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.

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

AT A GLANCE

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[redacted]	[redacted]	[redacted]

Significant Opinions

Supreme Court

United States v. Rapanos, 126 S. Ct. 2208 (2006), vacating and remanding 376 F.3d 629 (6th Cir. 2004).

Defendant developer (John Rapanos), through affiliated companies, owned various parcels of land in Michigan containing wetlands that lay near ditches into which he discharged fill materials in order to make the properties more useable for development. He did so without a permit and despite receiving a cease and desist letter from state officials and an administrative compliance order from USEPA. He also rejected the conclusion of his own consultant that the sites did in fact contain significant wetlands.

The government brought a civil action under the Clean Water Act against Rapanos and several of his companies, alleging discharges of fill into jurisdictional wetlands, failure to respond to requests for information, and disregard of administrative compliance orders, all in violation of the Act.

Simultaneously, federal criminal charges were brought against John Rapanos under the Act regarding one of the subject sites. He was convicted by a jury, but the U.S. Supreme Court vacated the conviction and remanded in light of its decision in *SWANCC*. Thereafter, the district court set aside the conviction, finding that the government lacked jurisdiction in light of *SWANCC*. However, the Sixth Circuit reversed the district court's holding, reinstated the conviction and remanded for resentencing. The Supreme Court then denied defendant's petition for certiorari.

The civil action led to a bench trial following which the district court found that defendant had filled a substantial number of acres of protected wetlands at three of the subject sites. The Sixth Circuit affirmed the judgment of the district court. It found that there was federal jurisdiction over the wetlands based upon the sites' hydrological connection to the nearby ditches or drains or to more remote traditional navigable waters.

In a companion case (*United States v. Carabell*) plaintiff owners were denied permits to fill in wetlands on their property in order to build condominium units. A drainage ditch along one boundary of the property was separated from the wetlands by an impermeable man-made berm. The ditch ran into a drain that emptied into a creek that in turn flowed approximately one mile into Lake St. Clair, which is part of the Great Lakes system.

After exhausting administrative appeals, plaintiffs filed an action in federal court challenging the Corps' jurisdiction and seeking review of the jurisdictional determinations made by the Corps. The district court found that there was federal jurisdiction over the site because the wetlands in question

were "adjacent to neighboring tributaries of navigable waters and [had] a 'significant nexus' to 'waters of the United States.'"

On appeal, the Sixth Circuit affirmed the district court's decision granting summary judgment to defendant, holding that the wetlands were adjacent to navigable waters. The court agreed with the conclusion by the district court that the ditch constituted a tributary and was "a water of the United States."

The Supreme Court granted certiorari in both cases and consolidated them.

Held: The Court vacated the decisions of the Sixth Circuit in both cases and remanded them for further proceedings. A four-judge plurality, written by Justice Scalia found that the holdings of the Sixth Circuit in both cases should be vacated, and the cases should be remanded for further proceedings. Justice Kennedy joined only in the decision to remand the cases.

According to the plurality, the definition "waters of the United States" includes only "relatively permanent, standing or continuously flowing bodies of water 'forming geographic features.'" It does not, however, include ordinarily dry "channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall" (although it may include waters that dry up in extraordinary circumstances and seasonal rivers.) Such an interpretation, the plurality opinion noted, would also preserve the primary responsibilities and rights of the states to "plan the development and use" of land and water resources. Under the holdings in *Riverside Bayview Homes* and *SWANCC*, the plurality found that the difficulty in delineating precise bounds of regulable waters had justified deference to the Corps' judgment that adjacent wetlands might be defined as waters under the Act. However, mere "reasonable proximity" to waters of the United States would not suffice to confer jurisdiction, and ecological considerations (such as in *Riverside Bayview Homes*) could be taken into account only to resolve the inherent ambiguity in defining where water ends and abutting wetlands begin. Thus, for the plurality, establishing wetlands jurisdiction under the Act requires (1) that an adjacent channel contain a relatively permanent body of water connected to traditional interstate navigable waters and (2) that the wetland have a continuous surface connection with that water. Finally, the plurality opinion noted that discharges into intermittent channels of pollutants that wash downstream probably could constitute discharges from a "point source" in violation of the Act. Because the Sixth Circuit had applied the wrong standard for determining wetlands jurisdiction, and because of the incomplete records below, the matter should be remanded to address these issues.

Justice Kennedy agreed with the plurality that the cases must be remanded, but, contrary to the plurality opinion, concluded that under *SWANCC* the proper test was whether a wetland possessed a "significant nexus" to navigable-in-fact. Like the dissenters, he described the two-pronged test advanced by the plurality as "without support in the language and purposes of the Act" or in the caselaw interpreting it. Under that test, a trickle, if continuous, would be subject to regulation while torrents occurring at irregular intervals through otherwise dry channels would not. Similarly, the "surface-connection" requirement was contrary to the purposes of the Act and unsupported by the decisions in *Riverside Bayside Homes* and *SWANCC*.

Justice Kennedy, again contrary to the plurality, would find that the requisite nexus exists when "wetlands, either alone or in combination with similarly situated lands in the region, significantly affected the chemical, physical, and biological integrity of other covered more readily understood as 'navigable.'" However, he disagreed with the dissenters (and the Corps) that "adjacency to tributaries, however remote and insubstantial," would support jurisdiction. He also found that the Sixth Circuit had erred in holding that a significant nexus can established in all cases by a mere hydrologic connection or by mere adjacency to a tributary.

The four-justice dissenting opinion, written by Justice Stephens, asserted that the Court's decision in *Riverside Bayside Homes*, asserting jurisdiction over wetlands "adjacent to navigable

bodies of water and their tributaries", was controlling. It rejected the plurality's "continuous surface connection" test as "nowhere implied" by that decision, and it found that *SWANCC* dealt only with isolated waters that were not part of a tributary system. The dissenters also wrote that wetlands serve important water quality roles, and wetlands located adjacent to tributaries generally have a "significant nexus" to a watershed's water quality and with traditionally navigable waters located downstream. That said, the dissenters would not overturn the existing regulatory structure in favor of the "significant nexus" standard advanced by Justice Kennedy. Finally, the dissenting opinion found the plurality's analysis of the Act's definition of "point sources" irrelevant to its distinction between permanent and intermittent tributaries.

Justice Breyer filed an additional dissenting opinion arguing that the CWA authority of the Corps extended "the limits of the congressional power to regulate interstate commerce, and urging the Corps promptly to write new regulations explicating the complex technical judgments that Congress intended the agency to make.

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Second Circuit

Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 451 F. 3d 77 (2d Cir. 2006).

New York City operates a tunnel as part of a water management system that delivers drinking water from the Catskill Mountains to the City and surrounding area. Water from a reservoir is diverted though the tunnel to a trout stream, and thence to another reservoir, and eventually through an aqueduct and a series of additional reservoirs and tunnels to the City. Because of suspended solids in the originating reservoir, discharges from the tunnel into the stream are more turbid than water already in the stream, impairing its use for fly-fishing and other recreational activities.

Plaintiff environmental groups representing recreational users of the stream brought a citizen suit under the Clean Water Act alleging that the City's discharge of turbid water from the tunnel without a permit violated the Act. The district court dismissed the suit, holding that the discharge did not constitute an "addition" of a pollutant to the stream. On appeal, the Second Circuit reversed the district court, holding that the discharge of water containing pollutants from one distinct water body to another was indeed an "addition of a pollutant" under the Act, and thus that the discharge from the tunnel required a permit. **[See Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 273 F.3d 481 (2d Cir. 2001).]**

Upon remand, the district court granted summary judgment to plaintiffs, ordered defendants to obtain a permit for operation of the tunnel, and assessed a civil penalty upon it.

Held: On the second appeal of this case, the Second Circuit affirmed the judgment of the district court, except as to the amount of the civil penalty, and remanded for recalculation of that penalty. Revisiting its decision on the prior appeal, the court restated its earlier holding that the tunnel was a "point source" under the Act, and that "addition" meant the introduction into navigable water from "any place outside the particular water body to which pollutants are introduced." It again distinguished cases involving dams because here, unlike the taking of water from a source and its subsequent release back into that same source, the tunnel discharged water into the stream from a different, distinct body of water -- an "interbasin," rather than an "intrabasin," transfer. Finally, it

restated its rejection of a "unitary water" theory of the Act, finding that navigable waters of the United States did not constitute a single water body such that transfers of water from any body that is part of the navigable whole to any other body could never be an "addition."

The court further found that the intervening decision by the Supreme Court in *Miccosukee Tribe* should not alter its decision here. That decision did not invalidate the distinction between intrabasin transfers that do not add new pollutants to navigable waters, and interbasin transfers that do, nor did it endorse the "unitary water" theory. The court also disregarded an intervening USEPA regulatory interpretation, indicating congressional intent that water transfers from one navigable water to a separate one should be regulated by the states rather than under the federal NPDES permit program, as not persuasive, since the power of states to allocate quantities of water within their borders was not inconsistent with federal regulation of water quality. Finally, the court rejected the City's argument that other provisions of federal law, including the Safe Drinking Water Act, were more appropriate means for regulating the discharges in question, finding that such regulation should not invalidate separate, independent requirements imposed under the CWA.

The court last addressed the amount of the civil penalty imposed under the factors enumerated in the Act and found that the district court had not abused its discretion. However, it noted an error in calculation of the maximum statutory penalty that could have been imposed and, therefore, remanded the case for possible recalculation in light of that correct maximum amount.

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Trials

United States v. Melvin Eugene Riecke II, No. 3:06-CR-00109 (N.D. Tex.), AUSA Phil Umpres [redacted] and SAUSA Cheryl Seager [redacted].

On August 24, 2006, Melvin Eugene Riecke II, general manager of the National Converting and Fulfillment Company, was convicted by a jury of four federal felony violations arising out of the improper removal of asbestos-containing flooring materials. Evidence presented at trial proved that Riecke improperly removed and disposed of asbestos-containing material, that he made false statements to the Texas Department of Health, and that he committed mail fraud when he sent a falsified asbestos renovation/demolition notification form to the Texas Department of Health.

The violations occurred between November 6 and December 10, 2001, when Riecke and his crew demolished a former lumber and hardware store without making any attempt to comply with federal asbestos workplace standards. The defendant committed these acts despite having knowledge of a pre-demolition survey of the building indicating the presence of asbestos-containing material and having signed a contract requiring that he properly remove these materials. Riecke was further found responsible for the illegal dumping of this material on a three and one-half acre industrial site.

This case was investigated by members of the Texas Environmental Crimes Task Force, including the United States Environmental Protection Agency Criminal Investigation Division, the Texas Parks and Wildlife, and the Texas Commission on Environmental Quality. Assistance was also provided by the City of Dallas Marshal's Office.

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United States v. Ronald Evans et al., No. 3:05-CR-00159 (M.D. Fla.), AUSA John Sciortino [redacted] SAUSA Jody Mazer [redacted] and DOJ Civil Rights Attorney Susan French [redacted]

Outfall Pipe

On August 25, 2006, Ronald Evans, Sr., was found guilty by a jury of engaging in a continuing criminal enterprise that distributed crack cocaine; conspiracy to distribute crack cocaine; trafficking in untaxed contraband cigarettes; violating the CWA; two counts of violating the Migrant and Seasonal Farm Worker Protection Act; and 50 counts of structuring cash transactions to avoid financial reporting requirements. Evan's wife, Jequita Evans, was found guilty of conspiracy to distribute crack cocaine and 48 counts of structuring cash transactions to avoid financial reporting requirements.

Evans, Sr., owns two labor camps for migrant and seasonal agricultural workers. He and his codefendants operated a camp located in East Palatka, Florida, and another camp in Newton Grove, North Carolina. According to trial witnesses, the defendants operated the camps so as to extract the greatest economic benefit at the lowest possible cost from a group of homeless people. For many years, the defendants recruited African Americans from homeless shelters and other low income areas in cities across the Southeast, including Miami, Tampa, Orlando, Jacksonville, New Orleans, Birmingham, Winston-Salem, and other cities.

The defendants charged the laborers $50 per week for room and board, and they put them to work in the fields for wages at or near minimum wage. At the end of every weekday, the defendants gave the workers the opportunity to purchase, on credit and at inflated prices, crack cocaine and untaxed generic-quality beer and cigarettes at a "company store" located on site. Records were kept of the laborers' purchases, and the defendants deducted these costs from the laborers' weekly pay.

"Advances" of crack cocaine also were available on payday in the workers' pay envelopes. As a result, the need arose for ready access to substantial amounts of cash to acquire drugs on a regular basis. The defendants obtained the money by cashing checks written by their farmer clients. Because large cash transactions must be reported by financial institutions, the defendants instructed the farmers to structure the payments to comply with the reporting requirements. After Evans, Sr., was indicted, he obstructed justice by persuading one farmer to lie on his behalf to investigating IRS agents and to deny that the structuring took place.

With respect to the CWA violation, Cow Creek, a primary tributary of the St. Johns River, flows along the southern border of the Evans' labor camp in East Palatka. Evans, Sr., directed that a large PVC pipe be connected to the labor camp's heavily used septic tanks. The pipe continuously carried raw, untreated human waste underground for some distance and then discharged it directly into Cow Creek. The severely contaminated creek flowed approximately a mile to the St. Johns River.

Nine defendants were originally charged in this case. Eugene Sheppard and Irvin Sutton are fugitives. Guilty pleas were taken between May and July 2006 from Eddie Lee Williams, Nathaniel Davenport, Emma Mae Johnson, Ronald Robert Evans, Jr., and Gilbert Irvin Labeaud, III. All pleaded guilty to conspiracy to possess narcotics except for Labeaud who pleaded guilty to trafficking in untaxed contraband cigarettes.

All defendants are scheduled to be sentenced on November 29, 2006.

This case was investigated by the U.S. Department of Labor's Inspector General's Office, the United State Environmental Protection Agency Criminal Investigation Division, the Drug Enforcement Administration, and the Putnam County Sheriff's Office.

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Indictments

United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Michelle Mallard [redacted].

On September 26, 2006, a three-count indictment was returned charging Krister "Kris" Sven Evertson, a.k.a. Krister Ericksson, the owner and president of SBH Corporation, with violating the Hazardous Materials Transportation Safety Act and two RCRA storage and disposal violations.

Evertson transported ten metric tons of sodium metal from its port of entry in Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant allegedly arranged for the transportation of sodium metal not used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. According to the indictment, Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transport, despite the fact that sodium metal and the materials in the tanks are highly reactive with water. The material subsequently was abandoned.

On May 27, 2004, the Environmental Protection Agency responded to the storage facility and removed the sodium metal, some of the sludge in the bottom of the tank, and another tank with corrosive liquid. Commercial laboratories refused to accept the sludge for testing due to its reactivity with water. When EPA tested the sludge at its own lab, it was classified as a hazardous waste. The EPA ultimately spent over a half a million dollars on the cleanup and response to Evertson's abandonment of the hazardous waste.

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

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United States v. Wassim Mohammad Azizi, No. 3:06-CR-00548 (N.D. Calif.), AUSA Stacey Geis [redacted]

On September 22, 2006, Wassim Mohammad Azizi was charged with four felony counts of violating the Clean Air Act.

The indictment alleges that between December 1, 2002, and February 1, 2003, Azizi illegally demolished a building that contained significant amounts of asbestos thereby placing workers and the

public at risk. The defendant allegedly failed to follow the NESHAPs in that he did not properly notify EPA, did not adequately wet the material, failed to remove all the asbestos-containing material from the demolition site, and failed to dispose of it in an approved disposal site.

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

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United States v. Chris Mulloy et al., No. 2:06-CR-00692 (C.D. Calif.), AUSA Joe Johns [redacted]

On September 19, 2006, two men were arrested for attempting to smuggle monkeys and birds into the U.S. from Thailand. Robert Cusack was found to have two endangered slow loris pygmy monkeys in his underwear, while birds of paradise escaped from Chris Mulloy's baggage as he attempted to get through Customs at the Los Angeles International Airport.

Slow Loris Pygmy Monkeys

Cusack was sentenced in June 2002 to serve more than five months' incarceration in a previous effort to smuggle four birds of paradise, two lorises, and 50 rare orchids into this country.

Mulloy also tried to sneak two newborn Asian leopard cats past the customs agents in carry-on luggage and later contacted his sister, Darlah Mulloy, to ask for her help in getting rid of the contraband cats. Chris Mulloy was charged with two smuggling violations for illegally receiving, concealing, and transporting wildlife, and two false statement violations. Darlah Mulloy was charged with one smuggling violation and one count of tampering with a witness.

The arrests came at the end of a four-year investigation. One of the smuggled cats has been living with an acquaintance of the Mulloys' for three years. Another was given to a friend who was unable to care for it, and the cat ultimately made its way to the U.S. Fish and Wildlife Service in Texas, where it is being cared for by a wildlife facility. The lorises are housed at the Los Angeles County Zoo, but the four birds of paradise all perished.

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

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United States v. Kim Johnson et al., No. 2:06-CR-00501(E.D. Pa.), AUSA Paul Gray [redacted]

On September 19, 2006, Kim Johnson and Virginia Smith were charged in a ten-count indictment with smuggling, possessing, and selling products from endangered and threatened animal species.

The defendants operated a business known as Authentic Africa, located in Philadelphia, as well as a Web site called *AuthenticAfrica.com* where they sold a variety of African artifacts, decorative items, animal skins, and parts. According to the indictment, the defendants sold animal parts in 2002 and 2003 to an undercover United States Fish and Wildlife Service agent. The items included ivory tusks, elephant hair bracelets, a gorilla skull, colobus monkey parts, a python skin, and tiger and jaguar skins. Specifically, they are alleged to have sold an African rock python skin for $450, three helmet masks containing colobus monkey fur for $1,225, an ivory elephant tusk for $2,500, a gorilla skull for $1,500, a tiger skin for $5,500, and a jaguar skin for $8,000. In addition, a leopard skin and skull and a tiger skin were sold for a total of $17,400.

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

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United States v. Frederick Reynolds et al., No. 1:06-CR-00003 (D. Ak.), ECS Senior Trial Attorney Bob Anderson [redacted] and SAUSA Todd Mikolop [redacted]

On September 19, 2006, Frederick Reynolds and Michael Sofoulis were variously charged in a nine-count indictment with conspiracy, Lacey Act, false statement, and witness tampering violations, as well as a violation of the Marine Mammal Protection Act, stemming from the illegal sale of walrus ivory.

The defendants are alleged to have illegally sold beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration (tagging). The ivory also may subsequently be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

Four Walrus Headmounts

The indictment alleges that Reynolds removed ivory from walrus carcasses that had washed ashore and then prepared certificates that falsely listed other persons as the “hunter" or "owner" of the walrus parts. Reynolds used tagging gear owned by his mother-in-law to sell the ivory (configured as “headmounts”) for $1,000 or greater with the help of his friend, Sofoulis, a guide. After hearing of the investigation, Sofoulis approached a fellow guide to whom he had sold

ivory and advised him to hide the headmount and remove the tags. He later suggested to this guide/customer that the latter lie to investigating agents about his purchase of the headmount.

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

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United States v. Fermin Fortun et al., No. 4:06-CR-10020 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Camp and Excavation Site

On August 31, 2006, Fermin Fortun and his son, Fermin Fortun, Jr., were charged with destruction of federal property valued in excess of $1,000 as well as trespassing, illegally searching for objects of antiquity, and the lighting of fires, all within the Key West National Wildlife Refuge.

Officials began their investigation in June of this year, as they observed the defendants over the course of two months visiting uninhabited Keys within the Refuge. By mid-July, the Fortuns had established themselves at an inland campsite on Boca Grande Key and begun excavation of a site that grew to be approximately eight feet in diameter and ten feet deep. Surveillance by air, from the adjacent waters, and by a team of enforcement officers on the Key confirmed the illegal digging activity, as well as the fact that the defendants had entered a closed part of the Key, set fires at their campsite, and were searching for objects of antiquity without the required authorization or permit for such activities. According to court records, the defendants previously engaged in a similar operation, causing less intrusion and damage to Refuge property, which was assessed at almost $10,000 for remediation.

Boca Grande Key has been part of the Key West National Wildlife Refuge since it was established in 1908 by President Theodore Roosevelt as a preserve and breeding ground for native birds and other wildlife. This refuge was the first established in the Florida Keys and is one of the earliest refuges in the United States. The refuge encompasses more than 200,000 acres with only 2,000 acres of land. The area is home to more than 250 species of birds and is an important sea turtle nesting area.

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

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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 September 14, 2006, Eco Finishing Company ("ECF"), an electroplating company, pleaded guilty to an information charging it with the knowing violation of a pretreatment program in violation of the Clean Water Act.

From May 2001 through approximately April 2005, the defendants 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 provided by disgruntled employees indicate 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 only during MCES inspections.

Co-defendant Ted Gibbons, a former chemist for ECF, was previously sentenced to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty 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." The investigation is ongoing.

This case is being 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. Daniel Storms, No. 7:06-CR-00770 (S.D.N.Y.), AUSA Ann Ryan [redacted]

On September 13, 2006, Daniel Storms, a former employee of the New York City Department of Environmental Protection ("DEP"), pleaded guilty to an information charging him with a false statement violation for making fraudulent entries in DEP records relating to the monitoring of drinking water. Storms was responsible for conducting tests to monitor drinking water turbidity at the DEP's Catskill Lower Effluent Chamber. Storms admitted that on February 9, 2006, he made false entries in the log book regarding turbidity levels and did not perform all the necessary steps in the test procedure.

The defendant is scheduled to be sentenced on December 11, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation and the FBI.

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United States v. Alan McGlory, No.3:05-CR-00213 (D. Conn.), ECS Trial Attorney Tom Ballantine [redacted] and AUSA Eric Glover [redacted]

On September 13, 2006, Alan McGlory was sentenced to serve a one-year term of probation and was ordered to pay a $3,000 fine. The court took into consideration the fact that the defendant is ill with lung cancer.

Starting in approximately March 1999, McGlory was the operations manager of a photo processing plant owned by Fujicolor Processing, Inc., in New Britain, Connecticut. McGlory pleaded guilty in August of this year to a CWA false statement violation relating to the illegal discharge of silver from this facility to the POTW.

From around January 2002, McGlory became aware that the equipment at the processing plant would occasionally fail to achieve the effluent limits set in the wastewater pretreatment permit. Despite this knowledge, however, the defendant signed off on discharge monitoring reports which he knew to contain false information. Specifically, the reports indicated that the average monthly silver concentration was 0.57 milligrams per liter, when in fact it was higher. The reports further state that the maximum measured silver concentration was 0.69 milligrams per liter, when McGlory knew they were actually exceeding the maximum permitted limit.

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United States v. Steven McClain et al., No. 2:06-CR-00102 (E. D. Pa.), AUSA Seth Weber [redacted] and SAUSA Joseph Lisa [redacted]

On September 13, 2006, wastewater treatment plant superintendent Steven McClain was sentenced to serve a year and one day of imprisonment. The court denied the defendant's request for a period of home confinement, as opposed to a term in prison. The judge emphasized that environmental crimes are serious matters and that the defendant's actions as a senior public official put the health and safety of the community in jeopardy. McClain also was sentenced to serve three additional months in a community detention center, followed by three months of home detention and six months of supervised release to follow his release from prison. Finally, the defendant is required to pay a $4,000 fine.

McClain and operator Ronald Meinzer pleaded guilty in April of this year to a two-count information charging them with felony CWA violations for dumping thousands of gallons of untreated sewage into the Delaware River. The defendants ordered workers, in August and September 2004, to wash thousands of gallons of raw sewage and sludge, which had spilled from a digester, into a storm water sewer that led to the Delaware River. Additionally, from approximately 1997 through June 2005, the defendants bleached samples prior to their being sent to an offsite lab for analysis in order to mask fecal coliform levels. The defendants also tampered with plant monitoring equipment by disconnecting devices including alarms on chlorine tanks and digesters at the Bristol Plant.

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

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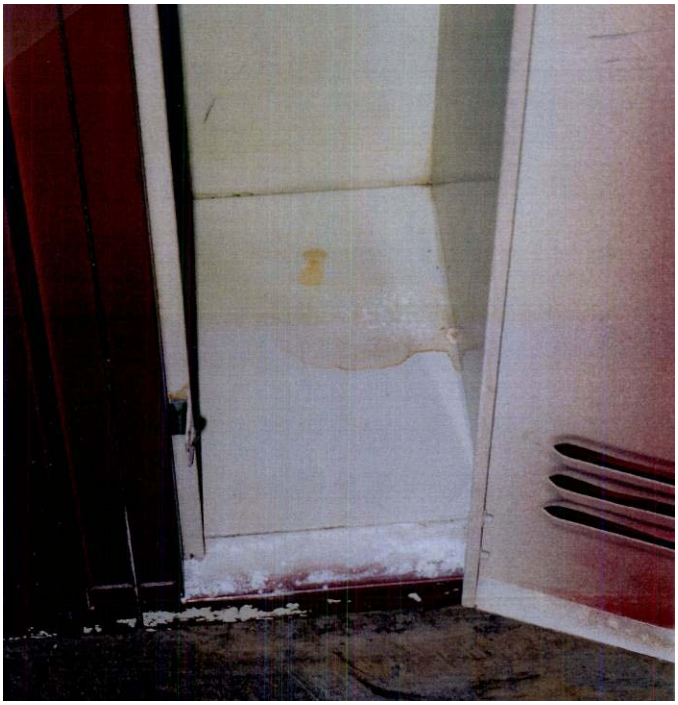
United States v. Joseph Cannella et al., Nos. 1:01-CR-00090, 3:04-CR-00152, 1:05-CR-00103 (D. Colo.), ECS Senior Counsel Jim Morgulec [redacted] AUSAs John Haried [redacted] and Tim Neff [redacted], and SAUSA Linda Kato [redacted]

On September 11, 2006, Joseph Cannella pleaded guilty to two counts of negligent endangerment under the Clean Air Act. The pleas grew out of charges that Cannella, a senior management employee at National Service Cleaning Corporation ("NSCC"), an asbestos abatement contractor, and co-defendant Steven Herron, owner of Steve Herron and Associates ("SH&A"), an asbestos abatement consultant, conspired and caused multiple violations of CAA work practice standards relating to the removal and disposal of asbestos at Fort Morgan High School, in Fort Morgan, Colorado, in July and August, 1999. Both defendants also initially were charged with multiple mail fraud violations. Herron had been charged with making a false writing in violation of 18 U.S.C.§ 1001. As part of the plea, Cannella agreed that a sentence of confinement in the range of 6 to 12 months would be an appropriate disposition. He also agreed to a lifetime ban from the asbestos-abatement industry. Before he could plead guilty, Herron was involved in a serious motor cycle accident and passed away September 14th. A motion to dismiss charges pending against him will be filed. Cannella is scheduled to be sentenced on November 21, 2006.



Asbestos in Locker

Two other co-defendants previously have been sentenced in this case. Daniel Argil also was employed by NSCC to remove asbestos from the school and was sentenced to serve 68 months' incarceration, followed by three years' supervised release, for his role as the project supervisor. He also was ordered to pay $232,052.90 in restitution to the Morgan County School District.

Argil caused a significant amount of hazardous asbestos to be released into the air at Fort Morgan High School and directed employees to mishandle the material during the removal process. A high-powered water sprayer was used to remove the asbestos, which resulted in asbestos being discharged outside the containment area. The water-laden asbestos migrated to areas within the school, including inside lockers and wall systems. After the water evaporated, the asbestos remained as a dry powder that easily became airborne and thus was much more dangerous. As a result of his actions, Argil left Fort Morgan High School contaminated with asbestos when students, faculty, staff and employees returned to the school in the fall of 1999. Further, NSCC employees made efforts to conceal the company's failure to properly conduct the asbestos abatement project. Argil pleaded guilty to two felony CAA violations and a mail fraud violation. Co-defendant David Backus, an employee for SH&A, pleaded guilty to two mail fraud violations and was sentenced in May 2005 to serve 18 months' incarceration followed by three years' supervised release. Backus also was ordered to pay $15,800 in restitution.

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

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United States v. Sun Ace Shipping Company et al. , 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted]

On September 6, 2006, Sun Ace Shipping Company ("Sun Ace") pleaded guilty to a one-count information charging an APPS violation for failing to maintain an accurate oil record book ("ORB"). In January 2006, during a Coast Guard boarding of the *M/V Sun New*, a bulk carrier vessel operated by Sun Ace, inspectors found that members of the engine room crew had used bypass hoses to discharge oily wastes overboard into the ocean without using the vessel's oil-water separator. Inspectors further discovered that the vessel's crew had disposed of oily waste into the ocean at least twice during the voyage from South Korea to New Jersey between November and December 2005. Chief engineer Chang-Sig O, and Mun Sig Wang, second engineer for the *Sun New*, were previously charged in a three-count indictment with conspiracy, obstruction of justice, and an APPS violation in connection with the use of two bypass hoses for these illegal discharges.

According to the terms of the plea agreement, the company has agreed to pay a $400,000 fine and an additional $100,000 community service payment to the National Fish and Wildlife Program, Delaware Estuary Grants Program, which will be used to protect and restore the natural resources of the Delaware Estuary and its watershed. Sun Ace also may be ordered to serve a three-year term of probation, during which time its vessels will be banned from entering U.S. ports and waters.

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. Victor's Premier Plating, Inc., et al., No. 05-CR-143 (S.D. Calif.), AUSA Melanie Pierson [redacted]**.**

On September 1, 2006, Victor Zuniga was sentenced to serve 24 months' in custody and ordered to pay a $120,000 fine. Zuniga and his business, Victor's Premier Plating, Inc., were convicted by a jury in May of this year on 24 CWA violations. The court ordered that the fine be paid jointly and severally between the defendants.

Evidence at trial proved that the defendants exceeded the legal limits on discharging wastewater contaminated with zinc on 19 occasions, wastewater contaminated with chromium on one occasion, and wastewater with a low (acidic) pH on four occasions, all between December 2001 and January 2003.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the City of San Diego Metropolitan Wastewater Department, Industrial Wastewater Control Program; and the FBI.

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United States v. Pacific-Gulf Marine, Inc. et al., No. 1:06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted], ECS Trial Attorney Malinda Lawrence [redacted], and AUSA Michael Cunningham [redacted]

On August 31, 2006, Pacific-Gulf Marine, Inc. ("PGM"), an American-based ship operator, pleaded guilty to a four-count information charging it with Act to Prevent Pollution from Ships ("APPS") violations for the deliberate overboard discharge of hundreds of thousands of gallons of oil-contaminated bilge waste from four of its ships through the use of a bypass pipe. PGM admitted to circumventing the oily water separator ("OWS") on four giant "car carrier" ships used to transport vehicles.

M/V Fidelio

The criminal investigation began on September 2, 2003, after the U.S. Coast Guard inspected the *M/V Tellus* and *M/V Tanabata* in Baltimore. An inspection in March 2003 of the *M/V Fidelio*, another PGM-managed vessel, disclosed a bypass pipe loaded with oil hidden under the engine room floor. Engineers denied involvement in any illegal conduct during both the March and September inspections. On the *M/V Tanabata*, the pipe used to bypass the OWS allegedly was thrown overboard by the ship's chief engineer after the Coast Guard inspected the vessel in Baltimore. After learning of the federal investigation, PGM conducted an internal investigation, which it disclosed to the government.

Under the terms of the plea agreement, $1 million will be paid as a criminal fine and an additional $500,000 will be devoted to community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects on the Chesapeake Bay and will provide environmental training to those enrolled in U.S. maritime academies. PGM also must complete a three-year term of probation and institute a comprehensive environmental compliance plan.

On June 28th, Stephen Karas and Mark Humphries, former chief engineers of the *M/V Tanabata*, were charged with conspiracy, APPS violations for failing to maintain an oil record book, and false statement violations. Karas also was charged with obstruction of justice for alleged witness tampering, while Humphries was further charged with obstruction for destruction of evidence, that is, allegedly throwing the bypass pipe overboard after the Coast Guard inspection in Baltimore.

PGM is scheduled to be sentenced on November 30, 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. Chian Spirit Maritime Enterprises, Inc., et al., No. 1:06-CR-00076 (D. Del.), Senior Trial Attorney Mark Kotila [redacted] and ECS Trial Attorney Jeff Phillips [redacted]

On August 30, 2006, Adrien Dragomir, the chief engineer for the tanker *Irene E/M*, pleaded guilty to one APPS violation for falsifying the oil record book ("ORB"). He was sentenced to serve a one-year term of unsupervised probation. Grigore Manolache, the ship's master, pleaded guilty in July of this year to an information charging him with presenting false information to the U.S. Coast Guard. Two other individuals, Christos Pagones and Evangelos Madias, were charged while still in Greece and may face extradition.

On July 14, 2006, a five-count indictment was returned charging two corporations and four individuals with violations stemming from the illegal discharge of oily waste from the *Irene*, 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*; Venetico Marine owner Madias; Venetico Marine technical supervisor Pagones; chief engineer Dragomir; and ship's master Manolache.

During a routine Coast Guard inspection in December 2005, inspectors uncovered evidence that the ORB had been falsified. Investigation further revealed that the vessel's oil water separator ("OWS") 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 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. Alexander Salvagno et al., No. 02-CR-0051 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On August 30, 2006, Alexander Salvagno was re-sentenced to serve 25 years' incarceration. This remains the longest sentence ever imposed for an environmental crime. His father, Raul Salvagno, was re-sentenced to serve 19 ½ years' incarceration, which is the second longest environmental criminal sentence. The Salvagnos and AAR Contractor, Inc. ("AAR") also are responsible for nearly $23 million in restitution to be paid to victims and must forfeit an additional $5.7 million to the federal government, some of which will be used to pay restitution to victims.

The two originally were sentenced in December 2004 after being convicted in March 2004 following a five-month trial of 14 felony counts. They were variously convicted of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), conspiracy to violate the CAA and TSCA, substantive CAA violations, and tax fraud violations stemming from an illegal asbestos removal scheme which spanned approximately ten years.

The Salvagnos owned AAR, which was one of the largest asbestos abatement companies in New York State. For almost a decade, the defendants engaged in multiple illegal asbestos abatement projects. From 1990 until 1999, Alex Salvagno secretly co-owned a purportedly independent laboratory, Analytical Laboratories of Albany, Inc. ("ALA"). The Salvagnos used ALA to defraud victims by creating fraudulent laboratory analysis results that were used to show that all asbestos had been properly removed as promised by the defendants. These results were taken from more than 1,555 facilities throughout the state, with the falsification of approximately 75,000 laboratory samples from asbestos abatements at elementary schools, churches, hospitals, state police barracks, the New York legislative office building, and other public buildings and private residences. Witnesses, including many former AAR and ALA employees, testified to "rip and run" activities directed by the defendants that included indoor "snow storms," which were releases of large amounts of visible asbestos into the air during the removal process. Evidence established that workers were knowingly sent into asbestos "hot zones" while being encouraged to work illegally without respirators or without sufficient replacement filters for the respirators. Eight other defendants have been prosecuted in this matter.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Internal Revenue Service, the United States Army Criminal Investigation Division, and the New York State Office of Inspector General. Assistance also was provided by the New York State Departments of Labor and Health.

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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, a company employee instead emptied these 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 District.

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 immediately sentenced 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, 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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