ''The district court here did not mention the phrase 'significant nexus' in its 'navigable waters' instruction to the jury. . . Rather, the district court instructed the jury that a continuous or intermittent flow into a navigable-in-fact body of water would be sufficient . . . As such, the instruction did not satisfy Kennedy's 'significant nexus' test and was erroneous,'' the Eleventh Circuit ruled.

The court vacated all of the convictions, including a conviction for making a false statement to the EPA, and remanded the case for retrial. However, if there is a retrial, it will not be before Judge Robert Propst, before whom the case was tried. Subsequent to the Eleventh Circuit decision, Propst issued an opinion stating that he would ask the clerk to reassign the case, noting among other things, that he is ''so perplexed by the way the law applicable to [the] case has developed that it would be inappropriate for [him] to try it again.''

The Ninth Circuit upheld a conviction, and an 18-month prison sentence, for an Idaho developer who was convicted for unpermitted discharges into Teton Creek. *United States v. Moses*, 496 F.3d 984, 64 ERC 1993 (9th Cir. 2007) The court found that Moses had dredged a creek that was a ''water of the United States'' under the Clean Water Act, though it runs only two months out of

[2] This article does not attempt to parse the *Rapanos* decision. For a helpful and concise review of the decision, *see*, Albrecht & Duncan, *Defining Wetlands: Justice Kennedy's Concurring Opinion in Rapanos Suggests Need for Rulemaking*, 37 ER 1647, 08/4/06.

the year. The court also found that there was sufficient evidence at trial to establish that deposits of pollutants had been made into the creek without a permit.

The defendant's appeal was based on whether the Teton Creek, as an ''intermittent stream,'' was a ''water of the United States'' under the Clean Water Act. The court noted Kennedy's statement that ''the (Army) Corps can reasonably interpret the Act to cover the paths of such impermanent streams'' so long as the Corps can establish a ''significant nexus'' between the intermittent stream and waters of the United States. Holding that such a nexus existed in the present case, the court also held that it made no difference whether the work was done while the creek was dry or while it was running. Notably, the case involved a defendant whom the court stated had ignored repeated ''demands by the EPA and the Corps that he comply with the Clean Water Act'' going on to say that ''while his sang-froid (or even contempt) in the face of agency demands may show either courage or foolhardiness, it does not save him from the consequences of his actions.''

Finally, the U.S. Court of Appeals for the Fourth Circuit rejected a defendant's claim that the government must prove that he knew that the ''sewage lagoon'' in the trailer park he managed, discharged into a creek that flowed into the Roanoke River. *United States v. Cooper*, 2007 U.S. App. LEXIS 7146, 64 ERC 1321 (4th Cir. Mar. 28, 2007). The court held that the element ''waters of the United States'' is purely jurisdictional, and thus irrelevant as to the defendant's state of mind. This form of analysis follows the legal precedent that, if someone assaults a federal officer (making the offense a federal one) it is irrelevant whether or not the person knew at the time that the person they assaulted worked for the federal government.

Voluntary Disclosure of Environmental Violations

In the context of mergers and acquisitions, there can be circumstances under which a new owner of a site or a facility is faced with the non-transferable nature of criminal liability. In this regard, it is worth noting an effort by EPA to allow new owners to voluntarily disclose environmental violations.

On May 14, 2007, EPA published a notice in the *Federal Register* requesting comment on ''whether and to what extent the Agency should consider offering tailored incentives to encourage new owners of regulated entities to discover, disclose, correct, and prevent the recurrence of environmental violations'' (72 Fed. Reg. 27,116).

Key points of EPA's notice included the following:

- EPA wants to motivate new owners to make a ''clean start'' for their new facility by conducting self-audits and disclosing uncovered violations Id. at 27,119.
- EPA acknowledges that, ''in today's merger and acquisition market,'' acquiring businesses may have little knowledge of an entity's environmental compliance. Id. at 27,120. EPA's notice states that environmental compliance could be improved in such situations through offering incentives to the acquiring company to conduct ''in-depth'' audits after purchase. Id.
- Incentives, however, would be limited to ''bona fide'' new owners and EPA solicited comments on ''a clear, straightforward and easily administered approach to determining 'new ownership.' '' Id.

What would be the benefit for taking up the EPA on such an offer?

- Reducing civil penalties beyond what the current Audit Policy provides;
- Allowing consideration of violations which would otherwise be ineligible because their discovery is legally mandated; and
- ''Providing recognition from the Agency to new owners who self-audit.'' By ''recognition,'' EPA apparently means a public commendation of the new owner, such as in the form of ''a list that recognizes companies that have stepped forward to examine compliance and operations at their newly acquired facilities, correct violations and upgrade deficient equipment and practices.'' Id. at 27,121-22.

In the notice, EPA also states that, if it decides to develop a new-owner incentive policy, it will also develop a three-year pilot program to test the effectiveness of the policy. Id. at 27,122.

Legislation to Protect Attorney-Client Privilege

The issue of protection for the attorney-client privilege and work-product protections has not ended. Congress is currently considering two pieces of legislation related to the attorney-client privilege.

Rep. Robert C. Scott (D-Va.) introduced H.R. 3013 on July 12, 2007. The legislation was reported favorably out of the House Committee on the Judiciary and, on Nov. 13, 2007, passed the House on a voice vote. The Senate received the bill on Nov. 14, 2007 and referred it to the Senate Judiciary Committee. The Senate Judiciary Committee has not taken action on the legislation, though a companion bill, S. 186, introduced by Sen. Arlen Specter (R-Pa.), also is before the committee.

On Sept. 18, 2007, the American Bar Association submitted extensive testimony to the Senate, strongly supporting passage of the two bills, to prevent government actions ''seriously undermining the confidential attorney-client relationship in the corporate community.''[3]

According to H.R. 3013's committee report, the purpose of this legislation is to ''restore judicial oversight'' of the attorney-client privilege and the work product doctrine in response to ''recent governmental policies [that] have given rise to a 'culture of waiver.' '' The committee report also specifically references the Justice Department's Holder, Thompson, and McNulty memoranda in discussing this ''culture of waiver.''

The bill states that, ''in any federal investigation or criminal or civil enforcement matter, an agent or attorney of the United States shall not'' do any of the following:

- ''demand, request, or condition treatment on the disclosure by an organization, or person affiliated with that organization, of any communication protected by the attorney-client privilege or any attorney work product'';
- condition a civil or criminal charging decision on (a) valid assertions of attorney-client privilege or work product protection, (b) an organization's advancement or employee legal fees, (c) the entry

[3] The ABA's testimony, which includes a proposed revision to the McNulty memo, is available at http://www.abanet.org/poladv/priorities/privilegewaiver/20070918_mcnulty.pdf.

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into a joint defense agreement, (d) the sharing of information with an employee, or (e) a failure to terminate or sanction an employee for the employee's exercise of his or her legal rights; and

- demand that an organization refrain from taking any action described in the preceding bullet point.

The bill does not prohibit an entity from making, or a federal agent or attorney from accepting, a voluntary and unsolicited offer to share ''the internal investigation materials of such organization.''

ABA "Standards for Criminal Justice"

For most prosecutors handling complex white collar cases, the days are long gone when ''police investigate, prosecutors prosecute.'' It is widely recognized that in complex criminal investigations, including environmental criminal investigations, the prosecutor is involved from the inception of an investigation. However, apart from some consideration for this development in academic literature[4], there has been little to guide prosecutors in this role.

Now the ABA has issued a new ''Standards for Criminal Justice'' which provide detailed and in-depth guidance for government lawyers who are actively engaged in the conduct of criminal investigations. The black-letter version of the new standards is available at http://www.abanet.org/crimjust/standards/pinvestigate.html#1.1.

The detailed ABA standards guide prosecutors through the numerous important decisions they must make before and during the investigative phase of a potential criminal case. These include guidance on:

- Working with police and other law enforcement agents;
- Victims, potential witnesses, and targets during the investigative process;
- Contacts with the public during the investigative process;
- Initiating or continuing a criminal investigation;
- Selecting investigative techniques;
- The use of undercover agents, undercover operations, confidential informants, cooperation agreements and cooperating persons;
- Arrest, subpoenas, search warrants, the grand jury, technologically-assisted surveillance, consensual and non-consensual interception and recording;
- Parallel proceedings;
- Terminating investigations; post-investigation analysis; guidance and training;
- Special prosecutors, independent counsel, and special prosecution units;
- Use of information, money or resources by non-governmental sources; and,
- Prosecutor's role in addressing suspected misconduct by law enforcement personnel, judges, defense counsel, witnesses, informants or jurors.

Rather than state unequivocally what investigating prosecutors should or should not do, the standards generally enumerate relevant factors (*e.g.*, risks and benefits) that prosecutors should consider prior to making decisions about initiating, continuing, and terminating criminal investigations or pursuing specific investigation strategies.

* * *

Clean Air Act

United States v. Callahan (W.D. Va., No. 06-CR-85, *sentence entered* 8/1/07)—A Virginia contractor who hired men from a homeless shelter to remove asbestos-containing materials from a building was sentenced to 21 months in prison and three years of probation. John Edward Callahan, who was not trained or licensed to handle asbestos, paid three homeless men $10 an hour to remove the material. Callahan provided them with rain suits, gloves, goggles, and paper face masks that were insufficient to protect them from the asbestos fibers. In addition, the waste was bagged and taken to a solid waste landfill, where it was disposed of as ordinary garbage (38 ER 374, 2/16/07).

United States v. Hylton (W.D. Okla., No. 06-CR-299, 8/20/07)—Two employees of Elk City, Okla., were found guilty by a federal jury of negligently allowing the release of a hazardous air pollutant when they employed prison labor to remove asbestos from a building owned by the city. City Manager Guy R. Hylton and a building superintendent, Chick Arthur Little, used inmates from the Elk City Work Center to remove asbestos insulation from a railroad depot that had been purchased by the city. Their failure to provide the inmates with protection caused the release of asbestos into the air and threatened the health of the inmates. Little was also convicted of making false statements, but the jury acquitted Hylton of a false statement charge and acquitted both defendants of a charge of illegal disposal of asbestos. The two officials face jail time and fines. Appeals are pending (38 ER 1806, 08/24/07).

United States v. Riecke (N.D. Texas, No. 3:06-CR-109G, *sentence entered* 1/31/07) — Melvin Eugene Riecke, a demolition contractor, was sentenced to 15 months in prison for failing to comply with federal asbestos disposal standards under the Clean Air Act. Riecke, general manager of National Converting and Fulfillment Co., was hired to demolish a lumber and hardware store that had asbestos-containing floor tiles and mastic. City inspectors in Dallas found the materials illegally dumped in an industrial area. Riecke failed to have employees trained in asbestos removal, failed to prevent the discharge of asbestos into the air, and did not properly mark the transport vehicles (38 ER 314, 2/9/07).

United States v. San Diego Gas & Electric (S.D. Calif., No. 3:06-CR-00065, *motion for new trial granted* 12/7/07) — San Diego Gas & Electric Co. was granted a new trial after a federal district court threw out a jury conviction of the company and two employees for violating asbestos work practice standards and making false statements. The case involved the removal of asbestos along a 9.2-mile stretch of piping at a former facility. According to the court, the case revolved around whether the government adequately proved that pipe wrap samples from the site contained more than 1 percent asbestos, thereby qualifying as ''asbestos contain-

[4] See, e.g., Little, *Proportionality as an Ethical Precept for Prosecutors in their Investigative Role,* 68 Fordham L.J. 723 (1999).

ing materials'' subject to EPA regulations. Here, improper sampling and the confusing manner in which test results were presented to the jury warranted a new trial on alleged violations of national emissions standards for hazardous air pollutants.

United States v. BP Products North America, Inc. (S.D. Texas, No. 07-CR-434, *plea announced* 10/25/07) — A subsidiary of British Petroleum agreed to pay a $50 million criminal fine after pleading guilty to Clean Air Act violations that resulted in a fatal explosion at Texas City oil refinery. The fine is the largest fine ever imposed for a Clean Air Act violation. The agreement stemmed from an incident in March 2005, where 15 contract workers were killed when vapors and liquids released out of a blowdown stack reached an ignition source and exploded, killing the workers who were in a nearby trailer. BP admitted that it had not followed CAA procedures for ensuring mechanical integrity and a safe startup of the refinery unit. Sentencing was delayed after a group of victims objected, arguing that the $50 million fine failed to ''impose a burden of any real significance to a defendant whose annual sales exceed $285 billion.'' The District Court rejected a motion by counsel for victims of the blast that was based on a violation of the 2004 Crime Victims Act. The court has not yet addressed the argument that the $50,000,000 fine (which if approved would be the largest federal environmental crime ever imposed under the Clean Air Act) was too small (38 ER 2277, 10/26/07).

United States v. CITGO Petroleum (S.D. Texas, No. 2:06-CR-00563, 6/27/07; 7/17/07) — A jury in federal court in Texas found CITGO Petroleum Corp. and one of its subsidiaries guilty of two felony violations of the Clean Air Act. The company operated two huge open-top tanks, containing some 4.5 million gallons of oil, without equipping them with either a fixed roof vented to a control device or a floating roof, as required by the CAA. As a result, the tanks emitted volatile organic compounds, including benzene, a known carcinogen. In a separate action involving the same tanks, the company was found guilty of violating the Migratory Bird Treaty Act by failing to fit the open tanks with nets or other equipment to prevent migratory ducks from landing in the oil (38 ER 1585, 7/20/07).

United States v. Honeywell International (M.D. La., No. 07-31-FJP-SCR, *sentence entered* 9/24/07) — Honeywell International, which operates a refrigerants plant in Baton Rouge, La., agreed to pay an $8 million fine and $4 million in restitution for a Clean Air Act violation. The violation stemmed from an incident in 2003 when a plant operator was killed after opening a pressurized 1-ton cylinder containing 1,800 pounds of spent antimony pentachloride, a highly toxic and corrosive hazardous material. The cylinder had been mislabeled as containing a nontoxic refrigerant. Two million dollars of the $4 million restitution payment will be made to the employee's children; the remainder will be divided among three state environmental and emergency response agencies (38 ER 2030, 9/21/07).

United States v. Langill (D. Md., No. 07-CR-00425, *plea entered* 10/26/07)—An employee of a Maryland asbestos abatement company faces jail time and significant fines after pleading guilty to violating the Clean Air Act in connection with the removal of asbestos-containing panels from the U.S. Naval Air Station in Patuxent River, Md. Robert Langill supervised the removal of the panels from buildings undergoing renovation or demolition in a manner that violated federal asbestos abatement work practice standards. He directed employees to break up the panels, causing a release of asbestos fibers into the environment; did not sufficiently wet the materials; failed to provide notification of the abatement activity to state officials; improperly disposed of the materials; and improperly stored the materials in a company truck.

United States v. MFA, Inc. (E.D. Mo., No. 4;07-CR-550, *judgment entered* 10/3/07)—A Missouri farmers' cooperative agreed to pay $100,000 and to make significant safety upgrades to its facilities, after pleading guilty to misdemeanor Clean Air Act violations. The charges stemmed from an incident in which anhydrous ammonia was being transferred from one tank to another. The connection between the valves became separated, and the resulting spill caused severe ammonia burns to employees. The cooperative, MFA Inc., acknowledged that it was negligent in failing to inspect and detect wear on the failed valve (38 ER 2169, 10/12/07).

Clean Water Act

United States v. Acuity Specialty Products, Inc. (N.D. Ga., No. 07-CR-223, *plea entered* 6/29/07) — The harshest penalty ever imposed for an environmental crime in the Northern District of Georgia was handed to Acuity Specialty Products Inc., an Atlanta-based manufacturer of detergent and cleaning products. After pleading guilty to violating the Clean Water Act, the company agreed to pay a fine of $3.8 million and serve three years of probation. The violation stemmed from several instances when Acuity employees altered the facility's wastewater flow while city inspectors were gathering samples. The company also admitted to failing to report significant discharges of phosphorus and acid. In a separate action, Daniel Schaffer, the company's former director of environmental compliance, pleaded guilty to conspiracy to violate the Clean Water Act and at last report was still awaiting sentencing (38 ER 1484, 7/6/07).

United States v. Barker (D. Kan., No. 4:07-CR-40011, *indictment returned* 2/21/07) — The manager of a Kansas City-based gravel company faces up to three years in prison and a fine of up to $250,000 after being indicted on charges of violating the Water Pollution Control Act. Hugh Barker, manager of Hi Grade Sand & Gravel, used tractors and earth-movers to create a dam made of fill material in order to divert water from East Sand Creek. The creek, a tributary of the Chikaskia River, is a navigable water and has been designated a critical habitat. Barker diverted the water for the use of his company despite being told that doing so would require a permit (38 ER 496, 03/2/07).

United States v. BP Petroleum Exploration (Alaska), Inc. (D. Alaska, No. 07-CR-125, *plea entered* 11/29/07) — A British Petroleum subsidiary agreed to pay a $12 million fine after pleading guilty to Clean Water Act violations related to leaks in the company's pipeline. One of the leaks resulted in the worst-ever oil spill on Alaska's North Slope. The company also agreed to pay $4 million in restitution to the state and another $4 million to the National Fish and Wildlife Foundation for environmental projects. The oil leaks occurred after the company failed to clean out the pipeline for eight years, allowing six inches of sediment to build up in the pipeline, leading to corrosion. ''This was a serious crime

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when you consider all the factors and how easily it could be avoided,'' the court said (38 ER 2277, 10/26/07).

United States v. Comprehensive Environmental Solutions, Inc. (E.D. Mich., No. 2:07-CR-20037, *indictment returned* 1/24/07) — A waste-treatment company and three of its executives were indicted for Clean Water Act violations after dumping raw sewage into the Detroit sewer system. Comprehensive Environmental Solutions, Inc. accepted millions of gallons of waste, despite the fact that its storage tanks were already filled to capacity, and discharged the untreated waste directly into the sewer. The executives were charged with conspiracy, Clean Water Act violations, obstruction of justice, and making false statements (38 ER 254, 02/2/07).

United States v. Cooper (4th Cir., No. 05-4956, 3/28/07) — The criminal conviction of a Virginia man for polluting U.S. waters by allowing a sewage lagoon to overflow into a nearby creek was upheld by the Fourth Circuit. D.J. Cooper was unable to convince the court that EPA failed to prove that he ''knowingly'' discharged pollutants, or that he did not know the creek was a water of the United States. The court pointed out that state regulators recorded more than 300 violations of Cooper's NPDES permit; ''The very existence of the DEQ permit established that Cooper was well aware that the lagoon discharge contained raw sewage and it flowed into the creek,'' the court said. Further, the court found that there could be no doubt that the creek — a tributary of Sandy Creek, which is a tributary of the Roanoke River — constitutes a water of the United States (38 ER 808, 4/6/07).

United States v. Crystal Extrusion Systems, Ltd. (E.D. Mo., No. 4:07-CR-00559, *plea entered* 11/16/07) — A manufacturer of aluminum window and door parts pleaded guilty to violating the Clean Water Act by spilling waste into a Missouri creek. Employees at Crystal Extrusion Systems Ltd. negligently discharged the contents of a 250-gallon tank of hydraulic waste oil and other waste products into the creek; state authorities became aware of the spill when a 911 caller reported the liquid in a creek running through a city park. The company agreed to pay a $50,000 fine as well as $42,000 in cleanup costs and additional oversight costs of $3,329 (38 ER 2517, 11/23/07).

United States v. Fujicolor Processing (N.D. Texas, No. 3:70-CR-0181, 9/6/07) — Fujicolor Processing agreed to pay a $200,000 fine after pleading guilty to discharging excessive amounts of silver-tainted photo processing waste into a Terrell, Texas, wastewater treatment plant. During an internal investigation, Fujicolor discovered that employees were ''cherry-picking'' wastewater test samples and reporting to the city only those results that fell within the limits of the facility's pretreatment permit. Employees would send part of a sample to a laboratory for screening and, if the sample did not fall within allowable limits, they would keep collecting samples until they found one that did. Fujicolor has since put safeguards in place to prevent additional violations (38 ER 1977, 9/14/07).

United States v. Greg Street Plating, Inc. (D. Nev., No. 06-CR-00081, *plea entered* 4/6/07) — A Nevada metal plating and finishing facility pleaded guilty to violating the Clean Water Act by discharging highly acidic waste into the sewer system leading to the Truckee Meadows sewage treatment facility. As part of the metal plating process, Greg Street Plating generated spent acid solutions, which it was supposed to treat in a closed loop evaporation system. When the company was unable to process all of its waste in its treatment system, an employee dumped the highly acidic solution into the sewer system. When the discharge reached the treatment plant, it set off warning alarms, and operators were able to neutralize the waste, avoiding substantial damage to the facility. The company, which is no longer operating, was sentenced to pay a $30,000 penalty.

United States v. Hamilton Sundstrand (D. Conn., No. 3:07-CR-23, *sentence entered* 5/18/07) — Hamilton Sundstrand, a Connecticut-based aerospace systems and industrial products manufacturer, agreed to pay a $1 million fine after pleading guilty to violations of the Clean Water Act. The company admitted that its wastewater treatment system consistently exceeded permit levels for hexavalent chromium, and that employees knowingly submitted monthly discharge monitoring reports that falsely presented altered and selected data as representative. In addition to the fine, the company agreed to spend $5.6 million on wastewater treatment upgrades and improvements, and make a $3 million contribution to a state account that funds environmental projects. The company also agreed to significantly reduce air emissions by installing a cogeneration facility, and pledged to give a $2.4 million grant it will receive for constructing the facility to the state environmental project fund (38 ER 1184, 5/25/07).

United States v. Holden (M.D. Tenn., No. 1:05-CR-11, *sentence entered* 4/20/07) — A father and son, who together operated a municipal sewage treatment plant, were sentenced to 24 months and 32 months in prison, respectively, after being found guilty by a jury of violating the Clean Water Act. James Larry Holden, director of the public works department of Mount Pleasant, Tenn., and his son, James Michael Holden, the licensed operator of the city's sewage treatment plant, falsely reported to state authorities that the water quality testing required under the CWA was being performed when it was not. James Larry Holden was found guilty of a second felony count for ordering an employee to falsify documents (38 ER 974, 4/27/07).

United States v. Johnson (E.D. Mo., No. 4:07-CR-760, *plea entered* 12/20/07) — A residential developer faces prison time and fines after pleading guilty to violating the Clean Water Act. Eric L. Johnson owned two developments where new houses were being constructed. He obtained construction stormwater permits from the state Department of Natural Resources, but failed to implement runoff controls. The EPA discovered that a significant amount of sediment had been allowed to flow into a nearby creek. In addition, Johnson also admitted to misusing money in a subcontractor escrow account, which led his lender to foreclose on his loan (39 ER 24, 1/4/08).

United States v. McWane, Inc. (11th Cir., No. 05-17019, 10/24/07) — A district court erred in failing to apply the Supreme Court's 2006 definition of ''navigable waters'' in a case alleging violations of the Clean Water Act. In 2005, a jury convicted McWane Cast Iron Pipe Co. and employees for discharging industrial waste in to Birmingham's Avondale Creek. The provisions of the Clean Water Act apply only to ''navigable waters.'' The district court instructed the jury that the term includes ''any stream which may eventually flow into a navigable stream or river.'' The Eleventh Circuit vacated the convictions and remanded the case for a new trial, using

the standard from the plurality opinion in the *Rapanos* case, which requires a ''significant nexus'' to waters that are actually navigable or could reasonably be made so (38 ER 2293, 10/26/07).

United States v. Mid-America Pipeline Co., LLC (D. Kan., No. 2:07-CR-20083, *plea entered* 9/4/07) — Mid-America Pipeline Co. will pay a $1 million fine for Clean Water Act violations stemming from the release of over 200,000 gallons of anhydrous ammonia into a Kansas creek. A company pipeline ruptured, allowing ammonia to enter a creek where it killed more than 25,000 fish, including some endangered species. The company alerted the National Response Center of the spill, but incorrectly reported that only 20 gallons of ammonia had been released. Under federal law, companies are required to notify the center about releases over various threshold amounts; the threshold for ammonia is 15 gallons. The incorrect report delayed the arrival of first responders for 24 hours, allowing the ammonia to spread through 12 miles of the stream.

United States v. Moses (9th Cir., No. 06-30379, 8/3/07) — A federal district court properly convicted an Idaho developer for violating the Clean Water Act by dredging and filling a stream. Over a 25-year period, Charles L. Moses repeatedly ignored warnings by federal regulators that rerouting, reshaping, and controlling the flow of waters in Teton Creek required a permit. Moses argued that the creek, which flows into the Teton River, was not subject to the Clean Water Act because it only flows seasonally. The Ninth Circuit disagreed, applying the Supreme Court's ruling in *Rapanos*, where the justices agreed that intermittent streams can be ''waters of the United States''(38 ER 1726, 8/10/07).

United States v. Rowan Companies (E.D. Texas, No. 2007-CR-00193, *plea entered* 10/9/07) — A Texas oil and gas drilling company will pay a $7 million criminal fine after pleading guilty to violating the Clean Water Act and the Act to Prevent Pollution from Ships by routinely discharging pollutants and garbage from one of the company's drilling rigs into the Gulf of Mexico. Rowan Companies, Inc. also agreed to pay $2 million in community service payments. In addition, it will reorganize its corporate structure to add an environmental division and implement a comprehensive environmental compliance plan. The charges stemmed from an investigation revealing that employees routinely discharged waste hydraulic oil mixed with water, used paint, paint cans, and other pollutants and garbage directly into the Gulf. Nine supervisory employees also pleaded guilty to related charges (38 ER 2189, 10/12/07).

United States v. Sinclair Tulsa Refining Co. (N.D. Okla., No. 4:06-CR-214, *sentence entered* 4/4/07) — A subsidiary of Sinclair Oil was sentenced to pay a $5 million penalty and a community service payment of $500,000 after admitting to knowingly manipulating the sampling of its wastewater discharges. The refinery was permitted to discharge a daily average of 1.1 million gallons of treated wastewater into the Arkansas River, subject to monitoring and sampling. On numerous occasions, the company directed employees to reduce flow rates and divert more heavily contaminated wastewater to holding impoundments, in order to ensure that samples met testing requirements. Separately, two company managers involved in the manipulation of samples were sentenced to home detention, probation, fines, and community service (38 ER 871, 4/13/07).

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

United States v. Accord Ship Management (D. P.R., No. 07-CR-00390, *plea entered* 9/20/07) — An India-based shipping company agreed to pay a fine of $1.75 million, and will be banned from U.S. ports for three years, after pleading guilty to illegally dumping oily sludge and bilge waste from the M/V Sportsqueen cargo vessel. In addition, the ship's chief engineer, Francisco Sabando, will serve a five-month prison term. Sabando ordered crew members to dump the wastes directly into the ocean and falsified the ship's oil record book. Five crew members who cooperated with Coast Guard investigators were each awarded $50,000 by the court. In a related action, the ship's captain, Nicanor E. Jumalon, pleaded guilty for his involvement in the ocean dumping, and was sentenced to eight months in prison.

United States v. Calypso Marine Corp. (W.D. Wash., No. 07-CR-5412, *plea entered* 6/25/07) — A Greek shipping company agreed to pay $1 million in fines for its use of a ''magic pipe'' to illegally dump oily waste overboard without first processing it through an oily water separator. The bypass pipe was found during a Coast Guard inspection of the ship Tina M, operated by Calypso Marine Corp. In a separate proceeding, the ship's chief engineer pleaded guilty to making false statements in the vessel's oil record book indicating that the ship had properly disposed of the waste (38 ER 1440, 6/29/07).

United States v. Chian Spirit Maritime Enterprises, Inc. (D.C. Del., No. 06-00076, *plea entered* 1/29/07) — Two Greek-based shipping companies were fined $500,000 and ordered to pay $250,000 in community service after pleading guilty to environmental violations related to the bulk carrier M/V Irene E.M. Owner Chian Spirit Maritime Enterprises, Inc., and operator Venetico Marine also agreed to implement a court-monitored environmental compliance program. The charges stemmed from the overboard discharge, through a ''magic pipe,'' of oily waste. A Coast Guard investigation revealed that the ship's oily water separator had been inoperable for several months. In related actions, the ship's chief engineer, Adrien Dragomir, pleaded guilty to violating the ship's oil record book and was sentenced to one year of probation; the ship's master, Grigore Manolache, pleaded guilty to presenting false information to the Coast Guard (38 ER 262, 2/2/07).

United States v. Clipper Wonsild Tankers Holding A/S (D. N.J., No. 07-CR-00264, *indictment returned* 3/27/07) — Three companies that own and operate the M/T Clipper Trojan, a chemical tanker vessel, were indicted for illegally dumping oily waste in international waters. All three companies are part of The Clipper Group A/S, based in Denmark. According to the indictment, crew members dumped oil sludge overboard on two occasions, and regularly dumped oily bilge water. Further, crew members attempted to mislead the Coast Guard during an inspection of the ship. Separately, chief engineer Fernando Magnaye pleaded guilty to charges of presenting a false oil record book to the Coast Guard.

United States v. IMC Shipping Co. Pte. Ltd. (D. Alaska, No. 3:07-CR-96, *plea entered* 8/14/07) — A Singapore-based shipping company agreed to pay a $10 million fine after pleading guilty to violations of the Refuse Act and the Migratory Bird Treaty Act. The charges stemmed from the grounding in the Aleutian Is-

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lands of the cargo ship Selendang Ayu, owned by IMC Shipping Co. Pte. Ltd. Engine trouble caused the ship to drift for two days; after it ran aground, it broke into two pieces, causing a large fuel spill and a discharge of 60,000 tons of soybeans. IMC also agreed to serve three years of probation, during which the company will undergo an audit of its maintenance program. The government and IMC disagree as to whether improper maintenance was the cause of the engine problem that led to the grounding (38 ER 1824, 8/24/07).

United States v. Ionia Management (D. Conn., No. 3:07-CR-00134, *judgment entered* 12/18/07) — A Greek shipping concern was fined $4.9 million after being convicted of pumping oil-contaminated waste and sludge from the M/T Kriton into international waters. The shipping company, Ionia Management, was already on probation for a 2004 conviction on similar charges involving another ship. In addition, the crew made false entries in the ship's oil record book, and submitted false statements in environmental compliance checklists that were required as a condition of its probation. The ship's second engineer was charged with obstruction of justice. In a separate action, the ship's chief engineer was sentenced to two years probation and a $9,000 fine. The company has appealed the conviction (38 ER 2713, 12/21/07).

United States v. Irika Maritime S.A. (W.D. Wash., No. 06-CR-5661, *sentence entered* 1/23/07) — A Panamanian-flagged bulk carrier was fined $500,000 for bypassing the ship's pollution prevention equipment and discharging oily waste directly into the ocean. After Coast Guard inspectors found no discrepancies in the ship's oil record book during an inspection, the ship's second engineer provided a photo of the hose used in the illegal dumping. He told inspectors that his protests about the dumping were ignored. A subsequent inspection revealed the hose and evidence that it had been used. The court directed that half of the fine be paid to the whistleblower. In addition, the company was sentenced to four years of probation and assessed $250,000 to fund habitat conservation projects (38 ER 193, 1/26/07).

United States v. Kassian Maritime Navigation Agency, Ltd. (M.D. Fla., No. 3:07-CR-48, *sentence entered* 8/10/07) — a Greek shipping company was sentenced to a $1 million fine after pleading guilty to dumping oily bilge and waste overboard the M/V North Princess and to falsifying records. The company, Kassian Maritime Navigation, also agreed to serve 30 months of probation and pay $300,000 to the U.S. Fish and Wildlife Foundation to fund community service projects. The court awarded a portion of the fine to the ship's wiper and cook — $230,000 each — for providing information leading to the conviction. Two third engineers were each awarded $20,000 (38 ER 1831, 8/24/07).

United States v. Overseas Shipholding Group, Inc. (E.D. Texas, No. 06-CR-00065, *sentence entered* 6/29/07) — One of the largest publicly traded tanker companies in the world agreed to pay a $37 million criminal settlement for regularly circumventing pollution prevention equipment and falsifying ship oil record books. The fine is the largest ever involving deliberate vessel pollution. Overseas Shipholding Group Inc. admitted that it falsified records, made discharges at night, and concealed bypass methods so that Coast Guard inspectors would not discover the criminal activity. In addition, the company will serve three years of probation, during which it will implement an environmental compliance program that includes monitoring and independent auditing. A total of $2 million of the fine will be designated to fund a satellite surveillance pilot program to monitor ships off the U.S. coast (38 ER 744, 3/30/07).

United States v. Pacific-Gulf Marine, Inc. (D. Md., No. 2006-CR-302, *sentence entered* 1/24/07) — An American shipping company that operated a fleet of four giant car-carrier vessels was fined $1 million for illegally discharging oil-contaminated bilge waste without the use of an oily water separator. Pacific-Gulf Marine was also required to pay $500,000 for community service, to serve three years of probation, and to implement a rigorous environmental compliance program. After learning of the Coast Guard's investigations on its vessels, the company voluntarily disclosed more than 50 interview reports gathered during an internal investigation. The court recognized that Pacific-Gulf had provided significant cooperation, even though the cooperation occurred after the investigation was initiated. In separate actions, a number of individuals who had served as chief engineers on the company's vessels pleaded guilty to conspiracy and violating the Act to Prevent Pollution from Ships (38 ER 254, 2/2/07).

United States v. Petraia Maritime, Ltd. (D. Maine, No. 06-CR-00091, *judgment entered* 11/28/07) — Petraia Maritime Ltd., which operates the M/V Kent Navigator, will pay a $525,000 fine and serve two years of probation, after being found guilty by a jury of failing to maintain a record of its overboard discharges of oily bilge waste. Investigation of the vessel began after the Coast Guard received an anonymous tip that the ship was illegally discharging its waste oil and bilge while at sea. A Coast Guard inspection discovered piping that led to overboard discharge valves and inoperable oil pollution control equipment. The discharges, which numbered 13 over eight months, were in excess of 5,000 gallons each. The company has appealed the verdict (38 ER 2614, 12/7/07).

United States v. Polar Tankers, Inc. (D. Alaska, No. 3:07-CR-00124, 10/24/07) — A subsidiary of ConocoPhillips, Inc. that ships crude oil from the trans-Alaska pipeline agreed to pay a $500,000 fine after pleading guilty to failing to report a release of oily sludge from one of its tankers. The fine was the maximum allowable under the Act to Prevent Pollution from Ships. The company, Polar Tankers, Inc., also agreed to pay $2 million to fund environmental projects along Alaska's coastline. The incident involved the tanker Polar Discovery, which accidentally spilled oily waste while it was being transferred to a slop tank. However, the crew failed to record the spill in the ship's oil record book, and took action to conceal the spill — including turning the tanker into the wind to remove oil from the ship's side under the guise of a man-overboard drill. Half of the fine was awarded to a crew member who reported the incident to the Coast Guard (38 ER 2351, 11/2/07).

United States v. Sun Ace Shipping Co. (D. N.J., No. 2:06-599-01, *sentence entered* 1/26/07) — The chief engineer of the M/V Sun New, owned and operated by South Korea-based Sun Ace Shipping Co., was sentenced to five months in prison and two months of supervised release after pleading guilty to vessel pollution crimes. Chang-Sig O admitted to maintaining a false oil record book and lying to the Coast Guard about his

knowledge of bypass hoses that allowed oily waste to be dumped overboard, bypassing the ship's pollution control equipment. Separately, the ship's second engineer, Mun Sig Wang, was sentenced to three years of probation for the same violations. In 2006, Sun Ace pleaded guilty to the violations, and was fined $400,000, ordered to pay $100,000 as a community service payment, and barred from U.S. waters for three years (38 ER 262, 2/2/07).

United States v. Williams (D. Hawaii, No. 07-376, *indictment returned* 8/8/07) — A Coast Guard chief warrant officer who allegedly ordered the direct discharge of bilge wastes into Honolulu Harbor was indicted for obstruction of justice and making a false statement. David G. Williams was the main propulsion assistant, responsible for the maintenance of the engines for the Coast Guard Cutter RUSH, stationed in Honolulu. Acting on an anonymous tip that Williams had directed the discharge of 2,000 gallons of bilge water, Coast Guard and EPA officials investigated; Williams denied authorizing personnel to discharge bilge waste and said he was not aware that the ship's pollution control equipment had been bypassed (38 ER 1774, 8/17/07).

Resource Conservation and Recovery Act

United States v. Berkeley Transportation Co. (D. R.I., No. CR-06-146T, *sentence entered* 6/12/07) — A Rhode Island freight company was fined $80,000 after pleading guilty to illegally shipping hazardous waste to a depot that was not permitted to store or receive hazardous waste. Berkeley Transportation, which was hired to clean up a property that was in the process of being sold, shipped two trailers containing 55-gallon drums of hazardous materials, including xylene. In addition, the company agreed in its plea agreement to pay $35,000 to a state environmental response fund, and to establish an environmental compliance program.

United States v. Evertson (D. Idaho, No. 4:06-00206, 10/22/07) — The former owner of a chemical manufacturing facility was sentenced to 21 months in prison for illegally transporting hazardous materials and illegally storing hazardous waste. Krister Sven Evertson transported 10 metric tons of sodium metal from Seattle, Wash., to his facility in Salmon, Idaho. He later transported some of the sodium metal and several aboveground storage tanks containing sludges and other liquids to a storage site. The sodium metal and the materials in the tanks were highly reactive with water, and classified by EPA as a hazardous waste. Everson failed to take protective measures to reduce the risk that the transported material would react. He was also ordered to pay $421,049 in restitution for the cost of cleanup and response related to the abandonment of the hazardous materials. Evertson has appealed.

United States v. Jacobs (N.D. Ill., No. 07-CR-527, *indictment returned* 8/15/07) — The president and owner of a Chicago electroplating company was arrested for violating RCRA by storing and disposing of hazardous wastes at his company's facility. Northwestern Plating Works Inc. used cyanides, acids, corrosives, and various metals in its electroplating processes, generating wastes that are designated as hazardous under RCRA. Rather than transporting the wastes to a permitted facility, the company stored large amounts of chemicals and waste at the facility in an unsafe manner. Owner and president David Jacobs was also indicted on charges that he robbed a company pension fund of $830,000 over a four-year period (38 ER 1820, 8/24/07).

United States v. North American Waste (W.D. Texas, No. 3:05-CR-02498, *sentence entered* 8/15/07) — The owner of a Texas waste transporting company was sentenced to five months in prison and fined $10,000 for violating federal hazardous waste law. Dennis Rodriguez and his company, North American Waste Assistance, were hired to dispose of construction waste, including 75 drums of petroleum-based concrete compound, which is a flammable hazardous waste. The drums were transported using manifests that falsely stated they contained nonhazardous waste, and were disposed of at landfills that were not permitted under RCRA to receive hazardous waste (38 ER 1819, 8/24/07).

United States v. Southern Finishing Co. (W.D. Va., No. 2007-CR-00027, *sentence entered* 12/7/07) — A Virginia manufacturer of wood and metal components was fined $200,000 for illegally storing hazardous waste at its facility in Martinsville, Va. The company, Southern Finishing Co., Inc., must also serve three years of probation and spend at least $250,000 to develop and implement an environmental management system. More than 150 55-gallon drums of hazardous waste — some punctured and leaking — were found by authorities at the company's facility, which did not have a permit to store hazardous waste (38 ER 2707, 12/21/07).

United States v. Southern Union Co. (D. R.I., No. 07-CR-00134, *indictment returned* 10/16/07) — Southern Union Co., the former owner of the New England Gas Co., was indicted on charges that it illegally stored mercury at a Pawtucket, R.I., site and failed to report a mercury spill. According to the indictment, the company began a program in 2001 to remove mercury-containing gas regulators from customers' homes. Employees brought the regulators to a facility where a contractor removed the mercury. After the removal contract expired and was not renewed, employees began storing the regulators in a vacant building, along with other containers containing a total of more than a gallon of mercury. At one point, youths broke into the facility and took several containers of mercury, which they spread around the grounds of an apartment complex. After a company employee discovered puddles of mercury on the ground at the facility, the company arranged for an environmental services company to remove it. The company, however, failed to notify local emergency officials of the spill, as required by federal law (200 DEN A-9, 10/17/07).

Safe Drinking Water Act

United States v. Kessel (S.D. Texas, No. 07-CR-00466-2 *indictment returned* 11/14/07) — Two executives of a Texas hazardous waste transport company face prison time and significant fines after being indicted for a conspiracy to illegally transport and dispose of hazardous waste in an underground injection well. John Kessel, the president and owner of Texas Oil and Gathering, Inc., and Edgar Pettijohn, the company's operations manager, allegedly purchased oil and gas production wastes from various facilities and processed it at their facility. They used part of the waste as a fuel additive, and then directed employees to transport the remaining hazardous waste, disguised with documents indicating the waste was from an oil production well, to a facility that was not permitted to accept, store or dispose of hazardous material. Once at that facility, the

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hazardous waste was disposed into injection wells in violation of the Safe Drinking Water Act.

United States v. Miritello (S.D. N.Y., No. 2007-CR-603, *complaint unsealed* 6/6/07) — An employee responsible for water monitoring at New York City's Catskill Lower Effluent Chamber facility was charged with making false entries in the city's drinking water monitoring records. Nicholas Miritello is the third Department of Environmental Protection employee to be charged with falsifying records in the past two years. He was caught after an EPA criminal investigator videotaped him leaving the chamber sampling site less than a minute after entering; the tests could not be completed in less than two minutes (38 ER 1301, 6/8/07).

United States v. Site Concrete (E.D. Texas, No. 4:07 CR 192, *plea entered* 11/7/07) — A Texas contractor faces fines, probation, and restitution after pleading guilty to making false statements regarding water samples. Site Concrete Inc. constructed new drinking water lines in Fairview, Texas, and was required to draw samples of water for testing by state environmental authorities. The company admitted to submitting false water samples to conceal the presence of microbiological contamination (39 ER 360, 2/22/08).

Wildlife

United States v. Barragan (D. Colo., No. 07-CR-00359, *indictment returned* 8/22/07) — Five individuals were indicted on charges of illegally trading in exotic skins and products made from sea turtles and other protected species, after a three-year undercover operation conducted jointly by U.S. and Mexican authorities. The five individuals were named in two indictments alleging 54 conspiracy, smuggling and money-laundering charges. The charges stemmed from 25 separate shipments of skins and other products between Mexico and the United States, including more than 700 tanned skins of sea turtle, caiman, python, and other species protected by the Convention on International Trade in Endangered Species.

United States v. Bonner (N.D. Fla., No. 07-CR-00013, *sentence entered* 4/24/07) — A former boat builder and a commercial fisherman were each sentenced to three years of probation and fined $25,000 and $40,000, respectively, after pleading guilty to violating the Magnuson-Stevens Fishery Conservation and Management Act. In an effort to address concerns about overfishing in the Gulf, the Magnuson Act placed a moratorium on certain vessel permits for commercial fishing boats. Individuals are eligible for a permit only if they can provide documentation showing that a vessel was under construction prior to March 29, 2001. Michael Bonner and Gerald E. Andrews Jr. submitted sales agreements for two new commercial fishing vessels, which were signed and dated March 2, 2001. In actuality, the agreements were signed in May 2003.

United States v. Boyer (D. Colo., No. 07-01191, *plea entered* 11/8/07) — John Boyer and his wife, Deborah, owners of a New Mexico hunting outfitter, were each ordered to pay a $3,000 fine and serve three years of probation after pleading guilty to violating the Lacey Act. The act prohibits the interstate transportation of wildlife that was taken in violation of state law. The Boyers participated in the unlicensed hunting and killing of a mountain lion in Colorado, and then transported the lion to New Mexico. John Boyer is prohibited from hunting anywhere in the world during the term of his probation, and may not apply for a Colorado hunting license for the remainder of his life. Deborah Boyer agreed not to perform taxidermy services on any wildlife taken from Colorado. In addition, the Boyers were each ordered to pay $3,000 in restitution to Colorado's ''Operation Game Thief,'' which pays citizens who provide information about wildlife poachers.

United States v. Diaz (N.D. Calif., No. 06-CR-00050, *judgment entered* 7/03/07) — The owner of a business that used captive raptors to scare nuisance birds away from its clients' sites was sentenced to prison for smuggling Eurasian Eagle Owl eggs into the United States from Austria. Jeffrey Andrew Diaz smuggled a total of 12 eggs into the country by concealing them in Easter baskets, and failing to declare them to customs officials. The Eurasian Eagle Owl is listed as an endangered species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and is protected by the Wild Bird Conservation Act. Diaz was sentenced to 21 months in prison, a $50,000 fine, and three years of supervised release, during which he can have no contact with birds requiring permits, including raptors. Diaz has appealed.

United States v. Fennelly (M.D. Fla., No. 07-CR-00204, *indictment returned* 8/2/07) — The captain of a commercial fishing boat was indicted on charges of violating the Magnuson-Stevens Act for collecting spiny lobster before the beginning of the season. On June 21, 2006, Zane H. Fennelly's vessel was within the exclusive economic zone of the United States, which extends 200 miles from Florida's coast. Upon the approach of Coast Guard and state wildlife officers, Fennelly attempted to destroy three bags containing spiny lobster tails. Under the act, fishing for spiny lobster is permitted only during the season running from August 6 to March 31.

United States v. Kern (S.D. Texas, No. 07-CR-00381, *indictment returned* 9/12/07) — The owner of a Virginia hunting outfitter faces up to five years in prison and a $250,000 fine after allegedly using a helicopter as an airborne shooting platform while hunting moose and sheep in Russia. The hunting trip was organized by Robert Kern and his company, the Hunting Consortium, and the trophy parts of the animals were shipped to the United States through an airport in Houston. Because Russian law prohibits the use of helicopters in the taking of wildlife, the practice violated the Lacey Act, which itself prohibits the importation of wildlife taken in violation of any foreign law related to wildlife.

United States v. LeBlanc (D. Mass., No. 07-CR-10243, *judgment entered* 11/27/07) — A Massachusetts man was sentenced to two years of probation, $8,000 in fines and restitution, and a five-year suspension of his right to hunt in Colorado and other Wildlife Violator Compact states, after pleading guilty to violations of the Lacey Act. Scott LeBlanc shot a black bear in Colorado without a valid permit, lied to wildlife officials about who actually killed the bear, and then shipped the bear skin to his home. The hunting guide who assisted LeBlanc in the illegal bear kill was prosecuted separately in Colorado.

United States v. Princess Cruise Lines (D. Alaska, No. 3:07-00005, *sentence entered* 1/31/07) — Princess Cruise Lines will pay a $200,000 fine and a $550,000 contribution to the National Park Foundation after pleading guilty to a charge of imperiling endangered humpback whales. The charge stemmed from an inci-

dent involving the death of a pregnant whale in Alaska's Glacier Bay National Park, a few days after the ship reported a close encounter with two diving humpbacks. The whale's injury was consistent with a ship strike. At the time, the ship was increasing its speed and was traveling at 14 knots. Immediately after the encounter, the company imposed a fleetwide speed limit of 10 knots for that area and implemented a whale-avoidance training program for captains (38 ER 262, 2/2/07).

United States v. Thompson (N.D. Calif., No. CR 06-0051, *judgment entered* 1/26/07) — A church pastor, church members, and several others were sentenced after pleading guilty to catching and selling undersized California leopard sharks. Kevin Thompson, pastor of the Holy Spirit Association for the Unification of World Christianity, led a scheme to illegally harvest the sharks, using the church's boats to fish for them, and storing them at a business associated with the church. Thompson was sentenced to one year and one day in prison. Another church member received a six-month prison sentence and six months of community service. The church will pay $500,000 in restitution, and the six defendants will pay a combined $410,000.

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