ENVIRONMENTAL CRIMES MONTHLY BULLETIN

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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.

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Quick Links

Significant Opinions

3rd Circuit

United States v. Abrogar, ___ F.3d ___ 2006 WL 2382328 (3rd Cir. 2006).

In this vessel pollution case, defendant Abrogar appealed the district court's application of a six-level sentencing enhancement pursuant to section 2Q1.3 of the Sentencing Guidelines. Abrogar, the chief engineer aboard the Panamanian-flagged *M/V Phoenix*, pleaded guilty to a one-count information charging him with failing to keep an accurate oil record book, in violation of 33 U.S.C. § 1908(a).

Coast Guard investigation revealed that Abrogar became aware that crew members under his direction were improperly discharging oil contaminated bilge waste directly into the ocean. Instead of ending this practice, Abrogar made multiple entries into the ship's oil record book indicating that the bilge waste had been incinerated and not discharged overboard. During a subsequent Coast Guard inspection of the *Phoenix*, Abrogar lied to inspectors and denied knowledge of any illegal discharges.

The presentence investigation report recommended a six-level enhancement pursuant to Guideline section 2Q1.3(b)(1)(A). This section provides for such an enhancement "if the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment." U.S.S.G. § 2Q1.3(b)(1)(A). The district court accepted the recommendation and sentenced Abrogar to twelve months and one day of imprisonment.

On appeal, the Third Circuit held that the six-level enhancement was misapplied. In so holding, the Court focused on the text of the Act to Prevent Pollution from Ships ("APPS"). Specifically, the Court noted that foreign flagged ships are subject to the criminal provisions in APPS, which implements Annex I of MARPOL, only when the ship is "in the navigable waters of the United States." 33 U.S.C. § 1902(a)(2). Because the illegal discharges all occurred outside of U.S. waters, and because the offense of conviction is restricted to failure to maintain an accurate oil record book within U.S. waters, the Court held that the discharges could not constitute relevant conduct for purposes of a sentencing enhancement. Specifically, the Third Circuit stated, "because the improper discharges are not relevant conduct, they cannot be considered part of the 'offense' under the Guidelines, and therefore the 'offense' did not 'result[] in' repeated discharges, as is required before the six-level enhancement under § 2Q1.3 may be applied." Consequently, the Court vacated Abrogar's sentence and remanded the case for resentencing.

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4th Circuit

United States v. Michael Hillyer ___F.3d___2006 WL 2129845 (4th Cir. 2006).

In this dredging case, the government appealed the defendant's sentence of probation. Hillyer pleaded guilty to two felonies involving his illegal use of "prop wash" to dredge an area around pilings he wished to remove. He did so under cover of darkness, over a period of several nights, and despite repeated warnings that his conduct was illegal. On facts that were not in dispute on appeal, Hillyer's advisory offense level under the Guidelines was 13 (or a possible12-18 months' imprisonment). Over the government's objection, the sentencing judge granted a motion for an aberrant behavior departure under USSG § 5K2.20. In so doing, the district court found that Hillyer had "engaged in a single criminal transaction that did not involve significant planning and was of limited duration" and that his conduct was inconsistent with his "long record of being attentive to environmental and safety concerns."

On appeal, the Fourth Circuit held that the court misapplied the departure and remanded the case for resentencing. Specifically, the court held that Hillyer's conduct was not a "single criminal occurrence," as required by § 5K2.20, and that it failed two of the three other elements needed to apply the departure. Those three elements are that the crime must: (1) be committed without significant planning; (2) be of limited duration; and (3) represent a marked deviation by the defendant from an otherwise law-abiding life. U.S.S.G. § 5K2.20(b).

Hillyer caused work crews to wash away sediment using tugboat propellers on multiple occasions, as reflected by the sentencing court's application of 2Q1.3(b)(1)(A), resulting in a six-level increase for "ongoing, continuous, and repetitive discharge and release of a pollutant." In light of his multiple criminal acts, the court held that Hillyer failed the "single criminal occurrence" requirement of § 5K2.20(b).

The defendant's crime also required significant planning. As the court explained, the facts showed that he went to great lengths to have his work crews on site after darkness and used tugboats without running lights to avoid detection. Further, his crimes were repeated over the course of ten days, despite repeated warnings that this prop washing activity was illegal. Because he thereby failed two prongs under § 5K2.20(b), the court did not need to reach the question of whether his conduct "represented a marked deviation by the defendant from an otherwise law-abiding life."

In light of these facts, the court remanded the case for resentencing without the downward departure and advised the sentencing court to determine whether the 12-18 month range without the departure "serve[s] the factors set forth in 18 U.S.C. § 3553(a)."

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9th Circuit

Northern California River Watch v. City of Healdsburg, ___ F.3d ___ 2006 WL 2291155 (9th Cir. 2006).

In this civil Clean Water Act case, the City of Healdsburg appealed a district court's judgment that Healdsburg violated the CWA by discharging sewage from its waste treatment plant without a National Pollutant Discharge Elimination System ("NDPES") permit. Healdsburg discharged sewage into a body of water known as Basalt Pond ("the Pond"), a man-made rock quarry pit located next to the Russian River ("the River") – a navigable water of the United States – and separated from the river by only a levee.

The evidence at trial established the following: (1) Healdsburg began discharging wastewater into the Pond in 1978; (2) the annual outflow from the sewage plant is sufficient to fill the Pond every two years; (3) beneath the surface of the Pond and the River is a large aquifer, which serves as the principal pathway for continuous passage of water between the Pond and the River; (4) at times, the River overflows the levee and the waters of the Pond and River commingle; (5) the Pond and the River support similar bird, mammal, and fish populations; and (6) the Pond substantially affects the chemical integrity of the River because the drainage of Pond water into the River increases the concentration of chloride in the River.

The issue on appeal was whether discharge of wastewater into the Pond is subject to the CWA. Specifically, the Court of Appeals for the Ninth Circuit was called upon to interpret the Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), to determine whether the provisions of the CWA extended to the Pond.

The Court of Appeals, treating Justice Kennedy's concurring opinion in *Rapanos* as the controlling rule of law, focused its analysis on whether a significant nexus existed between the Pond and a navigable-in-fact waterway – in this case, the River. Justice Kennedy's *Rapanos* opinion explained that a significant nexus exists "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affects the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" Justice Kennedy further explained in *Rapanos* that "the required nexus must be assessed in terms of the [CWA's] goals and purposes, which are 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'" Applying this standard, the Court of Appeals found a significant nexus between the Pond and the River. Specifically, the Court concluded that the Pond's effects on the River are "not speculative or insubstantial" and that the Pond "significantly affects the physical, biological, and chemical integrity of the Russian River." Because of this connection, the Pond qualified for protection as a "navigable water" under the CWA, and Healdsburg violated the CWA by discharging wastewater into the Pond without a NPDES permit.

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District Court

United States v. Evans, ___ F. Supp. 2d ___, 2006 WL 2221629 (M.D. Fla. 2006).

Defendant Evans, along with several others, operated a farm labor contracting business known as the Evans Labor Camp – with camps in Florida and North Carolina – for seasonal farm workers. The Evans Labor Camp provided housing to migrant and seasonal workers and transported the workers to local farms. Located behind the Florida Camp was a small creek.

Beginning in 2003, the FBI, and subsequently the EPA, began investigating the Evans Labor Camp for various violations of federal law. The EPA investigation focused on possible criminal violations of the Clean Water Act resulting from improper discharge of human waste. In June 2005, the EPA executed a search warrant at the Florida Camp. The search warrant permitted EPA agents to "photograph, videotape, trace, diagram, label, and sketch" (1) potential sources of wastewater discharge; (2) above ground and underground plumbing; (3) sewers, manholes, trench systems, and drainage pipes, and (4) sources of wastewater discharge. The government also was permitted to test wastewater and seize any documents relating to wastewater discharge. Eleven days later, the EPA executed a second search warrant at the Florida Camp. This second warrant authorized the government to excavate a PVC pipe, take additional photographs, and conduct more tests on the water.

After a federal grand jury returned an indictment charging, *inter alia*, violations of the CWA, the defendants challenged the validity of the two search warrants executed by the EPA. Specifically, the defendants alleged that the EPA searches were void because the warrant applications did not make a showing of federal jurisdiction over the body of water at issue.

In deciding the motion to suppress, the Court was called upon to apply the Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006). The Court stated that the jurisdictional requirement would be met if "the affidavits satisfy either the plurality's test (a relatively permanent, standing or continuously flowing water) or the general parameters of Justice Kennedy's concurrence (a tributary that feeds into a traditional navigable water; not necessarily a continuously flowing stream, river or ocean, but perhaps not also a ditch or drain." Evans, 2006 WL 2221629, at *19.

The search warrant affidavits stated the following: (1) a white PVC pipe extended from the Florida Camp property to the creek behind the Camp; (2) wastewater containing raw human waste directly discharged out of the pipe into the creek; (3) city tax maps and aerial photographs indicate that the creek at issue is the headwaters of Cow Creek, which flows directly into the St. Johns River, a body of water used in interstate and foreign commerce; (4) the creek is a continuously flowing body of water with a width of 7-8 feet and a depth of up to a foot.

The Court found these allegations sufficient to find CWA jurisdiction, regardless of whether the plurality opinion or Justice Kennedy's concurring opinion controls. Accordingly, the Court denied the defendants' motion to suppress the search warrant based on jurisdictional grounds.

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On August 23, 2006, the government filed a notice of appeal regarding three pretrial orders of the court and a motion to stay the trial pending the resolution of the appeal. On August 24th, Judge Molloy granted from the bench the motion to stay. The court said it would rule on any pre-trial

motions not involved in the pending appeal, but otherwise has acknowledged that jurisdiction now rests with the Ninth Circuit.

On July 27, 2006, the district court dismissed the knowing endangerment object of the conspiracy from the superseding indictment. A three-day hearing was held in which oral argument was heard on the motion to dismiss the object from the conspiracy, as well as on 28 other motions *in limine*. The court already dismissed the CAA knowing endangerment object of the conspiracy from the original indictment in June of this year, ruling that it was time-barred.

W.R. Grace ("Grace") and seven of its corporate officials were originally charged with conspiracy to defraud government agencies, including the EPA, knowing endangerment under the CAA, and obstruction of justice. Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. In the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to the EPA. Despite knowledge of the hazardous asbestos contamination, Grace continued to mine, manufacture, process and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

After the mine shut down in 1990, the company sold its contaminated mine properties to local buyers without informing them of the asbestos contamination. In 1999, Grace and company officials continued to mislead and obstruct the government when they failed to disclose the nature and extent of Libby's asbestos contamination to the EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Both trial dates of September 11, 2006, and March, 2007, have been adjourned.

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Indictments

United States v. Overseas Shipholding Group et al., No. 1:06-CR-65 (E. D. Tex.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Lana Pettus [redacted] and AUSA Joe Batte [redacted].

On August 17, 2006, a second superseding indictment was returned by a grand jury against Overseas Shipholding Group, Inc. ("OSG"), and Kun Yun Jho, modifying the language of a previous indictment returned on July 19, 2006. The company was charged with conspiracy, false statement and APPS violations. Jho, the chief engineer of the *M/T Pacific Ruby*, is similarly charged with falsifying the vessel's oil record book by omitting discharges that occurred during a time when Jho, and crew members at his instruction, deliberately "tricked" the oil water separator ("OWS"). The *Pacific Ruby* is flagged in the Marshall Islands and is owned and controlled by OSG.

In or about May 2005, in response to knowledge of deliberate acts of pollution using bypass equipment and the circumvention of pollution control equipment, as well as knowledge that documents on other ships in its fleet had been falsified, OSG installed anti-tricking devices on the ship including a device on the fresh water system to prevent it from being used to trick the OWS.

Between approximately May 2005 and July 2005, Jho directed a subordinate to use a screwdriver to repeatedly jam open a pneumatic valve, part of the ship's pollution control equipment, allowing fresh water to trick the oil content meter. He then made entries in the oil record book designed to mislead Coast Guard officials to believe that the ship's oil pollution control equipment was being properly used.

Trial is scheduled to begin on October 16, 2006. This case was investigated by the United States Coast Guard.

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United States v. Troy Gentry et al., No. 06-CR-00235 (D. Minn.), AUSA Michael Dees [redacted]

On August 15, 2006, country singer Troy Lee Gentry and commercial bear guide Lee Marvin Greenly were charged with conspiracy to violate the Lacey Act for illegally killing and tagging a tame black bear. Greenly sold a tame, trophy-caliber black bear to Gentry for approximately $4,650. Following the sale, Gentry allegedly killed the captive-reared bear with a bow and arrow while the bear was enclosed in a pen on Greenly's property. The indictment further states that they subsequently tagged the bear with a Minnesota license and registered the animal as if it had been killed in the wild. Greenly also was charged with two additional violations of the Lacey Act relative to his work as a licensed commercial bear guide.

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

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United States v. Citgo Petroleum Corporation et al., No. 2:06-CR-00563 (S. D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted], ECS Trial Attorney Lary Larson [redacted] and SAUSA William Miller [redacted]

On August 9, 2006, a ten-count indictment was returned charging Citgo Petroleum Corporation, its subsidiary, Citgo Refining and Chemicals Co., and Philip Vrazel, the environmental manager at its Corpus Christi, Texas, East Plant Refinery, with criminal violations of the Clean Air Act and the Migratory Bird Treaty Act.

Both the corporation and subsidiary were charged with two counts of operating the East Plant Refinery in violation of the National Emission Standard for Benzene Waste Operations and two counts of operating open top tanks as oil water separators without first installing the required emission controls. The CAA and EPA regulations require Citgo to control the emission of benzene from wastewater produced at the refinery.

The indictment also names Vrazel for failing to identify all of the points in the refinery wastewater system where potentially harmful benzene was generated in a report filed with the Texas Commission on Environmental Quality ("TCEQ") for the year 2000. According to the indictment, Citgo operated its Corpus Christi refinery in 2000 with more than 57 megagrams of benzene in waste streams which were exposed to the air. One megagram is equal to one metric ton. Federal regulations limit refineries to operating with no more than six megagrams of benzene in their exposed waste streams. Citgo is also charged with operating with more than seven megagrams of benzene in its exposed waste streams in 2001.

The indictment states that Citgo used two large open top tanks as oil water separators between January 1994 and May 2003 without the required emission controls. During an unannounced

inspection in March 2002, TCEQ inspectors found approximately 4.5 million gallons of oil in the two open top tanks. These tanks also attracted migratory birds, several of which were killed (including four cormorants, five pelicans, and 20 ducks) after they landed in the open tanks and were trapped in the oil. As a result, Citgo Refining and Vrazel were charged with an additional five counts of violating the Migratory Bird Treaty Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, the FBI, the Texas Parks and Wildlife Division and the Texas Commission on Environmental Quality.

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United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [redacted]

On August 7, 2006, Hisayoshi Kajima was arraigned on a 17-count indictment returned July 26, 2006, charging him with ESA and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation indicates that Kojima allegedly sold and smuggled numerous endangered butterfly species into the United States, including a pair of Queen Alexandra's Birdwings. This is the largest known butterfly in the world with a wing span of 12 inches. http://home.att.net/~Bret71/O_alexandriae.htm. The indictment states that documents submitted with this particular shipment declared that the package was a gift of "dry butterfly" worth $30, when in fact it consisted of the two giant butterflies which had been sold for $8,500. Twice in recent months, Kojima allegedly offered for sale the endangered Giant Swallowtail butterfly, an endangered species from Jamaica. The Giant Swallowtail butterfly is the largest butterfly in the western hemisphere. http://home.att.net/~Bret71/P_homerus.htm.

Kojima will remain in custody, as a flight risk, pending trial, which is scheduled to begin September 26, 2006. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Chang-Sig O et al., No. 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted].

On August 3, 2006, a three-count indictment was returned charging chief engineer Chang-Sig O and Mun Sic Wang, second engineer for the *M/V Sun New*, a bulk carrier vessel, with conspiracy, obstruction of justice, and an APPS violation in connection with illegally discharging sludge and oil-contaminated bilge waste into the ocean using two bypass hoses.

According to the indictment, the defendants used two hoses on a trip from Korea to Camden, New Jersey, between November 20, 2005, and December 31, 2005, to circumvent required pollution prevention equipment and dump sludge and oily bilge waste into the ocean. On January 3, 2006, this bypass equipment was discovered by the U.S. Coast Guard during an inspection of the vessel in New Jersey. The discharges were not noted in the oil record book, however, and thereby obstructed the investigation.

This case was investigated by the United States Coast Guard.

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Pleas / Sentencings

United States v. All Power Manufacturing Company, No. 06-CR-00612 (C.D. Calif.), AUSA William Carter [redacted]

On August 24, 2006, All Power Manufacturing Company ("All Power"), pleaded guilty to an information charging it with one misdemeanor violation of the CWA for negligently discharging pollutants, namely, petroleum and oil-contaminated wastewaters, into Coyote Creek and the San Gabriel River in March 2004.

All Power was involved primarily in the business of manufacturing parts used in the aerospace industry. During the course of cleaning its machinery, the company generated wastes contaminated with petroleum and oil which usually were transported to a licensed waste disposal facility. At some point after mid-January 2004, an All Power employee emptied the wastes into a floor drain connected to a clarifier that was located on the premises of the facility. The clarifier was typically used to treat wastewaters generated by floor-cleaning operations prior to being discharged into the sewer system maintained by the Los Angeles County Sanitation Districts.

In March 2004, a hose at the facility burst discharging water into the floor drain and ultimately into the clarifier, which held the oil-contaminated wastes. As a result, the clarifier overflowed and discharged those wastewaters to a street gutter, which in turn flowed into the storm drain system and ultimately reached Coyote Creek and the San Gabriel River, both navigable waters of the United States.

The company was sentenced immediately to pay a $150,000 fine, half of which will support community service projects, including the National Marine Fisheries Service and the International Bird Rescue Research Center in San Pedro. All Power also will pay approximately $20,000 in restitution to the Los Angeles County Department of Public Works and the California Department of Fish and Game, which responded to the spill, and complete a one-year term of probation.

This case was investigated by the California Department of Fish and Game, the Los Angeles County Department of Public Works, the City of Santa Fe Springs, and the FBI.

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United States v. East Coast Capital Company LLC, et al., No. 5:06-CR-00043, 62, 64 (N.D.N.Y.), AUSA Craig Benedict [redacted].

On August 28, 2006, Andrew Swaap was sentenced to serve 21 months' incarceration followed by two years' supervised release. Swaap was the director of acquisitions for the East Coast Capital Company, LLC ("East Coast"). The defendants were involved in the illegal removal and disposal of asbestos and perchloroethylene (a toxic chemical used in the dry cleaning industry) at a building owned by East Coast, which also hired workers to renovate the facility. The asbestos was disposed of in public trash dumpsters and the chemicals were disposed of into sewer drains.

Asbestos fibers under pipe

East Coast was sentenced on August 24th to pay a $500,000 fine, serve a two-year term of probation, and pay the unpaid balance in clean up costs which was $49,500. The company pleaded guilty in March of this year to a conspiracy to violate the Clean Air and Clean Water Acts.

Glen Middleton, the property manager for the company, was sentenced August 15th to serve 27 months' incarceration followed by two years' supervised release for his involvement in the conspiracy. Middleton arranged for hiring untrained individuals who were not given any protective equipment while they illegally disposed of the asbestos and perchloroethylene. Swaap pleaded guilty to a similar conspiracy violation for helping to hire the untrained works, as well as arranging to purchase the building.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation's Division of Law Enforcement and the New York State Department of Labor's Asbestos Control Bureau. Assistance was also provided by the United States Environmental Protection Agency National Enforcement Investigations Center.

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United States v. Michael Johnson et al., No. 1:06-mj-00394 and 395 (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney/SAUSA David Joyce [redacted]

On August 22, 2006, Michael Johnson was sentenced to pay a $6,000 fine and an additional $3,000 in restitution to the National Fish and Wildlife Foundation. Johnson also will serve three years' probation (one year of supervised and two years of unsupervised) and will be prohibited from hunting for three years.

Johnson and co-defendant Robert Brooks each pleaded guilty in May of this year to a one-count information charging a misdemeanor Lacey Act violation. Each defendant received wildlife in the Eastern District of Virginia that was taken in violation of New Mexico state law. Specifically,

Brooks took possession of an elk, which he killed in September 2001, and Johnson received an elk, which he killed in September 2003.

Brooks was sentenced August 15th to pay a $5,000 fine, serve three years' probation, and pay $2,000 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. Gulf Services Contracting, Inc., et al., No. 1:06-CR-00158, 159 and 160 (S.D. Ala.), AUSA Michael Anderson [redacted]

On August 15, 2006, Gulf Services Contracting, Inc. ("GSCI"), pleaded guilty to one count of major fraud against the U.S. in violation of 18 U.S.C. § 1031, stemming from the removal of asbestos-containing material and lead from federal property. Company president and owner Michael Burge pleaded guilty to a false statement violation and Jonathan Valle, a GSCI supervisor, also pleaded guilty to a false statement violation on August 17th.

From 1997 through 2001, the defendants entered into contracts with the federal government for the purpose of removing asbestos and/or lead from ten federal military facilities in Alabama, Florida, Mississippi, and Georgia. They subsequently submitted reports to the government containing fraudulent training certification information about the employees assigned to the projects, as well as falsified personnel data.

This case was investigated by the United States Environmental Protection Agency, Office of Inspector General, Defense Criminal Investigation Division and the United States Environmental Protection Agency Criminal Investigation Division. Assistance was provided by the United States Army Criminal Investigation Division, the United States Air Force Office of Special Investigations, the United States Naval Criminal Investigative Service, and the Social Security Administration, Office of Inspector General.

Yes EPA-OIG was lead, until their agent retired, then DCIS. Investigation was conducted primarily by them, EPA-CID, SSA-OIG and DCIS. The FBI, NCIS and ICE [redacted] the beginning, but were diverted following 9/11 (hence the contract fraud charges and nothing regarding the recruitment and employment of illegal aliens). AFOSI (Hurlburt Field, FL) assisted with respect to the charges affecting their base.

NOT RESPONSIVE

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United States v. Danaos Shipping Co., Ltd., No. 2:06-CR-00502 (C.D. Calif.), AUSA Dorothy Kim [redacted].

On August 14, 2006, Danaos Shipping Co., Ltd. ("Danaos"), a company based in Greece, pleaded guilty to a negligent discharge of oil into the Port of Long Beach from one of its ships and to obstructing a Coast Guard investigation of the oil spill.

The spill came from the *APL Guatemala,* an 803-foot-long, Greek-flagged ocean-going cargo vessel that transported goods around the world. In July 2001, while anchored at the Port of Long

Beach, the vessel leaked oil from its sea chest. (The sea chest is an intake located at the bottom of the ship which supplies seawater to various cooling systems.) After the vessel's crew members observed an oily sheen near the vessel, the spill was reported to the Coast Guard, which investigated the incident. The sheen dissipated soon thereafter, and the Coast Guard left the area.

The following day, crew members observed fresh oil leaking from the starboard side of the vessel. Instead of notifying the National Response Center, however, they poured detergent into the water in an attempt to disperse and hide the spill. That same morning, divers hired by Danaos inspected the ship and noticed oil actively flowing from the vessel. One diver informed a company official on board the ship that he had observed the oil flowing from the vent holes in the ship's sea chest. Danaos officials directed the diver to remove the oil from the sea chest and to falsely state on his report that he had only inspected valves, but had not investigated an oil spill.

As part of a plea agreement, the company has agreed to be sentenced to serve a three-year term of probation, to implement and fund an environmental compliance plan, and to pay full restitution to the Coast Guard and the United States Environmental Protection Agency.

Additionally, Danaos has agreed to pay a $500,000 fine, with $250,000 of the fine to be devoted to community service projects. Fifty thousand dollars of the community service money will go to the Santa Monica Mountains National Recreational Area, and $200,000 will be split between the National Marine Fisheries Service and the Channel Islands National Marine Sanctuary.

The company is scheduled to be sentenced on October 23, 2006. This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Panhandle Trading Inc., et al., No. 5:05-CR-00044 (N.D. Fla.), ECS Trial Attorney Mary Dee Caraway [redacted] and AUSA Stephen Presser [redacted]

On August 11, 2006, Danny D. Nguyen, Panhandle Seafood, Inc. ("PSI"), and Panhandle Trading, Inc. ("PTI"), pleaded guilty to conspiracy to violate the Lacey Act and conspiracy to commit money laundering for their role in an illegal catfish importation scheme.

Eight defendants were charged in a 42-count superseding indictment returned in May of this year. Nguyen was the vice president of both PTI and PSI. Four of the five remaining defendants are located in Vietnam. A fifth defendant, Buu Huy, a/k/a Huy Buu, is awaiting extradition from Belgium.

The indictment alleges that between May 2002 and April 2005 the defendants engaged in a scheme to intentionally mislabel certain frozen farm-raised Vietnamese catfish fillets, which were imported into the U.S. from Vietnam, in order to evade duties that had been imposed by the U.S. Department of Commerce on those imports. According to the plea agreement, Nguyen, PTI, and PSI subsequently engaged in a scheme to sell the frozen catfish fillets as wild-caught grouper in the American and Canadian commercial seafood markets. The scheme involved imports totaling over a million pounds of catfish labeled as grouper, channa, snakehead, or bass. More than 250,000 pounds of the fish have been seized in this investigation.

Sentencing is scheduled for November 17, 2006.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement and the United States Department of Homeland Security, Immigration, Customs and Border Protection.

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United States v. Amar Alghazouli et al., No. 05-CR-1148 (S.D. Calif.), AUSA Melanie Pierson [redacted]

On August 11, 2006, Ahed Alghazouli pleaded guilty to a conspiracy to launder money in connection with proceeds from the sale of illegally imported R-12 refrigerant (commonly known as "Freon"). Alghazouli admitted that, between June 1997 and October 2004, he and his brothers, Amar Alghazouli and Omran Alghazouli, operated a business in San Diego known as United Auto Supply, through which they sold automotive supplies, including R-12 purchased from individuals known to them to have smuggled the refrigerant into the United States from Mexico. They purchased cylinders of R-12 from Mexico, altered the writing on the cylinders to disguise their origin, and then sold them to customers in parking lots in the San Diego area.

Amar was sentenced last month after being convicted at trial in March of this year on five of the six counts charged. He was sentenced to pay a $7,500 fine and serve 41 months' incarceration followed by three years' supervised release. Amar was convicted of conspiracy to violate the CAA and conspiracy to launder money, two smuggling violations, and one CAA violation for the unlawful sale of Freon. Both Ahed and Amar will be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the government.

Ahed is scheduled to be sentenced on December 7, 2006, and Omran remains a fugitive.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation Division; Federal Bureau of Investigation; and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement, Office of Inspector General.

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United States v. Richard Schaffer et al., No. 06-CR-60116 - 60119 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On August 10, 2006, for his guilty plea to one CAA violation, Richard Schaffer was sentenced to serve six months' home detention as a condition of two years' probation, and ordered to pay a $25,000 fine. In addition, Schaffer must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos, and complete 250 hours of community service. Schaffer is the last defendant to be sentenced in this case involving the improper removal of asbestos during a demolition and renovation project in 2003 at the Pine Crest Village Apartment Complex ("Pine Crest") in Fort Lauderdale, Florida.

From approximately April 18, 2003, through April 28, 2003, Tarragon Management, Inc. ("TMI"), managing director Schaffer, project manager Robert Violino, and contractor Benco Development, Inc. ("Benco"), engaged in demolition and renovation activities that disturbed approximately 6,000 square feet of regulated asbestos-containing materials at Pine Crest without complying with the required work standards, in spite of four environmental assessments, an asbestos operations and maintenance program plan identifying the presence of asbestos at the facility, and numerous warnings by the Broward County Department of Planning and the Environmental Protection Asbestos Abatement Coordinator.

In June of this year, TMI pleaded guilty to, and was sentenced for, one CAA NESHAP violation and was ordered to serve a five-year term of probation, pay a $500,000 fine and pay an additional $500,000 in community service to the Florida Environmental Task Force Trust Fund. TMI also must implement a comprehensive compliance plan. Also in June, Violino pleaded guilty to a CAA violation and was sentenced to serve two years' probation with six months of home detention.

Violino was further ordered to pay a $25,000 fine and must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos.

Benco, the construction management company for the project, pleaded guilty to one CAA NESHAP violation in May of this year and was sentenced to complete a two-year term of probation, pay a $25,000 fine, and pay $25,000 in community service to the Florida Environmental Task Force Trust Fund. In addition, Benco's president must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Broward County Sheriff's Office.

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United States v. MK Shipmanagement Company, Ltd., No. 2:06-CR-00307 (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Thomas Calcagni [redacted]

On August 8, 2006, MK Shipmanagement Company, Ltd., operator of the *M/V Magellan Phoenix,* was sentenced as a result of pleading guilty in April of this year to one APPS violation for falsifying the ship's oil record book ("ORB"). The company will complete a three-year term of probation and pay a $200,000 fine, $100,000 of which will be split between two whistleblowers who brought this case to the attention of the authorities. An additional $150,000 will go to the National Fish and Wildlife Foundation to be applied toward the Delaware Estuary Foundation. The company also must implement an environmental compliance program.

The ship left Rotterdam in December 2004 and arrived with a cargo of grapes in Gloucester City, New Jersey, in March 2005. The Coast Guard boarded and inspected the ship on March 25, 2005. In the course of their inspection, inspectors learned that the *Magellan Phoenix* had routinely discharged oil sludge and oil-contaminated bilge water directly overboard into the ocean by intentionally by-passing the ship's oily-water separator and without recording the discharges in the ORB.

Noel Abrogar, the ship's chief engineer, previously pleaded guilty to an APPS violation for presenting the ORB to investigators. He was sentenced in January of this year to serve a year and a day of incarceration. Abrogar appealed and the Third Circuit remanded for sentencing on August 18, 2006. [See *Significant Opinions*, page 3, above.]

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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 August 8, 2006, Christopher Weaver pleaded guilty 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, Weaver 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 in the water 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. Harold DeGregory, Jr., No. 05-CR-60201 (S.D. Fla.), AUSAs Lynn Rosenthal [redacted] and Tom Watts-FitzGerald [redacted]

On August 4, 2006, Harold DeGregory, Jr., was sentenced to serve two years' incarceration and was further ordered to forfeit two Piper Navajo aircraft. DeGregory was convicted at trial in January of this year on five of the seven counts charged for the unlawful transportation of hazardous and radioactive material, specifically Iridium-192. He also was convicted of making a materially false statement to the government.

The defendant is the president and registered agent for H&G Import Export of Fort Lauderdale ("H&G"). DeGregory sub-contracted to Amelia Airways, a commercial air carrier, which transported hazardous and radioactive material from Fort Lauderdale to Freeport, Bahamas, without the pilot's knowledge. DeGregory never submitted the required hazardous material manifests, and the documents he provided to Customs agents reflecting transportation of cargo failed to mention the Iridium-192. DeGregory also flew his own aircraft from Freeport, Bahamas, to Fort Lauderdale Executive Airport. The customs declaration form he provided to Customs officials for that flight failed to disclose the hazardous radioactive cargo hidden in the wing compartment of his aircraft, which was discovered upon inspection.

This case was investigated by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement and the Federal Aviation Authority.

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United States v. Brett Boyce, No. 3:06-CR-00031(W. D. Va.), ECS Trial Attorneys Wayne Hettenbach [redacted] and David Joyce [redacted] and AUSA Jean Hudson [redacted]

On August 3, 2006, Brett Boyce pleaded guilty to a one-count information charging him with a misdemeanor Lacey Act violation for receiving wildlife (an elk) in interstate commerce. Boyce participated in a hunt in 2003, which was in violation of New Mexico state law.

Sentencing is scheduled for January 8, 2007. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Wallenius Ship Management, Pte., Ltd., et al., No. 2:06-CR-00213 (D.N.J.), ECS Trial Attorney Malinda Lawrence [redacted] and AUSA Thomas Calcagni [redacted].

On August 3, 2006, Wallenius Ship Management, Pte., Ltd. ("WSM"), a Singapore shipping company, was sentenced to pay a $5 million fine. Of that fine, $2.5 million was awarded to, and equally divided among, four whistleblowers in the case. An additional $1.5 million will be devoted to

community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects in New Jersey. WSM also will serve a four-year term of probation with an option to terminate after three years and must implement an environmental compliance plan. Nyi Nyi, the former chief engineer of the *M/V Atlantic Breeze*, was sentenced to complete a two-year term of probation due to a substantial downward adjustment for cooperation.

The defendants pleaded guilty in March of this year to violations associated with the illegal dumping of oily wastes over a period of approximately three years and the overboard dumping of plastics in 2005. The company pleaded guilty to conspiracy to violate APPS for failure to maintain an oil record book ("ORB"), making false statements and writings, and obstructing a government proceeding; three substantive APPS violations for failing to maintain the ORB; and three substantive violations of making materially false statements and using materially false writings. Nyi pleaded guilty to one false statement violation for presenting a false ORB to investigators.

The U.S. Coast Guard began an investigation in November 2005 after crew members on the *Atlantic Breeze*, a Singapore-registered car carrier vessel managed by WSM, sent a fax to an international seafarers' union alleging that they were being ordered to engage in deliberate acts of pollution, including the discharge of oil-contaminated bilge waste and sludge, as well as garbage and plastics. As a result of this tip, the Coast Guard conducted an inspection of the ship and discovered a multi-piece bypass system, referred to on board as "the Magic Pipe," hidden in various locations on the ship.

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

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United States v. Industrial-Commercial Consulting International, Inc., No. 2:06-CR-00025 (W. D. Pa.), AUSA Brendan Conway [redacted]

On August 1, 2006, Industrial Commercial Consulting International, Inc., ("ICCI") pleaded guilty to, and was sentenced for, conspiring to illegally remove asbestos-containing material from the former Woodville State Hospital in violation of federal workplace standards. Co-defendant Charles Victoria was charged in June of this year with conspiracy to violate the Clean Air Act and with obstruction of an administrative proceeding. Victoria was hired by ICCI to supervise removal of asbestos-containing material from a portion of the decommissioned hospital from December 1999 through December 2000.

ICCI was sentenced pay a $300,000 fine and complete a three-year term of probation. The company may offset $25,000 of the fine by implementing an environmental compliance plan designed to prevent further violations. Up to $150,000 of the fine may be additionally offset through payments to support environmental projects in the vicinity of the former hospital.

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

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United States v. Great Cats of the World, Inc., et al., No. 3:05-CR-00225 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

On August 1, 2006, five defendants from Oregon, California, Texas, and New York were charged with various crimes related to the illegal sale of ocelots, a rare species of leopard protected under the Endangered Species Act ("ESA"). Civil penalties were imposed upon three others, from California, Pennsylvania, and Washington, for their involvement in the illegal trafficking. Nine people have been charged thus far, including Deborah Walding, who pleaded guilty in June of 2005 to an ESA violation and was sentenced in April of this year to serve one month of incarceration and nine months' home confinement, followed by a year of supervised release. Walding also will pay $25,000 in restitution to the World Wildlife Fund's North American Endangered Species Trafficking Program. The plea agreement states that Walding attempted to sell two ocelot kittens in 2002 and two adults in 2004.

As few as 70 ocelots are known to remain in the wild in the United States, most of them on the Laguna Atascosa National Wildlife Refuge in south Texas. The large, nocturnal cats are endangered throughout their range in Texas and Central and South America, mostly as a result of habitat destruction and illegal trafficking in pelts. They are protected by national and international laws.

The investigation in this case uncovered an aggressive, nationwide effort to illegally sell endangered animals while attempting to conceal the activity. Three of the defendants, who pleaded guilty August 2nd, admitted they had lied to officials by making false statements on required documents. A gift of an endangered species is not barred by law. In each of these five cases, the defendant submitted a form claiming that the ocelot was a gift to the purchaser, when in fact it was sold. In each case, the ocelots were sold for thousands of dollars, several for as much as $5,000 each.

Two of the ocelots sold as part of the illegal sales died while under care of the purchaser, although no claim of mistreatment is alleged. Five ocelots have been or will be seized by the U.S. Fish and Wildlife Service, including the two dead animals.

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Below are additional details on the individual defendants:

United States v. Isis Society For Inspirational Studies, Inc., a/k/a the "Temple of Isis, 3:06-CR-00313 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

The Isis Society for Inspirational Studies, also known as the "Temple of Isis," is a company located in Geyserville, California. The company pleaded guilty to conspiring to violate the ESA through the illegal sale of six ocelots to purchasers in Texas, Florida, Oregon, and Minnesota. Throughout the course of the conspiracy, the Temple of Isis agreed with ocelot purchasers to mischaracterize the sale of ocelots as "donations" and to mischaracterize the payments for these animals as "contributions" to charitable organizations affiliated with the defendant, including the "Temple of Isis" and the "Isis Oasis Sanctuary." The purchasers falsified the required documentation in an attempt to conceal their actions.

The defendant has agreed to serve a two-year term of probation and may be ordered to pay a $60,000 fine.

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United States v. Great Cats of the World, Inc., 3:06-CR-00314 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Great Cats of the World ("Great Cats") is an Oregon corporation located in Cave Junction, Oregon, which formerly operated in Minnesota under the name "Center for Endangered Cats." The information states that the Center for Endangered Cats purchased an ocelot from the Temple of Isis and submitted a document falsely claiming that the ocelot had been "donated," when in fact the defendant paid thousands of dollars for the animal.

Great Cats pleaded guilty to one ESA violation and may be ordered to pay a $10,000 fine. The company has agreed to serve a one-year term of probation and also has agreed to forfeit the illegally purchased ocelot.

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United States v. Amelia Rasmussen, 3:06-CR-00312 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Amelia Rasmussen is a resident of Nixon, Texas. The information states that Rasmussen purchased two ocelots from the Temple of Isis and falsely claimed that they had been given to her when in fact she paid thousands of dollars for the animals.

The defendant pleaded guilty to an ESA violation and has agreed to serve a one-year term of probation. She also may be ordered to pay a $15,000 fine.

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United States v. Jackie Sinott, 3:06-CR-00311 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Jackie Sinott is a resident of Silverton, Oregon. The information states that Sinott purchased an ocelot from the Temple of Isis and then falsely claimed that she had received it as a gift despite paying thousands of dollars for the animal.

Sinott will enter a pre-trial diversion agreement which requires her to pay a fine of $10,000. The government has agreed to dismiss the charges against her if she does not violate any laws for six months.

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United States v. Glenn Donnelly, No. 3:06-CR-00286 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

An indictment was filed July 19, 2006, charging Glenn Donnelly with purchasing two ocelot kittens from Deborah Walding in April 2002 in violation of the Lacey Act and the ESA. Donnelly also is charged with falsely claiming that the sale was a "donation." Donnelly is scheduled to go to trial on October 10, 2006.

These cases were investigated by the United States Fish and Wildlife Service.

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United States v. Richard Wolfe et al. (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney/SAUSA David Joyce [redacted].

On July 26, 2006, Richard Wolfe, Christopher Wolfe, and Branden Ellison pleaded guilty to misdemeanor Lacey Act violations. The defendants killed wildlife, including pronghorn antelope and elk, in violation of New Mexico law and received the wildlife in Virginia.

Sentencing is scheduled to take place on October 17, 2006. This case was investigated by the United States Fish and Wildlife Service.

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Richard Wolfe with elk

United States v. Parkland Town Center, LLC, et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Jose Bonau [redacted].

On August 1, 2006, Parkland Town Center, LLC ("Parkland"), a Palm Beach real estate development firm, and company owner and developer Neil Kozokoff, were sentenced in this asbestos abatement prosecution. Both defendants were sentenced to serve two-year terms of probation. Parkland also will pay a $125,000 fine and $45,000 to the Statewide Florida Environment Task Force Trust Fund. Kozokoff will pay a $25,000 fine and complete 90 days' home confinement. The plea agreement had only called for 60 days, but the judge added 30 additional days.

Co-defendant Terry Dykes was sentenced in July to serve 24 months' incarceration followed by two years' supervised release. He was taken into custody and immediately remanded to the Bureau of Prisons. Dykes, a subcontractor, was convicted by a jury in May of this year of CAA NESHAP violations for his involvement in the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000.

Parkland and Kozokoff pleaded guilty just prior to trial. The company pleaded guilty to one violation of the CAA for failure to file notice of a demolition or renovation, and Kozokoff pleaded guilty to being an accessory after the fact of a CAA violation for failure to file notice of demolition or renovation. General contractor Mark Schwartz pleaded guilty prior to indictment to one CAA violation and was sentenced in November 2005 to serve a five-year term of probation.

While installing a sprinkler system in the building, another contractor filed a complaint with the local building inspector after he discovered what he believed to be asbestos. Further investigation disclosed that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

This case was investigated by the United States Environmental Protection Agency with assistance from the Palm Beach County Sheriff's Department.

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[redacted]
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