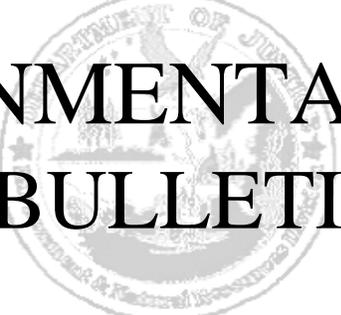


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# ENVIRONMENTAL CRIMES MONTHLY BULLETIN



*February 2006*

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## **AT A GLANCE**

*A FEW WORDS FROM ECS CHIEF DAVID UHLMANN - -*

This is the first edition of the Environmental Crimes Monthly Bulletin, which will replace the Environmental Crimes Bulletin that we previously circulated two to three times a year. By moving to a monthly format, we hope to provide more up-to-date information about case developments throughout the country.

The new monthly format will allow readers to more easily navigate through the Bulletin using electronic links. The cases will be grouped chronologically within the following sections: Significant Decisions, Trials, Indictments, Pleas/Sentencings and Training. While you may print out the document, you also will be able to read it on your computer as each case listed in the Litigation/Active Cases section is electronically linked to a description of the case.

The first edition of the Environmental Crimes Monthly Bulletin covers cases from December 2005 and January 2006, but in the future the Bulletin will primarily cover case activity for just the previous month. Subsequent editions may contain other features as we continue to “fine tune” the publication, and we welcome any comments our suggestions that you have in that regard. As always, please submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, please provide us with a copy. Please email your submissions to Elizabeth Janes at [REDACTED] or you may fax material 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>.

*SIGNIFICANT OPINIONS*

- ◇ [US v. Kraft, 8<sup>th</sup> Circuit, January 13, 2006: Conviction affirmed in case involving animal park and Lacey Act and ESA violations](#)

## LITIGATION

Districts	Active Cases	Case Type/ Statutes
S.D. Ala.	<a href="#">US v. McWane</a>	<i>Pipe Manufacturer/ CWA, Conspiracy, False Statement, Obstruction</i>
C.D. Calif.	<a href="#">US v. Andrew Nguyen</a>	<i>Primitive Endangered Plant/ ESA, Smuggling, Conspiracy</i>
	<a href="#">US v. Kahoolyzaheh</a>	<i>Dry Cleaner/ RCRA</i>
S.D. Calif.	<a href="#">US v San Diego Gas and Electric</a>	<i>Utility/ CAA, Conspiracy, False Statement</i>
M.D. Fla.	<a href="#">US v. Joseph Ulrich</a>	<i>Nest Destroyed/ Bald &amp; Golden Eagle Protection Act</i>
	<a href="#">US v. City of Venice</a>	<i>Municipality/ CWA</i>
S.D. Fla.	<a href="#">US v. Kevin McMaster</a>	<i>Endangered Species Skins/ Lacey Act, ESA</i>
D. Mass.	<a href="#">US v. MSC</a>	<i>Vessel/ APPS, Conspiracy, Obstruction, False Statement</i>
	<a href="#">US v. Jose Silva</a>	<i>Lobster Fishing/ Lacey Act, Conspiracy, False Statement</i>
W.D. Mich.	<a href="#">US v. James Vaandering</a>	<i>Electroplater/ RCRA</i>
E.D. Mo.	<a href="#">US v. Royal Canin USA</a>	<i>Pet Food Processor/ CWA</i>
D. Mont.	<a href="#">US v. John McDonald</a>	<i>Big Game Hunting/Lacey Act</i>
D.N.J.	<a href="#">US v. Atlantic States Cast Iron Pipe Co.</a>	<i>Pipe Manufacturer/ CWA, CAA, CERCLA, Conspiracy, False Statement, Obstruction</i>
	<a href="#">US v. Noel Abrogar</a>	<i>Vessel/ APPS</i>

Districts	Active Cases	Case Type/ Statutes
E.D.N.C.	<a href="#"><u>US v. Billy Moore</u></a>  <a href="#"><u>US v. Daniel Davis</u></a>  [REDACTED]	<i>Dredge and Fill/ CWA, Rivers and Harbors Act</i>  <i>Commercial Fishing/ Lacey Act</i>  [REDACTED]
N.D. Ohio	<a href="#"><u>US v. David Geisen</u></a>	<i>Nuclear Plant/ Conspiracy, False Statement</i>
E.D. Pa.	<a href="#"><u>US v. Wasserson</u></a>	<i>Dry Cleaning Products/ RCRA</i>
W.D. Pa.	<a href="#"><u>US v. James Bell</u></a>	<i>Laundry Company/ CWA, Conspiracy</i>
D.S.C.	<a href="#"><u>US v. Michael Hayhurst</u></a>	<i>Dredging Operation/ CWA, RHA, False Statements</i>
D. Utah	<a href="#"><u>US v. Alan Young</u></a>	<i>Road Construction Company/ CAA</i>
E.D. Va.	[REDACTED]  <a href="#"><u>US v. Lotuaco</u></a>	[REDACTED]  <i>Asbestos and Hazardous Material Removal/ Conspiracy to Defraud OSHA, EPA and SBA</i>

*TRAINING*

◇ [Environmental Crimes Training](#) - May 8 – 12, 2006 at the National Advocacy Center, Columbia, South Carolina.

*Quick Links*

- ◇ [Significant Opinions](#) p. 3
- ◇ [Trials](#) p. 4
- ◇ [Indictments](#) pp. 4 – 7
- ◇ [Pleas/Sentencings](#) pp. 8 – 18

## **Significant Opinions**

### **United States v. Nancy Kraft, No. 03-CR-315 (D. Minn.), ECS Trial Attorney Cathy Pisaturo and AUSA Bill Koch (**

The Eighth Circuit Court of Appeals affirmed the conviction and sentence of Nancy Kraft on January 13, 2006. Kraft and her husband, Kenneth Kraft, owned and operated two businesses in Minnesota, Kraft Animal Escapades and Bearcat Hollow. Using those businesses, they illegally sold endangered and threatened animals, including tigers, leopards and grizzly bears.

The case against Kraft was tried before a jury earlier this year, which found her guilty on seven of the eleven counts against her, including conspiracy and six Lacey Act false labeling charges. The district court sentenced Nancy Kraft to serve a fifteen-month term of incarceration, followed by two years' supervised release. Six other defendants pleaded guilty to Lacey Act or Endangered Species Act violations in connection with this case.

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

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## **Trials**

**United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS Assistant Chief Andrew Goldsmith [REDACTED], ECS Trial Attorneys Deborah Harris [REDACTED] and Noreen McCarthy [REDACTED], First AUSA Ralph Marra [REDACTED] and AUSA Norv McAndrew [REDACTED]**

In September 2005, trial began against iron foundry Atlantic States Cast Iron Pipe Company ("Atlantic States") and current and former managers John Prisque, Scott Faubert, Jeffrey Maury, Daniel Yadzinski and Craig Davidson. Atlantic States is a division of McWane, Inc., which manufactures iron pipes. The process involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit.

During the investigation, agents and prosecutors uncovered a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. The evidence indicates that the defendants routinely violated Clean Water Act permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River. There also is evidence that they repeatedly violated Clean Air Act permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola. Additionally, they systematically altered accident scenes; and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

The defendants were charged in September 2004 with conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. The defendants also were charged with substantive CWA, CAA, CERCLA, false statement, and obstruction violations.

The trial, which is continuing in Trenton, New Jersey, is expected to go to the jury in March 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; United States Department of Labor Occupational Safety and Health Administration, the New Jersey Department of Environmental Protection, the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the Phillipsburg Police Department.

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## **Indictments**

**United States v. David Geison et al. (N.D. Ohio), ECS Senior Trial Attorney Richard Poole [REDACTED] [REDACTED] ECS Trial Attorney Tom Ballantine [REDACTED] and AUSA Christian Stikkan [REDACTED]**

On January 19, 2006, a five-count indictment was returned charging engineering manager David Geison and systems' engineer Andrew Seimaszko, former employees at the Davis-Besse Nuclear Power Plant, and consultant Rodney Cook, with a scheme to conceal information from the Nuclear Regulatory Commission ("NRC") and with making false statements to the NRC.

FirstEnergy Nuclear Operating Company (“FENOC”) owns and operates the Davis-Besse Nuclear Power Plant (“Davis-Besse”) near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant’s safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.



**Boric acid flowing from weepholes at Davis-Besse. The indictment alleges that boric acid was an impediment to inspections that Davis-Besse engineers concealed from the Nuclear Regulatory Commission.**

An investigation of the events that led up to the corrosion hole at Davis-Besse showed that, in September 2001, the NRC had sought plant-specific information regarding the potential for nozzle cracking from all susceptible reactors. Defendants, together with other employees, submitted five relevant responses regarding Davis-Besse on behalf of FENOC. The indictment alleges that the defendants withheld

information specifically sought by the NRC about their ability to inspect the area where leaks from nozzle cracks would be evident.

The indictment further alleges that the defendants lied about the extent of inspections performed in 1996, 1998, and 2000. Specifically, it alleges that the defendants lied by writing that Davis-Besse engineers were able to inspect areas of the reactor vessel head that could not, in fact, be inspected and that Davis-Besse engineers had completed boric acid corrosion control procedures that they had not, in fact, completed. Two of the defendants also are charged with providing the NRC with photographs bearing captions that falsely indicate generally good conditions for visual inspections.

FENOC has agreed to a deferred prosecution in this case. Under that agreement, FENOC agrees that the United States can prove that knowing false statements were made on its behalf. FENOC is to pay a \$28 million monetary penalty and will cooperate in the investigation and prosecution of the individual defendants. As a result of this agreement, the company will pay more than \$23 million in fines and will spend an additional \$4.3 million on community service projects. These projects include a wetlands restoration project at the Ottawa National Wildlife Refuge valued at \$800,000 and \$550,000 in improvements to the Visitors Center; a \$500,000 communications systems’ upgrade for the Ottawa County Emergency Management Association; a \$500,000 project aimed at developing energy efficient technologies at the University of Toledo, College of Engineering; a \$1,000,000 project to extend the Towpath Trail at the Cuyahoga Valley National Park; and a \$1,000,000 project for the Northern Ohio Chapter of Habitat for Humanity for the construction of EPA Energy Star certified homes.

The case was investigated by the NRC Office of Investigations.

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**United States v. San Diego Gas and Electric et al., No. 3:06-CR-00065 (S. D. Cal.), AUSA Melanie Pierson**

San Diego Gas and Electric (“SDG&E”), two of its employees, and a contractor were charged in January 2006, with conspiracy to unlawfully remove asbestos, unlawful removal of asbestos and making false statements.

The charges relate to the alleged illegal removal of asbestos at SDG&E’s gas holding facility. According to indictment, a sample of suspected asbestos was taken from the facility, prior to work being done there. Analysis of the sample, which came from the coating of the facility’s underground piping, indicated that the coating was regulated asbestos containing material (“RACM”).

SDG&E subsequently entered into a tentative agreement to sell the facility and was required to remove the underground piping. The indictment alleges that the two employees and the contractor agreed that they would lie to government inspectors and the residents in the surrounding area. The defendants made statements that the coating removed from the underground piping was not RACM, in order to avoid the additional cost and time required to properly remove the asbestos.

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

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**United States. v. Joseph Ulrich et al., No. 2:05-CR-00130 (M.D. Fla.), AUSA Yolande Viacava with assistance from ECS Trial Attorney Lana Pettus**

The United States Attorney for the Middle District of Florida filed an information in December 2005, charging Joseph Ulrich with the destruction of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act, which was enacted to protect eagles and their nests.

During the summer of 2003, a bald eagle was discovered in a tree located within an area designated for residential development by Stock Development, LLC (“Stock Development”). Ulrich was employed as the construction

supervisor for Stock Development, which pleaded guilty to the same violation.

The principal officer and manager for Stock Development discussed in Ulrich’s presence the presence of a bald eagle nest in the tree, and the delay or cessation of construction that could result. On November 15, 2003, Ulrich directed another employee to cut down the tree with the nest, and Stock proceeded with the construction of houses on the lot where the tree once stood.

The company was sentenced last September to serve a one-year term of probation, and pay a \$175,000 fine, plus an additional \$181,000 in restitution to the following organizations:



the Wildlife Foundation of Florida for "Bald Eagle Research"; the Peace River Wildlife Center of Punta Gorda, Florida, for "Wildlife Rehabilitation, Research, and Public Education"; the Audubon Center for Birds of Prey in Maitland, Florida, for the "Florida Bald Eagle Rehabilitation and Eagle Watch Program"; and the Florida Fish and Wildlife Conservation Commission Division of Law Enforcement. This is the largest combination of a fine and restitution ever paid for the destruction of an eagle nest tree.

The trial of Ulrich is scheduled to commence February 6, 2006.

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

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**United States v. Andrew Nguyen, No. 2:05-CR-1208 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [REDACTED] and AUSA Joseph Johns [REDACTED]**

On December 14, 2005, an indictment was returned charging Andrew Nguyen with conspiring to import specimens of cycads protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Nguyen also was charged with eight counts of smuggling and importing cycads by means of false declarations and statements, and one count of violating the Endangered Species Act.

Cycads, which resemble palms or tree ferns, are a small group of primitive-looking plants whose ancestors date back more than 200 million years. Certain cycad species face threats in the wild from habitat loss and over-collection. Nguyen also attempted to illegally import and sell approximately 800 cycad seeds.

The indictment alleges that in April 2001 Nguyen agreed to purchase approximately 50 protected plants from a co-conspirator for approximately \$26,000. The plants were shipped to Nguyen from Zimbabwe by a second co-conspirator. Rather than bearing labels with accurate descriptions or names of the plants, the specimens were labeled with numbers. Nguyen was provided a key showing which numbers corresponded to which species. The permit accompanying the shipment did not authorize the shipment of any of the species in the actual shipment.

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

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

Michael Hayhurst was indicted on December 14, 1005, for violating the Clean Water Act and the Rivers and Harbors Act and with making false statements in connection with an illegal dredging operation he supervised in Calibogue Sound in Hilton Head Island, South Carolina.

According to the indictment, Hayhurst was the project manager for a dredging operation by South Island Dredging Association ("SIDA"). SIDA was formed by a number of homeowner associations and others for the purpose of funding and obtaining approval from the United States Army Corps of Engineers ("the Corps") to conduct this dredging operation.

The Corps issued a permit to SIDA to dredge certain areas in and around Calibogue Sound, but required that fine-grained dredged material from the operation be placed in an ocean-going barge. The barge, then, was to dispose of the dredged material at a designated site in the Atlantic Ocean, off the coast of South Carolina. The permit required that the barge be equipped with electronic positioning equipment to ensure that it was in fact making trips to the ocean disposal site.

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

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

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## **Pleas / Sentencings**

**United States v. McWane, Inc., et al., No. 2:04-CR-00199 (N. D. Ala.), ECS Senior Trial Attorney Chris Costantini [REDACTED] and ECS Trial Attorney Kevin Cassidy [REDACTED], ECS Paralegal Debbie Campbell [REDACTED] and AUSA Robert Posey [REDACTED]**

On January 26, 2006, Donald Harbin, a plant manager at the McWane, Inc., Birmingham facility, was sentenced for his role in a conspiracy to violate the Clean Water Act and to defraud the government. The court ordered Harbin, who pleaded guilty in August 2004, to pay a \$500 fine and serve a one-year term of probation. On December 5, 2005, McWane, Inc., was sentenced to pay a \$5 million fine and serve a five-year term of probation.

McWane operates iron foundries that manufacture cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas. McWane, through a division known as McWane Cast Iron Pipe Company, manufactures ductile cast iron pipe for the water and sewer industry at its facility in Birmingham. The manufacturing process involves melting ferrous scrap metal in a water-cooled cupola furnace. Molten metal is centrifugally cast into pipe in water-cooled machines. The cast iron pipe is then annealed, cleaned, tested, cement lined, painted, and bundled for shipment. A variety of waste streams are generated during this process.

In June of last year, defendants McWane, James Delk, Michael Devine, and Charles "Barry" Robison were convicted at trial for conspiring to conceal illegal wastewater discharges into Avondale Creek, substantive Clean Water Act counts, making false statements and obstruction of justice. The defendants continually violated their NPDES permits and concealed the illegal discharges from authorities.

The company must also perform a community service project valued at \$2.7 million. Delk, the former general manager and vice president of the Birmingham plant, was sentenced to serve six months' home confinement as a condition of three years' probation. Delk also must pay a \$90,000 fine. Former plant manager Devine was sentenced to serve three months' home confinement as a

condition of two years' probation and must also pay a \$35,000 fine. Robison, vice president of environmental affairs, was sentenced to serve two years' probation, pay a \$2,500 fine and complete 150 hours' community service.

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

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**United States v. Kevin McMaster, No. 2:05-CR-14102 (S.D. Fla.), ECS Trial Attorney Georgiann Cerese [REDACTED] and AUSA Tom Watts-FitzGerald [REDACTED]**

Kevin McMaster pleaded guilty on January 26, 2006, to a four-count information charging him with two felony Lacey Act violations and two misdemeanor Endangered Species Act violations.

Beginning in November 2003, the Fish and Wildlife Service initiated a covert internet investigation involving McMaster. An undercover agent had received an unsolicited email message from McMaster, sent to the agent's covert email address. In that email message, McMaster inquired whether the agent was interested in "cat skins." McMaster operated a website known as *deadzoo.com* and a business known as Exotic & Unique Gifts located in Port St. Lucie, Florida. Posing as a potential buyer, the agent communicated with McMaster over the course of the next year via email, phone and a visit to the defendant's business in his undercover capacity.

During the course of the investigation, McMaster sold to the agent numerous endangered species skins, including tiger, snow leopard and jaguar skins. Search warrants were executed at McMaster's home and business in December 2004. Based upon an examination of the items seized and a statement given by the McMaster, numerous other offers to sell and sales of endangered species - - predominantly cat skins such as tigers, leopards, and jaguars as well as a gorilla skull and baby tiger mounts -- were identified.

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

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**United States v. Nicanor Lotuaco et al., No. 05-CR-00074 (E.D. Va.), ECS Trial Attorney Noreen McCarthy [REDACTED] and AUSA Michael Smythers [REDACTED]**

Nicanor Lotuaco, President of Air Power Enterprises, Inc., was sentenced on January 25, 2006, for his role in a conspiracy to defraud OSHA, EPA and the Small Business Administration ("SBA"). The court ordered him to serve five months' incarceration, five months' home confinement, followed by three years' supervised release, and to pay a \$1 million fine.

ACS Environmental, Inc., ACS President James Schaubach, Air Power Enterprises, Inc., and Air Power president Lotuaco pleaded guilty in June 2005 to a one-count information charging them with conspiracy. The defendants fraudulently obtained approximately \$37 million in SBA 8(a) set-aside contracts. The contracts involved construction work to be performed at federal facilities throughout Virginia, Maryland, and Washington, D.C., including a large number of jobs involving asbestos and lead abatement and hazardous waste operations. From 1997 through 2001, the defendants purchased approximately 250 false training certificates from F&M Environmental Technologies for employees of ACS and Air Power. The employees were then directed to conduct work involving

asbestos, lead and hazardous waste removal at federal facilities under the SBA contracts, as well as at numerous schools.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the Naval Criminal Investigative Service, and the Department of Defense Criminal Investigative Service.

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**United States v. John McDonald et al., Nos. 1:05-CR-104, 1:06-CR-01 and 02 (D. Mont.), ECS Senior Trial Attorney Bob Anderson**

On January 25, 2006, John McDonald was sentenced to serve a one-year term of incarceration on two felony counts of the Lacey Act trafficking violations. McDonald, who pleaded guilty last October, also was ordered to serve two years' supervised release, and to pay a \$25,000 fine and \$25,000 in restitution. McDonald also lost his hunting privileges in Montana and the Wildlife Violator Compact states for the remainder of his life.



McDonald owns 1,100 acres near Yellowstone Park on which he frequently allowed

paying non-resident hunters to kill trophy-class bull elk after the close of the hunting season. This is when the elk bulls typically moved onto his property. During the past two years, nine of McDonald's poaching clients pleaded guilty to state charges, paid fines, abandoned illegal wildlife mounts and lost hunting privileges. Two of these clients, Jeffrey Young and Frank Shulze, however, refused to accept the state charges and initially lied to investigating agents about their involvement in the illegal hunts. They went so far as to write a letter to the state game agency complaining that they were being unfairly harassed by the investigators.

Three hours after McDonald was sentenced, these two hunters, Young and Shulze, entered their guilty pleas to, and were sentenced for, violating the Lacey Act. In accordance with their plea agreements, both lost their hunting privileges for five years, will serve two-year terms of probation and will each pay a \$2,500 fine. Schulze also will pay \$8,000 in restitution for the bull elk he killed, and Young will pay \$16,500 in restitution for the two bull elk and one mule deer he poached. The plea agreements also require the men to write a letter retracting and apologizing for the false claims made in their initial letter, the language of which will be approved by the government and sent to all recipients of the original letter. At the hearing, the judge excoriated the defendants for the false claims they made in their initial letter.

This case was investigated by the Montana Department of Fish, Wildlife and Parks and the United States Fish and Wildlife Service.

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**United States v. Bezhad Kahoolyadeh, No. 2:02-CR-01089 (C.D. Calif.), ECS Trial Attorney David Kehoe [REDACTED] and AUSA William Carter [REDACTED]**

On January 24, 2006, Bezhad Kahoolyadeh, aka "David Cohen," was sentenced to serve 37 months in prison for illegally transporting and storing perchloroethylene or "PERC," a dry cleaning agent. The defendant also is jointly and severally liable with others for \$1.29 million in restitution for cleanup costs. During the three year term of supervised release, Cohen will be prohibited from working in the hazardous waste business. Cohen pleaded guilty in March 2004 to conspiracy, two counts of illegal transportation of hazardous waste and two counts of illegal storage of hazardous waste.

AAD Distribution and Dry Cleaning Services, Inc. ("AAD"), was one of California's largest handlers of PERC, until the business was shut down in January 2001. Right Choice, which was located directly next door to AAD, was in the business of picking up and arranging for the disposal of hazardous, flammable solvents from automotive repair shops.

Cohen and co-defendants, who operated Right Choice, admitted that they stored drums of PERC waste at AAD, after their facility had exceeded its storage permit limit. They then loaded these drums onto trucks and, using falsified manifests, shipped them to unpermitted facilities off-site to evade state and city inspectors. Cleanup costs for the AAD facility and the other facilities where AAD PERC wastes were illegally stored, totaled approximately \$1 million.

Co-defendant Hormoz Pourat, pleaded guilty in August 2003 to two RCRA conspiracy violations. He was sentenced in December 2003 to serve 37 months' incarceration to run concurrently with a term of imprisonment he is currently serving in Colorado for state violations at the AAD facility there. Pourat also is liable for the \$1.29 million in clean up costs and will serve a three-year term of supervised release. A third co-defendant, Harry Pourat, fled to Scotland after he was indicted, and thereafter committed suicide.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the United States Department of Transportation; the California Environmental Protection Agency, Department of Toxic Substances Control; the City of Vernon; and the Colorado State Attorney General's Office.

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**United States v. Gary Wasserson, No. 2:03-CR-00110 (E.D. Pa.), SAUSA Martin Harrell [REDACTED] and AUSA Anita Eve [REDACTED]**

Gary Wasserson, the president and CEO of a company that supplied products to dry cleaners, was sentenced on January 20, 2006, for illegally transporting and disposing of hazardous waste. The court ordered him to serve four years' probation, pay a \$5,000 fine plus \$85,353 in restitution, and complete 60 hours of community service.

The Third Circuit Court of Appeals reinstated a jury's guilty verdict against Wasserson in late July 2005, and remanded the case to the district court for sentencing. Wasserson was convicted in 2004 of aiding and abetting and causing the disposal of hazardous waste. He transported and disposed of hazardous waste in 1999 from his warehouse in Philadelphia to an unpermitted garbage landfill. Evidence at trial established that Wasserson knew of the RCRA requirements, and that he had approved the hiring of a trash hauler to remove scrap metal and chemicals from the warehouse. The trash hauler, however, had been picked from the phone book by an employee who lacked Wasserson's knowledge of the hazardous nature of the waste.

Under the Sentencing Guidelines calculations, Wasserson faced a prison term of 33-41 months. At sentencing, the judge departed downward on three enhancements which left Wasserson with a range of 10-16 months. The court then relied on other sentencing factors in 18 U.S.C. § 3553 to sentence Wasserson to a term of probation.

The restitution will be paid to the owner of the landfill who had to excavate contaminated trash when some of the drums ruptured and spilled during disposal. The community service is to be performed at an environmental education center in the Philadelphia suburbs.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division with assistance from the FBI and the Pennsylvania Department of Environmental Protection.

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

On January 19, 2006, Hoang Nguyen pleaded guilty to smuggling red snapper caught in violation of the Magnuson Stevens Fisheries Act ("MSFA").

Nguyen is the captain of a commercial fishing vessel. He was charged by indictment in November 2005 with four counts of violating 18 U.S.C. § 545 for importing thousands of pounds of red snapper which had been caught in the Exclusive Economic Zone ("EEZ") after the fishing season had closed. The red snapper were concealed within a hidden compartment in Nguyen's boat and were brought into Texas for eventual sale in Houston.

Crewmember Tam Le was charged in the same indictment with two illegal importation counts. Le's trial has been scheduled to begin on February 13, 2006.

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

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**United States v. ConAgra Foods, Inc., No. 05-CR-00257 (D. Minn.), Senior Trial Attorney Jennifer Whitfield** [REDACTED].

ConAgra Foods, Inc. ("ConAgra") was sentenced on January 18, 2006, for violating the Clean Water Act. The company was directed to pay a \$138,513 fine, \$1,487 in restitution to the Minnesota Pollution Control Agency, and was further ordered to make two community service payments in the amount of \$55,000 each to the National Park Foundation and to the Friends of the Mississippi River.

ConAgra operated a food ingredient and flour mill facility. The discharges were related to non-contact cooling water that exceeded the maximum permitted temperature allowed under the facility's NPDES permit.

ConAgra pleaded guilty in September 2005 to an information charging the company with a negligent CWA violation for failing to include information from sampling results on daily monitoring reports from June 2000 through April 2003.

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

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**United States v. Noel Abrogar, No. CR (D. N. J.), ECS Trial Attorney Joe Poux [REDACTED] and AUSA Thomas Calcagni [REDACTED].**

On January 5, 2006, Noel Abrogar, the chief engineer for the *M/V Magellan Phoenix*, was sentenced to serve one year and a day incarceration for violating the Act to Prevent Pollution from Ships (“AAPS”). Abrogar pleaded guilty on September 7, 2005 to an AAPS violation for making false entries in the ship’s oil record book (“ORB”). Despite knowing that the ship had bypassed its oily water separator and discharged oil-contaminated bilge waste overboard in the ocean, Abrogar presented the ORB to Coast Guard inspectors, which contained false entries regarding the use of the separator.

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[REDACTED]

[REDACTED]

[REDACTED]

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**United States v. Alan Young, No. 2:05-CR-00124 (D. Utah), ECS Trial Attorney Aunnie Steward [REDACTED] AUSA Leisha Lee-Dixon [REDACTED] with assistance from ECS Senior Counsel Jim Morgulec [REDACTED]**

The trial of Alan Young, which began on January 3, 2006, ended on January 12, 2006, with the jury acquitting the defendant on all three counts of violating the Clean Air Act. The charges against Young related to an alleged false statement/scheme to conceal violations of mishandling of asbestos on a work site.

In January 2001, Young was the on-site supervisor for Merrick Young, Inc., a Utah road construction corporation. The company accidentally ruptured a water pipe that contained more than 260 linear feet of regulated asbestos-containing material during the Black Ridge Road Project. Over the course of several weeks, Young allegedly directed employees to excavate, crush, and bury the asbestos pipe on site, using it as fill and causing asbestos-laden dust to become airborne. Young purportedly knew of the asbestos, but failed to adhere to regulatory standards in the removal and disposal of this material.

After the activity was discovered and he was forced to clean it up, Young directed employees to bury the pipe and told them not to tell anyone where it was located. When an individual came

forward and informed the Environmental Protection Agency about the site, Young, upon questioning, continued to deny its existence. A subsequent search revealed the location of the crushed pipe.

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

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**United States v. Daniel Davis, No. 2:05-CR-00008 (E.D.N.C.), ECS Trial Attorney Wayne Hettenbach [REDACTED] and AUSA Banumathi Rangarajan [REDACTED]**

On December 20, 2005, Daniel Davis was sentenced to serve two months' home detention for violating the Lacey Act when he illegally caught red drum fish and striped bass. Davis pleaded guilty in May of last year to two Lacey Act violations for illegally catching, transporting and selling in interstate commerce red drum fish weighing 616 pounds and striped bass weighing 560 pounds. Davis also forfeited more than \$12,000 to the National Marine Fisheries Service as substitute assets for the vehicle used in the transaction and in proceeds from the unlawful activity.

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

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**United States v. Jose Silva, No. 1:05-CR-10011 (D. Mass.), AUSA Jonathan Mitchell [REDACTED]**

On December 20, 2005, Jose Silva, a commercial fisherman, pleaded guilty to charges stemming from his illegally harvesting lobster over a four-year period. Silva pleaded guilty to conspiracy to violate the Atlantic Coastal Fisheries Cooperative Management Act ("ACFCMA") and the Lacey Act, two substantive Lacey Act violations and a false statement violation. The ACFCMA was promulgated to help sustain the lobster industry by protecting female lobsters and capping the number of lobsters that may be caught during a single fishing trip.

From February 2000 to March 2004, Silva and others illegally took lobsters, including female egg-bearing lobsters, "v-notched" female lobsters, and lobsters in excess of the 500-per-trip limit. Silva additionally removed, and directed others to remove, the eggs of caught female lobsters on board his fishing vessels. He also sold the lobsters to seafood brokers and wholesalers, and covered up his practices by hiding the lobsters from the Coast Guard in secret compartments on his fishing vessels and by instructing crew members to withhold information from law enforcement.

On March 7, 2004, during a routine Coast Guard inspection, Silva presented documentation indicating significantly fewer lobster on board than he actually had. He verbally told inspectors that there was not any lobster in the fish hold when he in fact knew there were hundreds. Silva further instructed the crew to tell investigators that they had removed eggs from female lobsters without his knowledge, when Silva, in fact, had instructed them to do so.

Sentencing is scheduled for March 22, 2006.

This case was investigated by the U.S. Coast Guard.

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**United States v. Aman Mahana, United States v. Mani Singh, United States v. MSC Ship Management (Hong Kong) Ltd., Nos. 1:05-CR-10269, 10274 and 10351 (D. Mass.) ECS Senior Trial Attorney Richard Udell [REDACTED] ECS Trial Attorney Malinda Lawrence [REDACTED] ECS Paralegal Stephen Foster [REDACTED] AUSA Jon Mitchell [REDACTED] and SAUSA LCMR Luke Reid [REDACTED]**



MSC Elena Bypass

On December 19, 2005, MSC Ship Management (Hong Kong) Limited (“MSC”), a Hong Kong-based container ship company, pleaded guilty to conspiracy, obstruction of justice, destruction of evidence, false statements and violations of the Act to Prevent Pollution from Ships (“APPS”). Under the plea agreement, MSC will pay \$10.5 million in penalties, which is the largest involving deliberate pollution by a single vessel and the largest criminal fine paid by a defendant in an environmental case in the district of Massachusetts. \$500,000 of the fine will be used to support community service projects. The

projects will be administered by the National Fish and Wildlife Foundation to fund non-profit organizations that provide environmental education to seafarers visiting or sailing from Massachusetts’ ports, including how to report environmental crimes to the U.S. Coast Guard.

The information charges that a specially fitted steel pipe, referred to as the “magic pipe,” was used on the *MSC Elena*, a 30,971 ton container ship, to bypass required ship pollution prevention equipment and discharge oil sludge and oil contaminated waste directly overboard. Upon the discovery of this bypass equipment during a Coast Guard inspection in Boston Harbor on May 16, 2005, senior company officials in Hong Kong directed crew members to lie to the Coast Guard, and senior ship engineers ordered the concealment and destruction of documents.

MSC pleaded guilty to charges that, in response to the Coast Guard inspection, senior ship engineers directed that an “alarm” printout from the ship’s computer and a log containing actual tank volumes be concealed in an effort to cover up the falsification of records. Coast Guard inspectors subsequently were presented with fictitious logs containing false entries claiming the use of the oil water separator and omitting any reference to dumping overboard using the equipment that bypassed the oil water separator.



On December 20, 2005, Mani Singh, the chief engineer for the *Elena*, pleaded guilty to an indictment returned in November 2005 charging him with conspiracy, obstruction, destruction of evidence, false statements and an APPS violation in connection with the use of the bypass pipe. Singh was one of the engineers who concealed the alarm printout, presented fictitious logs to investigators, and was involved in the use of the bypass. The crew took various measures to conceal the illegal conduct and avoid discovery including discharging only at night and hiding the bypass equipment during port visits.

On December 1, 2005, Aman Mahana, the ship’s second engineer, pleaded guilty to an information filed in September 2005, charging him with violating APPS for failing to maintain an oil record book.

These cases were investigated by the U.S. Coast Guard Investigative Service with assistance from the U.S. Coast Guard Sector Boston, U.S. Coast Guard First District Legal Office, U.S. Coast

Guard Office of International and Maritime Law, U.S. Coast Guard Headquarters Office of Investigations and Analysis, and U.S. Coast Guard Office of Compliance.

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**United States v. James Vaandering, No. 1:05-CR-00134 (W. D. Mich.), AUSA Richard Murray**

[REDACTED]

On December 19, 2005, James Vaandering was sentenced to serve 13 months' incarceration for illegally storing and disposing of hazardous waste. He must also pay a \$1,000 fine, pay \$151,490 in restitution to EPA for the Superfund cleanup, and perform 300 hours of community service.

Vaandering is the former supervisor of the Sealmore Corporation ("Sealmore"). He pleaded guilty in September of last year to violating the Resource Conservation and Recovery Act by illegally storing and disposing of hazardous waste. The Sealmore facility was condemned in late 2000 and declared a Superfund site. Abandoned at the site were a number of containers and vats of chemicals and liquids used in the plating process, including acid solutions containing hexavalent chromium and hydrofluoric acid, both of which are hazardous.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Environmental Quality's Office of Criminal Investigations. Investigative assistance was provided by the EPA Region 5 Superfund Division.

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**United States v. James Bell, No. 2:05-CR-00226 (W.D. Pa.), AUSA Margaret Picking**  
**and SAUSA Martin Harrell**

On December 16, 2005, James Bell, a former plant manager for the Iron City Uniform Rental Company (“Iron City”), was sentenced to serve two years’ probation for conspiring to violate the Clean Water Act. He will spend six months under home confinement, and also must pay a \$2,500 fine. Bell pleaded guilty in September of last year to conspiring to violate the CWA.

In the process of cleaning used uniforms and other soiled items, the Iron City laundry discharged approximately one million gallons of wastewater containing benzene, toluene and oil each month into sewers operated by the Allegheny County Sanitary District. From approximately October 1995 to July 2000, Bell directed employees to alter wastewater samples from the Iron City’s laundry to yield false results. He also had employees take the samples from locations not authorized by the company’s discharge permit. Bell additionally ordered employees to add oil and grease to some samples so that the results would not appear “too clean” and trigger suspicion. Employees were further told to delay inspectors while clean water was added to wastewater prior to sampling.

Soon after Bell retired, the company president committed suicide. The new president was alerted to Bell’s activities and, following an internal investigation, the company disclosed the violations to the U.S. Attorney’s Office in Pittsburgh. The government decided not to prosecute the company due to this voluntary disclosure, the company’s post-disclosure compliance efforts, which included sending more heavily polluted items off site for laundering while it installed new treatment equipment, and the facility’s status as the last family-run laundry in Pittsburgh.

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

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**United States v. Billy Moore et al., Nos. 2:05-CR-00035 and 2:05-MJ-00094 (E.D.N.C.), AUSA Banu Rangarajan**

On December 15 and 16, 2005, two North Carolina Department of Transportation (“NCDOT”) employees pleaded guilty to charges stemming from their involvement in illegal dredging. Billy Moore pleaded guilty to a felony violation of the CWA and a misdemeanor violation of the Rivers and

Harbors Act. Stephen Smith pleaded guilty to misdemeanor violations of the CWA and the Rivers and Harbors Act. On November 2005, two additional NCDOT employees, Herbert O’Neal and Douglas Bateman, pleaded guilty to single misdemeanor violations of the CWA and the Rivers and Harbors Act.

Moore was managing a project to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks. O’Neal, Bateman, and Smith were employees of the NCDOT’s Ferry Division Dredge and Maintenance Crews. In 2004, Moore directed other NCDOT employees to use state-owned vessels to employ prop wash to dredge a channel so that a ferry could land at Corolla. Federal agencies previously had denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. When confronted about the dredging activity, Moore falsely stated that the channel was the accidental result of their efforts to free a boat that had become stuck.

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

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**United States v. City of Venice, No. 8:05-CR-00190 (M.D. Fla.), AUSA Dennis Moore**

On December 14, 2005, the City of Venice, Florida, a municipality, was ordered to pay a \$110,000 fine for violating the Clean Water Act. The city failed to fulfill its obligation to properly monitor wastewater discharges that went into Curry Creek during 2001 due to the flow monitor being inoperable during this period. Additionally, in August 2002, an irrigation pipe was deliberately opened allowing an unauthorized discharge of wastewater into Salt Creek, a navigable water. This illegal discharge damaged a park, disturbed wildlife and negatively impacted adjacent wetlands.

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

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**United States v. Royal Canin USA, No. 4:05-CR-00652 (E.D. Mo.), AUSA Anne Rauch**

On December 13, 2005, Royal Canin USA, Inc. (“Royal Canin”), a pet food processing plant, pleaded guilty and was sentenced to pay a \$125,000 fine for violating the Clean Water Act by releasing tons of animal fat into a nearby waterway. The company also must pay a \$35,000 civil penalty to the State of Missouri. The court also directed Royal Canin to pay an additional \$35,000 in natural resource damages and \$6,272 in restitution to the State.

Between March 31 and April 4, 2005, Royal Canin released approximately 8.2 tons of liquid animal fat from a storage tank at its Rolla facility. Employees and managers at the plant failed to immediately investigate the leak when it was discovered, and then failed to notify the National Response Center. On April 4, a local farmer discovered that liquid animal fat had migrated to ponds on his property and into Beaver Creek, a tributary of the Little Piney River. In response to the spill, Royal Canin employees removed several thousand gallons of chicken fat from around the creek bed.

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

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## **Training**

During the week of May 8 – 12, 2006, the Environmental Crimes Section will be presenting the next Environmental Crimes Seminar at the National Advocacy Center in Columbia, South Carolina. The announcement for nominations is anticipated to be circulated in mid-February 2006.

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