ENVIRONMENTAL CRIMES MONTHLY BULLETIN

November 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

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- **United States v. Thorson, No. 03-C-0074-C, 2004 WL 737522 (W.D. Wis. Apr. 6, 2004), aff'd sub nom. United States v. Gerke Excavating, Inc., 412 F.3d 804 (7th Cir. 2005), vacated and remanded, 126 S. Ct. 2964 (2006), on remand, ___ F.3d ___ (7th Cir. Sept. 22, 2006) (per curiam) (No. 04-3941).**
- **United States v. W. R. Grace, ___ F. Supp. 2d ___, 2006 WL 2258518 (D. Mont. Aug. 8, 2006).**
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- **United States v. W. R. Grace, 429 F. Supp. 2d 1207 (D. Mont. 2006).**

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Significant Opinions

Second Circuit

United States v. Williams, 399 F.3d 450, 452-59 (2d Cir. 2005).

Defendant Williams was apprehended carrying 14 one-gallon containers of concentrated liquid ammonia aboard a commercial airline flight when one of the containers began leaking ammonia vapors into the passenger cabin. After a jury trial, he was convicted of "knowingly and recklessly" causing the transportation of property containing hazardous material to an air carrier for transportation in air commerce in violation of 49 U.S.C. § 4613(a)(2). The jury acquitted the defendant of "willfully" transporting the material in violation of § 4613(a)(1).

At sentencing, the parties stipulated that, under U.S.S.G. § 2Q1.2 the defendant's base offense level was eight, and that a four-level enhancement applied for release of hazardous gases into the atmosphere. The district court went a step further, finding that the defendant "deliberately snuck [the ammonia] on to the plane" and was "fully aware" that he was not permitted to do so. Accordingly, the court imposed an additional nine-level enhancement for substantial likelihood of death or serious bodily injury. This enhancement brought the defendant's offense level to 21, yielding a sentence of 37-46 months incarceration. The court sentenced the defendant to serve 46 months' imprisonment, followed by three years' supervised release. He was further ordered to pay a $7,500 fine.

On appeal, the defendant claimed that the sentence violated the Sixth Amendment because the district court sentenced him based on conduct for which he was acquitted. The Second Circuit held that there was no violation in the sentence itself, but that, post-*Booker*, the mandatory use of a Guidelines enhancement violates the Sixth Amendment. Thus, the Court remanded for the district court to determine if the sentence would have been the same without the "mandatory" enhancement.

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Third Circuit

United States v. Wasserson, 418 F.3d 225, 228-36 (3d Cir. 2005).

Gary Wasserson owned Sterling Supply Company, which supplied products to commercial dry cleaners and laundry facilities in Philadelphia, Virginia Beach, and Hanover, Maryland. When his company went out of business, Wasserson was left with several barrels of hazardous waste in a warehouse. Rather than hire a hazardous waste hauling company to dispose of the material, Wasserson instructed an employee to find a less-expensive means of disposal. The waste was subsequently collected by a company without a hazardous waste permit and transported to a landfill that was not permitted to receive it. Once the waste arrived at the landfill, however, landfill officials recognized a paint-waste odor and isolated the shipment which was later determined to be hazardous waste.

After a jury trial, Wasserson was convicted of three-counts of violating the Resource Conservation and Recovery Act. The defendant's motion for new trial was granted as to two of the counts based on faulty jury instructions. The district court also granted the defendant's motion for judgment of acquittal as to the third count, holding that a generator of hazardous waste could not be convicted on an aiding and abetting theory of unlawful disposal under 42 U.S.C. § 6928(d)(2)(A).

The government appealed the judgment of acquittal, and the Third Circuit reversed, holding that "any or all of the separate RCRA offenses enumerated under § 6928(d), including the prohibition on unlawful disposal, can give rise to aiding and abetting liability under 18 U.S.C. § 2." The *Wasserson* court noted that the absence of the phrase "or causes to be disposed" within the statutory language was of no moment, because "[i]t is well-settled that 18 U.S.C. § 2 applies to the entire federal criminal code unless Congress clearly provides to the contrary."

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Seventh Circuit

United States v. Thorson, No. 03-C-0074-C, 2004 WL 737522 (W.D. Wis. Apr. 6, 2004), aff'd sub nom. United States v. Gerke Excavating, Inc., 412 F.3d 804 (7th Cir. 2005), vacated and remanded, 126 S. Ct. 2964 (2006), on remand, ___ F.3d ___ (7th Cir. Sept. 22, 2006) (per curiam) (No. 04-3941).

Defendant Thorson was president of Managed Investments, Inc., a real estate development company that owned a tract of land which it proposed to the state and to the Army Corps of Engineers would be partially filled in order to construct a retail and service business complex. One border of the site abutted a drainage ditch which ran into a stream that flowed in turn to a river that led into a navigable-in-fact river leading to the Mississippi River. These waters were all part of the Mississippi's surface water tributary system. The state denied the application, but defendant Thorson (relying upon *SWANCC* and ignoring the opinion of a biologist that a permit was required) hired Gerke Excavating,

Inc., to place fill material (including stumps, roots and other spoil material) and perform grading activities at the site.

Using bulldozers and trucks, the defendant dumped stumps, roots and sand-based fill into a six-acre tract containing wetlands that it wanted to develop. The wetlands were adjacent to and drained into a ditch that ran into a non-navigable river that in turn ran into a navigable river.

The Corps then issued cease and desist orders. The government subsequently filed a civil action seeking *inter alia* to enjoin defendants Thorson, Managed Investments, and Gerke Excavating from discharging pollutants into waters of the United States without a permit, to require that the defendants remedy damage caused by their activities, and to impose civil penalties, all pursuant to the Clean Water Act. The government then moved for partial summary judgment.

Held: The district court granted the government's motion for judgment on its claim of violation of the CWA. It also dismissed the defendants' counterclaim for a declaratory judgment that the filled portions of the site were not wetlands, but left for trial the status of the remaining unfilled portions of the site. The court determined that trucks used to haul fill material to the site and bulldozers used to push dredged material into piles were "point sources." It also held that the filled portions of the site constituted "waters of the United States," citing *Deaton* and accepting the Corps' criteria under the 1987 Wetland Delineation Manual as standards for identifying wetlands according to their hydrology. The court analyzed in detail and rejected the challenges by defendants' expert to the Corps' methodology and conclusions. It then held that the wetlands in question, which were adjacent to the drainage ditch and hydrologically connected to waters covered under the CWA, were subject to Corps regulation. It rejected the defendants' arguments that, to be regulated, wetlands must be *immediately* adjacent to waters that are actually navigable and, after analyzing the caselaw in detail, followed the reasoning of *Rueth Development*, *Deaton* and *Rapanos* and distinguished *SWANCC* in holding that the Corps could assert jurisdiction over "wetlands adjacent to tributaries of traditionally navigable waters," and that such authority comported with the statutory text of the CWA. The court went on to hold that that regulation did not exceed congressional authority under the Commerce Clause, finding that "[j]ust as Congress may regulate the flow of drugs and guns in interstate commerce, it may regulate the flow of pollutants through the channels of interstate commerce, even if the pollutants do not threaten the capacity of the channel to serve as a conduit in interstate commerce."

On appeal, the Seventh Circuit affirmed. The court first noted that a ditch clearly can be a "tributary of a tributary" under the CWA. It then analyzed the ability of Congress to regulate waterways under its Commerce Clause power, noting favorably the caselaw applying the aggregation of effects principle in allowing for regulating individual acts, and the caselaw broadly construing the breadth of jurisdiction over "waters of the United States" beyond the traditional concept of navigability. It found that wetlands adjacent to tributaries of tributaries of "navigable" waters clearly are subject to regulation under 33 C.F.R. §§ 328.3(a)(1), (a)(5) and (a)(7).

Subsequently, the U.S. Supreme Court granted a petition for *certiorari*, vacated the judgment of the Seventh Circuit and remanded the matter for further consideration in light of its determination in *Rapanos*. The Seventh Circuit in turn remanded the case to the district court for further proceedings. The Seventh Circuit noted the absence of a majority opinion in *Rapanos* and concluded that the concurring opinion by Justice Kennedy in that case, as the narrowest ground to which a majority might have assented, must govern further stages of the litigation.

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District Court

United States v. W. R. Grace, ___ F. Supp. 2d ___, 2006 WL 2258518 (D. Mont. 2006).

Defendant corporation and certain current and former employees were charged in a multi-count superseding indictment with various counts of (1) conspiracy to violate the knowing endangerment provision of the Clean Air Act and to defraud the United States, (2) violation of the knowing endangerment provision of the Clean Air Act, and (3) obstruction of justice, all resulting from the alleged release of asbestos-contaminated vermiculite from a mine operated by the company in Montana. All parties filed motions *in limine* seeking a ruling on the appropriate definition of "asbestos" as it appears in the Clean Air Act with respect to the charges in the indictment.

Held: The court denied the government's motion *in limine* and granted the defendants' motion, insofar as the definition of "asbestos" for the purposes of the Clean Air Act counts in the indictment is to be limited to certain of the asbestiform varieties at issue in the case. The knowing endangerment provision of the Act is predicated upon the release of a "hazardous air pollutant" listed (by chemical name and/or by a Chemical Abstract Services number) under 24 USC § 7412 of the Act (a civil regulatory statute). "Asbestos" and its CAS number is included in that list.

The court found that the treatment of asbestos contamination in a prior civil cleanup order issued under CERCLA was not determinative of the meaning of "asbestos" under the Clean Air Act. It further found that, in the context of interpreting a criminal statute, it should not rely simply upon a general reference to "asbestos" contained in a statutory provision, which would leave the jury with the difficult task of evaluating disputed expert testimony as to which minerals fall within the scope of the criminal offense. Similarly, the "definition" section of the CAS Registry number for asbestos offers little guidance as to that determination, other than suggesting a more limited interpretation.

Pursuant to the 1990 Amendments to the Act, EPA promulgated the various National Emission Standards for Hazardous Air Pollutants ("NESHAP"), which include a NESHAP for asbestos that contains a more specific and limited regulatory definition of the substance. Resolving the statutory ambiguity here in favor of the defendant, the court found that the more limited definition of "asbestos" contained in the NESHAP regulation was the more appropriate for instructing the jury at trial.

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Simsbury-Avon Preservation Society LLC v. Metacon Gun Club, Inc., ___ F. Supp. 2d ___, 2005 WL 1413183 (D. Conn. June 14, 2005), and ___ F. Supp. 2d ___, 2006 WL 2223946 (D. Conn. Aug. 2, 2005).

Plaintiff association is a group of homeowners who live adjacent to and near an outdoor shooting range operated by the defendant that is situated on an area of wetlands and streams and is part of a designated flood plain area that frequently is flooded. The association and several of its individual members brought a five-count citizen suit alleging violations of RCRA and the Clean Water Act due to the unpermitted discharge of substances, including a large amount of lead shot and target debris, that allegedly damaged an aquatic biota, birds and other wildlife, and threatened neighboring children with lead poisoning. The defendant moved to dismiss.

Held: In its June 14, 2005, decision, the court dismissed the RCRA count that charged disposal of hazardous waste without a permit. However, it denied the motion to dismiss regarding the

remaining RCRA and CWA counts. After finding that the plaintiff had standing to sue, the court found that the regulatory definition of solid waste under RCRA (40 C.F.R. § 262.1(a)) is narrower than its statutory counterpart (42 U.S.C. § 6903(27)) with respect to citizen suits that allege violations of permitting requirements (as opposed to those that allege imminent hazards to health or the environment). It then found that US EPA's interpretation of the term "solid waste" as excluding spent rounds of ammunition and target debris because they were not "discarded material" due to the fact that they had not been "abandoned" by reason of having been shot, was not unreasonable. (At the time of firing, the shooter does not intend to "abandon" the bullet, but rather to put it to its intended use to hit the target.) Thus, a permit was not required for the shooting activity. (However, at some future time, a spent bullet that is left on the ground or in water might become "discarded" and thereby subject to RCRA's remediation provisions.)

In its August 2, 2005, decision, the court found that one of the individual plaintiffs had standing to sue, and thus plaintiff association had standing as well. It granted summary judgment to the defendant on the remaining RCRA counts, leaving one CWA count for trial.

The court found that the broader statutory definition of solid waste (rather than the regulatory definition previously considered in the motion to dismiss the disposal count) was applicable to the RCRA counts charging "open dumping" of waste and alleged imminent and substantial endangerment. USEPA's interpretation that, for these latter purposes, spent lead bullets would become solid waste if discarded (rather than reclaimed or recycled), without regard to whether they had been "abandoned" or "disposed of" as required under the regulatory definition, was reasonable. Since uncontradicted evidence showed no proof of ammunition and target debris leaving the site, and demonstrated that the defendant regularly cleaned up and recycled bullets remaining on the site, the defendant was entitled to summary judgment on the "open dumping" and "imminent hazard" RCRA counts.

Finally, since the plaintiffs had conceded their CWA count alleging dumping of fill material containing lead into waters of the United States without a Corps of Engineers or state section 404 permit, that left remaining for trial only the CWA count alleging discharges of lead bullets and debris into a river and its tributaries and adjacent wetlands without an EPA or state section NPDES permit.

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United States v. W. R. Grace, 429 F. Supp. 2d 1207 (D. Mont. 2006).

Defendant corporation and certain current and former employees were charged in a ten-count indictment with various counts of (1) conspiracy to violate the knowing endangerment provision of the Clean Air Act and to defraud the United States, (2) violation of the knowing endangerment provision of the Clean Air Act, (3) wire fraud, and (4) obstruction of justice, resulting from the alleged release of asbestos-contaminated vermiculite from a mine operated by the company in Montana. The defendants filed a series of motions to dismiss various counts of the indictment. The government filed a motion to dismiss the wire fraud counts.

Held: The court denied the defendants' motion to dismiss the conspiracy count as duplicitous, and denied the defendants' motions to dismiss the substantive knowing endangerment counts (1) for failure to allege a required element (that defendants were aware that their conduct in violation of the Act was unlawful), and (2) for failure to allege a breach of an emissions standard. It granted defendants' motion to dismiss the substantive knowing endangerment counts with respect to the criminal offenses that were completed prior to the running of the statute of limitations beginning on November 3, 1999. The court also granted the government's motion to dismiss (without prejudice) the wire fraud counts for failure to allege the required element of materiality.

Acts taken to conceal a criminal conspiracy are considered to have been in furtherance of the conspiracy when those acts were contemplated by the original conspiratorial agreement and carried out in furtherance of the objectives of the main conspiracy. Since the defrauding conspiracy charged in the conspiracy count here was aimed at avoidance of liability for the effects of the contaminated vermiculite on humans and the environment, as well as facilitation of the mine as an on-going concern, such avoidance of liability continued after mining operations ceased in 1990 and also after the mine was sold in 1994, and it continued during the period from 1999 through 2002 in which USEPA conducted a Superfund investigation of the site. Thus, the dual purpose conspiracy to violate the Clean Air Act and to defraud the government constituted a single offense and was not duplicitous.

Citing *International Minerals* and distinguishing *Cheek*, 498 U.S. 192 (1991), *aff'd on remand*, 3 F.3d 1057 (7th Cir. 1993), *cert. denied*, 510 U.S. 1112 (1994), the court found that the language of 42 USC § 7413(c)(5)(B) merely "added content to the knowing endangerment requirement with respect to individual defendants," rejecting the defendants' argument that that subsection changed the required mental state under the statute. Under this public welfare offense statute, a defendant is not required to know that its conduct was unlawful.

The knowing endangerment statute covers releases of any hazardous air pollutant, and under its plain language, the clause in 42 USC § 7413(c)(5)(A) exempting releases that are in compliance with a permit or emissions standard provides an affirmative defense. Therefore, citing *Freter*, 31 F.3d 783 (9th Cir.), *cert. denied*, 513 U.S. 1048 (1994), the court held that the government was not required to allege breach of such a standard in the indictment.

Finally, the court rejected the government's argument that the knowing endangerment crime is not complete until the endangerment ceases. It further found that there is no explicit language in the Act mandating, and no indication that Congress otherwise intended, that such crimes are continuing offenses. Thus, the statute of limitations would not be extended.

NOTE: In a subsequent ruling, the court found that the government had failed to allege an overt act with respect to the conspiracy charge within the statute of limitations period. While the "causing" during the limitations period of releases that might not occur until after its expiration may constitute a completed substantive violation of the knowing endangerment statute, that does not translate into a completed conspiracy in the absence of an overt act within the period. The court therefore granted the defendants' motion to dismiss the knowing endangerment object of the conspiracy charge as time-barred. *See United States* v. *W. R. Grace*, 434 F. Supp. 2d 879 (D. Mont. 2006).

Later, after the government had filed a superseding indictment including allegations of overt acts in furtherance of both the defrauding object and the endangerment object of the conspiracy, the court granted the defendants' motion to dismiss the knowing endangerment object of the conspiracy charge contained in the superseding indictment also as time-barred. Since the failure to allege an overt act in furtherance of the knowing endangerment object had occurred in the original indictment, the court found that the government could not take advantage of a statutory provision allowing a six-month grace period for curing defects by reindictment. *See United States* v. *W. R. Grace*, ___ F. Supp. 2d ___, 2006 WL 2258479 (D. Mont. July 27, 2006).

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Trials

United States v. Wally El-Beck et al., No. 4:05-CR-00179 (E.D. Ark.), AUSA Angela Jegley [redacted]

On October 20, 2006, Wally El-Beck was convicted by a jury on 37 counts of mail fraud and one count of wire fraud. Co-defendant Moumen Kuziez's motion for judgment of acquittal was granted on all counts against him.

Between December 31, 2000, and March 5, 2003, El-Beck made numerous fraudulent solicitations to industrial waste generators located in Tennessee and Illinois claiming that he could dispose of their waste through incineration. He received approximately 13,000 drums of wastes at the Arkansas Municipal Waste to Energy facility located in Osceola, Arkansas. The waste in the drums was not incinerated, however, and the companies that generated it were forced to pay a second time to have the drums transported to another site where the waste was properly incinerated.

More than four million dollars has been spent by the U.S. EPA Superfund to clean up the site, in addition to more than one million dollars spent by companies victimized in the scheme.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Postal Service Inspector General's Office with assistance from EPA's National Enforcement Investigations Center.

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United States v. Timothy Boisture, No. EV05-CR-0043 (S.D. Ind.), AUSA Steve Debrota and SAUSA Dave Taliaferro

On October 17, 2006, Timothy Boisture, a partner with Environmental Consulting and Engineering Co., Inc., was convicted by a jury on two counts of mail fraud.

The State of Indiana hired the defendant's firm to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants which threatened to flow into a local pond and the Ohio River.

Boisture was convicted of defrauding the state by submitting false invoices, charging over $44,000 for equipment that was never installed and services that were not billed by his subcontractor. He was further convicted of defrauding his partner by inducing three other subcontractors to pay him more than $140,000 in kickbacks. Boisture was acquitted of three other counts charging money laundering, making a false statement and an additional mail fraud violation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Law Enforcement Division of the Indiana Department of Natural Resources, the Internal Revenue Service's Criminal Investigation Division and the Federal Bureau of Investigation.

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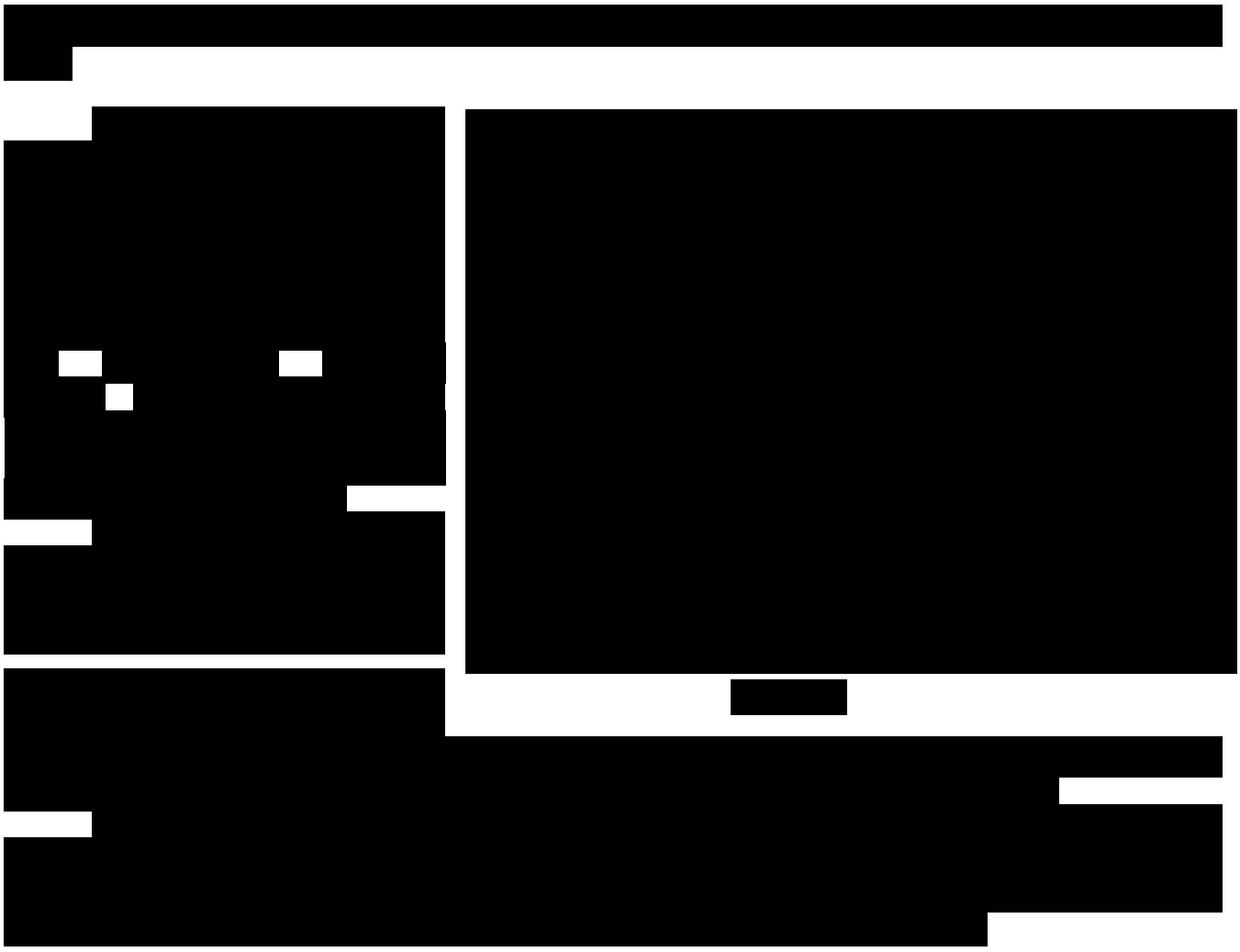

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Indictments

United States v. Bruce Penny et al., Nos. 2:06-CR-00761 and 765, 2:06-mj-01688 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On October 6, 2006, an indictment was returned charging three defendants with an Endangered Species Act ("ESA") violation for illegally transporting and selling Asian Arowanas, commonly known as "dragon fish" or "lucky fish."

The dragon fish is native of Southeast Asia and can grow to approximately three feet in length. Under the ESA and international treaties, permits are required to export endangered species from their country of origin, as well as to import them into the United States. In the United States, Asian Arowanas can sell on the black market value for as much as $10,000.

Bruce Penny is charged with selling several Asian Arowanas to a purchaser in New York; Anthony Robles is charged with purchasing dragon fish, selling some to Penny and helping Penny ship some of the fish to the New York buyer; and Peter Wu is charged with transporting and selling an Asian Arowana to an undercover agent with the Fish and Wildlife Service.

William Ho remains charged in a criminal complaint with selling several lucky fish to the New York buyer.

This case was investigated by the United States Fish and Wildlife Service.

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Pleas / Sentencings

United States v. Jared Ohsman, 1:06-CR-20630 (S. D. Fla.), AUSA Tom Watts-Fitzgerald [redacted]

On October 24, 2006, Jared Ohsman pleaded guilty to, and was sentenced for, a Lacey Act violation for attempting to unlawfully import 35 specimens of a Brazilian species of spider into the United States by mail. He was sentenced to serve 18 months' probation.

In March 2006, a package addressed to Ohsman at a Mesa, Arizona, pet store, was intercepted at the Miami International Mail Facility by Customs and Border Protection inspectors. The package was subsequently delivered to the address specified, and Ohsman picked up the package. When he opened it later, a transponder was activated and he was arrested.

Venomous snakes

A search of Ohsman's apartment in Arizona revealed approximately 200 spiders and over 100 snakes, including venomous exotics and native species. Arizona Game and Fish Department officers seized several of the snakes because of violations of state regulations and Ohsman was convicted in Arizona state court for possession of a restricted species.

This case was investigated by the United States Fish and Wildlife Service, the Arizona Game and Fish Department, the United States Customs and Border Protection Service, and the United States Postal Service.

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United States v. Jason Scardecchio et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Albert Glenn [redacted].

On October 18, 2006, Jason Scardecchio, lead supervisor of Indoor Air Quality, Inc. ("IAQ"), an asbestos removal company, was sentenced as a result of pleading guilty in June of this year to two counts of mail fraud and one count of violating the Clean Air Act National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. He was sentenced to serve one year and one day of incarceration, followed by a three-year term of supervised release. Scardecchio also will pay $11,804.67 in restitution. The restitution will pay for medical examinations for employees of the company and also will reimburse certain homeowners who had subsequent air testing performed. The court at sentencing noted that a period of incarceration was warranted in order to, among other things, provide for general deterrence in the regulated community. Under the sentencing guidelines, Scardecchio faced a term of imprisonment between 18 and 24 months. Although the court did not state that it disagreed with the guidelines' calculation provided by the government, it chose to downward depart and did not disclose its reasoning.

IAQ and company president Wallace Heidelmark pleaded guilty in January of this year to two counts of mail fraud and one count of violating the NESHAP. The charges arose from illegal asbestos removal projects performed in residences, commercial buildings, and a school in 2002. The mail fraud counts stem from a scheme to defraud homeowners concerning the removal of asbestos-containing material in their homes. IAQ had an extensive history of non-compliance and has been cited in three EPA administrative enforcement actions. The company previously paid civil penalties and entered into consent agreements.

Heidelmark was sentenced in July of this year to serve 24 months' incarceration followed by three years' supervised release. He also must pay a $5,000 fine and will be held jointly and severally liable for $41,514.17 in restitution. IAQ was sentenced to complete two years' probation, pay a $100,000 fine, and the $41,514.17 restitution. The restitution will be provided to former employees and to homeowners. With regard to the employees, Heidelmark and IAQ are required to pay for medical examinations to be performed at a local hospital offering a worker health program specifically focused on workers in the asbestos removal industry. Heidelmark and IAQ also were ordered to pay restitution to certain homeowners who subsequently had air testing performed in their homes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Richard Wolfe et al., Nos. 1:06-mj-00397, 398, 578 (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney David Joyce [redacted]

On October 17, 2006, three hunters were sentenced for illegally killing big game wildlife in New Mexico, in violation of New Mexico state law, and then shipping the trophies back to Virginia. All three defendants were sentenced to serve three years' probation and will be banned from hunting or possessing weapons during their terms of probation.

Christopher Wolfe and Richard Wolfe both took trips to New Mexico in 2002 and 2003. Christopher Wolfe killed an elk and an antelope on the first trip and another elk on the second trip. Richard Wolfe killed an elk on the first trip, and another elk and an oryx on the second trip. Christopher Wolfe pleaded guilty to two misdemeanor Lacey Act violations and was sentenced to serve 30 days' incarceration, followed by five months' home detention. He also must pay a $10,000 fine and $5,200 in restitution to the National Fish and Wildlife Foundation. Richard Wolfe pleaded guilty to two misdemeanor Lacey Act violations and was sentenced to serve 45 days in jail, followed by five months' home detention. He too must pay a $10,000 fine and $5,000 in restitution to the National Fish and Wildlife Foundation

Brandon Ellison made one trip to New Mexico in 2003 and killed an antelope. Ellison pleaded guilty to one misdemeanor Lacey Act violation and was sentenced to pay a $3,000 fine and $1,000 in restitution to the National Fish and Wildlife Foundation.

This case was investigated by the United States Fish and Wildlife Service.

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United States v. Christopher Weaver, No. 5:06-mj-00031 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On October 9, 2006, Christopher Weaver was sentenced to pay a $1,000 fine and serve two years' probation, during which time he may not possess a firearm. Weaver pleaded guilty in August of

this year to a misdemeanor violation of the Marine Mammal Protection Act for knowingly and unlawfully taking a marine mammal, in this case a dolphin.

On Oct. 13, 2005, the defendant was the captain of the *LEO TOO*, a charter fishing vessel operating out of Treasure Island Marina, in Panama City Beach, Florida. During the course of a deep-sea fishing trip, Weaver watched a dolphin grab a fish that one of his fishing clients had hooked. Weaver, who was on the bridge of the ship, fired a .357 magnum handgun at the dolphin while it was near the boat. When the group moved to another fishing spot, Weaver again shot at one or more dolphins. It is unknown whether his shots struck any of the dolphins.

This case was investigated by the National Oceanographic and Atmospheric Administration Office of Law Enforcement.

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United States v. Luxury Wheels, Inc. et al., No. 1:04-CR-00346 (D. Colo.), AUSA Patricia Davies [redacted]

On September 29, 2006, Luxury Wheels, Inc., an electroplater, and Albert Hajduk, the company's operations manager, were sentenced as the result of conspiracy, false statement and CWA violations. Luxury Wheels was sentenced to serve two years' probation and was ordered to pay a $40,000 fine. The company also must pay $350,000 in restitution to a Grand Junction city employee who suffered respiratory and other injuries as a result of the production of a toxic gas caused by the company's negligent discharge into the Grand Junction sewer system on July 25, 2002. Hajduk was sentenced to serve five months' incarceration followed by five months' home detention.

The defendants pleaded guilty in June of this year to charges stemming from illegal wastewater discharges into the City of Grand Junction's sewer system. The company pleaded guilty to conspiracy to violate the CWA and to make false statements, and a negligent CWA violation that resulted in the

release of toxic fumes to the POTW, injuring a POTW worker. Hajduk pleaded guilty to a false statement violation for submitting false monitoring reports to the POTW and to a negligent CWA violation.

Luxury Wheels electroplated automobile wheels with chrome, using various chemicals for this process including acids and caustics, as well as chemical solutions containing metals. The company had a permit from the City of Grand Junction to discharge treated electroplating wastewater into city sewers. From May 1999 until September 2003, the defendants violated the CWA by diluting wastes before treating them, by attempting to treat wastewater when their treatment system was overburdened, and by hiring a company to "hydrojet" the company's sewage service line to remove chemical sludge blockages in order to conceal evidence of illegal discharges.

This prosecution has resulted in two published opinions by the district court, addressing, *inter alia*, search issues arising when POTW workers sample other than in conformity with compliance sampling procedures under the permit, and myriad other challenges to charges alleging violations of the CWA and RCRA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA's National Enforcement Investigations Center.

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United States v. Cognis Corporation, No. 1:06-CR-00109 (S.D. Ohio), AUSA Laura Clemmens [redacted]

On September 28, 2006, Cognis Corporation pleaded guilty to an information charging four negligent violations of the CWA and one violation of the MBTA. Cognis operates a chemical manufacturing facility in Cincinnati. On December 13, 2005, there was an explosion and a pipeline rupture at its facility. This caused a number of illegal discharges from the plant into storm drains containing isodecyl alcohol, adipic acid and other pollutants. The drains empty into Mill Creek, which is a tributary of the Ohio River.

Chemical spill

On December 14, 2005, an inadequate containment dike allowed the discharge of additional pollutants, causing the death of 7,700 fish, 11 Canada geese, and one Mallard duck in and along Mill Creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the United States Fish and Wildlife Service, the Ohio Environmental Protection Agency, the Division of Wildlife of the Ohio Department of Natural Resources, the Cincinnati Fire Department, and the Cincinnati Metropolitan Sewer District.

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United States v. Glen Joffe, et al., No. 1:06-CR-00022 (C.D. Ill.), AUSA Steven Kubiatowski

On September 27, 2006, Glen Joffe was sentenced to serve five years' probation for smuggling prohibited wildlife artifacts into the United States, including ivory and items made from tigers. Joffe was further ordered to complete 1,500 hours of community service and to surrender more than $500,000 in prohibited artifacts.

Joffe and co-defendant Claudia Ashleigh-Morgan, who co-own Primitive Art Works gallery in Chicago, were accused of stocking their gallery and home with illegal items. Artifacts included ivory carvings, feathered hairpins, as well as items made from elephants and other animals. The couple first came to the attention of federal agents in March 2003 after they appeared in a newspaper article with items that looked as if they had been made from endangered species. The two subsequently were stopped at O'Hare International Airport in April 2003 as they were coming back from China with illegally imported items made from ivory and sea turtles in their luggage.

Joffe and Ashleigh-Morgan were originally charged in a 20-count indictment for violations including smuggling merchandise made from protected wildlife and making false statements to U.S. Customs agents. Joffe pleaded guilty to a conspiracy to knowingly and fraudulently import protected wildlife, to a felony sale of migratory bird parts and to illegally possessing a headdress made from protected birds. Ashleigh-Morgan was sentenced in June of this year to complete three years' probation for the same felony sale of migratory bird parts. She also was ordered to pay a $12,000 fine and must complete 600 hours of community service.

This case was investigated by the United States Fish and Wildlife Service.

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United States v. Pacific Shrimp Company, Inc., et al., No. 2:06-CR-00579 (C. D. Calif.), AUSA Joe Johns

On September 26, 2006, Pacific Shrimp Company, Inc. ("Pacific Shrimp") and Tony Zavala, vice president of sales, pleaded guilty to charges related to a scheme to avoid the payment of Mexican tariffs on frozen shrimp sold to Mexico. Specifically, the defendants admitted to purchasing shrimp from other countries, creating documents falsely claiming the seafood was harvested and inspected in the United States, and then exported the seafood to Mexico without paying the tariffs imposed on such products.

Mexico normally imposes an import duty of at least 20% on all seafood imported into the country. However, under the North American Free Trade Agreement, seafood grown or harvested in the United States may be imported into Mexico duty-free. In order to avoid paying tariffs on foreign seafood, Pacific Shrimp and Zavala created bogus documents to make it appear that their products were harvested in the United States, when in fact the seafood had originated in India.

In May 2003, Pacific Shrimp and its employees created a fictitious certificate of inspection to export approximately 65,000 pounds of frozen peeled shrimp to Mexico. The certificate stated that the shrimp had been inspected by the United States Department of Health Services and that laboratory analyses did not detect the presence of Salmonella, Listeria, Yellowhead virus, Whitespot virus, Cholera or Chloramphenico. The shrimp, in fact, had not been inspected or analyzed by any government agency prior to the export to Mexico. As a result of this scheme, Pacific Shrimp and its Mexican customers avoided paying more than $100,000 in duties to Mexico.

Pacific Shrimp pleaded guilty to two counts of unlawful export of wildlife, two counts of falsifying a government document, and two counts of knowing use of a counterfeit government seal. Pursuant to a plea agreement, Pacific Shrimp is expected to be placed on probation for five years and to pay a $120,000 fine. A $70,000 portion of the fine is anticipated to be earmarked for the Fish Genetics Program operated by the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center. The Fish Genetics Program will collect tissue specimens from species such as sharks, billfishes and tuna, with the goal of expanding the existing fish DNA data base that is used to help protect and manage United States marine mammals and fisheries resources.

Zavala pleaded guilty to the use of a counterfeit government seal. The charge carries a maximum possible penalty of five years in federal prison, but the government has agreed to recommend a sentence of ten months' incarceration.

Both defendants are scheduled to be sentenced on December 4, 2006.

This case was investigated by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement.

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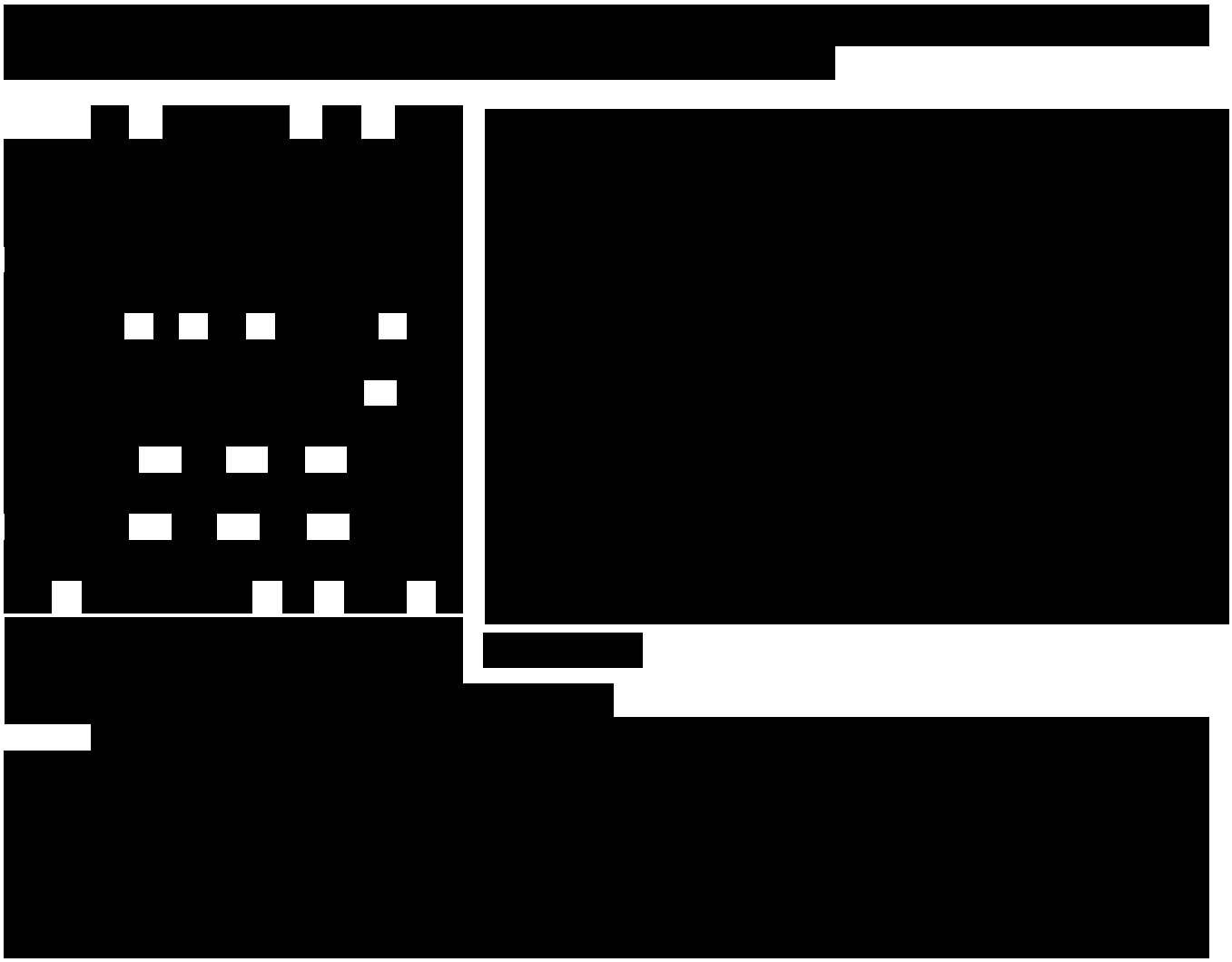

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United States v. Rodolfo Esplana Rey, No. 06-CR-00315 (C.D. Calif.), AUSAs William Carter [redacted] and Dorothy Kim [redacted], and RCEC Erica Martin [redacted].

On September 22, 2006, Rodolfo Esplana Rey, the chief engineer for the *M/T Cabo Hellas*, a petroleum transport tanker operated by the Overseas Shipholding Group, Ltd., was sentenced to serve six month's incarceration followed by a one-year term of supervised release.

In December 2005, OSG replaced the old oil content meter ("OCM") on several ships in its fleet, including the *Cabo Hellas*. On several occasions between December 2005 and March 20, 2006, Rey tricked the OCM into allowing bilge water to be discharged overboard without first being analyzed by the meter. Specifically, on at least two occasions per month during this period, Rey discharged bilge water from the bilge tanks overboard into the ocean with the stop valve in the closed position. The last occasion was on March 20, 2006, in international waters off the coast of Mexico. Rey also trained a subordinate employee, an oiler, how to bypass the meter and thereby avoid setting off the alarm when oily bilge water was discharged overboard. Rey further made false entries in the oil record book, as well as omitting information, in order to conceal the illegal discharges. During a Coast Guard inspection in March 2006, Rey directed crew members to lie about how they were operating the oil water separator.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

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