ENVIRONMENTAL CRIMES MONTHLY BULLETIN

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EDITORS' NOTE:

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

AT A GLANCE

SIGNIFICANT OPINIONS

United States v. W.R. Grace et al., 429 F3d. 1224 (9th Cir. 2005). Agency "interpretive deference" as to statutory interpretations.

United States v. Ed Winddancer, 2006 WL 1722432 (M.D. Tenn.). Eagle feathers and demonstration of "sincere religious belief".

United States v. W.R. Grace et al., 2006 WL 1581751 (D. Mont.). CAA Conspiracy and knowing endangerment object.

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D. Minn.	US v. Eco Finishing Company	*Electroplater*/ CWA Pretreatment, Tampering
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D. Utah	**US v. McWane**	***Cast Iron Manufacturer*/ CAA, False Statement**
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Significant Opinions

9th Circuit

United States v. W.R. Grace et al., 429 F3d. 1224 (9th Cir. 2005).

The Ninth Circuit provides clarification of the "interpretive deference" standard courts apply to agencies implementing federal environmental statutes. In sum, this holding reinforces the position that courts should continue to provide a "modified level of respect" to agency statutory interpretations. The authority of regulatory agencies to "fill statutory gaps" in a reasonable fashion may lessen a defendant's opportunity to score appellate victories based upon technical arguments of statutory interpretation.

The United States District Court for the District of Montana had partially granted the United States' motion for summary judgment against defendant W.R. Grace, holding that (1) a decision by the Environmental Protection Agency ("EPA") to approve a CERCLA removal action in the town of Libby, Montana, was not arbitrary and capricious; and (2) EPA's decision to implement a "removal", rather than a "remedial", action under CERCLA withstood scrutiny under the "modified level of interpretive deference afforded by *Mead*. *See United States v. Mead*, 533 U.S. 218, 226-27 (2001). The amount of judicial deference accorded to agencies, which presumably hold such authority as delegated by Congress, recently has been unsettled. The high degree of deference applied by the Supreme Court in *Chevron* was questioned in a limited fashion by the *Mead* court, which focused the scope of judicial deference more narrowly on issues of formal rulemaking. *See Chevron*, 467 U.S. at 842-45 (1984). In so doing, *Mead* opened for question the proper amount of judicial deference applied in other situations, such as non-formal rulemaking and agency statutory interpretations. EPA's decision in the *Grace* matter to define its activity as a CERCLA "removal", which involves a less stringent rulemaking and formal approach compared to a CERCLA "remedial" action, gave rise to the defendant's claim that EPA was overreaching its authority. Grace's stake in the question was not

trivial. A "removal" action is statutorily limited in duration and expense to $2 million and 12 months from the date of first environmental-response activity. EPA used a statutory exemption to exceed both limits, which resulted in a liability to Grace of $54.53 million in clean-up reimbursements, indirect costs, and a declaratory judgment of future cleanup cost liability. Grace claimed that because EPA's "removal" action had "remedial" action characteristics, to include the bottom-line cost and permanence of the applied remedy, EPA should have been required to follow more formal and deliberative administrative law procedures.

The court found that Congress "did not draw a clear line between 'removal' and 'remedial' actions", and EPA's determination of the Libby cleanup as a removal action was "correct as a matter of law." Because EPA's interpretation of CERCLA was an informal agency interpretation, the court used a "rationally construed" standard to determine EPA acted appropriately. Interestingly, the court relied on an extensive record of internal EPA memoranda and guidance to determine that "cogent administrative interpretations . . . not the products of formal rulemaking. . . nevertheless warrant respect."

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District Courts

United States v. Ed Winddancer, 2006 WL 1722432 (M.D. Tenn.)

On June 19, 2006, the court issued an order and accompanying memorandum opinion, denying defendant's motion to dismiss the indictment. The defendant is charged with violations of the Migratory Bird Treaty Act ("MBTA") and Bald and Golden Eagle Protection Act ("BGEPA"), stemming from his possession of eagle and other migratory bird feathers and barter transactions of the same with an undercover FWS agent. Winddancer moved to dismiss the indictment on the grounds that the enforcement of the statute against him violated the Religious Freedom Restoration Act because he was using the feathers in connection with his alleged sincere exercise of a Native American religion. Winddancer is not an enrolled member of a federally recognized tribe.

The court held that the defendant lacked standing to bring his, as applied, challenge under the MBTA because he had failed to first apply for a permit under that Act. The court further held that any facial challenge would fail because the MBTA provision could be applied in circumstances that did not present defendant's issues. As to the BGEPA claims (for which application for a permit would have been futile and thus not a prerequisite to standing), the court found that he did not meet his burden of establishing a sincere exercise of religion. The government had not challenged his sincere religious belief, but rather whether the possession of feathers that he bartered to someone of another tribe was an exercise of that religion. The court found, however, that Winddancer had failed to show a sincere religious belief essentially because he did not identify a specific belief, but alleged some general "Native American religion." Finally, the court found that, even had he met this burden of proof, his defense still failed because the government permitting scheme is the least restrictive means of furthering the government's compelling interests in protecting eagles and protecting tribal religion and culture and the government's trust relationship with the tribe. This issue is also currently pending in the District of Utah and the District of Wyoming.

The court further held that the exchange of feathers of the same species constitutes a barter under the Act and that the defendant's actions, specifically including the barters, were in fact harmful

to birds and properly charged under the MBTA. The court further denied the defendant's claim of outrageous government conduct which had been based on the undercover agent's posing as a tribal member acquiring feathers for ceremonial/dancing use.

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United States v. W.R. Grace et al., 2006 WL 1581751 (D. Mont.)

On June 8, 2006, the court granted the defendants' motion to dismiss with prejudice the CAA knowing endangerment object of the conspiracy count. The court ruled that the indictment did not allege any overt acts within the statutory period in furtherance of a knowing endangerment objective and, therefore, the object was time-barred. In two separate orders, the court denied the defendants' motion to dismiss the indictment for pre-indictment delay and substantially denied the defendants' motion for Rule 17(c) subpoenas.

In February 2005, a ten-count indictment was returned charging W.R. Grace ("Grace") and seven of its corporate officials with conspiracy to violate the CAA and to defraud government agencies, including the EPA, knowing endangerment under the CAA, wire fraud, 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. The indictment alleges that, in the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to EPA. It is further alleged that, 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.

The indictment states that, 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 allegedly continued to mislead and obstruct the government when it failed to disclose the nature and extent of Libby's asbestos contamination to EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Trial remains scheduled to begin on September 11, 2006.

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Trials

United States v. Jerry Gaskill, No. 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan [redacted]

On June 15, 2006, a jury convicted Jerry Gaskill, the Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, of a false statement violation, and acquitted him on the remaining charge of conspiracy to violate the Clean Water Act. The court granted the defendant's Rule 29 motion, dismissing the CWA and Rivers and Harbor Act violations.

The charges stem from an illegal dredging project, the purpose of which was to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks. The indictment filed in January of this year alleged that Gaskill participated in "prop washing," or the unauthorized dredging of a channel, by using the propellers of NC DOT vessels in the Corolla basin, ultimately altering the bottom of the Currituck Sound. The defendant knew that permits had not been issued, and he subsequently lied to the United States Army Corps of Engineers about these activities. Federal agencies had previously denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. Evidence at trial established that Gaskill signed a written false statement claiming that the creation of the channel was unintentional. Four other NCDOT employees, Billy Moore, Herbert O'Neal, Douglas Bateman, and Stephen Smith, pleaded guilty last December.

The unauthorized dredging created a 730-foot long by 30-foot wide by five-foot deep channel which resulted in the destruction of an essential fish habitat that supports commercially important fish and wildlife species found in the area.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the United States Coast Guard Investigative Service, with investigative assistance from the United States Army Corps of Engineers.

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United States v. Michael Hayhurst, No. 2:05-CR-01336 (D. S. C.), ECS Trial Attorney David Kehoe [redacted] and AUSA Emery Clark [redacted]

On June 22, 2006, a jury acquitted Michael Hayhurst on all charges after a four-day trial. Hayhurst was charged in December 2005 with violating the Clean Water Act, the Rivers and Harbors Act, and with making false statements in connection with an illegal dredging operation he supervised in Calibogue Sound in Hilton Head Island, South Carolina.

According to the indictment, Hayhurst was the project manager for a dredging operation by South Island Dredging Association ("SIDA"). SIDA was formed by a number of homeowner associations and others for the purpose of funding and obtaining approval from the United States Army Corps of Engineers ("the Corps") to conduct this dredging operation. The Corps issued a permit to SIDA to dredge certain areas in and around Calibogue Sound, but required that fine-grained dredged material from the operation be placed in an ocean-going barge. The barge was then to dispose of the

dredged material at a designated site in the Atlantic Ocean off the coast of South Carolina. The permit required that the barge be equipped with electronic positioning equipment to ensure that it was in fact making trips to the ocean disposal site.

Instead of complying with the terms of the permit by dumping the dredged material in the ocean, the indictment alleges that Hayhurst illegally dumped dredged materials and other pollutants into Calibogue Sound in violation of the CWA and that he altered and modified the course and condition of the sound in violation of the RHA. The indictment further states that Hayhurst placed seawater into the ocean-going barge, rather than the dredged material, and transported the seawater to the ocean disposal site to conceal from the Corps that he was illegally discharging the dredged material into the Sound.

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

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Pleas / Sentencings

United States v. Eco Finishing Company et al., No. 06-CR-00152 (D. Minn.), AUSA Bill Koch [redacted]

On May 30, 2006, Eco Finishing Company ("ECF"), an electroplating company, and David Rosenblum, the company's chief executive officer and 49% owner, agreed to plead guilty to an information charging them with the knowing violation of a pretreatment program in violation of the Clean Water Act. From May 2001 through approximately April 2005, the defendants are alleged to have discharged wastewater which exceeded permitted limits.

Investigation revealed a company practice (through internal memos and e-mails) of discussions among management and employees of upcoming inspections by the Metropolitan Council Environmental Services ("MCES"), the local sewer authority. Documents provide by disgruntled employees indicated that production practices were changed during the inspections. Investigators subsequently obtained a search warrant and installed a covert sampling device in the sewer line. Samples taken provided proof that the facility was generally in compliance with its permit during the announced inspections, but quickly fell out of compliance when sewer authorities left the premises. Using this data, a second search warrant was obtained and additional incriminating documents were seized showing that management personnel had directed employees to alter the effluent, change the production process, and take other steps to ensure compliance during MCES inspections.

On May 8, 2006, co-defendant Ted Gibbons, a former chemist for ECF, was sentenced to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty in February of this year to one felony CWA pretreatment violation and two felony CWA tampering violations.

Gibbons was responsible for analyzing the company's wastewater and for reporting analytical results to the MCES. Gibbons failed to submit laboratory reports to the sewer authority for all wastewater monitoring conducted during each monitoring period, as required by the facility's sewer permit, from at least January 2001 through about April 15, 2005. On two occasions in 2004 and 2005, Gibbons also tampered with sampling equipment during times when the sewer authority was testing the facility's effluent. Gibbons wrote memos to wastewater staff with tips on how they were to stay in

compliance during the period that MCES was taking samples. This included the instruction that they were to "leave all water running during all shifts."

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the FBI, the Minnesota Pollution Control Agency, and the MCES.

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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 [redacted] and SAUSA Silvia Carreno [redacted]

On June 22, 2006, Puerto Rico Aqueduct and Sewer Authority ("PRASA") was charged in, and agreed to plead guilty to, a 15-count indictment for CWA violations based upon a 25-year history of inadequately maintaining and operating the island's wastewater and water treatment systems. PRASA was 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.

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 the 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 complete a five-year term of probation, pay a $9 million fine, make $109 million in repairs and upgrades at the nine POTWs named in the indictment, complete $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 will be presented to the district court to determine the appropriate remedy to impose with respect to the water treatment facilities.

There was an additional comprehensive civil settlement 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. Peter Ward, No. 1:05-CR-00499 (S.D.N.Y.), AUSA Anne Ryan [redacted].

On June 20, 2006, Peter Ward, a licensed asbestos investigator, was sentenced to serve 27 months' incarceration for improperly removing asbestos from a police precinct building in Queens and an apartment building in Brooklyn. In June 2005, Ward pleaded guilty to one CAA charge, admitting that in 2001 he improperly removed the asbestos from the apartment building, further stating that he attempted to conceal his actions by not notifying the EPA.

Ward has an extensive record of environmental violations going back more than a decade. During this period, the defendant and companies he controlled were issued Notices of Violation for work performed at 29 separate locations, including the current two, in New York City. Ward has previously fined $115,000 by the City and continued to break the law even after pleading guilty in the current case. In January 2006, he pleaded guilty to a second CAA violation for the improper abatement at the precinct building. Ward was remanded into custody on March 9, 2006.

Dry Asbestos

This case was investigated by the FBI and the United States Environmental Protection Agency Criminal Investigation Division, with assistance provided by the New York City Department of Environmental Protection's Asbestos Control Program.

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

On June 19, 2006, Rodolfo Esplana Rey, the Chief Engineer for the *M/T Cabo Hellas*, a petroleum transport tanker operated by the Overseas Shipholding Group, Ltd., pleaded guilty to a false statement and APPS violation. Rey was charged in April of this year in a three-count indictment with presenting a false record book to Coast Guard inspectors during an inspection at the Port of Los Angeles. He was further charged with obstruction of agency proceedings for allegedly instructing the crew to lie to officials about a valve that was used to discharge oily waste directly into the ocean.

Rey is scheduled to be sentenced on August 28, 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. Tarragon Management, Inc., No. 0:06-CR-60116-60119 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On June 19, 2006, Tarragon Management, Inc. ("TMI"), pleaded guilty to, and was sentenced for, one CAA NESHAP violation for improper asbestos removal during a demolition and renovation project in 2003 at the Pine Crest Village Apartment Complex ("Pine Crest") in Fort Lauderdale, Florida. The company 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.

From about April 18, 2003, through April 28, 2003, TMI and its employees, Richard Schaffer and 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 mandated 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 Environmental Protection Asbestos Abatement Coordinator.

Benco, the construction manager for the project, pleaded guilty to one CAA NESHAP violation on May 25, 2006, 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 on the identification and handling of hazardous substances and wastes, including asbestos. Also on May 25th, Richard Schaffer, TMI's managing director, pleaded guilty to a CAA violation for his involvement in the illegal abatement. Schaffer is scheduled to be sentenced on August 17, 2006.

Asbestos investigation

On June 16, 2006, TMI's project manager, Robert Violino, pleaded guilty to a CAA violation and was sentenced to serve two years' probation with a special condition of six months' home detention. Violino was further ordered to pay a $25,000 fine and must also complete the 40-hour training course covering the identification and handling of hazardous substances and wastes.

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. C. Lynn Moses, No. 4:05-CR-00061 (D. Idaho), AUSAs Jim Oesterle [redacted] and George Breitsameter [redacted]

On June 19, 2006, developer C. Lynn Moses was sentenced to serve 18 months' incarceration followed by one year of supervised release, pay a $9,000 fine, and publish a public apology to the community acknowledging his conduct and accepting responsibility for damaging Teton Creek.

Moses was convicted by a jury in September of last year on three counts of violating the CWA. The violations occurred from 2002 through 2004 during the development of property adjacent to Teton

Creek. While developing the land, Moses supervised a continuing effort to use heavy equipment to manipulate the stream bed of the creek, which is a tributary of the Snake River.

Bulldozer in stream channel

Moses refused to submit a permit application prior to undertaking the stream bed manipulation work in 2002, 2003, and 2004 and failed to comply with previous administrative notices directing him to cease all work in the creek. As recently as April 2004, Moses violated an administrative order issued by the United States EPA ordering him to stop all discharges of dredge and fill material into Teton Creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with the assistance of the United States Army Corps of Engineers and the FBI.

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United States v. Estremar S.A. (a.k.a. ASC South America S.A.), No. 1:06-CR-10097 (D. Mass.), ECS Trial Attorney Lary Larson [redacted] ECS Senior Trial Attorney Elinor Colbourn [redacted] AUSA Nadine Pellegrini [redacted].

On June 15, 2006, Estremar S.A., an Argentine company, plead guilty to, and was sentenced for, a misdemeanor Lacey Act violation. Specifically, Estremar admitted that in March 2002, it knowingly imported into the United States, and attempted to sell, over 30,000 pounds of Patagonian toothfish, aka Chilean seabass, when it reasonably should have known that the toothfish had been harvested and transported in violation of federal law. This imported amount was in excess of the weight authorized for import by the required documentation.

The company was sentenced to pay a $75,000 fine and must also make a $10,000 community service donation. The donation will be paid to the National Environmental Trust which studies and works with this species. In addition, Estremar agreed to forfeit all assets subject to forfeiture as a result of its guilty plea, including $158,145.53 in proceeds from the sale of the toothfish seized by agents in and near Boston during the investigation of this case.

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

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United States v. Burtram Johnson, Nos. 04-CR-10013 and 05-CR-10015 (S.D. Fla.), AUSA José Bonau [redacted]

On June 12, 2006, Burtram Johnson was sentenced to serve two years' incarceration, followed by two years' supervised release, and was further ordered to pay a $50,000 fine. Johnson filed a notice of appeal on June 15, 2006.

The defendant was convicted at trial in February of this year of two counts of obstruction of justice, two counts of perjury, and one count of making false statements to federal agents. Facts presented at trial proved that the defendant twice testified falsely concerning when he first became aware of the illegal landfill activities undertaken by co-defendant Jeffrey Balch. Johnson told investigators and the grand jury that he was unaware of any illegal fill activities on Balch's bay-front property prior to being contacted by the United States Army Corp of Engineers. Evidence revealed, however, that Johnson was aware of the filling activities prior to being notified.

Balch was sentenced in January 2005 to serve five months' incarceration followed by one year's supervised release. He was further ordered to pay a $15,000 fine and $66,122 in restitution to the Florida Keys Environmental Restoration Trust Fund for damage to the Florida Bay. Balch pleaded guilty to a CWA violation for illegally discharging fill material into Florida Bay, which is located within the Florida Keys. He illegally excavated fill from his property in Marathon from February to March 2002 and dumped it in the water without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Army Defense Criminal Investigative Service.

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United States v. McWane et al., No. 2:05-CR-00811 (D. Utah), ECS Trial Attorney Aunnie Steward, ECS Senior Trial Attorney Richard Poole [redacted] ECS Senior Counsel Claire Whitney [redacted] and AUSA Leshia Lee-Dixon [redacted]

On June 12, 2006, Charles Matlock, vice president and general manager of Pacific States Cast Iron Pipe Company ("Pacific States"), a division of McWane, Inc., was sentenced to serve 12 months and one day of incarceration and must pay a $20,000 fine. Matlock tried to argue that his motive was not to conceal excess air pollution emissions but instead to meet some technical requirement. The judge found, however, that there was no evidence to support his argument, and in fact, the evidence clearly indicated the contrary. The court further stated that if the defendant had admitted the truth he would not have been sentenced to jail time.

On February 8, 2006, Pacific States pleaded guilty to two false statement violations and was sentenced to pay a $3 million fine plus complete a three-year term of probation. Matlock pleaded guilty to a Clean Air Act violation for rendering inaccurate a monitoring device.

Pacific States and two of its employees were charged with a variety of violations stemming from falsified emissions tests required in the production of cast iron pipes. McWane, Matlock and Charles "Barry" Robison, vice president of environmental affairs, were charged with conspiracy to violate the CAA by rendering inaccurate a state-required emissions testing method, for making false statements in documents required by the CAA, and for defrauding the United States. McWane and Matlock also were charged with additional CAA violations for rendering inaccurate the testing method. McWane was charged with additional false statement violations for misrepresentations made in documents submitted to the State of Utah. Charges against Robinson were dropped in exchange for his agreeing not to appeal his sentence from a previous prosecution of him in Alabama, where he was sentenced to pay a $2,500 fine, serve two years' probation, and complete 150 hours' community service.

As part of the production of cast iron, McWane melts scrap metal, primarily shredded steel from scrap automobiles, in a furnace known as a "cupola." The ferrous scrap metal melted in the cupola contains significant quantities of shredded scrap metal, which includes scrap automobiles. The autos often contain rust, chrome-plated parts, plastic, tires and car seats. McWane was exceeding its

emission limits for a parameter known as PM10. During a compliance test in September 2000, McWane employees at the direction of Matlock melted pig iron, a pure iron product, in the cupola in order to lower the PM10 emissions and thus pass the stack emissions test. Robison was aware of this and facilitated the filing of false emissions reports based on this stack test. Pacific States admitted that documents submitted to the State of Utah included data from this test, which was not representative of its emissions.

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

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United States v. Wayne County Airport Authority, No. 2:06-CR-20300 (E.D. Mich.), ECS Assistant Chief Kris Dighe [redacted] ECS Senior Counsel Jim Morgulec [redacted], SAUSA Kris Vezner [redacted], and assisted by Tom Piotrowski with the Michigan Attorney General's Office.

Airport Retention Pond

On June 8, 2006, Wayne County Airport Authority ("Airport Authority"), which operates the Detroit Wayne County Metropolitan Airport, pleaded guilty to a misdemeanor violation of the Clean Water Act, 33 U.S.C. § 1319(c)(1)(A). The Airport Authority pleaded guilty to a negligent failure to report a May 16, 2001, discharge of turbid water into the Frank and Poet Drain, a waterway that leads to the Detroit River, in violation of the Airport's discharge permit. Two days after the event, the discharge was discovered during the course of an investigation of a fish-kill, which was observed near the mouth of the waterway, as it enters the Detroit River.

The Airport maintains a number of large ponds on-site that collect storm water runoff. During winters, significant quantities of aircraft de-icing fluids, primarily propylene glycol, are used on aircraft. Run-off from the de-icing is collected in a separate pond identified as Pond 3W. Ordinarily, Pond 3W discharges to a sanitary sewer system that conveys the glycol-contaminated stormwater to the Wyandotte Wastewater Treatment Plant. During the second week in April, 2001, the valve connecting Pond 3W to the sanitary sewer became clogged. The chemicals collected in this pond were in the process of breaking down into their various constituents and gradually turned the water turbid and odorous. Attempts to clear the pipe failed, as did efforts to pump water from Pond 3W to the sanitary sewer.

On May 16, 2001, Airport personnel opened a gate connecting Pond 3W to other ponds, identified as Ponds 3E and 4. They then opened an outfall valve that allowed these ponds to discharge directly to the Frank and Poet Drain. On May 17th, Airport employees, noting that the water being discharged was turbid and odorous, closed the connection gate and the outfall valve. The discharge of approximately 25 million gallons of water from the Airport from Ponds 3E, 3W, and 4 was not reported to the Michigan Department of Environmental Quality.

The Airport Authority has agreed to pay a $75,000 fine and will complete a four-year term of probation. As a special condition of probation, the Airport will undertake and finish a "Force Main" project, which involves the construction and use of a force main to connect Pond 3W at the Airport to sanitary sewer lines leading to the Detroit Water and Sewerage Department's treatment plant. Planning for this project has been underway for a number of months and currently is estimated to cost $8.5 million. An additional $25,000 will be paid as community service to Friends of the Detroit River, a non-profit organization dedicated to conserving, preserving, and restoring the watershed of the Detroit River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI, with assistance from the Michigan Department of Environmental Quality Office of Criminal Investigation.

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United States v. Jon Pen Tokosh, No. 05-CR-258 (W.D. Pa.), AUSA Luke Dembosky [redacted] with assistance from ECS Senior Trial Attorney Bob Anderson [redacted]

On June 2, 2006, Jon Pen Tokosh was sentenced to serve one year of incarceration, followed by two years' supervised release and must pay $25,000 in restitution to the Pennsylvania State Game Agency.

Tokosh pleaded guilty in February of this year to one Lacey Act violation in connection with the sale of two smuggled Indian Star Tortoises to a U.S. Fish and Wildlife Service undercover agent in 2002. The tortoises and other animals were smuggled into the U.S. by a wildlife dealer in Florida from Singapore dealer Leon Tian Kum. Tokosh then resold the animals in the United States. Kum was apprehended in 2003 during a visit to this country and now is serving a 37-month prison sentence.

Indian Star Tortoises are protected by the CITES treaty and are one of several reptile species frequently smuggled in overnight mail packages from Asia into this country, where the buyers can resell the animals to collectors for approximately $800 - $1,000 each.

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

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United States v. John Coon et al., No. 3:06-CR-05345 and 05346 (W.D. Wash.), AUSA Jim Oesterle [redacted].

On May 31, 2006, John Coon and his son Jonathan, were each sentenced to serve two years' probation and pay a $2,500 fine. The two pleaded guilty to one count of unlawfully taking migratory birds with the aid of baiting. Jonathon spread barley grain on the ground adjacent to a pond on the Coon family property. The grain was placed on the ground to attract migratory birds to the area where hunters would be attempting to shoot the birds. Two days later, the defendants participated in a hunt on the property, shooting and killing many migratory birds including mallard ducks and American wigeons. "Bird baiting" by hunters can lead to a slaughter and changes in the birds' migration patterns. Migratory birds become aware of feeding areas and will revisit the area looking for food for several days after the bait has been consumed.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

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United States v. Robert Brooks 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 May 30, 2006, Robert Brooks and Michael Johnson each pleaded guilty 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

received an elk, which he killed in September 2001, and Johnson received an elk, which he killed in September 2003.

The defendants are scheduled to be sentenced on July 18, 2006.

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

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United States v. Antonio Martinez-Malo et al., No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick [redacted]

On May 30, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc. ("Anchor), were sentenced for their involvement in smuggling undersized spiny lobster. Anchor will pay a $50,000 fine and complete a five-year term of probation. Antonio Martinez-Malo was sentenced to pay a $5,000 fine and serve 21 months' imprisonment followed by a three-year term of supervised release. Liliana Martinez-Malo was sentenced to serve one year and a day of incarceration to be followed by a three-year term of supervised release. She also must pay a $3,000 fine.

The defendants pleaded guilty in March of this year to charges stemming from a conspiracy to violate the Lacey Act for smuggling 16,500 pounds of undersized spiny lobster from Jamaica into the United States. The company pleaded guilty to a smuggling and conspiracy violation, and the individuals pleaded guilty to conspiracy.

Anchor Seafood is a business operated by Antonio Martinez-Malo, the president and sole shareholder, and his wife, Liliana. The defendants were charged with making 40 illegal shipments of undersized spiny lobster tails from January, 2000, through January, 2001. During this period, the defendants conspired to import from Jamaica, and then sold and transported, over 16,000 pounds of undersized spiny lobster tails valued at $229,000. This is a violation of Jamaican and Florida law, both of which have strict size and weight limits for spiny lobster. The defendants concealed the actual size of the lobster tails through a coding system they used on the exterior of boxes and on their invoices.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office for Law Enforcement.

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[redacted]
Elizabeth R. Janes
Program Specialist
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