


ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

April 2007

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email it, along with your information, to Elizabeth Janes at [REDACTED]. Material 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 at <http://www.regionalassociations.org>.

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

AT A GLANCE

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Significant Opinions

Third Circuit

United States v. Thomas Michael Hayes, Jr., No. 04-1430 (3rd Circuit Mar. 8, 2007)

On March 8, 2007, the Third Circuit reversed and remanded the case for a new trial in a non-precedential opinion. The Court found that the district court should have allowed the admission of defendant's reverse 404(b) evidence (evidence of prior good acts). During the course of the trial, the defendant attempted to offer evidence that he issued directives or made statements to employees that were contrary to the objectives of the conspiracy and contrary to the direction allegedly given to the government's witnesses. The Third Circuit found that the trial court erroneously excluded this evidence by concluding it was character evidence, and held that the evidence was relevant to show the defendant's intent. The Court went on to hold that the error was not harmless. The Court also addressed a jury note sent to the judge shortly after deliberations. The jury inquired whether "the co-conspirators' (who had already pled guilty) sentences depend on the verdict(s) we come up with." The court answered "no." The Third circuit found the answer "not technically incorrect," but misleading. The Court reasoned that the answer "allowed the jurors to conclude that the witnesses had nothing to gain by [the defendant's] conviction."

Thomas Michael Hayes, Jr., was convicted in April 2003 of conspiracy to violate the CAA, to make false statements to the U.S. EPA, to commit mail fraud, and to obstruct justice. He was sentenced in February 2004 to serve 57 months' incarceration followed by three years' supervised release. He also was ordered to pay a \$1,000 fine.

Hayes was the vice president of Western Hemisphere Operations for Saybolt, Inc., whose primary business is the sampling and analysis of petroleum products. Saybolt and several of its senior executives, operating on behalf of, and in conjunction with, a number of its clients, falsified data on petroleum products, including reformulated gasoline. While the company had testing laboratories throughout the United States, this case involves conduct undertaken at its headquarters in Parsippany, New Jersey, and at the facilities located in Kenilworth, New Jersey, and Woburn, Massachusetts. After he became aware of the EPA's investigation, Hayes ordered specific laboratory data to be destroyed.

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Fourth Circuit

United States v. D.J. Cooper, ___ F.3d ___, 2007 WL 914314 (4th Cir. March 28, 2007), held that the government is not required to prove that a criminal defendant in a Clean Water Act (“CWA”) case knew the facts that made the water into which he was discharging pollutants a water of the United States. The decision brings some clarity to the issue of how the knowing mental state standard of a CWA criminal violation relates to the “water of the United States” element. As a purely “jurisdictional” element, it does not require proof of factual knowledge, and it is subject to neither a mistake of fact nor a mistake of law defense.

Cooper was convicted of knowingly discharging pollutants without a permit from a point source to navigable waters, defined as “waters of the United States.” The Fourth Circuit held that the “waters of the United States” element constituted a “classic jurisdictional element,” intended merely to situate the CWA within Congress’s authority. The court then noted the well-settled principle that *mens rea* requirements typically do not extend to jurisdictional elements of a crime. The Fourth Circuit recognized that Congress might, in exceptional circumstances, intend for a jurisdictional element to *also* constitute a substantive component of the crime, but after an analysis of the language, purposes, and affect of the CWA the court concluded that such was not the case with regard to “waters of the United States.” The court noted that three other Courts of Appeals (the Second, Eighth, and Ninth Circuits) had similarly declined to extend the “knowingly” requirement of the CWA to “waters of the United States,” and that the Fifth Circuit has held that “knowingly” does not apply to “purely jurisdictional elements” without specifically identifying those elements.

Notably, the Fourth Circuit distinguished its prior decision in *United States v. Wilson*, 133 F.3d 251 (4th Cir. 1997), which had required evidence that the defendant was aware of facts establishing a link between waters of the United States and the wetland into which he had discharged fill material. The *Cooper* panel suggested that *Wilson* should apply only in the “limited context” in which a defendant’s conduct is not clearly prohibited by federal or state law and there is confusion among federal agencies as to whether federal law applies to the facts of the alleged violation.

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Indictments

United States v. San Diego Gas and Electric et al., No. 3:07-CR-00484 (S. D. Cal.), ECS Trial Attorney Mark Kotila (██████████) and AUSA Melanie Pierson (██████████)

On February 27, 2007, a superseding indictment was returned by the grand jury. The original indictment, including a false statement count and several Clean Air Act counts, was previously dismissed by the court. On February 12, 2007, following a motion to reconsider filed and argued by the government, the court reinstated the false statement count, finding that the court does have jurisdiction over a false statement made to state regulators due to U.S. EPA delegating authority to the San Diego Air Pollution Control District.

San Diego Gas and Electric ("SDG&E"), two of its employees, and a contractor were charged with conspiracy to unlawfully remove asbestos and to make false statements. The charges relate to the alleged illegal removal of asbestos at SDG&E's gas holding facility. According to the indictment, a sample of suspected asbestos was taken from the facility prior to commencing work. Analysis of the sample, which came from the coating of the facility's underground piping, indicated that the coating was regulated asbestos.

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. Specifically, the defendants are alleged to have made statements that the coating removed from the underground piping was not regulated asbestos, 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 Investigation Division and the Federal Bureau of Investigation.

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Pleas / Sentencings

United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420-423, (C.D. Calif., N.D. Calif., D. Mass., D. Me., E.D.N.C., E. D. Tex.), ECS Special Litigation Counsel Gregory Linsin [REDACTED] ECS Senior Trial Attorney Richard Udell [REDACTED] and ECS Trial Attorneys Malinda Lawrence [REDACTED] Lana Pettus [REDACTED] and Joe Poux ([REDACTED] AUSAS: Malcolm Bales [REDACTED] Joe Batte ([REDACTED] Stacey Geis [REDACTED] Dorothy Kim [REDACTED] Jon Mitchell [REDACTED] Rick Murphy [REDACTED] and Banu Rangaragan [REDACTED]



M/T Pacific Sapphire

On March 21, 2007, Overseas Shipholding Group Inc. ("OSG") pleaded guilty and was sentenced to pay \$27 million for violations in Boston, Portland, Maine, Los Angeles, San Francisco, and Wilmington, N.C. In addition to the fine, OSG was sentenced to serve a three-year term of probation during which it must implement and follow a stringent environmental compliance program that includes a court-appointed monitor and outside independent auditing of OSG ships trading worldwide. OSG pleaded guilty in January to additional charges in Beaumont, Texas, and has

agreed to pay another \$10 million at a later date.

The total \$37 million plea agreement is the largest-ever involving deliberate vessel pollution. The violations involving 12 OSG oil tankers occurred between June 2001 to March 2006, and they include APPS violations, conspiracy, false statements, and obstruction of justice. The \$37 million penalty includes a \$27.8 million criminal fine which will be divided among the districts and a \$9.2 million organizational community service payment that will fund various marine environmental projects from coast to coast. In imposing the sentence, the court granted a motion to award 12 current and former whistleblower crew members with \$437,500 each for their role in disclosing the illegal conduct.

Informations were filed in December 2006 in six districts charging the company with conspiracy, CWA, obstruction, false statement, and APPS violations which occurred on a total of 12 ships. Guilty pleas were entered to Counts One (conspiracy) and Two (false statements) of the second superseding indictment in *United States v. Jho et al.* relating to the *M/T Pacific Ruby*, as well as to Counts One through Four (false statements) of the new information relating to the *M/T Uranus*, *M/T Overseas Shirley*, and the *M/T Pacific Sapphire*.

On December 4, 2006, an adverse opinion was issued in the *Jho* prosecution dismissing the eight APPS violations, holding that the United States did not have jurisdiction to enforce the criminal provision of APPS for failing to maintain an oil record book based upon the United Nation's Convention on the Law of the Sea and customary international law. A notice of appeal was filed on December 5, 2006. OSG has agreed to plead guilty to three of the APPS violations, if the government prevails on appeal, or will substitute false statement counts, if the government's appeal fails. The outcome of the appeal will not impact the overall settlement or number of counts.

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *Uranus*. The *Uranus* made discharges on voyages within U.S. waters in New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *Overseas Shirley* and *Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. William "Jamie" Garrison, No. 3:06-CR-00046 (W.D. Va.), ECS Trial Attorney David Joyce

On March 23, 2007, William "Jamie" Garrison entered his guilty plea to a misdemeanor Lacey Act violation stemming from his participation in illegal elk hunting on the Valles Caldera National Preserve in New Mexico during 2003.

The Preserve is an 8,900 acre property situated inside of a collapsed crater northwest of Santa Fe, New Mexico. It is home to large populations of big game animals including elk, antelope and oryx. Garrison and members of his hunting party shot and killed bull elk, without permits, in violation

of state law. At least one of these elk was then transported through interstate commerce in violation of the Lacey Act.

Garrison was sentenced to serve a two-year term of probation to include three months' home confinement. He also will pay a \$1,500 fine and \$5,000 in restitution to the National Fish and Wildlife Fund.

Six other hunters previously have been convicted in Virginia for this activity as well as two hunters and guides in New Mexico. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Troy Gentry et al., No. 0:06-CR-00235 (D. Minn.), AUSA Michael Dees ([REDACTED]) and D. Gerald Wilhelm ([REDACTED])

On March 14, 2007, Marvin Greenly, a Minnesota hunting guide and wildlife photography business owner, was sentenced to pay a \$1,000 fine, complete a three-year term of probation and pay \$2,100 in restitution to the Minnesota Department of Natural Resources and \$968 to the United States Fish and Wildlife Service Rice Lake National Wildlife Refuge. Co-defendant and country singer Troy Lee Gentry was sentenced on February 26, 2007, to pay a \$15,000 fine and serve a three-year term of probation.

Gentry purchased a captive-reared bear from Greenly that he killed with a bow and arrow while the bear was enclosed in a pen on Greenly's Minnesota property. Gentry and Greenly then tagged the bear with a Minnesota hunting license and registered the animal with the Minnesota Department of Natural Resources as if it had been killed in the wild. The animal was then shipped to a taxidermist in Kentucky for mounting.

Greenly pleaded guilty to two felony violations of the Lacey Act in connection with his work as a licensed commercial hunting guide and admitted that he and his employees had guided some clients into the Sandstone Unit of the Rice Lake National Wildlife Refuge. Even though it is illegal to enter parts of the refuge, Greenly established and maintained multiple bear-baiting stations and hunting stands in those areas. He also admitted he or his employees had directed two clients to those prohibited areas, where one of them had shot and killed two black bears. Gentry pleaded guilty to a misdemeanor conspiracy violation of the Lacey Act for submitting a false hunting registration form after killing a domesticated, trophy-caliber black bear.

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

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United States v. Cognis Corporation, No. 1:06-CR-00109 (S.D. Ohio), AUSA Laura Clemmens ([REDACTED])

On March 14, 2007, the Cognis Corporation was sentenced as a result of a series of chemical spills in 2005 that killed numerous fish and birds. The company will pay a \$215,000 fine with additional payments of \$100,000 to The Mill Creek Watershed Council of Communities, \$100,000 to the Mill Creek Restoration



Chemical spill

Project, and \$10,000 to Raptor, Inc. The company also will reimburse the Ohio Department of Natural Resources Division of Wildlife \$9,994.67 as restitution for the fish kill.

Cognis operates a chemical manufacturing facility in Cincinnati. On December 13, 2005, there was an explosion and a pipeline rupture at its facility. This caused a number of illegal discharges containing isodecyl alcohol, adipic acid and other pollutants from the plant into storm drains. The drains empty into Mill Creek, which is a tributary of the Ohio River. On December 14th, an inadequate containment dike allowed the discharge of additional pollutants, causing the death of 7,700 fish, 11 Canada geese, and one Mallard duck in and along Mill Creek. The company pleaded guilty in September 2006 to an information charging four negligent violations of the CWA and one violation of the MBTA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the United States Fish and Wildlife Service, the Ohio Environmental Protection Agency, the Division of Wildlife of the Ohio Department of Natural Resources, the Cincinnati Fire Department, and the Cincinnati Metropolitan Sewer District.

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United States v. Deniz Sharpe, 1:07-CR-00098 (D. Md.), ECS Senior Trial Attorney Richard Udell [REDACTED] **ECS Trial Attorney David Joyce** [REDACTED] **and AUSA Tonya Kowitz**
[REDACTED]

On March 7, 2007, Deniz Sharpe, a chief engineer for the *M/V Fidelio*, pleaded guilty to a one-count information charging him with an APPS violation for falsifying the oil record book (“ORB”). The *Fidelio* was one of four car carrier vessels managed by American-based operator Pacific-Gulf Marine, Inc. (“PGM”). Sharpe admitted that on November 17, 2003, he failed to note in the ORB that overboard discharges of bilge waste had been made without



going through the oil water separator. During his tenure both as chief engineer and as first engineer, Sharpe was involved in the deliberate discharge of oil-contaminated wastewater which had not been processed through the oil water separator and for which entries were either falsely made or omitted from the ORB.

PGM pleaded guilty last summer to four APPS violations for the deliberate overboard discharge of hundreds of thousands of gallons of oil-contaminated bilge waste from four of its ships through the use of a bypass pipe. The company was sentenced in January 2001 to pay a \$1 million fine and an additional \$500,000 in community service. PGM also will complete a three-year term of probation and enact an environmental compliance plan. Sharpe is scheduled to be sentenced on August 28, 2007.

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

On March 7, 2007, Daniel Storm pleaded guilty to knowingly disposing of hazardous waste without a permit. Storm, a professor of pharmacology, admitted that in June 2006 he dumped

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, because it was too costly. Storm then used an axe to break open the metal containers and dumped the ethyl ether down a sink in his laboratory, pouring an ethanol solution down the drain 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 memos 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. Twilight Marine Ltd., No. 4:07-CR-00114 (N.D. Calif.), AUSA Maureen Bessette



Crack covered with paint

On March 6, 2007, Twilight Marine Ltd., (“TML”) pleaded guilty to, and was sentenced for, operating a vessel in a grossly negligent manner, in violation of 46 U.S.C. § 2302(b), a Class A misdemeanor.

TML was the owner of the Maltese-registered vessel, the *M/V Warrior*. In or about September 2006, the ship made an Atlantic Ocean crossing, traveling toward North America. During this crossing, several sailors onboard identified several small cracks and rust holes in the vessel's starboard side deck which were repaired. Shortly thereafter, however, two three-foot long cracks were discovered on the port side deck which the master ordered the crew to cover with tape and paint to conceal the cracks, creating a hazardous condition.

When the ship arrived in San Francisco in November 2006, the Coast Guard discovered the cracks during an inspection, but had not been told of them by company officials. TML was sentenced to pay a \$50,000 fine with an additional \$100,000 to be paid in restitution to the National Fish and Wildlife Foundation. The company also will

implement an environmental compliance program.

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

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United States v. Timothy Boisture, No. EV05-CR-0043 (S.D. Ind.), AUSA Steve Debrotta [REDACTED] and SAUSA Dave Taliaferro [REDACTED]

On March 6, 2007, Timothy Boisture, a partner with Environmental Consulting and Engineering Co., Inc., was sentenced after being convicted of violations stemming from his fraudulent actions during a well-closure project. Boisture must serve a five-year prison term, followed by three years' supervised release, and he must pay \$492,571 in restitution.

The State of Indiana hired the defendant's firm to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants that threatened to flow into a local pond and the Ohio River. Boisture was convicted in October 2006 of defrauding the state by submitting false invoices, charging more than \$44,000 for equipment that was never installed and services that were not billed by his subcontractor. He further was convicted of defrauding his partner by inducing three other subcontractors to pay him more than \$140,000 in kickbacks. Boisture was acquitted of three other counts charging money laundering, making a false statement, and an additional mail fraud violation.

The \$492,571 in restitution is to be paid as follows: \$158,247 will go to the Environmental Consulting and Engineering Company, Inc., ("ECECI") for fraudulent overpayments; \$60,000 is to be paid to the Indiana Department of Natural Resources ("IDNR") for re-drilling and re-plugging six wells; \$44,824 is to be paid to the Indiana Department of Environmental Management ("IDEM") for fraudulent costs paid for non-existent equipment and services; and \$229,500 is to be paid to IDEM for the future cost of re-drilling and re-plugging 17 additional wells.

In a case related to the same well-closure project, Bi-State Pipe Company, Inc. ("Bi-State"), co-owner Carl Hanisch, and IDNR inspector Donald Veatch, also were sentenced on March 6, 2007. Veatch was ordered to complete 12 months' home detention followed by three years' supervised release and must pay approximately \$385,000 in restitution as follows: \$215,100 to IDEM for their bridge plug fraud scheme and for re-drilling future wells, \$60,000 to IDNR for re-drilling earlier wells, and \$109,934 to ECECI. Hanisch and Bi-State were each sentenced to serve a one-year term of probation and will be held jointly and severally liable for the \$275,100 in restitution to be paid to IDEM and IDNR.

Veatch was an inspector with the IDNR Division of Oil and Gas. In 1999, Bi-State was sub-contracted to plug the inactive and leaking injection wells. The defendants pleaded guilty to falsely stating on several forms that Bi-State had installed cast iron bridge plugs in the wells to prevent petroleum-based hydrocarbons from contaminating freshwater zones higher up in the wells. These forms were submitted to IDNR and used to generate certifications that were utilized by the State of Indiana to receive \$269,949 in reimbursement from the Federal Oil Spill Liability Trust Fund for the costs to plug the wells.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Law Enforcement Division of the Indiana Department of Natural Resources, the Internal Revenue Service Criminal Investigation Division, and the Federal Bureau of Investigation.

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

On March 2, 2007, Fermin Fortun and his son, Fermin Fortun, Jr., pleaded guilty to destruction of federal property valued in excess of \$1,000. The two had originally been charged with the additional violations of trespassing, illegally searching for objects of antiquity, and the lighting of fires, all within the Key West National Wildlife Refuge. The Fortuns, who have been incarcerated since their arrest six months ago, were sentenced to time served and each ordered to complete three-year terms of supervised release.

The investigation began in June 2006, as officials observed the defendants over the course of two months visiting uninhabited Keys within the Refuge. By mid-July, the Fortuns had established themselves at an inland campsite on Boca Grande Key and begun excavation of a site that grew to be approximately eight feet in diameter and ten feet deep. Surveillance by air, from the adjacent waters, and by a team of enforcement officers on the Key confirmed the illegal digging activity, as well as the fact that the defendants had entered a closed area of the Key, set fires at their campsite, and were searching for objects of antiquity without the required authorization or permit for such activities. The defendants previously engaged in a similar operation, causing less intrusion and damage to Refuge property, which was assessed at almost \$10,000 for remediation.

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

acres of land. The area is home to more than 250 species of birds and is an important sea turtle nesting area.

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

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United States v. Randall Cone, No. 2:07-CR-00074 (E.D. Pa.), SAUSA Martin Harrell [REDACTED]

On February 28, 2007, former asbestos contractor Randall Cone pleaded guilty to a one-count information charging him with a CAA violation in connection with the transportation of asbestos waste in 2000, following the discovery of the waste in an abandoned trailer in 2005 in Camden, New Jersey.

In 2000, Cone was the owner and operator of R. Cone Environmental Services, Inc., an asbestos abatement firm. He was hired in the spring of 2000 to remove and dispose of asbestos-containing material from a building in Philadelphia that was being converted to a charter school. Cone then hired an individual to transport this material for disposal, but it eventually was abandoned in a semi-trailer at a parking lot in New Jersey. The material was discovered by a company that was redeveloping the property in New Jersey, which subsequently paid approximately \$18,000 to dispose of the asbestos waste and trailer. Cone is scheduled to be sentenced on May 31, 2007.

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

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

On February 16, 2007, Eco Finishing Company (“ECF”), an electroplating company, was sentenced to complete a three-year term of probation, pay a \$225,000 fine and an additional \$25,000 in restitution to the Federal Transport Program.

From May 2001 through approximately April 2005, the defendants discharged wastewater which exceeded permitted limits. Investigation revealed a company practice (through internal memos and e-mails) of discussions among management and employees of upcoming inspections by the Metropolitan Council Environmental Services (“MCES”), the local sewer authority. Documents provided by disgruntled employees indicated that production practices were changed during the inspections. Investigators subsequently obtained a search warrant and installed a covert sampling device in the sewer line. Samples taken provided proof that the facility was generally in compliance with its permit during the announced inspections, but quickly fell out of compliance when sewer authorities left the premises. Using this data, a second search warrant was obtained and additional incriminating documents were seized showing that management personnel had directed employees to alter the effluent, change the production process, and take other steps to ensure compliance only during MCES inspections. The company pleaded guilty to an information charging it with one Clean Water Act charge for the knowing violation of a pretreatment program.

Co-defendant Ted Gibbons, a former chemist for ECF, previously was sentenced to serve 18 months’ incarceration followed by one year of supervised release. Gibbons pleaded guilty to one felony CWA pretreatment violation and two felony CWA tampering violations. Gibbons was responsible for analyzing the company’s wastewater and for reporting those results to the MCES.

Gibbons failed to submit laboratory reports to the sewer authority for all wastewater monitoring conducted during each monitoring period, as required by the facility's sewer permit, from at least January 2001 through about April 15, 2005. On two occasions in 2004 and 2005, Gibbons also tampered with sampling equipment during times when the sewer authority was testing the facility's effluent. Gibbons wrote memos to wastewater staff with tips on how they were to stay in compliance during the period that MCES was taking samples. This included the instruction that they were to "leave all water running during all shifts."

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

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United States v. Don Walker, No. 1:06-CR-00290 (S.D. Ala.), AUSA Maria Murphy [REDACTED]



On February 14, 2007, Don Walker, the captain of the *FV Lady D*, a fishing boat chartered out of Orange Beach, Alabama, pleaded guilty to, and was sentenced for, violating the Marine Mammal Protection Act in regard to shooting at a dolphin last year in the Gulf of Mexico.

On June 10, 2006, members of a fishing party which had chartered the *F/V Lady D*, complained to officials that Walker had shot at a dolphin that was attempting to eat a fish off a fishing line. A member of the party took a picture of a bullet spraying the water near the dolphin.

The defendant was sentenced to serve a one-year term of probation and was ordered to pay a \$1,000 fine. He is further required to make a \$1,000 contribution to the Mote Marine Laboratory in Sarasota, Florida, for the development of a public service announcement reminding others of the consequences of harassing bottlenose dolphins.

This case was investigated by the National Marine Fisheries Service.

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United States v. Loch Louman et al., No. 3:06-CR-00248 (E. D. Va.), AUSAs Olivia Hawkins and Michael Dry [REDACTED] **and SAUSA David Lastra** [REDACTED]

On February 6, 2007, Loch Louman pleaded guilty to a Rivers and Harbors Act ("RHA") violation stemming from illegal dumping during a bridge construction project. Co-defendant Rick Callahan pleaded guilty in January 2007 to an RHA violation and both are scheduled to be sentenced on April 30, 2007.

In the spring of 2000, the Virginia Department of Transportation ("VDOT") awarded a contract to AMEC Civil, L.L.C., previously doing business as Morse Diesel Civil, L.L.C., to complete the Clarksville Bypass Project in Mecklenburg, Virginia. This project involved the expansion of Route 58

south of the existing bridge, as well as the construction of a new bridge across the J.H. Kerr Reservoir, a state water and a navigable water of the United States. VDOT obtained a Virginia Water Protection Permit, pursuant to the Virginia Water Protection Permit Regulations and section 401 of the Clean Water Act. This permit governed the expansion project and included provisions prohibiting the pouring of wet or uncured concrete into state waters as well as the dumping of construction material or waste material into the reservoir.

During construction of the Bypass Project, Louman, the construction project manager, and Callahan, the project manager, used a hose to pump slurry, a mixture containing water, concrete, and plasticizer, into the Reservoir in violation of the RHA.

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

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