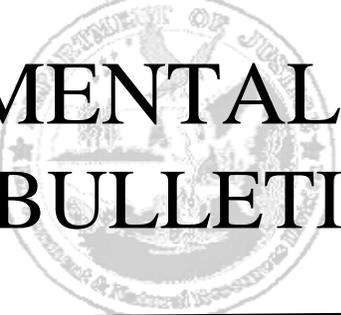

ENVIRONMENTAL CRIMES MONTHLY BULLETIN



January 2007

EDITORS' NOTE:

Our colleagues with Environment Canada publish a monthly online environmental magazine called *EnviroZine*. In the November issue you may read about how Canadian wildlife inspectors discovered a rare poisonous snake that had been mailed from Israel in a package marked as containing "watermelon seeds." http://www.ec.gc.ca/EnviroZine/english/issues/70/home_e.cfm

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 *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

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[U.S. v. Grace, 455 F. Supp.2d 1172 \(D. Mont. 2006\) \(EPA indoor air sampling results\).](#)

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[U.S. v. San Diego Gas and Electric, No. 06-CR-00065 \(S.D. Cal.\) \(Regulated Asbestos-containing material test methods\).](#)

Districts	Active Cases	Case Type / Statutes
C.D. Calif.	United States v. Danaos Shipping Company, Ltd.	Vessel/ Negligent Discharge of Oil
N.D. Calif.	United States v. Artemios Maniatis	Vessel/ APPS
S.D. Calif.	United States v. Amar Alghazouli	CFC Smuggling/ Conspiracy, CAA, Money Laundering, Smuggling
D.D.C.	United States v. District Yacht Club	Cement Debris / Rivers and Harbors Act
N.D. Fla.	United States v. Panhandle Trading, Inc.	Seafood Importers Mislabeled Catfish/ Lacey Act
D. Mass.	United States v. Overseas Shipholding Group	Multi-District Vessel/ Conspiracy, APPS, Obstruction, False Statement, CWA
D. Minn.	United States v. Troy Gentry	Bear Hunt/ Lacey Act
D.N.J.	United States v. Sun Ace Shipping Company	Vessel/ APPS
N.D.N.Y.	United States v. John Chick	Asbestos Removal/ Conspiracy, CAA
	United States v. John Wood	Asbestos Removal/ Conspiracy, CAA, Mail Fraud
	United States v. Everett Blatche	Asbestos Removal/ Conspiracy, CWA, CAA, CERCLA
	United States v. AAR Contractor	Asbestos Removal/ Conspiracy, RICO, CAA, TSCA, Tax Fraud
S.D.N.Y.	United States v. Daniel Storms	DEP Employee/ CWA False Statement
N.D. Okla.	United States v. Sinclair Tulsa Refining Company	Oil Refinery/ CWA
D. Utah	United States v. Johnson Matthey	Gold and Silver Refinery/ Conspiracy, CWA Pretreatment
E.D. Va.	United States v. William Garrison	Elk Hunting/ Lacey Act

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Significant Opinions

District Courts

U.S. v. Grace, 439 F.Supp.2d 1125 (D. Mont. 2006)

Defendant corporation and seven current and former employees were charged with conspiracy to violate the Clean Air Act and to defraud the United States, violation of the Clean Air Act, and obstruction of justice. Seven individual defendants filed motions to sever their trials from the corporate defendant and, in some cases, from other individual defendants. The defendants based their motions on varying grounds, including the “spillover” prejudicial effect of being tried together, the length of trial, their intent to present, as part of their defense, and documents over which co-defendant W.R. Grace had asserted attorney-client privilege.

Held: The trial court granted two individual defendants’ motions to sever and set their joint trial for a later date. The defendant corporation and the remaining five individual defendants remained joined for trial. The court examined *in camera* attorney-client privilege documents and determined that the two individual defendants’ Fifth Amendment right to due process and Sixth Amendment right to present evidence in their defense outweighed the presumption in favor of joint trials. Because one defendant had the right to present exculpatory evidence that was incompatible with W.R. Grace’s right to a fair trial and the other defendant was W.R. Grace’s in-house counsel, which raised the near certainty of antagonistic defenses and irreconcilable conflicts with co-defendants, the court ordered their trial severed.

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U.S. v. Grace, 455 F. Supp.2d 1172 (D. Mont. 2006) (EPA indoor air sampling results)
U.S. v. Grace, 455 F. Supp.2d 1177 (D. Mont. 2006) (W.R. Grace historical product testing)
U.S. v. Grace, 455 F. Supp.2d 1181 (D. Mont. 2006) (ATSDR medical study)
U.S. v. Grace, 455 F. Supp.2d 1196 (D. Mont. 2006) (EPA soil sampling results)
U.S. v. Grace, 455 F. Supp.2d 1203 (D. Mont. 2006) (EPA risk assessments)

Defendant corporation and seven current and former employees were charged with conspiracy to violate the Clean Air Act and to defraud the United States, violation of the Clean Air Act, and obstruction of justice. Defendants filed multiple motions *in limine* to exclude government evidence and related expert testimony relating to government sampling and medical evidence, as well as W.R. Grace's own historical product testing relating to its asbestos-contaminated vermiculite. The defendants based their motions primarily on the grounds that the evidence at issue did not meet the "fit" test for expert testimony under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702, and it was unfairly prejudicial under Federal Rule of Evidence 403.

Held: The trial court, in large part, granted the defendants' motions. The court excluded EPA's risk assessments and sampling results and W.R. Grace's historical testing and related expert testimony for the purpose of proving a risk of harm as required by the Clean Air Act knowing endangerment crime. The court did not exclude the evidence entirely, however, and stated that some of the evidence would be permitted to show the defendants' knowledge or as proof of the obstruction counts or the defraud prong of the conspiracy. With regard to the ATSDR medical study, the court excluded it entirely, finding that it failed *Daubert's* "fit" requirement because the study was not designed to establish a causal link between exposure to asbestos and the incidence of asbestos-related disease in Libby, Montana, and additionally the probative value of the study's findings was outweighed by the risk of jury confusion.

Note: The government filed notice of interlocutory appeal of all five orders. The government's opening brief is due to the Ninth Circuit in early January of 2007.

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United States v. San Diego Gas and Electric et al., No. 06-CR-0065 (S. D. Cal.), ECS Trial Attorney Mark Kotila [REDACTED] and AUSA Melanie Pierson [REDACTED]

On November 21, 2006, the court issued an order dismissing four of the five counts charged in the indictment for "failure to state an offense." The court found that the government relied on an improper test method used by EPA to determine if coal tar insulation used to wrap an underground pipeline contained more than 1% asbestos and therefore was to be treated as regulated asbestos-containing material ("RACM"). Specifically, the court held that the EPA should have used the required multi-layer test rather than the recommended single layer test. Defense counsel in this case had limited their argument to the issue of the test, claiming the government could not prove the jurisdictional amount of 1% since they used the wrong test. The court, however, went a step further by ruling that the indictment was defective on its face in that it failed to unambiguously set forth all elements of the charged offense, i.e., that the material was specifically defined as regulated asbestos-containing material as determined by the specified test method and, therefore, should be dismissed. As to the false statement count charged, the court opined that there was no direct link between the false statement to a member of the regulating agency and the authorized function of the EPA.

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 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 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 to 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 RACM, in order to avoid the additional cost and time required to properly remove the asbestos.

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Indictments

United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420- 23; (C.D. Cal., N.D. Cal, 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: Dorothy Kim [REDACTED] Stacey Geis [REDACTED] Jon Mitchell [REDACTED] Rick Murphy [REDACTED] Banu Rangaragan [REDACTED] Joe Batte [REDACTED] and Malcolm Bales [REDACTED]

On December 19, 2006, informations were filed in six districts charging Overseas Shipholding Group (“OSG”) with conspiracy, CWA, obstruction, false statement, and APPS violations that occurred on a total of 12 ships. Plea agreements also were filed in Boston and Beaumont, Texas. Under the terms of the plea agreements, OSG has agreed to pay a total of \$37 million, \$27.8 million of which will be paid as a criminal fine. The Districts of Massachusetts and Maine and the Eastern District of Texas each will receive \$10 million; \$3 million each will be paid to the Central District of California and the Eastern District of North Carolina; and \$1 million will be paid to the Northern District of California. Payments of \$9.2 million will be made toward organizational community service projects.

The company also will complete a three-year term of probation and be subject to the terms of an environmental compliance plan (to include a court-appointed monitor and an outside independent auditor). [REDACTED]

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *M/T 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 *M/T Overseas Shirley* and *M/T 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.

The government's investigation thereby expanded to encompass 12 vessels in six ports. [REDACTED]

[REDACTED] Starting in August 2005, OSG made six self-disclosures involving six ships that committed violations during the pendency of the criminal investigation. All of the cases involve the falsification and failure to maintain oil record books.

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 Environmental Protection Agency Criminal Investigations Division.

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United States v. John Chick, No. 06-CR-514 (N.D.N.Y.), AUSA Craig Benedict [REDACTED].

On December 20, 2006, John Chick was charged in a 10-count indictment with violations stemming from the illegal removal of asbestos from the Cayuga County Board of Elections Building in Auburn, New York. Chick was charged with conspiring to violate the CAA; six substantive CAA violations related to the illegal removal and disposal of asbestos from the building in February 2006; and three counts of making false statements, including denying that he used Cayuga County prison inmates to perform some of the illegal work and falsely stating that he gave them masks during the removal activities.

Trial is scheduled to begin on February 20, 2007. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation, with assistance from the New York State Department of Labor, Asbestos Control Bureau.

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United States v. Artemios Maniatis et al., No. 06-CR-0796 (N.D. Calif.), AUSA Stacey Geis [REDACTED]

On December 13, 2006, Greek nationals Artemios Maniatis and Dimitrios Georgakoudis were charged with an APPS violation stemming from their roles in ordering the routine illegal discharge of sludge and waste oil from the oil tanker *M/T Captain X Kyriakou*.

Investigation began when a crew member informed the Coast Guard National Response Center that he was routinely ordered to discharge oil overboard. Coast Guard inspectors subsequently discovered a bypass pipe and evidence that these illegal discharges had not been recorded in the vessel's oil record book as required.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Coast Guard Pacific JAG Office.

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United States v. William Garrison, No. 3:06-CR-00046 (E.D. Va.), ECS Trial Attorney David Joyce [REDACTED]

On December 13, 2006, William Garrison was charged with a conspiracy to violate the Lacey Act and with making a false statement stemming from Garrison's 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. The indictment alleges that 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.

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. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS Senior Trial Attorney Richard Poole [REDACTED] **SAUSA Aunnie Steward** [REDACTED] **and AUSAs Richard Lambert** [REDACTED] **and Jarred Bennett** [REDACTED]

On December 13, 2006, a superseding indictment was returned, adding Johnson Matthey, PLC, the UK-based parent company, as a defendant.

On March 22, 2006, a 29-count indictment was returned charging Johnson Matthey, Inc., a silver and gold refinery, its general manager and vice president John McKelvie, and production manager Paul Greaves, with violations caused by excessive levels of selenium discharged in wastewater generated during the refinery process. The defendants were charged with conspiracy to violate the CWA and several pretreatment and concealment violations for both screening samples and diluting the wastewater with a hose over an approximately seven-year period. They also are charged with tampering with a monitoring device for shutting off the wastewater when the regulators pulled samples.

The superseding indictment now alleges that the parent company, a multi-national specialty chemicals producer, played a role in conspiring to conceal the release of the contaminated wastewater into the sewers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Utah Attorney General's Office.

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United States v. John Wood, No. 5:06-CR-00494 (N.D.N.Y.), AUSA Craig Benedict [REDACTED]

On December 7, 2006, John Wood was charged with conspiracy to violate the CAA and to commit mail fraud related to illegal asbestos removal activities at numerous locations in New York State. Wood also was charged with three substantive CAA counts.

The defendant is the owner of J&W Construction, an asbestos removal company. According to the indictment, on various dates in 2005 and 2006 Wood supervised individuals who were engaged in renovation or removal projects, instructing workers to remove asbestos-laden material from businesses and residences in an illegal and unsafe manner.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Clinton County Sheriff's Department, and the New York State Department of Labor, Asbestos Control Bureau.

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United States v. Everett Blatche, No. 5:06-CR-00474 (N.D.N.Y.), AUSA Craig Benedict ([REDACTED])

On December 7, 2006, Everett Blatche was scheduled for trial to begin on February 5, 2007. He was charged in November 2006 with conspiracy to violate the CAA, CWA, and CERCLA related to an illegal asbestos removal. Blatche also was charged with one CERCLA, one CWA, and three substantive CAA counts.

Blatche was a supervisor for AAPEX Environmental Services, Inc., an asbestos removal company. From June through November, 2006, the defendant supervised numerous individuals who removed approximately 220,000 square feet of spray-on fire proofing asbestos material from a large building. Blatche supervised the illegal removal activities at numerous locations throughout the building, discharged asbestos that ran down the outside of the structure and onto surrounding grounds, disposed of asbestos as if it were simply construction debris, and released asbestos into storm drains that led to the Erie Canal system.

This case was investigated by the United States Environmental Protection Agency and the New York State Departments of Environmental Conservation and Labor, Asbestos Control Bureau.

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Pleas / Sentencings

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

On December 15, 2006, Danny Nguyen, Panhandle Seafood, Inc. ("PSI"), and Panhandle Trading, Inc. ("PTI"), were sentenced after pleading guilty in August 2006 to conspiracy to violate the Lacey Act and conspiracy to commit money laundering for their role in an illegal catfish importation scheme. Nguyen was ordered to serve 51 months' incarceration followed by three years' supervised release. Both companies will complete five-year terms of probation and all three defendants will be held jointly and severally liable for \$1,139,275 in restitution to be paid to United States Department of Homeland Security, Immigration, Customs and Border Protection.

Eight defendants were charged in a 42-count superseding indictment returned in May 2006. Nguyen was the vice president of both PTI and PSI. Four of the five remaining defendants are located in Vietnam. A fifth defendant, Buu Huy, a/k/a Huy Buu, is awaiting extradition from Belgium.

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

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

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United States v. Sinclair Tulsa Refining Company et al., No. 4:06-CR-00214 (N.D. Okla.), ECS Trial Attorney Mark Kotila [REDACTED] and AUSA Susan Morgan [REDACTED]



Corroded tank

On December 13, 2006, Sinclair Tulsa Refining Company (“Sinclair”), a subsidiary of oil and gasoline producer Sinclair Oil, pleaded guilty to two felony CWA violations for deliberately manipulating wastewater discharges at its Tulsa Refinery. Company managers Harmon Connell and John Kapura each also pleaded guilty to one felony CWA count.

Sinclair, Kapura and Connell admitted to manipulating the sampling and discharges of wastewater in violation of their

NPDES permit over an extended period of time. According to court documents, between January 2000 and March 2004, the Sinclair refinery discharged an average of 1.1 million gallons of treated wastewater per day into the Arkansas River. On numerous occasions in 2002 and 2003, Sinclair directed employees to limit wastewater discharges with high concentrations of oil and grease to manipulate the result of required bio-testing. During monitoring periods, Sinclair, through its employees, reduced flow rates of wastewater discharges to the river and diverted more heavily contaminated wastewater to holding impoundments, as one way of ensuring that they had passed the tests.

Under the agreement, Sinclair has agreed to pay a criminal fine of \$5 million and to make a community service payment of \$500,000 which will be paid into an environmental fund, to be identified at a later date. Connell and Kapura each face a maximum penalty of three years in prison and a fine to be determined by the court. Sentencing is scheduled for April 2, 2007.

This case was jointly investigated by the Oklahoma Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General’s Office.

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United States v. Sun Ace Shipping Company et al., No. 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe

Sun Ace Shipping Company (“Sun Ace”) was sentenced in November 2006 to pay a \$400,000 fine plus an additional \$100,000 community service payment. On December 12, 2006, an APPS award of \$200,000 (half of the fine), was ordered to be divided among three crew member whistle blowers.

The company must complete a three-year term of probation during which time its vessels will be banned from U.S. ports and waters. The community service payment will be made to the National Fish and Wildlife Program, Delaware Estuary Grants Program, which will be used to protect and restore the natural resources of the Delaware Estuary and its watershed.



Bypass pipe

In January 2006, during a Coast Guard boarding of the *M/V Sun New*, a bulk carrier vessel operated by Sun Ace, inspectors found that members of the engine room crew had used bypass hoses to discharge oily wastes overboard into the ocean without using the vessel’s oil-water separator.

On December 5, 2006, chief engineer Chang-Sig O pleaded guilty to obstruction of justice for maintaining a false oil record book (“ORB”) and for lying to the Coast Guard about his knowledge of the bypass hoses used to circumvent pollution control equipment. Second engineer, Mun Sig Wang, pleaded guilty to an APPS violation for presenting a false ORB to inspectors during the January port inspection. The company pleaded guilty in September of last year to a one-count information charging an APPS violation for failing to maintain an accurate ORB. The engineers are scheduled to be sentenced on January 27, 2007.

This case was investigated by the United States Coast Guard.

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United States v. Daniel Storms, No. 7:06-CR-00770 (S.D.N.Y.), AUSA Ann Ryan

On December 11, 2006, Daniel Storms, a former employee of the New York City Department of Environmental Protection (“DEP”), was sentenced to serve two years’ probation and to pay a \$250 fine.

Storms pleaded guilty in September of this year to an information charging him with a false statement violation for making fraudulent entries in DEP records relating to the monitoring of drinking water. Storms was responsible for conducting tests to monitor drinking water turbidity at the DEP’s Catskill Lower Effluent Chamber. Storms admitted that on February 9, 2006, he made false entries in the log book regarding turbidity levels and did not perform all the necessary steps in the test procedure.

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

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United States v. Amar Alghazouli et al., No. 05-CR-1148 (S.D. Calif.), AUSA Melanie Pierson

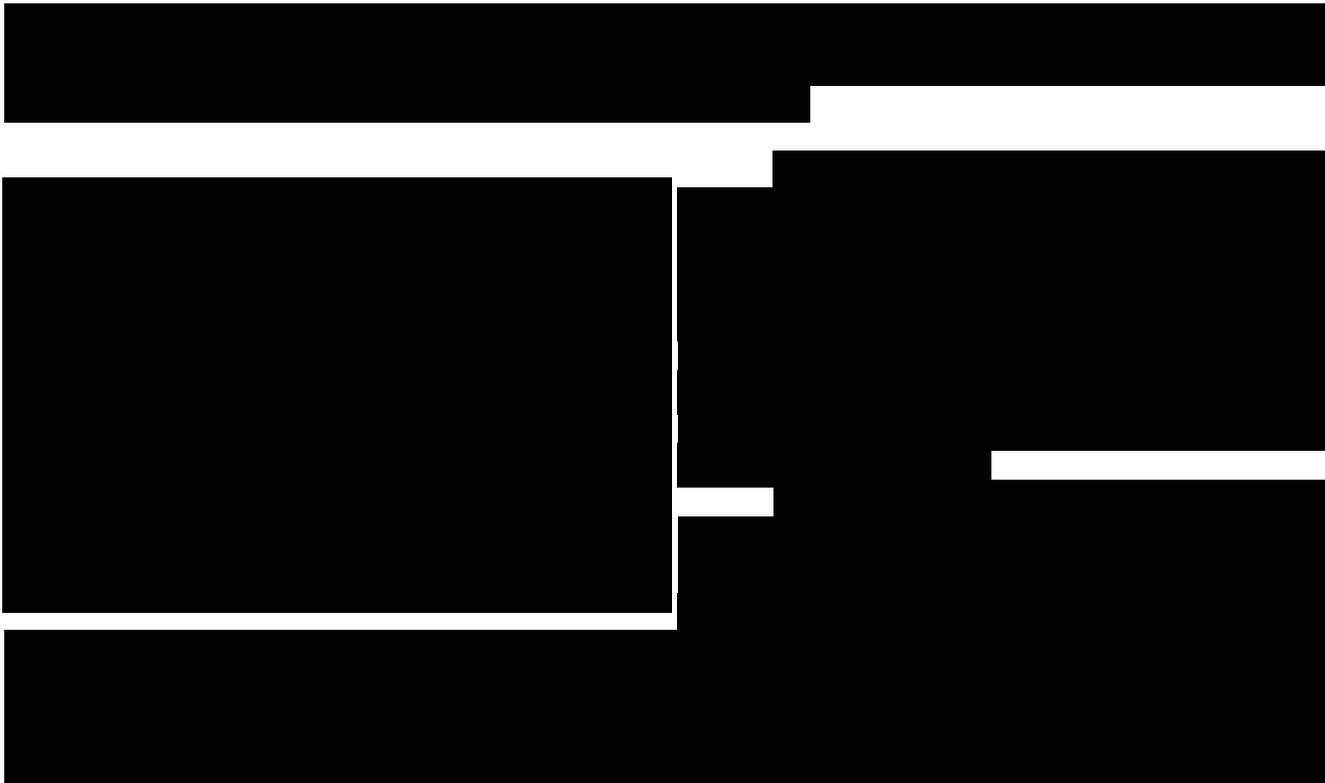
On December 8, 2006, Ahed Alghazouli was sentenced to serve 30 months' incarceration followed by three years' supervised release. He also must pay a \$6,000 fine.

Ahed Alghazouli pleaded guilty in August 2006 to a conspiracy to launder money in connection with proceeds from the sale of illegally imported R-12 refrigerant (commonly known as "Freon"). Alghazouli admitted that, between June 1997 and October 2004, he and his brothers, Amar Alghazouli and Omran Alghazouli, operated a business in San Diego known as United Auto Supply, through which they sold automotive supplies, including R-12 purchased from individuals known to them to have smuggled the refrigerant into the United States from Mexico. They altered the writing on the cylinders to disguise their origin and then sold them to customers in parking lots in the San Diego area.

Amar previously was sentenced after being convicted at trial in March 2006 on five of the six counts charged. He was sentenced to pay a \$7,500 fine and to serve 41 months' incarceration followed by three years' supervised release. Amar was convicted of conspiracy to violate the CAA and conspiracy to launder money, two smuggling violations, and one CAA violation for the unlawful sale of Freon. Both Ahed and Amar were required to forfeit \$135,000 in currency and a home in Chandler, Arizona, to the government. Omran remains a fugitive.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation Division; Federal Bureau of Investigation; and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement, Office of Inspector General.

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United States v. District Yacht Club, No. 1:06-MJ-00405 (D.D.C.), ECS Trial Attorney Noreen McCarthy [REDACTED] and AUSA Bruce Hegyi [REDACTED]

On December 5, 2006, the District Yacht Club (“DYC”) pleaded guilty to an information charging a Rivers and Harbors Act violation. On approximately May 8, 2003, one or more officers of the DYC knowingly directed the discharge and deposit of approximately 240 square feet of cement debris into the Anacostia River without a permit. On this occasion, the debris was discharged and deposited into the river from the shore using a piece of motorized equipment, known as a “Pettibone,” and was dumped approximately two feet in front of a sewer outfall, which caused the flow from the outfall to be partially obstructed and re-directed.



Dock near outfall

The company was sentenced to pay a \$10,000 fine and an additional \$10,000 in restitution to be paid to the National Park Foundation to restore and preserve the area where this material was discharged. The company also will complete a three-year term of probation and is required to develop an environmental compliance plan.



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United States v. AAR Contractor, Inc., et al., Nos. 5:00-CR-00099, 101, 450; 5:02-CR-00051 (N.D.N.Y.), AUSA Craig Benedict

On December 4, 2006, the five remaining defendants who cooperated extensively in the prosecution of Alex and Raul Salvagno were sentenced along with AAR Contractor, Inc. (“AAR”).

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

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

1) Timothy Carroll, the public owner of Analytical Laboratories of Albany, was sentenced to serve 26 months in prison, followed by two years’ supervised release and 200 hours of community service. He will be held jointly and severally liable for the \$22,875,575 in restitution to be paid to victims. Carroll pleaded guilty to a conspiracy to violate the CAA and to commit mail fraud.

2) Gary Alvord, the director of operations for AAR Contractor, was sentenced to serve 15 months in prison, followed by two years’ supervised release and 200 hours of community service. Alvord pleaded guilty to a conspiracy to violate the CAA and TSCA and to substantive CAA violations.

3) Robert Obrey, an AAR field supervisor, was sentenced to serve 15 months in prison, followed by two years of supervised release and 200 hours of community service. Obrey pleaded guilty to a conspiracy to violate the CAA and TSCA and to substantive CAA violations.

4) Philippe Goyeau, the ALA executive director, was sentenced to serve eight months in prison, followed by two years of supervised release and 200 hours of community service. Goyeau pleaded guilty to a conspiracy to violate the CAA.

5) Alison Gardner, the ALA laboratory director, was sentenced to serve three years of probation and must complete 300 hours of community service. Gardner pleaded guilty to a conspiracy to violate the CAA and to commit mail fraud.

Because of their significant cooperation, the sentence for each of the individuals above was substantially lower than what would have been generated by the sentencing guidelines.

AAR Contractor was sentenced to pay approximately \$22,875,575 in restitution to victims of the asbestos scheme. The company also must forfeit \$2,033,457 to the United States.

On August 30, 2006, Alexander Salvagno was re-sentenced to serve 25 years' incarceration. This remains the longest sentence ever imposed for an environmental crime. His father, Raul Salvagno, was re-sentenced to serve 19½ years' incarceration, which is the second longest environmental criminal sentence. The Salvagnos also are responsible for nearly \$23 million in restitution to be paid to victims and must forfeit an additional \$5.7 million to the federal government, some of which will be used to pay restitution to victims. Eight other defendants have been prosecuted in this matter.

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

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

On November 27, 2006, country singer Troy Lee 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. Specifically, Gentry bought the bear from co-defendant Lee Marvin Greenly, a Minnesota hunting guide and owner of a wildlife photography business. Following the sale, Gentry killed the captive-reared bear 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 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 conceded he had 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.

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

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