ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

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EDITOR'S 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: [redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

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

AT A GLANCE

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Significant Opinions

9th Circuit

Northern California River Watch v. City of Healdsburg, ___ F.3d___, 2007 WL 2230186 (9th Cir. Aug. 6, 2007).

[The 9th Circuit withdrew its previous opinion (Northern California River Watch v. City of Healdsburg, 457 F.3d 1023 (9th Cir. 2006)) and replaced it with this one. The opinion is modified somewhat in light of the post-Rapanos caselaw. The 2006 opinion was summarized in the September 2006 edition of this Bulletin.]

Plaintiff environmental organization brought a citizen suit against defendant municipality under the Clean Water Act alleging that the City, without an NPDES permit, had discharged wastewater from its waste treatment facility into a pond (a rock quarry pit that had been formed from a prior gravel excavation operation). The pond was filled with water up to the line of the water table of the surrounding aquifer, and it drained into that aquifer. The pond lay along the Russian River, a navigable water that was separated from the pond by wetlands and a levee. Usually there was no surface connection between the river and the pond due to the levee. However, pond water eventually (and continuously) seeped from the aquifer into the river. In the process, the wastewater was partially cleansed as it passed through the bottom and sides of the pond and also through wetlands surrounding the pond. Pollutants remained in the water, however, including a substantially elevated concentration of chlorides. After trial, the district court found under Riverside Bayview Homes that the defendant had discharged sewage into protected waters of the United States (the pond) in violation of the CWA.

Held: On appeal, the Ninth Circuit affirmed the decision of the district court. The court found that the pond and its surrounding areas that were "inundated or saturated by surface or groundwater" constituted wetlands and that the pond was not "isolated." Under Justice Kennedy's controlling opinion in Rapanos, in order to qualify as a navigable water under the CWA, a body of water need not be continuously flowing, but must bear a "significant nexus" to a waterway that is in fact navigable,

and a mere hydrological connection due to adjacency of wetlands to navigable waters is not alone sufficient. Applying that test, the Ninth Circuit found that pond waters seeped through both surface wetlands and the underground aquifer directly into the Russian River and that these hydraulic connections significantly affected the physical, biological, and chemical integrity of the river. Thus, the pond and its wetlands not only were "adjacent" to the river within the meaning of Riverside Bayview Homes, but they also possessed a significant nexus to the river (which contained waters that were navigable in fact). Furthermore, an actual surface connection occurred whenever the river overflowed the levee. Finally, the wetlands in question supported substantial bird, mammal, and fish populations as an integral and indistinguishable part of the river's ecosystem.

The court rejected defendant's claim that the pond was excluded from protection under the "waste treatment system" exemption contained in the CWA and regulations. That exemption applies only to discharges made into a self-contained body of water that has no connection to waters of the United States or into waters that are part of an approved treatment system, neither of which situations existed here. It also rejected defendant's claim that the pond was excluded from protection under the regulatory exemption for ongoing excavation operations. In fact, rock and sand no longer were being excavated from the pond, which now was being used only for the pumping of sand and sediment *into* the pond.

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United States v. Moses, ___ F.3d ___, 2007 WL 2215954 (9th Cir. Aug. 3, 2007).

Defendant real estate broker and developer worked on a subdivision development located in a flood plain next to a creek that flowed into a tributary of waters of the United States (the Snake River). Because of an upstream irrigation diversion, water flowed in the creek (albeit in high volume) only during spring runoff. Over many years, the defendant rerouted and reshaped the creek, converting three channels into a single broader and deeper channel in order to carry all of the seasonal water flow. He employed bulldozers and other heavy equipment to redeposit material, and he erected log and gravel structures in the creek.

The Army Corps of Engineers warned the defendant on several occasions that his stream alteration work required a permit under the Clean Water Act and ordered him to cease and desist the work, subsequently issuing him a NOV. The defendant continued his actions and the USEPA issued an administrative compliance order directing him to cease discharges and to submit a work plan for restoring the stream. Nevertheless, the work continued, severely impacting the stream.

The defendant was indicted on three felony counts of knowing discharge of pollutants without a permit over a period of three years. He was convicted by a jury on all counts. On appeal, he argued principally that the evidence had been insufficient to support the verdict and that he should have been granted a new trial, claiming that the creek was not a water of the United States and that he had not discharged into it. He further argued that in any event he had not needed a permit.

Held: The Ninth Circuit affirmed the defendant's conviction. Citing Hubenka, the court held that the creek was a tributary of waters of the United States and remained so despite the man-made upstream diversion (even though the diversion began long before the CWA was enacted). It further found that under Headwaters and Eidson the seasonally intermittent creek was a water of the United States. The court noted that, even under the plurality opinion in Rapanos, "*seasonal* rivers, which contain continuous flow during some months of the year" could constitute waters of the United States. The dissenters in Rapanos, and Justice Kennedy, clearly would extend coverage to such intermittent flows.

The court rejected the defendant's argument that the pollutants were deposited only while the receiving portions of the creek were dry. The dredging and redepositing activities became discharges when the creek subsequently flowed (and thereby carried the material downstream to the river). The court also found that the redeposits fell well outside the regulatory definition of "incidental fallback".

The court went on to reject the defendant's claim that he had not needed a permit. It found that the work clearly had not come within the statutory exemption for "maintenance of currently serviceable structures" and that, in any event, the exception did not apply because the work here "further impair[ed]" a water of the United States. Finally, the court held that Nationwide Permit No. 3 was inapplicable because it was issued under the Rivers and Harbors Act, not the CWA.

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Districts

United States v. Citgo Petroleum Corp., ___ F. Supp. 2d ___, 2007 WL 1125792 (S.D. Tex. Apr. 16, 2007).

The defendant became the subject of an environmental criminal investigation regarding alleged mismanagement of benzene waste operations at its Corpus Christi refinery in violation of the Clean Air Act. In response to grand jury subpoenas, the company produced thousands of documents, including privileged documents, including documents that had been marked as "attorney client privileged" and "attorney work product". The government claimed that by producing the documents the defendant waived the privileges. The defendant subsequently stated to the government in writing that most of the documents marked as privileged were not in fact privileged and therefore there had been no waiver and that a few documents that were in fact privileged had been inadvertently disclosed. Defendant requested the return of those that were indeed privileged. When the government refused, the defendant filed a motion to compel return. The government filed a motion *in limine* to use as evidence attorney-client information and documents disclosed by the company during the grand jury investigation. It supported its motion with a series of documents from the defendant's files (all marked privileged) that it contended contained advice of corporate counsel regarding compliance with federal benzene regulations, arguing that the defendant had waived its attorney-client and work product privileges by disclosing them. The defendant responded by claiming that only four of the inadvertently disclosed documents in fact had been privileged, that the government had waited almost two years after disclosure before asserting the waiver, and that the government had violated ethical obligations by failing to notify the defendant promptly of the disclosure .

Held: The court granted in part the government's motion *in limine* and denied the defendant's motion to compel. Considering only the four documents that were acknowledged as privileged, it found that the defendant had not taken reasonable precautions to properly label documents and to prevent disclosures on multiple occasions. The defendant's delay in bringing a legal action and its lax attention to protecting confidentiality obviated the government's lack of timeliness and candor in the matter. Since the disclosure was inadvertent, however, and not for tactical advantage, the court limited the waiver to the specific documents disclosed, rather than generally to the entire subject matter of the representation, namely to all issues related to benzene waste management.

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United States v. Hylton, ___ F. Supp. 2d ___, 2007 WL 1674183 (W.D. Okla. June 7, 2007).

Defendant Guy Hylton, Jr., was the city manager for Elk City, Oklahoma, and Chick Little was a city employee. In May 2002, Hylton bought a former railroad depot built in the 1900s that was to be renovated and used by the City. During a five-month period in 2003, inmates from a local work program were used to remove asbestos from the property without proper equipment.

The Oklahoma Department of Central Services ("DCS") performed asbestos removal at governmental units within the state, including local units. An inspector for the State Department of Labor took samples at this former train depot in Elk City at the behest of federal OSHA because of the possible presence of asbestos. A representative of DCS who later was estimating the costs of removal took a second set of samples. Quantem Laboratories, which analyzed both sets of samples, concluded that they contained significant amounts of asbestos. A third sample later was taken at a dump site by a representative of the State Department of Environmental Quality in the company of two criminal investigators for that agency who were investigating a complaint of illegal asbestos disposal. In that instance, Quantem Laboratories concluded that the object tested was a white powder that did not contain asbestos.

All three sets of samples were destroyed or lost prior to the return of an indictment in the case. The defendants moved to dismiss the indictment, arguing that their inability to inspect the samples or to do further testing upon them denied them a fair trial by preventing them from having or developing important exculpatory evidence.

Held: After a hearing, the court denied the motion to dismiss the indictment. It held under Youngblood that there had been nothing to suggest that the government knew or should have known that the samples that had tested positive for asbestos had potential exculpatory value in a criminal proceeding at the time of their destruction. The failure to preserve the samples was not otherwise done in bad faith, since the laboratory acted in accordance with an established (and documented) procedure and no request had been made for their retention beyond the usual date in connection with a legal case or otherwise. With respect to the later samples that tested negative for asbestos, the laboratory report to that effect was itself exculpatory even in the absence of those samples.

The defendants were charged with a Clean Air Act knowing endangerment violation and with a CAA violation for causing the waste to be taken to a dump that was not licensed to handle it. They were further charged with an 18 U.S.C. §1001 false statement for informing investigators that the waste had been properly disposed of. A jury found both defendants guilty of a lesser CAA negligent endangerment charge and Little also was convicted of a false statement.

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Trials

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United States v. Guy Hylton et al., No. 5:06-CR-00299 (W.D. Okla.), AUSA Randy Sengel ([redacted]) and SAUSA Kathleen Kohl [redacted].

On August 20, 2007, Guy Hylton, Jr., the city manager for Elk City, Oklahoma, and Chick Little, a building superintendent for the city, were found guilty by a jury of a Clean Air Act negligent endangerment charge. Little also was convicted of a false statement violation.

In May 2002, Hylton bought a former railroad depot built in the 1900s that was renovated and used by the City. During a five-month period in 2003, inmates from a local work program were used to remove asbestos from the property without being provided the proper protective clothing or equipment.

The defendants originally were charged with a CAA knowing endangerment violation and a CAA violation for causing the waste to be taken to a dump that was not licensed to handle it. Both had been charged with false statements for informing investigators that the waste had been properly disposed. The jury convicted on the lesser negligent endangerment offense.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

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Indictments

United States v. Rowan Companies, Inc., No. 2:07-CR-00298 (E.D. La., E.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted], AUSAs Joe Batte [redacted] and Dee Taylor [redacted]

On August 16, 2007, informations were filed in two districts charging Rowan Companies, Inc., ("Rowan") with violations related to discharges from an oil rig. Specifically, the defendant is charged in the Eastern District of Louisiana with a Clean Water Act violation for discharging sandblasting waste into waters off an oil rig. The company also is charged in the Eastern District of Texas with MARPOL and CWA violations for discharging oil and garbage from an oil rig.

This was a mobile oil rig rented out to various companies that had drilling rights in the Gulf of Mexico, and it was pulled by a tug to and from those locations. The initial port was in Beaumont, Texas, and then it was moved to Louisiana for sandblasting.

The government's investigation revealed that between January and May 2004, company employees participated in sandblasting on one of the offshore drilling rigs in Port Fourchon, Louisiana, without properly containing the discharge of blasting waste. Investigation further revealed that employees on multiple occasions discharged a waste hydraulic oil and water mix from the rig into the navigable waters of the United States in the Eastern District of Texas between 2002 and 2004. Finally, defendants are charged with dumping garbage from the rig during this same time frame, which included used paint and paint cans, paint rollers and brushes, and food wastes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the United States Coast Guard and the United States Department of Interior.

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United States v. David Jacobs, No. 1:07- CR-00527 (N.D. Ill.), AUSA April Perry [redacted].

On August 15, 2007, David Jacobs, the president and owner of Northwestern Plating Works Inc., was charged in a two-count indictment with failing to properly dispose of hazardous wastes generated through the firm's electroplating processes and with embezzling nearly $1 million from an employee pension plan.

The indictment states that Northwestern Plating had been active in the metal finishing business since the 1920s, but ceased operations in August 2005. The Chicago Department of Environment eventually investigated the plant and discovered large amounts of

Crystalized Plating wastes

plating chemicals and wastes. Between July 2005 and April 2006, Jacobs is alleged to have illegally stored and disposed of cyanides, acids, corrosives, brass, copper, zinc, and nickel in violation of RCRA.

The second count of the indictment states that the company operated an employee profit-sharing plan, which provided retirement income to employees. The plan was administered by Jacobs, who also acted as the sole trustee for the plan. Between September 2001, and March 2005, Jacobs is charged with having converted for his own use $830,000 in plan funds in violation of ERISA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Labor.

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United States v. David Williams, No. 1:07-CR-00376 (D. Hawaii), ECS Trial Attorney Joe Poux [redacted] Major Crimes Section Chief Ronald Johnson [redacted] and AUSA William Shipley [redacted]

On August 8, 2007, David Williams, a Chief Warrant Officer in the U.S. Coast Guard and the Main Propulsion Assistant for the Coast Guard Cutter *RUSH*, was charged with obstructing the investigation into his authorization of the overboard discharge of bilge wastes through a deep sink which then drained directly into the Honolulu Harbor. He further is charged with making a false statement.

As the Main Propulsion Assistant, he oversaw the maintenance of the main diesel engines and other machinery in the engine room for the *RUSH*, a 378-foot high endurance cutter stationed in Honolulu. According to the indictment, on or about March 8, 2006, Williams authorized the direct discharge of bilge wastes through the sink into Honolulu Harbor, bypassing the oily water separator. Approximately a week later, the State of Hawaii Department of Health received an anonymous complaint that the ship's crew members were ordered to pump approximately 2,000 gallons of bilge waste into Honolulu Harbor. On May 1, 2006, investigators from the United States Coast Guard Investigative Service and the Environmental Protection Agency received confirmation from *RUSH* personnel who had personally been involved that bilge wastes had indeed been discharged into the Harbor.

According to the indictment, when questioned by investigators, Williams denied authorizing personnel to discharge bilge waste and also is alleged to have denied knowledge of any bypasses.

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. Zane Fennelly, No. 3:07-CR-00204, (M.D.Fla.), ECS Trial Attorney Georgiann Cerese [redacted] and AUSA John Sciortino [redacted].

On August 6, 2007, Zane Fennelly, former captain of a Jacksonville, Florida-based commercial fishing vessel, was arrested on an indictment returned on August 2, 2007. The indictment alleges a violation of the Magnuson Stevens-Fisheries Conservation Act for knowingly disposing of and attempting to destroy, three bags containing spiny lobster tails that were caught within the exclusive economic zone ("EEZ") of the United States.

On July 21, 2007, upon the approach of U.S. Coast Guard and Florida Fish and Wildlife Conservation Commission officers, Fennelly attempted to get rid of his catch. The bags did not sink, however, and were easily spotted and retrieved by law enforcement. The spiny lobster fishery in the

EEZ off the coast of Florida is only open between August 6th and March 31st and was closed at the time Fennelly jettisoned the lobster tails overboard.

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

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Pleas / Sentencings

United States v. James Jairell et al., No. 1:06-CR-0003 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] ECS Trial Attorney Wayne Hettenbach [redacted], with assistance from AUSA Steven Skrocki [redacted].

On August 29, 2007, James Jairell was sentenced to serve one month of incarceration despite a stipulation in the plea agreement to a seven-month sentence. The judge apparently changed his mind based on sentencing co-defendant Alan Veys earlier in the month to serve one month of incarceration. Jairell previously pleaded guilty to a felony conspiracy to violate the Lacey Act and to a Lacey Act felony false labeling violation for his involvement in illegal black bear hunts.

Veys, the operator of the Pybus Point Lodge on Admiralty Island, acting alone or with Jairell, recruited clients at sports shows to hunt bears at the Lodge in the spring and fall for approximately $4,000 per trip. The clients paid Veys, who later split the fees with Jairell. Jairell guided the clients on black bear hunts without involving a registered guide as required by Alaska state law. The defendants falsified "sealing certificates" submitted to the state, which claimed the bears were killed on non-guided hunts, and then shipped the bear skins and skulls to the clients from Alaska.

Veys earlier pleaded guilty to one misdemeanor count of negligently conspiring to violate the Lacey Act. As part of his sentence, Veys also will complete five months' home detention followed by one year of supervised release. He was further ordered to pay $20,000 in fines and restitution.

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

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United States v. Daniel Storm, No. 2:07-CR-00060 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On August 28, 2007, Daniel Storm was sentenced to serve three years' probation, complete 80 hours of community service, and pay a $5,000 fine. Storm, a professor of pharmacology at the University of Washington, pleaded guilty in March of this year to a RCRA violation for disposing of containers of highly flammable ethyl ether down a sink in his lab. The illegal disposal of ethyl ether created a significant risk of explosion or fire.

In 2006, the University of Washington Environmental Health and Safety Department conducted a survey of Storm's lab and determined that three metal containers of ethyl ether and two glass bottles containing a mixture of ethyl ether and water needed to be disposed of. The cost for disposal was $15,000, which Storm was unwilling to pay from his laboratory operations account. He then used an axe to break open the metal containers and poured the ethyl ether down a sink in his laboratory, followed by an ethanol solution to flush out any remaining explosive material.

Storm subsequently devised an elaborate cover-up scheme, including creating a false invoice using a fictitious hazardous waste company. He then placed calls to other professors purporting to represent the waste company and offering to pick up their lab waste in an effort to legitimize the company. Finally, he gave investigators two written memoranda detailing his alleged disposal arrangement with the fictitious waste company. When the agents were unable to locate this company, they subsequently discovered the illegal disposal.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the University of Washington Police Department.

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United States v. IMC Shipping Co. Pte. Ltd., No. 3:07-CR-00096 (D. Alaska), AUSA Aunnie Steward [redacted] and ECS Senior Trial Attorney Bob Anderson [redacted]

M/V Selendang Ayu

On August 22, 2007, IMC Shipping Co. Pte. Ltd., ("IMC") pleaded guilty to two Refuse Act violations and one violation of the Migratory Bird Treaty Act for spilling approximately 340,000 gallons of bunker fuel, as well as several thousand tons of soy beans, into the Bering Sea in the Alaska Maritime National Wildlife Refuge in the Aleutian Islands, resulting in the deaths of several thousand migratory birds. The company was sentenced to pay a $10 million criminal penalty.

On December 8, 2004, the *M/V Selendang Ayu*, a 738-foot Malaysian-flagged vessel, drifted for two days in stormy weather before grounding off the west side of Unalaska Island. After grounding, the ship severed into two nearly equal pieces. Twenty of the 26 crew members were rescued by the U.S. Coast Guard. Six crewmen died, though, when a Coast Guard helicopter that was hoisting them from the vessel crashed.

The spill was the largest in Alaska since the 1989 *Exxon Valdez* tanker spill. Approximately 1,600 dead seabirds were collected, but many more were likely killed and not found. The ship's captain, Kailash Bhushan Singh, previously pleaded guilty to making a false statement during the investigation regarding the time the engine was shut down prior to the ship's grounding. Cleanup, which was hampered by the site's harsh conditions and remote location, continued until the summer of 2006 and cost more than $100 million.

The $10 million criminal penalty includes $4 million in community service, specifically, $3 million to conduct a risk assessment and related projects for the shipping hazards off the area where the ship went aground near Unalaska Island and $1 million for the Alaska Maritime National Wildlife Refuge, Aleutian Chain Unit. IMC also will complete a three-year term of probation to include an audit of the company's maintenance program by an outside auditor. The court also specified that $1 million of the fine will be held in abeyance pending the defendant's compliance with the terms of probation.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigations, and the United States Coast Guard.

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United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla.), ENRD John Irving [redacted] AUSA John Sciortino [redacted] and Senior Trial Attorney Richard Poole [redacted]

On August 16, 2007, Kassian Maritime Navigation Agency, Ltd. ("Kassian") was sentenced to pay a $1 million fine, serve 30 months' probation, and pay $300,000 to fund community service projects through the United States Fish and Wildlife Foundation. In addition, the company will implement an environmental compliance program. Spyridon Markou, the second assistant engineer for the *M/V North Princess*, was sentenced to pay a $1,000 fine.

The company previously pleaded guilty to an APPS violation for maintaining a false oil record book. Markou pleaded guilty to making a false statement to the United States Coast Guard regarding his knowledge of the ship's use of an illegal bypass pipe to transfer oil-contaminated waste overboard. On or about November 20, 2006, after the Coast Guard inspected the *M/V North Princess* in Jacksonville, Florida, they found evidence that the company, through its employees, made false statements and used false documents during the course of the inspection by failing to maintain an accurate oil record book.

This case was investigated by the United States Coast Guard.

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United States v. Laidlaw Environmental Services a/k/a Safety Kleen Services, Inc., No. 5:07-CR-00317 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On August 15, 2007, Laidlaw Environmental Services (U.S.), Inc., now known as Safety-Kleen Services, Inc., pleaded guilty to an information charging one RCRA violation stemming from the mislabelling of hazardous waste.

On June 3, 1998, a company employee mislabelled mercury-contaminated waste by failing to include the proper designation on a hazardous waste manifest. On the same day as the plea, Laidlaw was sentenced to pay a $250,000 fine.

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

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United States v. Dennis Rodriguez, No. 3:05-02498 (W.D. Tex.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] AUSA Donna Miller [redacted] and AUSA Laura Franco Gregory ([redacted]

On August 15, 2007 Dennis Rodriguez, the president and chief operator of North American Waste Assistance ("NAWA"), was sentenced to serve five months' imprisonment followed by five months' house arrest and two years' supervised released. He also will pay a $10,000 fine. Rodriguez pleaded guilty in February of this year to three RCRA violations. Specifically, he pleaded guilty to one count of making a false statement in a manifest, one count of transporting hazardous waste to an unpermitted facility in Texas, and one count of transporting hazardous waste to an unpermitted facility in South Carolina.

Drums containing hazardous waste

NAWA is a waste disposal company located in El Paso, Texas, that disposed of hazardous and non-hazardous waste. In March 2003, NAWA was hired by a local construction company to dispose of approximately 180 55-gallon drums of construction-related waste. About 84 of the drums contained an expired petroleum-based concrete curing compound, which was an ignitable hazardous waste. Rodriguez generated a manifest that stated that the drums contained "Non-RCRA, Non-Regulated" waste and made arrangements to transport the drums to disposal sites in Texas and South Carolina, which were not permitted to accept or dispose of hazardous waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Texas Commission on Environmental Quality.

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United States v. Charles Powell, Jr., et al., No. 3:07-CR-30013 (S.D. Ill.), AUSAs Kevin Burke [redacted] and Jennifer Hudson [redacted]

On August 13, 2007, Charles Powell, Jr., the owner of Powell's Demolition Company, was sentenced to serve 15 months' incarceration followed by two years' supervised release. Powell pleaded guilty in June of this year to conspiracy to violate the Clean Air Act and one CAA count for failing to notify authorities prior to removing regulated asbestos-containing material. Powell directed others to remove asbestos without protective gear, without wetting the asbestos prior to removal, without notifying the contract waste haulers that they were hauling asbestos material, and without notifying the Illinois Environment Protection Agency prior to the removal work.

Powell originally had contracted with real estate developer Phil Cohn to renovate the Spivey Building in East St. Louis. The defendants had intended to rehabilitate the 12-story building, the tallest building in Southern Illinois, into an office and shopping center. Cohn previously pleaded guilty to a CAA violation and in 2005 was sentenced to serve five years' incarceration related to his

submitting false invoices to a school district for environmental cleanup work at the Clark Middle School site.

Co-defendant Isaiah Newton pleaded guilty in July 2007 to conspiracy to violate the Clean Air Act. Under Powell's direction, Newton supervised the crews that removed the asbestos from the Spivey Building. Newton is scheduled to be sentenced on October 17, 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division, the Illinois Environmental Protection Agency, and the Federal Bureau of Investigation.

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United States v. Ronald Jagielo, No. 1:07-CR-00190 (W.D.N.Y.), AUSA Marty Littlefield [redacted]

Waste outside facility

On August 9, 2007, Ronald Jagielo pleaded guilty to a RCRA violation for disposing of hazardous wastes between January 2004 and November 2006 at his family-owned business, MRS Plating. The wastes, containing cadmium, chromium and corrosive liquids, were dumped in and around his company's electroplating facility. EPA currently is engaged in a clean-up of the facility as a Superfund waste site.

This is Jagielo's second felony conviction for violating criminal environmental laws. MRS Plating, a now defunct corporation, also was previously prosecuted in 1996 and in 2000.

Sentencing is scheduled for December 7, 2007. This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division and the New York State Department of Environmental Conservation.

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United States v. David Bachtel, No. 2:05-CR-00872 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On August 6, 2007, David Bachtel was sentenced to serve 24 months' home confinement followed by three years' supervised release. A fine was not assessed. Bachtel is appealing his sentence.

The defendant was convicted at trial in February of this year on six of the seven violations charged in this case stemming from the defendant's intentionally sinking or scuttling of his 37-foot Chris Craft pleasure boat on March 5, 2005, causing oil to be released into the waters of the Port of Los Angeles. Bachtel was convicted of two water pollution violations: one count for the discharge of oil in a quantity that may be harmful and one for an unpermitted pollutant discharge; one count of attempting to obstruct the Coast Guard's investigation of the sinking by preparing false California DMV paperwork; two counts of making false statements to Coast Guard investigators; and one misdemeanor count of sinking a boat in a navigation channel.

Instead of completely sinking, the partially-submerged boat ran aground and was discovered by the Coast Guard on the next day to be leaking oil. Coast Guard divers concluded that the boat had been intentionally submerged because holes were made in the hull by someone striking it from the inside, and all registration numbers had been removed. When questioned about the boat, the defendant denied having any knowledge of it. Eleven days after scuttling the vessel, Bachtel filed a release of liability form with the California Division of Motor Vehicles, claiming to have sold the boat 14 days earlier to a man named "Jose Lopez" for $100.

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

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United States v. Jan Swart, d/b/a Trophy Hunting Safaris, No. 07-CR-00022 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] ECS Trial Attorney Jim Nelson [redacted] and AUSA Greg Holloway [redacted].

On August 6, 2007, Jan Swart, a South African big-game outfitter, was sentenced to serve 18 months' incarceration followed by three years' supervised release.

Swart pleaded guilty in May of this year to a one-count indictment charging a felony smuggling violation. The charge stems from his involvement in a scheme to import, through Denver in 2004, five hides and three skulls of leopards illegally killed in South Africa and smuggled to Zimbabwe. False CITES permits were subsequently obtained for the parts prior to their shipment to the United States.

Swart and co-defendant Basson, another South African outfitter, who previously pleaded guilty, were arrested in Pennsylvania in February 2007 at a sports show where both were advertising their businesses. Basson was sentenced in April of this year to pay a $5,000 fine, serve 19 days' imprisonment (with credit for 19 days already served), followed by three years' unsupervised probation in South Africa. The probation term requires Basson to return to the United States, at his own expense, to cooperate in the government's prosecution, if summoned. The court determined that Swart was likely unable to pay the stipulated fine of $20,000 and further that the government would have difficulty collecting it from him after his return to South Africa when he is released from prison. He was remanded to custody immediately following the hearing. Swart also will be banned from advertising in this country and may have his sentenced reduced if he cooperates against three remaining U.S. leopard hunters under investigation.

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

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United States v. John Callahan, No. 7:06-CR-00085 (W.D. Va.) AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On August 3, 2007, John Callahan, a two-time convicted felon, was sentenced to serve 21 months' incarceration for illegally removing asbestos from a government building in Roanoke, Virginia. Callahan also used homeless men to conduct the work.

The City of Roanoke hired Callahan, who operated Environmental Construction, to remove asbestos-containing material from the building in March 2004. Callahan hired three homeless men to do the work, knowing the men were not certified or properly trained to remove asbestos, nor did he provide them with the necessary protective gear. Callahan paid each man $10 per hour for over three days of work and instructed them to cut the asbestos-containing material with knives and hack saws without first wetting it. After the material was placed in unmarked garbage bags, Callahan hired a trash hauler to dispose of the waste at a landfill in Roanoke. Although the landfill had a special area for asbestos-containing material, the waste was improperly disposed of because Callahan failed to identify it.

Another company had to be hired at a cost of $12,000 to properly remove the asbestos from the Roanoke building after Callahan started the job.

This case was investigated by the United States Environmental Protection Criminal Investigation Division with assistance from EPA's National Enforcement Investigations Center, the City of Roanoke Police Department and the Virginia Department of Environmental Quality.

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United States v. Jo et al., No's. 2:07-CR-00012 and 00044 (D. Maine), AUSA Halsey Frank [redacted]

On August 3, 2007, Jo Miller was sentenced to pay a $24,000 fine and complete two years' probation for being an accessory after-the-fact in transporting hazardous waste without a manifest. Miller's husband, Herbert Miller, owned Miller Industries, a business engaged in milling waste fiber into yarn, cloth, and finished textiles, using a variety of chemicals including dyes, bleaches, caustics and oils. The company has operated plants in at least three locations in Maine since the 1970s. Miller Industries was storing discarded or unusable chemicals at its Maine facilities, accumulating approximately 550 containers of waste ranging from gallon cans to 55-gallon drums. Many of the chemicals were identified as hazardous waste by federal and state regulations.

Discarded hazardous waste

In 2001, Miller Industries obtained bids from at least two licensed environmental contractors to dispose of the waste. The company, however, proceeded to do the work itself, without a license or permit to do so. The company did not generate any manifests for the hazardous waste it transported, properly label the containers or placard the trucks it used, or provide training associated with the hazards of handling such wastes to its employees, one of whom was exposed to reactive waste.

In April 2007, Jo Miller again began contacting qualified contractors to dispose of the waste until the Maine Department of Environmental Protection was notified about the procedures Miller Industries had been following.

Miller Industries was sentenced in June 2007 to pay a $75,000 fine and ordered to make a $75,000 community restitution payment to the Maine Hazardous Waste Fund. The company also must complete a one-year term of probation. Herbert Miller was not charged.

This case was investigated by United States Environmental Protection Agency Criminal Investigations Division, EPA's National Enforcement Investigations Center and the Maine Department of Environmental Protection.

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United States v. Robert Roberts, No. 2:06-CR-00160 (C. D. Calif.), AUSA Dorothy C. Kim ([redacted] and SAUSA Vincent B. Sato [redacted]

On July 9, 2007, Robert Roberts was sentenced to serve two years' incarceration followed by three years' supervised release. He also was ordered to pay $12,279 in restitution to the Los Angeles Air Force Base. Roberts was convicted by a jury in January of this year of a false statement violation stemming from his dumping significant numbers of fluorescent light tubes and lamps containing hazardous levels of lead and mercury in storage lockers across Southern California after soliciting business in which he claimed to be a certified waste recycler. Roberts was initially charged with one count of storing hazardous wastes without a permit, three false statement counts, and one count of obstructing justice.

Roberts owned a company known as Recyclights West ("Recyclights"), which was primarily involved in the business of transporting and disposing of fluorescent light tubes and high-intensity discharge lamps. Recyclights advertised itself as a company that recycled "hazardous waste lamps" in compliance with federal environmental regulations, and it also promised customers that it would issue a certificate of recycling.

The indictment alleges that, when agents executed search warrants at approximately 30 storage units, they found tens of thousands of lights that contained hazardous levels of lead and mercury. Investigators also learned that Roberts had stopped paying rent for the units.

This case was investigated by the Office of Inspector General for the Department of Defense, the California Department of Toxic Substances Control and the United States Postal Inspection Service.

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