ENVIRONMENTAL CRIMES MONTHLY BULLETIN

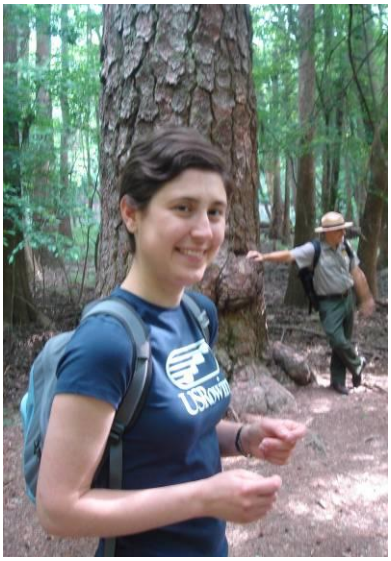
June 2006

EDITORS' NOTE:

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

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

PHOTOS FROM ENVIRONMENTAL CRIMES COURSE MAY 2006 COLUMBIA, SOUTH CAROLINA:



Martha Grekos

Herb Johnson

AT A GLANCE

SIGNIFICANT OPINIONS

♦ **S.D. Warren Co. v. Maine Board of Environmental Protection, ___ S. Ct. ___, 2006 WL 1310684 (May 15, 2006) (No. 04-1527). Clean Water Act, Discharge of a Pollutant, Release from Hydropower Dams.**

♦ **United States v. Thorn, 317 F.3d 107 (2d Cir. 2003), on remand, ___ F.3d ___, 2006 WL 1130902 (2d Cir. Apr. 27, 2006). Clean Air Act, Sentencing, Injury and Abuse of Trust Enhancements.**

♦ **United States v. Wabash Valley Service Co., 62 Env't Rep. Cas. (BNA) 1050 (S.D. Ill. Mar. 16, 2006). FIFRA, Void for Vagueness Doctrine.**

♦ **United States v. Singleton, ___ F. Supp. 2d ___, 2006 WL 539554 (E.D. Mich. Mar. 6, 2005). RCRA, Sentencing, Continuing Release Enhancement.**

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	US v. Ahmet Artuner	*Ship Scuttling*/ CWA, False Statements
N. D. Calif.	US v. Sierra Meat Company	*Exotic Meat Sales*/ Lacey Act
S. D. Calif.	US v. Victor's Premier Plating, Inc.	*Electroplater*/CWA Pretreatment
N.D. Fla.	US v. Panhandle Trading Inc.	*Seafood Importers Mislabeled Catfish*/Lacey Act
S.D. Fla.	US v. Parkland Town Center, LLC. US v. Winn-Dixie Stores, Inc. US v. Alberto Roman	*Hotel Renovation*/ CAA NESHAP *Supermarket Chain Undersized Lobsters*/Lacey Act *Commercial Fisherman Illegal Import*/ Lacey Act
D. Minn.	US v. Ted Gibbons US v. Prime Plating, Inc.	*Electroplater*/ CWA Pretreatment, Tampering *Metal Plater*/ CWA, Conspiracy
D. N. J.	US v. Ashok Kumar	*Vessel*/ Conspiracy, False Statement, Obstruction
D. Nev.	US v. Greg Street Plating, Inc.	*Electroplater*/ CWA
E.D. Tex.	US v. Kun Yun Jho	*Vessel*/ Conspiracy, False Statement, APPS
S. D. Tex.	US v. Corpus Christi Day Cruise, Ltd.	*Vessel*/ False Statement, Obstruction

Quick Links

Significant Opinions

U.S. Supreme Court

S.D. Warren Co. v. Maine Board of Environmental Protection, ___ S. Ct. ___, 2006 WL 1310684 (May 15, 2006) (No. 04-1527).

Plaintiff company operated five hydropower dams on a river that produced electricity for its paper mill. Each dam created a pond from which water was funneled into a "power canal," through turbines, and back to the riverbed downstream from the dam. A license to operate the dams was required from the Federal Energy Regulatory Commission ("FERC"). Under section 401 of the Clean Water Act, if such activities could cause a discharge into navigable waters, a FERC license must be conditioned upon a certification from the state in which the discharge may originate that it will not violate water quality standards (including those set under state law). The certification may set forth effluent limitations and other requirements assuring compliance with the Clean Water Act and applicable state law.

Seeking to renew its federal licenses in 1999, plaintiff, under protest, applied for certification from the Maine Department of Environmental Protection ("MDEP"), claiming that its dams did not result in a "discharge into" the river. The MDEP issued certifications containing environmental conditions, and FERC subsequently licensed the dams subject to the state conditions. Continuing to claim that it did not need state certification, the plaintiff appealed to the Maine Board of Environmental Protection ("BEP"), which denied its appeal. It then filed suit in County Superior Court, which affirmed the decision of the BEP. Defendant, in turn, appealed to the Maine Supreme Judicial Court (its highest court), which affirmed the judgment of the Superior Court. The U.S. Supreme Court subsequently granted *certiorari*.

Held: The Court affirmed the decision of the Maine Supreme Judicial Court. It first noted that the term "discharge" (unlike the narrower "discharge of a pollutant") is not defined in the CWA and thus should be construed according to its "ordinary meaning," that is a "flowing out." It then found, under prior precedent, that releases from hydropower dams are "discharges" of water. The Court rejected plaintiff's argument that the term "discharge" necessarily implied the addition of something foreign into the water, distinguishing Miccosukee Tribe as interpreting the narrower term "discharge of a pollutant" under a different section of the CWA (section 402).

The Court also disagreed that the removal of the term "thermal discharge", during the enactment of the Water Pollution Control Act Amendments of 1972, from the descriptive scope of the term "discharge" in Section 502(16) of the CWA, was intended to narrow the reach of the statute. [NOTE: Justice Scalia declined to join in this portion of the Court's opinion.]

Finally, the Court rejected plaintiff's argument that the inclusion of the term "discharge of a pollutant" in section 511(c)(2) of the CWA (barring review by agencies such as FERC of effluent limitations and other requirements or conditions contained in section 401 certifications) meant that discharges that add no pollutant were not covered under section 401. The CWA protects the integrity of the nation's waters broadly, including "pollution" resulting from man-made alterations such as

changes in movement, flow and circulation due to the presence of dams, and section 401 certifications are essential to preserve the authority of states to address such concerns.

[NOTE: The Maine Supreme Court had held that plaintiff's dams, in removing substances from a navigable water body and then redepositing them into that same body of water, had "added" to the river, finding that "[a]n 'addition' is the fundamental characteristic of any discharge." S.D. Warren Co. v. State Board of Environmental Protection, 868 A.2d 210 (Me. 2005). In a footnote, the U.S. Supreme Court pointed out that, although it was affirming the judgment of the Maine Supreme Court, it was doing so upon different grounds, since it disagreed that an addition was fundamental to any discharge.]

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2nd Circuit

United States v. Thorn, 317 F.3d 107 (2d Cir. 2003), after remand, ___ F.3d ___, 2006 WL 1130902 (2d Cir. Apr. 27, 2006).

Defendant owner of an asbestos abatement company employed a total of approximately 700 persons on abatement projects at more than one thousand buildings over several years. Although he assured customers that all abatement jobs would be completed in compliance with the law, defendant (with the assistance of independent laboratories and air monitoring companies) actually engaged in an extensive scheme to defraud customers and to violate a number of applicable regulations through "rip and run" procedures without proper containment, causing significant quantities of asbestos fibers to be released into the air within each of the buildings. His workers (many of whom did not wear respirators) were extensively exposed to the fibers, and defendant falsified medical reports regarding their exposure. Thorn was convicted by a jury on nine Clean Air Act violations with respect to the removal of asbestos at twenty-two specific projects over a five-year period and of one count of conspiracy to promote money laundering. He was sentenced to serve 65 months' incarceration, forfeit almost $1 million in value of twenty-two abatement contracts, and pay approximately $300,000 in restitution. No fine was imposed because the district court found the defendant was unable to pay. The government appealed the sentence, arguing *inter alia* that the district court had erred (1) in finding that the CAA violations had not resulted in a substantial likelihood of death or serious bodily injury and (2) in refusing to impose an enhancement for abuse of a position of trust. The defendant cross-appealed his money laundering conviction.

Held: The Second Circuit affirmed the defendant's conviction on the money laundering charge. It vacated his sentencing on a number of grounds, including both of the CAA issues appealed by the government, and it remanded for resentencing.

The court first found that "substantial likelihood" in section 2Q1.2(b)(2) of the Sentencing Guidelines means "considerably more likely [than not]," and the application of that enhancement does not require that the offense actually cause serious bodily injury or death. Also, this guideline does not restrict the class of individuals put at risk, so it is not limited to situations in which the offense created a risk to persons other than participants in the offense. It then found that the district court clearly had erred in finding that the evidence had been too uncertain to support application of this enhancement. The fact that asbestos abatement inherently imposes risks on workers and that workers knowingly participated in the conduct that endangered them did not preclude a finding that the defendant's illegal

behavior resulted in a "substantial likelihood" of death or serious bodily injury to those workers, and undisputed medical evidence established that likelihood. Thus, the district court should have imposed a nine-level increase in offense level as provided under section 2Q1.2(b)(2).

The court also found that, due to the nature of his work and despite the substantial regulation of his industry, the defendant enjoyed broad discretion that enabled him to perform illegal abatements and to conceal and carry out his scheme undetected for ten years. To the extent that his clients deferred to him, they did so because of his special skill and expertise as an asbestos contractor. The district court however, correctly determined that it could not apply the enhancement in section 3B1.3 of the Sentencing Guidelines for use of a special skill because it already had applied an enhancement for defendant's aggravating role in the offense. Nevertheless, customers may have entrusted defendant with discretion to complete the asbestos projects without supervision and without relying upon independent laboratory test results to confirm compliance with regulations, thereby providing him with the freedom to commit difficult-to-detect crimes. If such were the case, and if such position of trust had been used to significantly facilitate the commission or concealment of the offenses, then application of the abuse of trust enhancement would be appropriate. Thus, the court remanded for such a determination.

Upon remand, the district court resentenced defendant to serve 168 months' incarceration and again to pay approximately $300,000 in restitution. Once again, the parties cross-appealed the sentence.

The Second Circuit affirmed in part the amended judgment of the district court, vacated it in part, and once more remanded for a second resentencing. The circuit court, noting that the district court upon remand had imposed the nine-level increase mandated for offenses resulting in substantial likelihood of death or serious bodily injury, declined to revisit that issue as urged by the defendant, even though the district judge had stated that he had found the testimony of the government's medical expert to have been insufficient to support the enhancement and "to some extent incredible." It also rejected the defendant's argument that the district court mistakenly had concluded that it had no authority under the Second Circuit's remand to consider a three-level downward departure based upon the nature of the risk created and the number of persons placed at risk. The court found that the defendant had waived the issue by not raising it at the initial sentencing, but, in any event, the facts here involving extensive exposure of a substantial number of people to visible emissions foreclosed such a downward departure. Finally, defendant similarly waived his objection to the restitution order by failing to challenge it at the initial sentencing or at the resentencing.

The Second Circuit further found that on remand the district judge had erred in failing to impose a two-level enhancement for abuse of trust, and it remanded for imposition of that enhancement. The enhancement was required because, as testimony by a victim had demonstrated, the defendant had "misuse[d] substantial discretionary judgment that is ordinarily given considerable deference to achieve or conceal criminal conduct." The district court found only that the defendant had not used his position of trust to *conceal* the offense, but had failed to determine whether the defendant had used that position to significantly facilitate the *commission* of the crime. Since the district court found that the defendant had used his special skills to get hired and secure "absolute discretion" in doing the job, the enhancement should have been imposed because it was established as a matter of law that the defendant used his special skill to facilitate the crime and to conceal it. The Second Circuit also found that the district court on remand had erred in departing downward by finding that the defendant's money laundering offense had been atypically "outside of the heartland" of such offenses, and it remanded with instructions to apply the Sentencing Guideline for such offenses without a downward departure. Finally, the Second Circuit found that on remand the district court erroneously had granted defendant's motion to depart downward with respect to his Criminal History

Category from II to I, since its determination was unsupportable on several grounds. The Second Circuit, thereby, vacated that determination and remanded with instructions to use category II.

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District Courts

United States v. Wabash Valley Service Co., 62 Env't Rep. Cas. (BNA) 1050 (S.D. Ill. Mar. 16, 2006).

An employee of defendant company applied two restricted-use pesticides (both containing Atrazine and subject to FIFRA) to a farm using an "air flow application rig." A neighbor observed and videotaped both the application process and also the pesticides drifting onto her nearby land (due to 20 mph winds in that direction). The defendants subsequently were criminally charged under FIFRA, 7 U.S.C. § 136j(a)(2)(G), with unlawfully using a registered pesticide in a manner inconsistent with its labeling. Specifically, the labels for both pesticides provided as follows: (1) "Do not apply . . . in a way that will contact workers or other persons, either directly or through drift", (2) "To avoid spray drift, do not apply under windy conditions", and (3) "Do not apply when weather conditions favor drift from treated areas".

Defendants moved to dismiss the charges against them and to declare the FIFRA criminal enforcement provision unconstitutional.

Held: The court granted defendants' motion to dismiss the charges and declared that the statute is unconstitutionally vague as applied insofar as it incorporates provisions of the labels of the two pesticides. Under the "void for vagueness doctrine," a statute must be sufficiently clear to provide individuals with fair notice that their conduct is prohibited, and it must define the prohibited conduct in a manner that does not encourage arbitrary and discriminatory enforcement. After analyzing in detail the Supreme Court's jurisprudence under the vagueness doctrine (regarding both facial and "as applied" challenges to statutory provisions), the court examined the specific language of the labels in question. Labels on pesticide products contain a number of safety indications as well as suggestions for efficient and proper product use. Where, as here, defendants must speculate as to which provisions they must strictly adhere, the statute may become unconstitutionally vague. The court did not address the government's argument that "common sense and experience," together with use of words such as "must" and "shall," would allow applicators to determine which portions of the labels were advisory and which mandatory. The court found that, however, since in the instant case the statute did not implicate First Amendment rights, and simply regulated business activity without implicating other constitutional rights, it was not subject to facial challenge.

As for the challenge to the statute as applied, the court found that the statute should be read from the perspective of those subject to its application. Here those were persons in the pesticide application industry, taking into account their specialized knowledge of the field. The court found that whether the terms used in the label provisions had precise meanings different from how a reasonable layperson would understand them was an issue of fact. However, it stated that resolution of that issue would not be outcome-determinative in this case.

The court rejected defendants' argument that the first provision in the labels prohibited only improper forms of application, and they did not address conditions such as the presence of wind. However, as conceded by the government, some "drift" will occur under nearly all conditions, so the applicator must evaluate numerous environmental and other factors in determining whether s/he will be applying the pesticides "in a way" that they will come into contact with people. Even proposed jury

instructions would be difficult to craft in this case, meaningful determination of enforcement decisions (in particular, the exercise of prosecutorial discretion) will be similarly difficult, and every applicator will be subject to prosecution due to "drift" under unguided discretion of the authorities. Thus, the court held, the first label provision was unconstitutionally vague as applied to defendants' conduct.

Similarly, the court found the second label provision unconstitutionally vague. The government's proposed interpretation of the term "spray drift" (in contrast with defendants' claim that they were "spreading" pesticides in the form of dry bulk impregnated fertilizer) suggested an understanding in the professional applicator community that differed from the government's asserted meaning. The subjective specialized understanding of terminology within an industry is relevant in a vagueness determination, and the dictionary meaning of "spray" suggests a liquid, not dry bulk, application. Further, "windy" is a subjective term that did not put applicators on notice of whether their conduct would violate the law, and the court rejected the government's argument that the training and license requirements for commercial applicators, together with their professional experience, provided adequate guidance to obey the statute. For similar reasons, the court found the third label provision, in particular the use of the terms "weather conditions" and "favor," also unconstitutionally vague. It is not just in marginal, but rather in all but the most egregious, situations that these terms are unclear and, again, an applicator's training and experience would not sufficiently guide him or her as to what an authority would consider reasonable conduct.

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United States v. Singleton, ___ F. Supp. 2d ___, 2006 WL 539554 (E.D. Mich. Mar. 6, 2005).

Defendant was convicted by a jury of conspiracy to violate RCRA, knowing transportation of hazardous waste to an unpermitted facility, storage and disposal of hazardous waste without a permit, and transportation of hazardous waste without a manifest. The court sentenced him to serve three concurrent terms of 37 months' imprisonment and a concurrent term of 24 months' imprisonment, to be followed by three years of supervised release. Defendant was further ordered to pay approximately $85,000 in restitution. Defendant appealed and the Sixth Circuit affirmed his conviction, but vacated his sentence and remanded for re-sentencing in light of Booker.

Held: The district court, after review, re-imposed the original sentence. District courts, after Booker, still may consider the same evidence and make appropriate findings under the Sentencing Guidelines, but once the applicable range has been determined, the court must determine in its discretion, as it did here, whether that range is appropriate under all the other factors set forth in 18 U.S.C. § 3553(a), taking the relevant guidelines into account. The court in this case found that the original sentence imposed had been reasonable and fair, rejecting once again defendant's objection to a six-level enhancement due to a continuing release of a hazardous substance. It noted that, when at the original sentencing, it had expressed doubt regarding the "fairness" of applying the six-level enhancement in the instant case, the court had been concerned about the structure of the guidelines in general and not about particularized unfairness to defendant. It had declined either to impose a sentence at the bottom of the available range or to explore possible grounds for a downward departure. The court also, once again, declined defendant's request for a downward departure due to his "severe medical condition."

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Trials

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

On May 10, 2006, after deliberating for approximately an hour, a jury convicted both defendants on all counts after a week-long trial.

Victor's Premier Plating, Inc., an electroplating firm, and owner Victor Zuniga, were charged in January 2005 in a 25-count indictment with CWA violations. 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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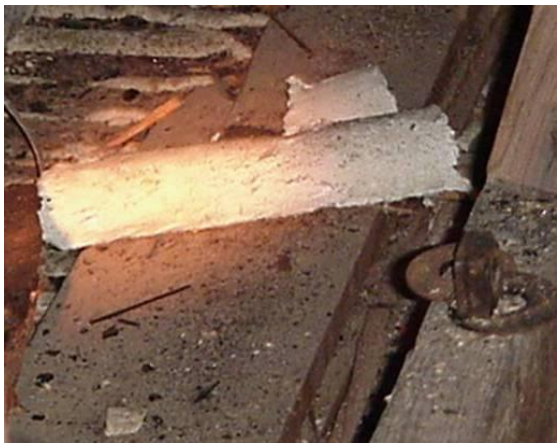
United States v. Parkland Town Center, LLC, et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield ([redacted] and AUSA Jose Bonau [redacted].

On May 8, 2006, after a two week trial, a jury returned guilty verdicts on all counts against contractor Terry Dykes. Co-defendants Parkland Town Center, LLC ("Parkland") and 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.

Exposed Asbestos



Parkland, a Palm Beach real estate development firm, company owner and developer Kozokoff, and Dykes, a subcontractor, were charged in September 2005 with violating the CAA NESHAP requirements during the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000. Parkland and Kozokoff were the owner and operator, respectively, of the former Northwood Hotel Building and Dykes was the subcontractor supervising the demolition project. 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. Upon investigation, it was discovered that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

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Indictments

United States v. Kun Yun Jho, No. 1:06-CR-00065 (E. D. Tex.), ECS Senior Trial Attorney Richard Udell ([redacted] ECS Trial Attorney Lana Pettus ([redacted] and AUSA Joe Batte ([redacted]

On May 17, 2006, Kun Yun Jho, chief engineer of the *M/T Pacific Ruby*, was charged in a five-count indictment with conspiracy, false statement and three APPS violations. The defendant allegedly falsified the 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").

In 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 the fleet had been falsified, the owners and operators of the *Pacific Ruby* 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 allowing fresh water to trick the oil content meter, causing alarms to be recorded in the ship's records, and creating the appearance that proper discharges were being made. Trial is scheduled to begin on July 17, 2006.

This case was investigated by the United States Coast Guard Investigative Service with assistance from the Coast Guard Marine Safety Office.

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United States v. Greg Street Plating, Inc., No. 3:06-CR-00081 (D. Nev.), ECS Trial Attorney Lary Larson [redacted].

On May 17, 2006, Greg Street Plating, Inc. ("Greg Street"), an electroplating, metal plating and finishing company, was charged in a one-count indictment with a CWA violation for discharging highly acidic waste into the sewer system that leads to the Truckee Meadows Sewage treatment facility.

The indictment alleges that, late Saturday night, April 12, 2003, or early on Sunday morning, April 13, 2003, an unknown Greg Street employee dumped this acid waste into the sewer system. The acid discharge reached the sewage treatment plant, setting off warning alarms. The operators of the treatment plant acted quickly and efficiently to isolate and neutralize the acid waste, thereby avoiding the possibility of substantial damage to the facility. The source of the discharge was quickly identified as Greg Street Plating by investigators from the Truckee Meadows Water Reclamation Facility and the Nevada Department of Environmental Protection.

As part of its metal plating process, Greg Street allegedly generated hundreds of gallons of rinse wastewater each week that exhibited a pH of less than 5.0 and was contaminated with heavy metals. The wastewater from the facility was supposed to be treated in a closed loop evaporation system and none of the wastewater from the plating process was permitted to be discharged into the sewer system.

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

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

On May 9, 2006, a 42-count superseding indictment was returned charging two seafood importers, the manager of those businesses, and a number of Vietnamese catfish suppliers, with importing falsely labeled catfish into the United States from Vietnam and subsequently marketing those fish as grouper in the commercial seafood markets in the United States and Canada.

Defendants charged are Danny Nguyen, Panhandle Trading, Inc. ("PTI") and Panhandle Seafood, Inc. Nguyen was vice president for each company. The remaining five defendants are located in Vietnam: An Giang Agricultural and Food Import Export Company, a/k/a Afiex Seafood Industry, a/k/a A. Seafood Industry; Buu Huy, a/k/a Huy Buu; Mekongfish Company, a/k/a Mekongfish, a/k/a Mekonimex; Canto Animal Fishery Products Processing Export Enterprise; and Duyen Hai Foodstuffs Processing Factory.

The indictment alleges that between May 2002 and April 2005, the defendants engaged in a scheme to intentionally mislabel certain frozen farm-raised catfish fillets, which were imported into the U.S. from Vietnam, in order to evade duties which had been imposed by the U.S. Department of Commerce on those imports. According to the indictment, Nguyen, PTI and PSI subsequently engaged in a scheme to sell the frozen catfish fillets as wild-caught grouper in the American and Canadian commercial seafood markets. The scheme involved imports totaling over a million pounds of catfish labeled as grouper, channa, snakehead or bass. Over 250,000 pounds of the fish have been seized in this investigation. The case is scheduled for trial to begin on August 21, 2006.

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

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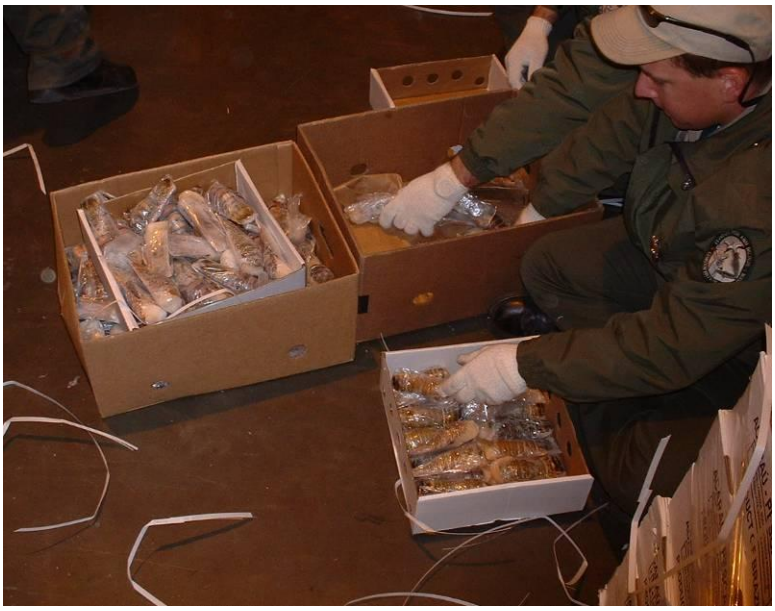
Pleas / Sentencings

United States v. Winn-Dixie Stores, Inc., No. 1:06-CR-20254 (S.D. Fla.), AUSA Tom Watts-Fitzgerald [redacted].



Undersized Lobster Tails

On May 22, 2006, Winn-Dixie Stores, Inc., pleaded guilty to a one-count information charging one Lacey Act violation for its illegal possession, transportation, and sale of undersized spiny lobster. On or about October 29, 2002, Winn-Dixie received a shipment at its Miami warehouse of approximately 6,000 pounds of Brazilian-origin spiny lobster, which it had purchased through a broker in Illinois. Based on inspections of similar shipments from the same source to other Winn-Dixie warehouses, it was determined that approximately 4,600 pounds of the lobster failed to meet the legal size standards set by Florida and Brazil.

The company was sentenced to pay a $200,000 fine and complete a two-year term of probation with $100,000 to be paid to the NOAA Fisheries Enforcement Fund established under the Magnuson-Stevens Act. The remaining $100,000 will be suspended and paid as alternative community service to the Wildlife Foundation of Florida, to be disbursed to the Florida Fish and Wildlife Conservation Commission ("FWCC") Fish and Wildlife Research Institute for in-depth habitat and sustainability research of the spiny lobster in Florida and throughout its Caribbean range. Winn-Dixie also has agreed to forfeit approximately 6,000 pounds of lobster with a retail value of $160,000.

This case was investigated by the NOAA Fisheries Office of Law Enforcement and the FWCC.

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United States v. Ashok Kumar et al., No. 2:02-CR-00406 and 407, 2:04-CR-00060 (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Tom Calcagni [redacted]

On May 17, 2006, Ashok Kumar, captain of the *M/T Guadalupe*, was sentenced to pay a $3,000 fine and ordered to serve three years' probation. Chief engineer Mani Elangovan was sentenced on May 19 to serve two years' probation and pay a $3,000 fine. The two pleaded guilty in May 2002 to violations related to the illegal discharge of oil during a five-month period in 2001. Kumar pleaded guilty to conspiracy to make false statements for encouraging crew members to lie to the U.S. Coast Guard and for asking engineers to conceal illegal oil discharge bypass pipes. Elangovan pleaded guilty to a false statement violation for making false entries in the ship's oil record

book to conceal the illegal discharges. Investigation further revealed that Elangovan ordered other employees to use a bypass hose to discharge oil.

Guadalupe Shipping, LLC, owned the *Guadalupe*, a tanker that carried various types of petroleum products, including diesel and jet fuel. OMI Marine Services, LLC, was the ship's operator. Both Guadalupe Shipping and OMI Marine Services were wholly-owned subsidiaries of the OMI Corporation.

OMI Corporation ("OMI") was sentenced in August 2004 to pay a $4.2 million fine, half of which was paid to a crew member whistleblower. The company also was placed on three years' probation. OMI pleaded guilty in January 2004 to preparing false documents in an effort to cover up the illegal dumping of thousands of gallons of waste oil at sea in violation of APPS.

This case was investigated by the U.S. Coast Guard Investigative Service, United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Transportation's Office of Inspector General.

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United States v. Ahmet Artuner, No. 2:05-CR-00937 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On May 15, 2006, Ahmet Artuner pleaded guilty to causing an unnecessary search and rescue and to making a false statement to the United States Coast Guard regarding his intentional sinking of his vessel the *F/V Junior*.

Artuner was charged in September 2005 with CWA violations and making false statements for sinking his 73-foot fishing boat off the coast of Central California and for then attempting to cover up the crime. The scuttled ship discharged a harmful quantity of oil and Artuner further caused the United States Coast Guard to launch a rescue mission when no help was needed.

The plea agreement states that Artuner willfully caused the destruction of the *Junior* on March 29, 2003, approximately three miles southwest of Channel Islands Harbor in Oxnard. After the vessel was sunk, the Coast Guard detected an emergency radio beacon coming from the vessel. When the Coast Guard responded to the location, it found only floating debris; however, investigators were able to determine the name of the ship. When the Coast Guard contacted the defendant as the owner of the vessel, he denied any knowledge of the scuttling and said that a man had been living on the *Junior* as a caretaker. With the information that someone may have been on board, the Coast Guard launched an unnecessary search and rescue mission. As part of the plea, Artuner has agreed to pay $132,000 in restitution to reimburse the Coast Guard. Sentencing is scheduled for October 4, 2006.

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

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United States v. Ted Gibbons, No. 06-CR-00035 (D. Minn.), AUSA William Koch [redacted].

On May 8, 2006, Ted Gibbons, a former chemist for the Eco Finishing Company, an electroplating facility, 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 local sewer authority, Metropolitan Council Environmental Services ("MCES"). Gibbons failed to submit laboratory reports to the MCES 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. The defendant 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. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux [redacted]

On May 4, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, was sentenced to serve a four-year term of probation, to pay a $150,000 fine, and to pay an additional $150,000 towards a community service program to restore waters off the coast of Corpus Christi. The ship's chief engineer, Gojko Petovic, was sentenced to serve a three-year term of probation.

On March 15, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, pleaded guilty to obstructing a U.S. Coast Guard investigation into whether the ship had illegally discharged waste oil and deliberately bypassed its pollution prevention equipment. The ship's chief engineer, Gojko Petovic, pleaded guilty to lying to Coast Guard inspectors about the existence of tank sounding records and then attempting to destroy them.

Coast Guard inspectors boarded the *M/V Texas Treasure* in Port Aransas, Texas, as part of a routine Port State Control examination. The inspectors discovered evidence that the ship's crew was bypassing its pollution prevention equipment and deliberately discharging oil-contaminated waste overboard. During the inspection, Petovic claimed to not know about the sounding records and attempted to delete them from his computer. The inspectors recovered the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

This case was investigated by the United States Coast Guard Investigative Service.

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United States v. Alberto Roman, No. 4:06-CR-10007(S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On May 4, 2006, Alberto Roman pleaded guilty to a Lacey Act violation for attempting to import approximately 875 pounds of Bahamian-origin fin fish of various species into the United States.

Roman caught the fish in May 2005. Upon returning to Marathon, Florida, his boat was inspected by local Fish and Wildlife officers who determined that Roman did not possess a Bahamian cruising permit authorizing him to fish in Bahamian waters. A GPS receiver found aboard Roman's vessel established that it had been operating in the Bahamian fisheries zone. It also was revealed that

the defendant was a former commercial fisherman and had been personally placed on notice by Bahamian enforcement authorities of the requirement for a cruising permit.

Illegal Catch

The Commonwealth of the Bahamas regulates and manages its domestic fisheries through the Fishery Resource Jurisdiction and Conservation Act, which addresses both commercial and recreational fishing activity. As a conservation measure, the federal Lacey Act gives reciprocal support and enforcement authority to U.S. agencies to implement such measures established by treaty, foreign, state, municipal, and tribal law.

The court sentenced Roman to time served and a one-year term of supervised release. In addition, as part of an agreed recommendation in lieu of seeking forfeiture of his vessel under the Lacey Act, Roman was ordered to pay a $10,000 fine to the NOAA National Marine Fisheries Service, Fisheries Enforcement Fund, and agreed to forfeit the value of the fish that were seized at the time of the offense.

This case was investigated by the NOAA Fisheries Office of Law Enforcement and the Florida Fish and Wildlife Conservation Commission.

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United States v. Sierra Meat Company, No. 3:06-CR-00308 (N.D. Calif.), AUSA Stacey Geis [redacted]

On May 3, 2006, Sierra Meat Company ("Sierra"), formerly known as Durham Meat Company, pleaded guilty to and was sentenced for selling exotic meat in violation of the Lacey Act. The company must pay a $75,000 fine, complete a one-year term of probation and implement a compliance plan.

The charges stem from the illegal sale of kangaroo, bear, and snake meat. A federal investigation uncovered numerous violations of wildlife statutes based on the illegal sale and import of bear meat, alligator meat, kangaroo meat, and certain kinds of snake meat in California.

Sierra illegally imported 1,521 pounds of kangaroo meat from Australia to California by mislabeling it and sold 150 pounds of bear meat. The company also was found to be falsely labeling snake meat, including selling Burmese Eel and labeling it as "rattlesnake" meat. A portion of the fine, $25,000, will be stayed during the term of probation. The compliance plan applies to all facilities owned and operated by the company.

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

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United States v. Prime Plating, Inc., et al., No. 04-CR-00208 (D. Minn.), AUSA Bill Koch (612) [redacted]

On April 28, 2006, four metal platers were sentenced after being convicted of discharging untreated hazardous waste into the sewer system. Scott Hanson, the owner and president of Prime Plating, Inc., was sentenced to serve 30 months' incarceration. Sam Opare-Addo, the company's environmental manager, was sentenced to serve 26 months' confinement. James Meissner, Hanson's cousin and a government witness who pleaded guilty prior to trial, was sentenced to serve 12 months and one day in prison. Arlyn Hanson, Scott Hanson's father, was sentenced to pay a $4,000 fine, complete a three-year term of probation with a special condition to serve 10 months' home detention, and complete 100 hours of community service. In addition to the prison terms, the defendants were jointly ordered to pay $1,020 in restitution to the City of Maple Grove to repair damage done to the sewer. The now-defunct metal finishing company also was ordered to pay $4,800 to the Crime Victims Fund. Scott Hanson's 30-month sentence is the second longest prison term handed down in Minnesota for an environmental crime.

The defendants were convicted in December 2004 on conspiracy and CWA violations for failing to use an operating waste treatment system. In June and July of 2003, the defendants conspired to discharge industrial wastewater from the facility to maintain operations despite not having a functioning pre-treatment system for the waste. The untreated wastewater was discharged directly into sewers using a series of pumps and garden hoses described during sentencing as "a spaghetti junction of hoses into the drain." According to evidence presented at trial, the company discharged zinc in amounts up to 160 times greater than allowed under the permit. The chromium discharges were up to 50 times greater than allowed.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Hennepin County Department of Environmental Services, with assistance from the United States Environmental Protection Agency NEIC.

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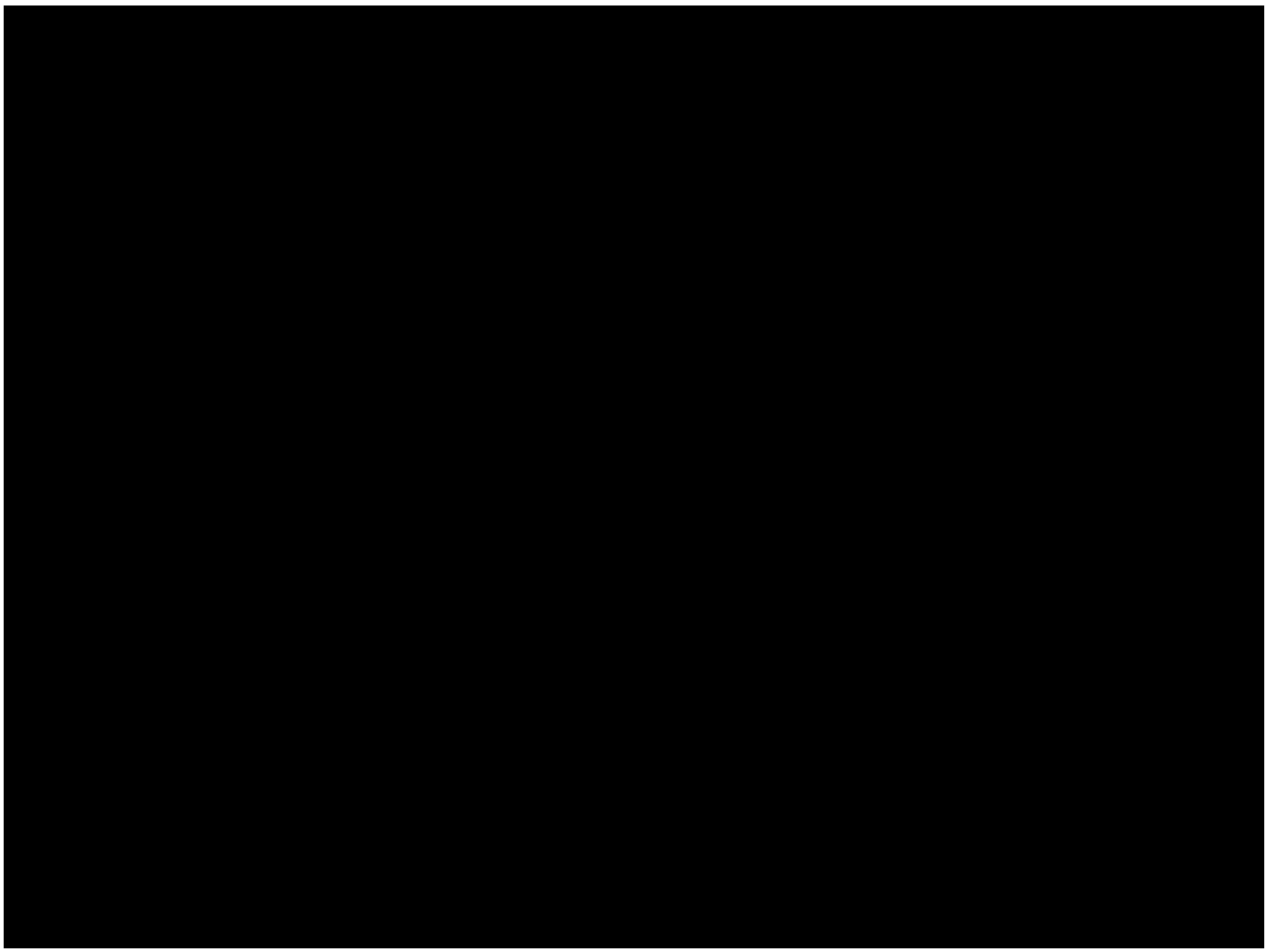

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[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice