ENVIRONMENTAL CRIMES MONTHLY BULLETIN

August 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.

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AT A GLANCE

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Significant Opinions

9th Circuit

United States v. Pedro Babauta, 2006 WL 1627289, (9th Cir. June 6, 2006), 05-10645.

On June 7, 2006, the 9th Circuit reversed the convictions in this false statements' case, and remanded for judgment of acquittal on both counts. Pedro Babauta, a former laboratory manager for the Commonwealth Utilities Corporation ("CUC") in Saipan, Commonwealth of Northern Mariana Islands ("CNMI"), was sentenced for falsifying documents concerning the microbiological content of CUC drinking water which were submitted to the CNMI Department of Environmental Quality ("DEQ") in September 2005. He was convicted by a jury in June 2005 of two false statement violations and acquitted on two false statement charges. Babauta was ordered to serve one year in prison followed by three years' supervised release.

In his appeal, the defendant argued that the government failed to submit one of the elements of the offense to the jury, specifically, proof of the government's federal jurisdiction. The government was required to prove that reports submitted to the local DEQ, an agency of the CNMI, were matters within the jurisdiction of the United States Environmental Protection Agency ("USEPA"). However, since the district court instructed the jury, as a *matter of law*, that the reports were within the USEPA's jurisdiction, it erred by not allowing the jury to decide this as a *factual matter*.

The Court went on to note that the government failed to provide adequate proof that the USEPA had properly granted this state agency "primary enforcement responsibility" under 42 USC § 300(g)(2). A notice was issued in 1982 in the Federal Register by EPA that the DEQ had satisfied the criteria to be granted federal enforcement authority. This authority, however, was contingent upon EPA's then following through with a final notice confirming that no requests for a hearing to discuss this appointment had been made within the requisite 30 days. As a result, the Court noted, there was insufficient evidence to show that the DEQ was actually authorized to receive the monthly reports from which the false statements were charged. Double jeopardy precludes another trial if an appellate court fails to find the evidence to be legally sufficient, hence the judgment of acquittal.

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11th Circuit

United States v. Rick Stickle, ___F3d.___, 2006 WL 1843365 (11th Cir. 2006).

On July 6, 2006, the 11th Circuit affirmed the convictions of Rick Stickle, Chairman of Sabine Transportation Company, for participation in a multi-object conspiracy and for a substantive APPS violation based upon the unlawful dumping of 442 tons of diesel-contaminated wheat from the *S/S Juneau* into the ocean. In a published opinion, the Court rejected Stickle's challenge to the APPS regulations and several additional arguments regarding the high-seas venue statute and the sufficiency of the government's proof of venue. Specifically, the Court said the government properly charged the defendant with violating 33 CFR § 151.10(a). The ship was certified as a freight vessel, not an oil tanker, and was therefore not certified to discharge oil, let alone 440 metric tons of grain contaminated with 9,000 gallons of diesel fuel. Regarding the venue arguments, the government need only meet the preponderance of the evidence standard for a non-essential element of the crime.

The Court found venue was appropriate in the Southern District of Florida because a false statement made by a co-conspirator in the district had hindered the criminal investigation. The government further established venue in that district since the criminal activities occurred on the high seas, and the last known residence of a co-conspirator was in West Palm Beach, Florida. The court concluded by stating, "There is simply no merit in the contentions made in this appeal."

Stickle was sentenced in April 2005 to serve 33 months' incarceration, followed by two years' supervised release, and was further ordered to pay a $60,000 fine as a result of being convicted in November 2004. Four additional defendants, including the former Sabine president, a former marine superintendent, the former master of the Juneau, and the vessel's former chief officer, pleaded guilty to related offenses and were sentenced to various terms of home confinement, community service, and probation.

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United States v. Norris, ___ F.3d ___, 2006 WL 1716912 (11th Cir. 2006).

In *Norris*, the Eleventh Circuit clarified the calculation of "market value" which, under U.S.S.G. § 2Q2.1, increases the base offense level for offenses involving fish, wildlife, and plants transported in violation of CITES and the Endangered Species Act. The Court held that the "market value" of such shipments should include the value of all fish, wildlife, or plants transported using invalid CITES permits or false labeling because such falsification renders the entire shipment illegal.

Norris and a Peruvian accomplice were charged in the Southern District of Florida with conspiracy, smuggling, facilitating the sale of smuggled merchandise, and false statements. The indictment alleged that Norris' accomplice collected wild orchids in Peru for transport to Norris in the United States. Since the wild orchids were protected by CITES Article II, Norris' accomplice obtained CITES permits to transport artificially-propagated orchids and sent Norris a "key" so that he could decipher the false labels and identify which shipments contained non-artificially-propagated orchids. Norris then sold the CITES-protected orchids in the United States.

Norris pleaded guilty to the indictment and the pre-sentence investigation report ("PSR") assessed a base sentencing level of six under U.S.S.G § 2Q2.1(a). The PSR recommended an eight-

level enhancement under §§ 2Q2.1(b)(3)(A)(ii) and 2B1.1(b)(1)(E) based on its determination that the "market value" of the shipments exceeded $70,000. Norris objected to the PSR and claimed that the appropriate market value of the shipments was $44,703 (which would have resulted in a six-level enhancement). The government agreed with the PSR and contended that the appropriate market value was $86,947. The government argued that this value was correct because the presence of false labeling rendered the entire shipment illegal. The district court agreed and sentenced Norris to serve17 months' imprisonment followed by two years' supervised release. The lower court noted that it would have imposed the same sentence whether the Sentencing Guidelines were mandatory or advisory. Norris appealed, claiming that (1) the district court had improperly interpreted the "market value" enhancement, and (2) that his sentence was unconstitutional under *Booker v. Washington*.

In reviewing the district court's interpretation of § 2Q2.1, the Eleventh Circuit noted that neither the Guideline nor the comments thereto addressed the appropriate market value determination where only part of the shipment contained protected plants. The Court noted, however, that § B1.3(a)(1)(A) instructs that the sentencing court should consider all relevant conduct, including "all acts and omissions committed, aided, abetted, [or] counseled . . ." either "during the commission of the offense" or "in the course of attempting to avoid detection." The Court held that the inclusion of non-protected orchids in the shipments was "an integral part of the conspiracy" to import CITES-protected orchids into the country without detection. Thus, the Court held that the district court had properly calculated the market value enhancement.

The Court rejected Norris' *Booker* argument because the district court made no findings of fact regarding the market value; it merely determined the proper method of calculation. The Court further held that any error in the sentence was harmless, because the lower court specifically noted that it would have imposed the same sentence under advisory Guidelines.

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District Court

United States v. Chevron Pipe Line Company, ___F.Supp.2d___, 2006 WL 1867376 (N.D. Tex. June 28, 2006).

On June 28, 2006, nine days after the *Rapanos* decision, the District Court for the Northern District of Texas issued an 18-page order granting Chevron Pipe Line Company's ("Chevron") motion for summary judgment, finding that there was not a "significant nexus" established between the site of an oil spill, which was an intermittent or ephemeral stream, and navigable-in-fact waters. Nor did the government provide evidence that the oil from this spill actually reached "navigable waters" or adjoining shorelines within the meaning of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq*., as amended by the Oil Pollution Act of 1990 ("OPA"), 33 U.S .C. §§ 2701 *et seq. United States v. Chevron Pipe Line Co.*, ___F.Supp.2d___, 2006 WL 1867376 at *4 (N.D. Tex. 2006). Thus, the district court held that the government lacked jurisdiction to impose a fine under the CWA or OPA without the existence of navigable-in-fact waters.

Sometime on or about August 24, 2000, a pipeline owned by Chevron allegedly corroded to the point that 126,000 gallons of crude oil were discharged, spilling into an unnamed tributary where it pooled and stained about 500 feet of soil downhill and 100 feet uphill. Oil also migrated into nearby Ennis Creek, an intermittent stream. Chevron began immediate remediation and by October 2000 had

removed much of the saturated soil. Chevron contended that, since there was no water flowing in the Creek at the time of the spill nor through October during which much of the remediation had been completed,[1] oil did not enter navigable water.

The *Chevron* court relied heavily on *In Re Needham*, 354 F.3d 340 (5th Cir. 2003), which specifically discussed the relevance of a waterway being navigable-in-fact, and bristled at the governments' contention that the regulatory definition of "navigable" be used to "impose regulations over puddles, sewers, roadside ditches and the like." *Id*. at 345-346. The Fifth Circuit further states "(in) the end, there must be 'a close, direct and proximate link between ... [the] ... discharges of oil and any resulting actual, identifiable oil contamination of natural surface water that satisfies the jurisdictional requirements of the OPA.' " *In Re Needham*, 354 F.3d at 346 n. 9 (quoting *Rice v Harken Exploration Co*., 250 F.3d at 272) (second brackets in original).

The district court also pointed to *Rapanos v. United States*, 547 U.S. ___, 126 S.Ct. 2208, (2006), which, despite the lack of consensus, the Supreme Court plurality opinion questioned CWA jurisdiction over intermittent and ephemeral streams. 126 S.Ct at 5 (plurality opinion)(J. Scalia.). Justice Scalia went on to write that "[t]he separate classification of 'ditch[es], channel[s], and conduit[s]'-which are terms ordinarily used to describe the watercourses through which intermittent waters typically flow-shows that these are, by and large, not "waters of the United States." *Id*. at *12 (emphasis and brackets in original). The district court concluded that the only "plausible" interpretation for "waters of the United States" must be limited to "relatively permanent, standing or continuously flowing bodies of water…" (*Chevron* at *6).

Because the Supreme Court failed to reach a consensus on the matter of CWA jurisdiction in the *Rapanos* matter, Chief Justice Roberts advised that the lower courts will have to do their own analysis "on a case-by-case basis" (*Rapanos* at *24)(Roberts, C.J. concurring). Using Justice Kennedy's "significant nexus" test *Id*. at *24 (J. Kennedy concurring in judgment and writing separately on what falls within jurisdiction of the CWA), the *Chevron* court determined that "…as a matter of law in this circuit, the connection of generally dry channels and creek beds will not suffice to create a "significant nexus" to a navigable water simply because one feeds into the next during the rare times of actual flow." (*Chevron* at *7)

Further, according to dicta in *Needham*, the court must determine, as a material fact, whether "... the site of the farthest traverse of the spill, is navigable-in-fact or adjacent to an open body of navigable water." *Needham*, 354 F.3d at 346 (citing *Rice*, 250 F.3d 264, 269 (5th Cir.2001) (emphasis added)). The only evidence the government provided of whether the oil from the spill reached a "navigable" body of water (which is ultimately the Brazos River) was merely speculative. The government only provided the court with an affidavit from an expert who said it may have been possible *during times of flow* in Ennis Creek that oil could have reached the Brazos. But since the unnamed tributary and the Creek do not fit the (Fifth Circuit's) definition of "navigable waters of the United States," the government must prove the oil *actually* reached navigable waters or adjoining shorelines, which it did not. Absent this evidence, the court granted Chevron's motion for summary judgment.

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[1] The date of the first rainfall was October 12, 2000. Inspection reports filed by the Texas Railroad Commission ("TRC") indicate that oil was still present at the site of the spill in December 2000 and that the company was not in compliance with its clean-up efforts. Chevron did not request final certification from the TRC that additional cleanup was required until May 17, 2005.

Indictments

United States v. Charles Victoria, No. 2:06-CR-00230 (W.D. Pa.), AUSA Brendan Conway [redacted]

On June 21, 2006, Charles Victoria was charged with conspiracy to violate the Clean Air Act and with obstruction of an administrative proceeding. Victoria had been hired to supervise removal of asbestos-containing material from a portion of the decommissioned Woodville State Hospital. The indictment alleges that Victoria conspired to remove the material in violation of CAA workplace standards for asbestos and other standards and that he made misrepresentations to government officials in connection with the clean-up investigation.

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

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United States v. Chian Spirit Maritime Enterprises, Inc., et al., No. 1:06-CR-00076 (D. Del.), ECS Senior Trial Attorney Mark Kotila [redacted] and ECS Trial Attorney Jeff Phillips [redacted]

On July 14, 2006, a five-count indictment was returned by a grand jury charging two corporations and four individuals with violations stemming from the illegal discharge of oily waste from the tanker *Irene E/M*, including conspiracy, falsifying oil record book entries, and tampering with witnesses.

Defendants charged are Chian Spirit Maritime Enterprises, Inc., ("Chian Spirit"), a Greek-based shipping management company; Venetico Marine S/A, corporate owner of the *Irene*; Evangelos Madias, Venetico Marine owner; Christos Pagones, Venetico Marine technical supervisor for the *Irene* Adrien Dragomir, ship's chief engineer; and Grigore Manolache, ship's master. Manolache pleaded guilty to an information charging him with representing false information to the U.S. Coast Guard.

During a routine Coast Guard inspection in December 2005, inspectors uncovered evidence that the oil record book ("ORB") had been falsified. Investigation further revealed that the vessel's oil water separator had been inoperable for the previous year and that overboard discharges of untreated oily water and bilge waste had taken place approximately four times per week while in the open ocean. Most of these discharges took place at night or far from shore during trips to various African ports, from Africa to Brazil, and from Brazil to the United States. These illegal discharges were either recorded in the ship's ORB inaccurately as "discharges through the OWS" or not recorded at all. The ship's engineers also constructed a bypass pipe, which was hidden during Coast Guard boardings. All defendants are alleged to have encouraged crew members to lie to investigators.

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. Overseas Shipholding Group, 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 July 19, 2006, a superseding indictment was returned by a grand jury charging Overseas Shipholding Group ("OSG") with conspiracy, false statement, and Act to Prevent Pollution from Ships ("APPS") violations. On May 17, 2006, Kun Yun Jho, chief engineer of the *M/T Pacific Ruby*, was similarly charged for allegedly falsifying the vessel's oil record book by omitting discharges which 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.

Defendants are scheduled to go to trial in October 2006. This case was investigated by the United States Coast Guard.

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United States v. Alan Veys et al., No. 1:06-CR-0003 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] and AUSA Steven Skrocki [redacted]

On July 19, 2006, a grand jury returned an indictment charging Alan Veys, operator of the Pybus Point Lodge on Admiralty Island, and James Jairell, a Wyoming native, with conspiracy and Lacey Act violations in connection with a scheme where clients at the Lodge were allegedly taken on black bear hunts illegally guided by Jairell in 2001.

According to the indictment Veys, acting alone or with Jairell, recruited clients at sports shows to fish and hunt bears at the Lodge in the spring and fall, for approximately $4,000 per trip. The clients would pay Veys, who later split the fees with Jairell. Jairell guided the clients on black bear hunts, without involving a registered guide as required by Alaska state law. Jairell and Veys would then falsify "sealing certificates" submitted to the state, which claimed the bears were killed on *non*-guided hunts, and ship the bear skins and skulls to the clients from Alaska. Veys is charged with conspiracy and four Lacey Act trafficking counts. Jairell is charged in these counts, as well as eight additional Lacey Act false labeling violations. The indictment includes a forfeiture count which alleges that a boat owned by the Lodge was used to transport the hunters and bear parts, ultimately aiding in the commission of the felony Lacey Act violations.

Jairell previously was convicted in 2005 in Alaska state court of falsifying residency information (with Veys' assistance) in order to obtain his class-A assistant guide license and hunting licenses. Jairell subsequently lost his licenses and was ordered to pay fines. Veys recently was sued by potential buyers of the Lodge, and was ordered to pay a three million dollar civil judgment. Veys filed for bankruptcy protection of the Lodge assets which are valued at approximately two million dollars.

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

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Pleas / Sentencings

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

On June 8, 2006, Luxury Wheels, Inc., an electroplater, and Albert Hajduk, the company's operations manager, pleaded guilty to charges stemming from illegal wastewater discharges into the City of Grand Junction's sewer system. Luxury Wheels 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. According to the indictment, 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 challenges to charges alleging violations of the CWA and RCRA.

Pursuant to their respective plea agreements, Luxury Wheels will pay $350,000 in restitution to the POTW worker plus a $50,000 fine. Defendant Hajduk faces a probably Guidelines' sentence of 10-16 months' incarceration. Sentencing is scheduled for August 25, 2006.

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. Wallace Heidelmark et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Albert Glenn [redacted].

On July 6, 2006, Wallace Heidelmark, president of Indoor Air Quality, Inc. ("IAQ"), an asbestos removal company, was sentenced 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 restitution in the amount of $41,514.17. IAQ was sentenced to complete two years' probation, pay a $100,000 fine, and $41,514.17 in restitution.

The defendants pleaded guilty in January 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 asbestos work practice standards. 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.

As part of their sentence, Heidelmark and IAQ are required to provide restitution to former employees of the company and to homeowners for whom IAQ had performed the removals. 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.

Under the Sentencing Guidelines, Heidelmark faced a term of imprisonment between 63 and 78 months. The primary issue at sentencing was amount of gain that Heidelmark had accrued as a result of his mail fraud. The government argued that the gain should be calculated based upon the costs of air tests that Heidelmark had promised more than 730 homeowners would be performed in their homes after asbestos removal work had been completed, but which Heidelmark and IAQ routinely failed to perform. The government estimated the gain conservatively at more than $350,000.

The court agreed with the government's estimate for the gain resulting from the fraud and agreed with the Guidelines' calculation provided by the government which resulted in an offense level of 26. Rather than imposing a sentence within the Guidelines' range of 63-78 months, however, the court departed downward due to "mitigating circumstances" and sentenced Heidelmark to a term of 24 months imprisonment. The court failed to explain the downward departure and failed to define specifically the "mitigating circumstances" that he believed warranted such a departure.

A third co-defendant, supervisor Jason Scardecchio, pleaded guilty on June 22, 2006, to two counts of mail fraud and one count of violating the asbestos work practice standards. Scardecchio is scheduled to be sentenced on September 21, 2006.

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

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

Freon Cannister

On July 7, 2006, Amar Alghazouli was sentenced to pay a $7,500 fine and serve 41 months' incarceration followed by three years' supervised release. In March of this year, Amar Alghazouli was found guilty of five of the six counts charged for his role in a conspiracy to smuggle ozone depleting substances and to launder money. Specifically, 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. He will also be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the United States.

A 15-count indictment was filed in July 2005 charging Ahed Alghazouli, Omran Alghazouli, and Amar Alghazouli with a variety of offenses related to their operation of a Freon smuggling scheme from approximately June 1997 through October 2004. The defendants operated an automotive supply store known as United Auto Supply. 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.

Ahed is scheduled for trial to begin on August 21, 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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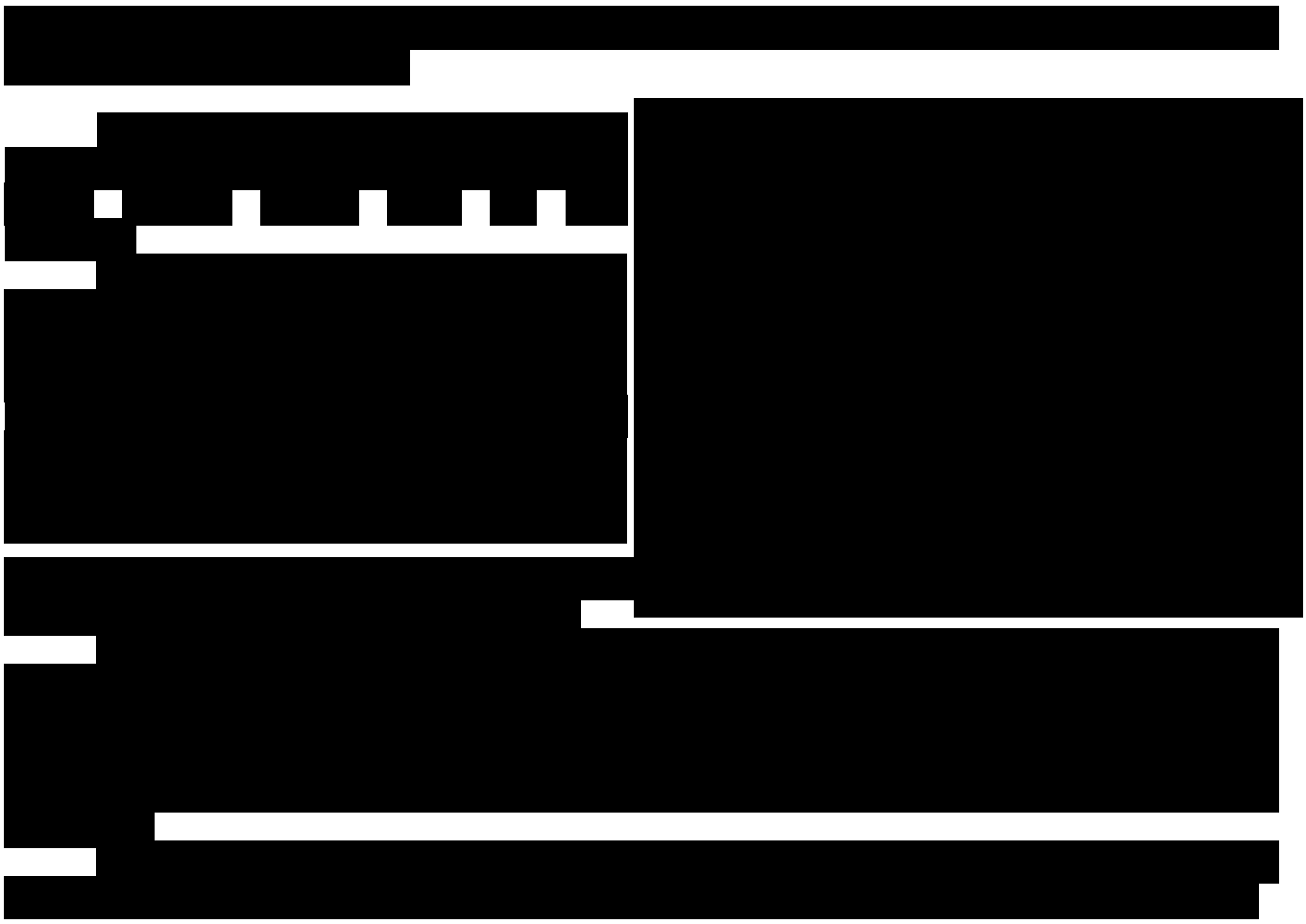

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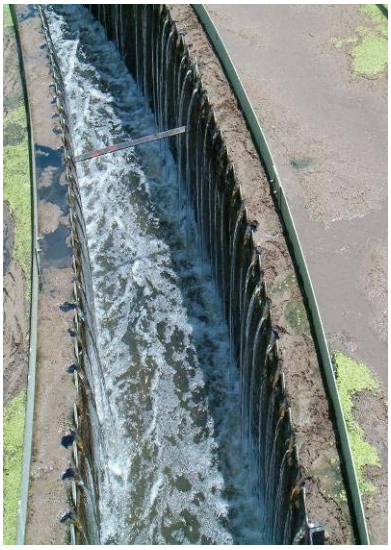
United States v. Puerto Rico Aqueduct and Sewer Authority, No. 3:06-CR-00202 (D. P. R.), ECS Senior Litigation Counsel Howard Stewart and SAUSA Silvia Carreno

On July 7, 2006, Puerto Rico Aqueduct and Sewer Authority ("PRASA") pleaded guilty to a 15-count indictment charging CWA violations based upon a 25-year history of inadequately maintaining and operating the island's wastewater and water treatment systems. PRASA was specifically charged with nine counts of discharges in violation of its NPDES permit at the nine largest POTWs on the island; five counts of illegal discharges from the five water treatment plants that supply drinking water to the largest portion of the local population; and one count charging a direct discharge from the PRASA system to the Martin Pena Creek.




Final Clarifiers

PRASA is a public corporation of the Commonwealth of Puerto Rico created to provide adequate water and sanitary sewer service. PRASA operates the island's entire sewage collection and treatment system of 68 POTWs, 508 pump stations, and related infrastructure. PRASA also operates the island's 133 water treatment plants ("WTP"), which provide drinking water for the local population. The POTWs each discharge treated water under the authority of an NPDES permit issued by EPA. The WTPs also discharge what is referred to as "backwash" under the terms of an NPDES permit. PRASA is the named permittee for each NPDES permit. The illegal discharges from PRASA's POTWs and WTPs are a direct result of the corporation's poor maintenance and operational practices.

The plea agreement states that the Authority will be placed on probation for five years, pay a $9 million fine, agree to make $109 million in repairs and upgrades at the nine POTWs named in the indictment, make $10 million in repairs and upgrades to the Martin Pena sewer system, and fund a study of the five water treatment plants identified in the indictment. The study will be conducted by CH2M Hill, an independent environmental engineering firm, and it will be presented to the district court to determine the appropriate remedy to impose with respect to the water treatment facilities.

An additional comprehensive civil settlement was reached as well, requiring PRASA to spend an estimated $1.7 billion implementing capital improvement projects and other remedial measures at all of its 61 wastewater treatment plants and related collection systems over the next 15 years.

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

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United States v. Charles Hungler, Jr. et al., No. 3:06-R-00014 (E.D. Ky.), AUSA Robert Duncan, Jr. [redacted]

On July 12, 2006, Charles Hungler, Jr., and Perfect-a-Waste Sewage Equipment Company ("Perfect-a-Waste") pleaded guilty to an indictment charging one Clean Water Act violation for making a false statement on a discharge monitoring report.

Hungler owns and operates Perfect-a-Waste. The defendants both operate the Edgewood Sewage Treatment Plant, located in Franklin County. On July 28, 2005, Hungler submitted a Kentucky Pollutant Discharge Elimination System Discharge Monitoring Report to Kentucky environmental authorities, falsely stating that samples had been taken when, in fact, they had not.

The defendants are scheduled to be sentenced on November 17, 2006.

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United States v. David Inskeep, No. 1:06-CR-10026 (C.D. Ill.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Tate Chambers [redacted].

Discharged Dairy Waste

On July 13, 2006, David Inskeep was sentenced to serve 30 days' incarceration followed by one year of supervised release. He also must pay a $3,000 fine. Inskeep pleaded guilty in March of this year to one count of negligently discharging animal waste into waters of the United. The defendant operated the Inswood Dairy, Inc., a dairy with more than 1,200 cows, that operated a waste management system consisting of a lagoon designed to hold up to approximately 40 million gallons of animal waste. The system used water to flush cattle manure and wastewater from the barns to a central collection point. The waste then was pumped to the lagoon for storage until it could be lawfully removed. Inskeep continued to flush manure and wastewater into the lagoon after state officials repeatedly warned him that the lagoon was too full.

A judge issued an order on February 16, 2001, for the dairy to immediately cease discharging into the lagoon. On February 16 and 17, 2001, however, Inskeep lowered the level in the lagoon by pumping waste from the lagoon through a hose to a tributary that flowed downhill from the dairy, discharging more than one million gallons of waste and manure. The waste pumped from the lagoon flowed into a tributary of the West Fork of Kickapoo Creek, which eventually flows to the Illinois River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources.

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United States v. Hoang Nguyen et al., No. 3:05-CR-00015 (S.D. Texas), ECS Trial Attorney Georgiann Cerese [redacted]

On July 21, 2006, Hoang Nguyen and Tam Le were sentenced as a result of pleading guilty to smuggling red snapper caught in violation of the Magnuson Stevens Fisheries Act. Nguyen was sentenced to serve 30 months' incarceration, Le was sentenced to serve 21 months' incarceration, and both will complete three years' supervised release. Le, the crewmember of a commercial fishing vessel, pleaded guilty in February of this year to a smuggling violation for his role in concealing and selling commercial quantities of red snapper that had been illegally imported into the United States. During a vessel boarding in March 2005, federal agents discovered thousands of pounds of red snapper, concealed within a hidden compartment on the fishing vessel. Nguyen, the captain of the vessel, pleaded guilty to a similar charge in January 2006. The fish, which had been caught in the Exclusive Economic Zone after the fishing season had closed, were brought into Texas for eventual sale in Houston.

This case was investigated by the United States Department of Commerce National Oceanic and Atmospheric Association ("NOAA") Fisheries Service Office for Law Enforcement with assistance provided by the Texas Parks and Wildlife Department.

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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 July 21, 2006, Terry Dykes was sentenced 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 for Clean Air Act National Emissions Standard for Hazardous Air Pollutants violations for his involvement in the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000. 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.

Pipe Covered with Asbestos

Parkland Town Center, LLC ("Parkland"), a Palm Beach real estate development firm, and company owner and developer Neil 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.

Kozokoff and Parkland are scheduled to be sentenced on August 1, 2006. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Palm Beach County Sheriff's Department.

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[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice