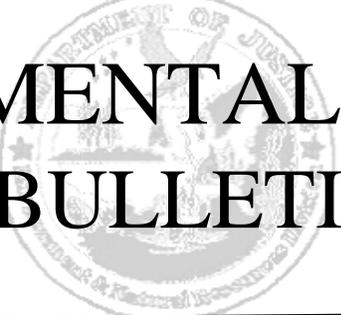


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# ENVIRONMENTAL CRIMES MONTHLY BULLETIN



*March 2006*

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*EDITORS' NOTE:*

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

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

## **AT A GLANCE**

*SIGNIFICANT OPINIONS*

- ♦ [United States v. Kapp](#), 419 F.3d 666 (7<sup>th</sup> Cir. 2005): Endangered Species Act/Species and Subspecies Hybrids/Sufficiency of Evidence
- ♦ [United States v. W.R. Grace](#), 201 F. Supp.2d 1087 (D. Mont. 2005): Asbestos/Discovery
- ♦ [United States v. W.R. Grace](#), 401 F. Supp.2d 1069 (D. Mont. 2005): Asbestos/Discovery
- ♦ [United States v. Kraft](#), 2005 WL 578313 (D.Minn. 2005): Wildlife Trafficking/Lacey Act Two-Step Analysis

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C.D. Calif.	<a href="#">US v. David Bachtel</a>	<i>Boat Scuttling/CWA, Obstruction, False Statement</i>
N.D. Calif.	<a href="#">US v. Kevin Thompson</a>	<i>Undersized Shark Sales/Conspiracy, Lacey Act</i>
M.D. Fla.	<a href="#">US v. Joseph Ulrich</a>	<i>Nest Destroyed/ Bald and Golden Eagle Protection Act</i>
S.D. Fla.	<a href="#">US v. Jorge Hernandez</a> <a href="#">US v. Harold DeGregory</a> <a href="#">US v. Antonio Martinez-Malo</a> <a href="#">US v. Pablo Garcia</a>	<i>Migratory Bird Sales/MBTA</i> <i>Transport of Radioactive Material/ HMTL, False Statement</i> <i>Undersized Lobster Sales/Lacey Act, Smuggling</i> <i>Migratory Bird Sales/MBTA</i>
D. Idaho	<a href="#">US v. Shackelford</a>	<i>Wastewater Treatment Package Systems/ Mail Fraud</i>
D. Mass.	<a href="#">US v. MSC</a>	<i>Vessel/ APPS, Conspiracy, Obstruction, False Statement</i>
N.D. Miss.	<a href="#">US v. Gordon Tollison</a>	<i>Chronic Sewage Discharge History/ CWA</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>
S.D.N.Y.	<a href="#">US v. NYCDEP</a>	<i>State Agency Probation Violation/ CWA, TSCA</i>
E.D.N.C.	<a href="#">US v. Jerry Gaskill</a>	<i>Dredge and Fill/ CWA, Rivers and Harbors Act</i>
D.N.D.	<a href="#">US v. Warren Anderson</a>	<i>Hunting Operation/Bald and Golden Eagle Protection Act, MBTA, Lacey Act</i>
E.D. Pa.	<a href="#">US v. Wallace Heidelmark</a> <a href="#">US v. Joel Udell</a>	<i>Asbestos Removal/ CAA, NESHAP, Mail Fraud</i> <i>Hazardous Waste Abandoned Overseas/ RCRA</i>

Districts	Active Cases	Case Type/ Statutes
W.D. Pa.	<a href="#">US v. Jon Pen Tokosh</a>	<i>Protected Tortoise Sales/Lacey Act</i>
S.D. Tex.	<a href="#">US v. Corpus Christi Day Cruise, Ltd.</a> <a href="#">US v. Tam Le</a>	<i>Vessel/ Obstruction, False Statement</i> <i>Red Snapper/ Smuggling</i>
D. Utah	<a href="#">US v. McWane</a>	<i>Cast Iron Manufacturer/ CAA, False Statement</i>

### TRAINING

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

### Quick Links

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## Significant Opinions

### 7<sup>th</sup> Circuit

#### **United States v. Kapp, 419 F.3d 666 (7th Cir. 2005)**

On August 19, 2005, the U.S. Court of Appeals for the Seventh Circuit affirmed the conviction of William Kapp under the Endangered Species Act (“ESA”) and the Lacey Act for the killing of tigers and leopards and the sale of their meat, hides and other parts. Kapp was a taxidermist who purchased live exotic cats from various exotic animal dealers. He and the dealers filled out paperwork submitted to the United States Department of Agriculture indicating that the cats had been “donated,” in an effort to make their transactions appear legal. Kapp then killed the animals and sold the various parts. In

addition to tigers and leopards, Kapp also bought, killed, and sold the parts of a “liger” (a lion-tiger hybrid).

On appeal, Kapp argued that his conviction should be reversed because “the government failed to prove beyond a reasonable doubt that the animals at issue were endangered and protected under the ESA, because it was theoretically possible that the animals were actually unprotected hybrids at the species level.” He also argued that it was possible that the animals were actually unprotected hybrids at the subspecies level. Kapp further argued that it was error for the trial court to allow leopards and tigers he had purchased, killed, and mounted to be entered into evidence. He asserted that the probative value of the mounts was substantially outweighed by undue prejudice.

In upholding Kapp’s conviction, the Seventh Circuit rejected Kapp’s interspecies hybrid argument. The court noted the testimony of a morphologist and a geneticist that indicated that the hides Kapp was charged for procuring had come from endangered animals and not hybrids. More “damning” in the eyes of the Court was evidence that illustrated that Kapp himself “was well aware of the distinction between the protected animals and unprotected hybrids like ligers” and had specifically identified certain hides as liger hides and others as tiger and leopard hides on transmittal and other records.

The Court of Appeals also rejected Kapp’s subspecies hybrid argument. The court pointed to 50 C.F.R. § 17.11(g) which states that “[t]he listing of a particular taxon includes all lower taxonomic units.” In this case, the relevant taxon was the tiger at the species level. The court then reasoned that since all subspecies of tiger were protected according to 50 C.F.R. §17.11, crosses of various subspecies of tiger were also protected.

Finally, the Seventh Circuit upheld the district court’s decision to admit the mounted leopards and tigers. Noting that, “if evidence is probative of an issue relevant to an element of the offense, it must be admitted in all but the most extreme cases,” the Kapp court found that the mounted animals were both relevant and probative of the identity of the animals and assisted the jury in understanding and evaluating the testimony of the witnesses, and particularly the morphologist.

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## **District Courts**

### **United States v. W.R. Grace, 401 F. Supp.2d 1087 (D. Mont. 2005)**

In the prosecution of the W.R. Grace Corporation (“Grace”) for violations of the Clean Air Act, conspiracy, wire fraud, and obstruction of justice relating to the release and distribution throughout Libby, Montana, of asbestos-contaminated vermiculite, the defendant moved to compel the government to produce the “rough notes” taken by agents of interviews with Grace employees under Rule 16 of the Federal Rules of Criminal Procedure.

Pointing to the Advisory Committee’s Note to the 1991 Amendments to Rule 15, and the Ninth Circuit Court of Appeals’ opinion in *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976), the district court held that rough notes are properly discoverable under Rule 16(a)(1)(B)(ii). The court rejected, however, the company’s contention that all past and present Grace employees should be considered agents of the company for purposes of Rule 16(a)(1)(C). The court opined, “Whether a statement must be produced under that rule depends on the government’s position regarding the person making the statement. Grace’s speculative broad sweep about the scope of the government’s contentions is

insufficient to pull every past and present Grace employee within the purview of Rule 16(a)(1)(C).” The court cautioned, however, that if the government attempted to use an employee’s statement or conduct to bind the company, but had not produced the rough notes of any interview with that employee, the government’s evidence could be excluded as a sanction. Finally, the court denied the defendant’s motion for an order directing the government to inspect all rough interview notes not discoverable under Rule 16 for *Brady* material because “[t]he provisions of *Brady* are self-executing” and the government appeared to understand its requirements.

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### **United States v. W.R. Grace, 401 F. Supp.2d 1069 (D. Mont. 2005)**

In the prosecution of the W.R. Grace Corporation (“Grace”), the defendant corporation and individual defendants filed two broad discovery motions. The corporate defendant, Grace, filed a motion seeking information in the possession of government agencies that were not members of the “prosecution team.” The individual defendants filed a motion to compel production of specific items of evidence or categories of evidence favorable to them under *Brady v. Maryland*. In both motions, the defendants objected to the government’s disclosure of its entire evidentiary database without differentiating evidence favorable to the accused. The defendants’ motions were granted in part and denied in part.

The trial court held that the duty to produce documents was not limited to “the prosecution team.” Applying what it called the “knowledge and access test” to both Rule 16(a)(1)(E) and *Brady*, the court held that “[t]he prosecution may not simply ask for information it wants while leaving behind other, potentially exculpatory information within agency files.” Instead, the prosecution must review the files of any federal agency from which the prosecution seeks information to determine whether there is evidence favorable to the defendant in that agency’s files, whether or not that agency is a member of the “prosecution team.” The court explicitly stated in a footnote that this same logic does not apply when federal prosecutors seek and receive files from state agencies. The court appeared to be motivated by its belief that “the prosecution is in a unique position to obtain information known to other agents of the [federal] government.” Despite this reasoning, the court did not order the production of *Brady* material because “[t]he prosecution’s constitutional duty under *Brady* is self-executing, and cannot be enlarged or curtailed by court order.” The court, instead, set a production deadline.

The court then considered the defendants’ objections to the government’s manner of disclosing *Brady* material. The government produced its discovery in a searchable database containing more than three million pages of documents. The defendants maintained that the government was required to search for and identify for the defense each document that was favorable to the defense. The court rejected the defendants’ argument because more than two million of the documents were actually documents belonging to the corporation, and all defendants are working together to prepare their defense. Therefore, there was no reason to believe that the government was in a better position to locate exculpatory materials than the defendants.

Finally, as to a number of the individual defendants’ specific requests for particular documents, the court found that the defendants’ requests were based on speculation that the documents existed. The court declined to “impose an additional burden by compelling production of documents that may or may not exist based on the speculative inferences of the defense.” Such speculation was not sufficient to prove “‘facts which would tend to show that the Government is in possession of information helpful to the defense,’ as is required by Rule 16.”

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**United States v. Kraft, 2005 WL 578313 (D.Minn) (2005)**

The District Court of Minnesota adopted recommendations of the magistrate judge regarding the sufficiency of charges and certain evidentiary issues. Two primary issues are discussed below.

The court dismissed certain wildlife trafficking counts charged under the Lacey Act, on the grounds that their required underlying and overlying acts were merged. Under the Lacey Act, among other things, it is illegal to do one of several enumerated acts (the overlying act) with wildlife that has been taken, possessed, transported or sold in violation of a federal law (the underlying act). Thus, the Lacey Act requires a two-step analysis.

In this case, the defendants sold wildlife in interstate commerce in violation of the Endangered Species Act (the “underlying” act). Knowing the wildlife was illegal, the defendants then transported it (the “overlying” act). Where the wildlife value is more than \$350, and where the overlying offense involves commercial conduct, the crime is a felony. In this opaque decision, the court held that, because the language of the felony provisions of the Lacey Act criminalize “conduct involving the sale or purchase, offer of sale or purchase, or intent to sell or purchase,” only the sale or purchase of, offer to sell or purchase, or intent to sell or purchase wildlife constitutes an appropriate “overlying” offense. Thus, the “transport” of wildlife, even if it occurs during the course of a commercial transaction, cannot constitute “conduct involving the sale or purchase” of wildlife. In addition, the court held that the government did not establish the two distinct steps necessary for a Lacey Act claim, finding that the transportation of the wildlife after the sale was, itself, part of the sale.

Defendant Nancy Kraft ultimately was convicted of most of the remaining counts, including Lacey Act false labeling charges, and sentenced to 15 months’ imprisonment. Kenneth Kraft entered guilty pleas to seven felony counts and was sentenced to 18 months’ imprisonment. Most of the remaining defendants also entered guilty pleas.

The district court adopted the magistrate judge’s recommendation not to suppress a recorded telephone conversation. Defendant Kenneth Kraft argued that the conversation violated the Sixth Amendment right to counsel. The conversation, arranged by law enforcement officers and conducted by a cooperating witness, concerned a prior illegal sale of a bear. At the time of the conversation, the defendant was under indictment for the illegal sale of a tiger. The court found that the conversation regarding the illegal bear transaction was unrelated to the pending charges and that the right to counsel had only attached to the tiger-sale indictment.

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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]

On February 6, 2006, after approximately 24 weeks of trial, the government rested its case after presenting 50 witnesses. The defense continues to present its case. The trial 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 began in September 2005. 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.

The investigation 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 the next few weeks.

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

On February 23, 2006, after a two and one half day trial and approximately three hours of jury deliberation, the jury returned a not guilty verdict.

Joseph Ulrich, the on-site construction supervisor for Stock Development, LLC, ("Stock Development), was charged in December 2005 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"). The principal officer and manager for the company discussed in Ulrich's presence the existence of a bald eagle nest in the tree and the delay or cessation of construction that could result. On November 15,

2003, Ulrich directed James Messina to cut down the tree with the nest, and the company proceeded with the construction of houses on the lot where the tree once stood.

Messina pleaded guilty January 31, 2006, to a similar violation and is scheduled to be sentenced on April 25, 2006. Stock Development pleaded guilty and 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.

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

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**United States v. David Bachtel, No. 2:05-CR-00872 (C.D. Calif.), AUSA William Carter** [REDACTED]

On February 10, 2006, David Bachtel was convicted at trial on six of the seven violations charged in this case stemming from the defendant's intentionally sinking or scuttling his 37-foot Chris Craft pleasure boat on March 5, 2005, causing oil to be released into the waters of the Port of Los Angeles. Bachtel was convicted of one two water pollution violations; one for the discharge of oil in a quantity that may be harmful and one for an unpermitted pollutant discharge; one count of attempting to obstruct the Coast Guard's investigation of the sinking by preparing false California DMV paperwork; two counts of making false statements to Coast Guard investigators; and one misdemeanor count of sinking a boat in a navigation channel.

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

Bachtel is scheduled to be sentenced on May 8, 2006.

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

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**United States v. Jorge Hernandez, No. 05-CR-20675 (S.D. Fla.), AUSA Tom Watts-FitzGerald**

On February 2, 2006, Jorge Hernandez was convicted by a jury on four of the five counts charged for his illegally dealing in protected species of migratory birds. Hernandez and five co-defendants were previously charged in a 21-count indictment with Migratory Bird Treaty Act violations for the unlawful sale and offering for sale of indigo and painted buntings and blue grosbeaks from October 24, 2004, through March 6, 2005. Giraldo Wong, Rafael Padrino, Francisco Corrales, Pablo Olivera Garcia, and Madeleisy Molerio previously pleaded guilty, two of whom were recently sentenced. [ U.S. v. Pablo Garcia, et et al., p. 13 ].

The case arose out of an investigation, dubbed Operation Bunting, which was initiated after field biologists with the U.S. Geological Survey conducting research in South Florida noticed many protected migratory birds being sold

illegally in pet stores and informal flea markets around Miami. Illegal trapping activities uncovered by a Park Service Ranger on the edge of Everglades National Park resulted in the development of intelligence that led to a large outdoor market in Hialeah, Florida. Research conducted over a 30-year period has indicated that populations of at least one of the protected species involved in these cases, the painted bunting, have declined by more than half.

The investigation also led to the convictions of three pet store operators for possessing the same protected species in their stores.

This case was investigated by the United States Fish and Wildlife Service, the United States Environmental Protection Agency Criminal Investigation Division and the Florida Fish and Wildlife Conservation Commission.



**Mail Painted Bunting**

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**United States v. Harold DeGregory, Jr., No. 05-CR-60201 (S.D. Fla.), AUSAs Tom Watts-FitzGerald and Lynn Rosenthal**

On January 18, 2006, Harold DeGregory, Jr., was convicted at trial on five of seven counts charged for the unlawful transportation of hazardous and radioactive material. DeGregory transported a container, commonly referred to as a "pig," which contained Iridium-192. He also was convicted of making a materially false statement to the government.

DeGregory is the president and registered agent for H&G Import Export of Fort Lauderdale ("H&G"). DeGregory sub-contracted to Amelia Airways, a commercial air carrier, which transported hazardous and radioactive material from Fort Lauderdale to Freeport, Bahamas, without



**Iridium Container**

the pilot's knowledge. DeGregory never submitted the required hazardous material manifests, and the documents he provided to Customs agents reflecting transportation of cargo failed to mention the Iridium-192. DeGregory also flew his own aircraft from Freeport, Bahamas, to Fort Lauderdale Executive Airport. The customs declaration form he provided to Customs officials failed to disclose the hazardous radioactive cargo hidden in the wing compartment of his aircraft, which was discovered upon inspection.

DeGregory is scheduled to be sentenced on April 14, 2006.

This case was investigated by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement and the Federal Aviation Authority.

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## Indictments

**United States v. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux** [REDACTED]

On February 8, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, and Gojko Petovic, the ship's chief engineer, were charged for violations related to their attempt to obstruct a United States Coast Guard investigation.

Coast Guard inspectors boarded the *M/V Texas Treasure* in Port Aransas, Texas, as part of a routine Port State Control examination. The inspectors discovered evidence that the ship's crew was bypassing its pollution prevention equipment and deliberately discharging oil-contaminated waste overboard. During the inspection, Petovic denied the existence of certain sounding records, which had been requested by the inspectors, and then attempted to erase the records from his computer in an effort to hide them. The inspectors, however, were able to recover the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

Petovic was charged with one count of making a false statement to the Coast Guard and the company was charged with one count of obstructing a Coast Guard proceeding.

Trial is currently scheduled to commence on April 3, 2006.

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

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**United States v. Kevin Thompson et al., No. 4:06-CR-00051 (N.D. Calif.), AUSAs Stacey Geis**  
[REDACTED] **and Maureen Bessette** [REDACTED] **with assistance from AUSA Ana Guerra**

On February 8, 2006, an indictment was unsealed charging six defendants with violations stemming from the unlawful catching and selling of thousands of undersized juvenile leopard sharks. The indictment alleges that the pastor of a San Leandro church, four individuals employed in the aquarium industry, and a fisherman, violated the Lacey Act, incorporating California state law, which



Leopard Shark

places a minimum size limit of 36 inches for any commercial harvest of California leopard sharks. The reason for this restriction is that the leopard shark is a slow-growing species which does not reach sexual maturity until it is between seven and 13 years of age. The species may live as long as 30 years.

Five of the six defendants are charged with conspiracy to harvest thousands of undersized California leopard sharks from the San Francisco Bay, and then sell and ship the juvenile sharks to pet trade distributors throughout the U.S. and overseas. The conspiracy defendants are: Pastor Kevin Thompson who co-owned with his church at least one vessel used for the illegal harvesting; John Newberry worked at Pan Ocean Aquarium and previously was a commercial fisherman; Ira Gass is a marine aquaria dealer in Azusa, California, and operated Indorica Fish Import, an aquaria business; Hiroshi Ishikawa was a fisherman; Vincent Ng owned Amazon Aquarium, Inc., in Alameda, California. Sion Lim owned Bayside Aquatics, located in Oakland, California, and was charged with one violation of the Lacey Act for the illegal sale of juvenile leopard sharks on May 6, 2004.



**Juvenile Leopard Shark**

Both the John G. Shedd Aquarium in Chicago, Illinois, and the Monterey Bay Aquarium in Monterey, California, assisted federal wildlife agents and Illinois Conservation officers in the transportation and care of 19 baby leopard sharks confiscated during the course of the investigation. The baby sharks, which ranged in size from 8 ½ to 17 ½ inches, were shipped to California in July 2004 by Shedd Aquarium staff and received further care at the Monterey Bay Aquarium. Nine were ultimately returned to the wild in Monterey Bay in the summer of 2004. Three remain on exhibit at Monterey Bay Aquarium and seven died either at the Shedd Aquarium or Monterey Bay Aquarium

because of their poor condition at the time they were confiscated.

This case is the result of a nearly two-year long investigation conducted by National Oceanic and Atmospheric Administration's Fisheries Office for Law Enforcement in conjunction with the United States Fish and Wildlife Service, California Department of Fish and Game, the United Kingdom's Department for Environment Food and Rural Affairs Fish Health Inspectorate, and the Netherlands General Inspection Service.

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**United States v. Antonio Martinez-Malo et al., No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick**

On January 24, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc., were charged in a two-count indictment with conspiracy to violate the Lacey Act and a smuggling violation for illegal shipments of undersized spiny lobster.

Anchor Seafood is a business operated by Antonio Martinez-Malo, the president and sole shareholder, and his wife, Liliana Martinez-Malo. The defendants were charged with making 40 illegal shipments of undersized spiny lobster tails from January, 2000, through January, 2001. The indictment alleges that, during this time, the defendants conspired to import from Jamaica, and then sold and transported, over 16,000 pounds of undersized spiny lobster tails valued at \$229,000. This is a violation of both Jamaican and Florida law, both of which have strict size and weight limits for spiny lobster.

According to the indictment, the defendants violated the false labeling, records, and identification provisions of the Lacey Act by concealing the actual size of the lobster tails through the coding system they used on the exterior of boxes and on their invoices.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office for Law Enforcement.

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**United States v. Jerry Gaskill, No. 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan** [REDACTED]

On January 18, 2006, Jerry Gaskill, Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, was charged in a four-count indictment with conspiracy to violate the Clean Water Act, and false statement, CWA, and Rivers and Harbor Act violations for his involvement in an illegal dredging project. The purpose of the project was to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks.

Gaskill is alleged to have agreed to "push" NCDOT vessels into the Corolla basin, which ultimately altered the sound bottom because of the hull of the vessels and propellers. He did so knowing that permits had not been issued, and then lied to the United States Army Corps of Engineers about those operations. Federal agencies had previously denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. Gaskill and his co-conspirators allegedly used the propellers of the NCDOT vessels to "prop wash" a channel in the Currituck Sound adjacent to Heritage Park in Corolla. Gaskill also is charged with subsequently signing a written false statement claiming that the creation of the channel was unintentional. Four other NCDOT employees, Billy Moore, Herbert O'Neal, Douglas Bateman, and Stephen Smith, pleaded guilty last December.

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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## **Pleas / Sentencings**

**United States v. Jon Pen Tokosh, No. 05-CR-258 (W.D. Pa.), AUSA Luke Dembosky** [REDACTED]  
[REDACTED] **with assistance from ECS Senior Trial Attorney Bob Anderson** [REDACTED]

On February 21, 2006, Jon Pen Tokosh pleaded guilty to one Lacey Act violation in connection with the sale of two smuggled Indian Star Tortoises to a U.S. Fish and Wildlife Service undercover agent in 2002. The tortoises and other animals were smuggled into the U.S. by a wildlife dealer in Florida from Singapore dealer Leon Tian Kum. Tokosh then resold the animals in the United States.

Kum was apprehended in 2003 during a visit to this country and now is serving a 37-month prison sentence.

Indian Star Tortoises are protected by the CITES treaty and are one of several reptile species frequently smuggled in overnight mail packages from Asia into the U.S., where the buyers can resell the animals in this country to collectors for approximately \$800-\$1,000 each.

Tokosh is scheduled to be sentenced on June 2, 2006.

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

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**United States v. Pablo Garcia et al., No. 05-CR-20675 (S.D. Fla.), AUSA Tom Watts-FitzGerald**

On February 15 and 16, 2006, Pablo Garcia and Francisco Corrales were sentenced after having previously pled guilty to Migratory Bird Treaty Act violations. The charges stem from the unlawful sale and offering for sale of indigo and painted buntings and blue grosbeaks from October 24, 2004, through March 6, 2005, in Miami, Florida. Each defendant was sentenced to pay a \$2,000 fine and serve three-year terms of probation with the special condition that they are prohibited from being in any locale in which birds are bartered, traded, displayed, or offered for sale unless it is a licensed pet store. Corrales also was ordered to pay \$1,165 in restitution. [U.S. v. Jorge Hernandez, p. 9].



**Painted and Indigo Buntings**

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**United States v. Joel Udell, et al. (E. D. Pa.), No. 2:05-00402 (E.D. Pa.), SAUSA Martin Harrell**

On February 14, 2006, Joel D. Udell, and two affiliated businesses, Pyramid Chemical Sales Co. and Nittany Warehouse LP, were sentenced for mishandling hazardous wastes. As the result of a seven-year investigation by local, state, federal and international regulators and law enforcement agencies, the defendants will pay more than \$2 million in restitution and fines for mishandling hazardous wastes in Pottstown, Pennsylvania, and in Rotterdam, the Netherlands, between 1998 and 2000. In addition, Udell, who now resides in Boca Raton, Florida, must move back to Pennsylvania to spend six months in home confinement under electronic monitoring and perform 500 hours of community service in Pottstown. The defendants previously pleaded guilty to storing hazardous waste without a permit at the former Nittany Warehouse in Pottstown, from May 1998 to early 2001, exporting hazardous waste outside the United States without consent of the receiving country on various dates in 2000, and transporting hazardous waste without manifests and to unpermitted facilities in 2000.

The court also required the defendants to jointly and severally pay restitution in the amounts of \$1,243,072.65 to the Dutch government, \$409,639.97 to Europe Container Terminals BV, and \$150,000 to the United States Environmental Protection Agency. Udell must also pay a \$100,000 fine and the two companies, which are defunct, each must pay a \$50,000 fine. Payments are to be made over a five-year period of probation imposed on all the defendants.



**Storage Condition of Drums**

During this period, the defendants shipped 29 forty-foot containers of aging chemicals to Rotterdam, allegedly as part of a sale of chemicals to a company in Nigeria. The containers remained at the port for three years when the Dutch refused to permit them to be reshipped because of their poor condition, and the defendants refused to have them repackaged to be returned to the United States. Udell also ignored an EPA RCRA administrative order issued in 2003 directing him to return the chemicals to the U.S., and he fought a civil Superfund cost recovery case. The restitution ordered in the case will reimburse the port operator's costs for storing the chemicals for three years, the Dutch government's costs to incinerate almost 300 tons of chemicals at the end of 2003, and EPA's costs in overseeing the warehouse clean up in Pottstown.



**Containers Abandoned at Terminal**

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, with assistance from EPA's National Enforcement Investigations Center, the Netherlands Ministry of the Environment, and the Borough of Pottstown. Assistance was also provided by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement.

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**United States v. Tam Le et al., No. 3:05-CR-00015 (S.D. Tex.), ECS Trial Attorney Georgiann Cerese [REDACTED].**

On February 10, 2006, Tam Le pleaded guilty to smuggling for concealing red snapper that had been illegally imported into the United States. Le, the crewmember of a commercial fishing vessel, was previously charged with two counts of smuggling for his role in concealing and selling commercial quantities of red snapper that had been illegally imported into the United States. During a vessel boarding in March 2005, federal agents discovered thousands of pounds of red snapper, caught in violation of the Magnuson-Stevens Fishery Conservation and Management Act, concealed within a hidden compartment on the fishing vessel. The captain of the vessel, Hoang Nguyen, pleaded guilty to a similar charge in January and is scheduled to be sentenced on April 21, 2006. Le is scheduled to be sentenced on May 19, 2006.

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

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**United States v. Gordon Tollison, No. 3:04-CR-00158 (N.D. Miss.), ECS Senior Trial Attorney Jeremy Korzenik [REDACTED] and AUSA John Alexander [REDACTED].**

On February 9, 2006, Gordon Tollison was sentenced to serve one year and a day of incarceration for four Clean Water Act violations. The defendant previously was charged in a 39-count indictment for chronic CWA violations from a group of sewage treatment systems.

Between 1976 and 2003, Tollison was the owner and chief executive of Environmental Utilities Services, Inc. ("EUS"), a small Mississippi corporation that owned and operated eight wastewater treatment plants servicing housing developments containing approximately 900 homes near Oxford, Mississippi. The defendant's plants had been in perpetual violation of their state NPDES permits, discharging untreated or under-treated sewage into state waterways for more than 25 years. In spite of decades of effort by the Mississippi Department of Environmental Quality ("MDEQ") to bring him into compliance, Tollison ignored numerous administrative orders and repeated admonitions and continued to discharge waste in substantial violation of his permits.

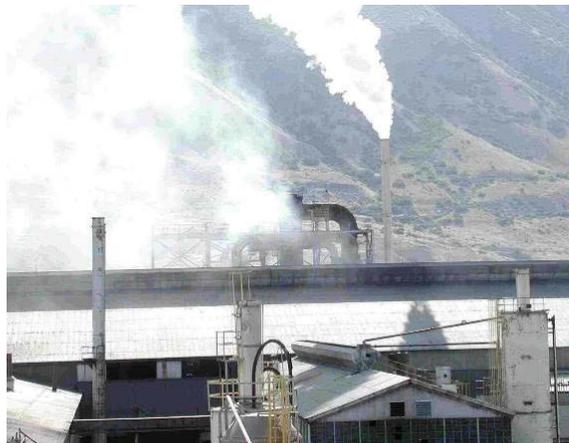
This case was investigated by the Mississippi Department of Environmental Quality and the United States Environmental Protection Agency with assistance from the FBI.

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**United States v. McWane et al., No. 2:05-CR-00811 (D. Utah), ECS Trial Attorney Aunnie Steward [REDACTED], ECS Senior Trial Attorney Richard Poole [REDACTED], ECS Senior Counsel Claire Whitney [REDACTED] and AUSA Leshia Lee-Dixon [REDACTED].**

On February 8, 2006, Pacific States Cast Iron Pipe Company ("Pacific States"), a division of McWane, Inc., pleaded guilty to two false statement violations and was sentenced to pay a \$3 million fine plus complete a three-year term of probation. Company vice president and general manager Charles Matlock pleaded guilty to a Clean Air Act violation for rendering inaccurate a monitoring device.

Pacific States and two of its employees were previously charged with a variety of violations stemming from falsified emissions tests required in the production of cast iron pipes. McWane, Matlock and Charles “Barry” Robison, vice president of environmental affairs, were charged with conspiracy to violate the CAA by rendering inaccurate a state-required emissions testing method, for making false statements in documents required by the CAA, and for defrauding the United States. McWane and Matlock also were charged with additional CAA violations for rendering inaccurate the testing method. McWane was



**Pacific States' Facility**

charged with additional false statement charges for misrepresentations made in documents submitted to the State of Utah. Charges against Robinson were dropped in exchange for his agreeing not to appeal his sentence from a previous prosecution of him in Alabama, where he was sentenced to pay a \$2,500 fine, serve two years' probation, and complete 150 hours' community service.

As part of the production of cast iron, McWane melts scrap metal, primarily shredded steel from scrap automobiles, in a furnace known as a “cupola.” The ferrous scrap metal melted in the cupola contains significant quantities of shredded scrap metal, which includes scrap automobiles. The autos often contain rust, chrome-plated parts, plastic, tires and car seats. McWane was exceeding its emission limits for a parameter known as PM10. During a compliance test in September 2000, McWane employees, at the direction of Matlock, melted pig iron, a pure iron product, in the cupola in order to lower the PM10 emissions and thus pass the stack test. Robison was aware of this and facilitated the filing of false emissions reports based on this stack test. Pacific States admitted that documents submitted to the State of Utah included data from this test, which was not representative of its emissions.

Matlock is scheduled to be sentenced on May 2, 2006.

McWane previously was indicted in New Jersey (December 2003) and Alabama (May 2004 with guilty verdicts returned in June 2005). The company pleaded guilty in Texas (May 2005) and pleaded guilty to crimes occurring at Union Foundry in Anniston, Alabama, on September 6, 2005. The New Jersey case began trial on September 12, 2005, and the case is anticipated to go to the jury before the end of March 2006.

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

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### **United States v. New York City Department of Environmental Protection, No. 01-CR-836 (S.D.N.Y.), AUSA Anne Ryan [REDACTED]**

On February 7, 2006, the New York City Department of Environmental Protection (“NYDEP”), admitted to violating its sentence of probation from a 2001 conviction on Clean Water Act and Toxic Substances Control Act violations. The probation was revoked and DEP was resentenced to serve a minimum of three years additional probation and will be required to implement a more stringent and comprehensive compliance program with greater oversight obligations. The

probation violation was imposed for the City's felony violation of the CWA for its knowing failure to properly maintain the emergency electrical system in a sewage treatment plant, in violation of the permit. The emergency system failed to operate during a power blackout in August 2003, causing 30 million gallons of untreated sewage to be released into the East River.

In August 2001, the NYDEP pleaded guilty to CWA violations for illegally discharging mercury-contaminated water into a reservoir which supplied drinking water to the City of New York. During the period between July 1998 and November 2000, DEP admitted to several instances of discharging mercury-contaminated wastewater from a pipe connected to sump pumps in the basement of one of the physical plant buildings where it eventually emptied into the Rondout Reservoir. The agency further admitted to TSCA violations at the Kensico Reservoir for continuing to use machinery that was known to be contaminated with PCBs since 1988. This equipment had multiple openings directly above the water which flowed beneath it, and workers who came in contact with the equipment also were exposed to PCBs. After thousands of test samples taken around the City, the water was determined to be safe for consumption.

DEP previously was sentenced to serve a three to five year term of probation with a federal monitor assigned to oversee the agency's implementation of a broad range of environmental, health and safety compliance programs. A \$50,000 fine was also imposed. The investigation revealed a decades-long history of federal environmental violations by DEP in its operation and maintenance of the New York City water supply system.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the New York City Department of Investigation and the United States Attorney's Office for the Southern District of New York.

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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]**

On February 1, 2006, MSC Ship Management (Hong Kong) Ltd. ("MSC"), the management company for the *M/V MSC Elena*, entered its guilty plea to conspiracy, obstruction of justice, destruction of evidence, false statements and violations of the Act to Prevent Pollution from Ships ("APPS"). The company was sentenced to pay \$10.5 million in penalties, which is the largest penalty 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.

Aman Mahana, the ship's second engineer, was sentenced on February 2 to serve a one-year term of probation in accordance with the government's recommendation for a reduced sentence. Mahana pleaded guilty in December 2005 to an information charging him with violating APPS for failing to maintain an oil record book.

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 in May 2005, senior company officials in Hong Kong directed crew members to lie to the Coast Guard, and senior ship engineers further ordered the concealment and destruction of documents.

Specifically, 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 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.

These cases were investigated by the United States Coast Guard Investigative Service with assistance from the United States Coast Guard Sector Boston, United States Coast Guard First District Legal Office, United States Coast Guard Office of International and Maritime Law, United States Coast Guard Headquarters Office of Investigations and Analysis, and United States Coast Guard Office of Compliance.

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#### **United States v. Raymond Shackelford, No. 05-CR-00084 (D. Idaho), AUSA George Breitsameter**

On January 31, 2006, Raymond Shackelford pleaded guilty to two counts of mail fraud. He was previously charged with multiple counts of mail fraud in connection with false representations he made to the Idaho Department of Environmental Quality to support applications made for permits to construct wastewater treatment systems.

Shackelford is a former owner of Quality Water Systems (“QWS”), a Montana wastewater design and management company. QWS designs, sells and operates a Montana wastewater design and management company for developers and property owners who cannot use publicly-owned plants or private septic systems. One of these systems was built on Eagle Island, which is located in the middle of the Boise River. Shackelford used falsified data from this system to request applications for 12 additional systems to be built in Idaho. Approval for these facilities was conditioned upon Shackelford’s submitting quarterly reports showing that the amount of total nitrogen contamination in the plant’s effluent was within acceptable levels. Some areas of Idaho have been identified as having concentrated nitrates in ground water.

Shackelford is scheduled to be sentenced on April 17, 2006.

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

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**United States v. Warren Anderson, No. 1:06-CR-00012 (D.N.D.), AUSA Cameron Hayden**

On January 31, 2006, Warren Anderson, a licensed outfitter, pleaded guilty to killing a golden eagle, possessing and transporting a bald eagle, killing five hawks, and violating the Lacey Act for his role in helping hunters transport an “overlimit” of pheasants out-of-state.

Agents posing as nonresident hunters booked a three-day hunt with Anderson. The agents observed Anderson shoot and kill a golden eagle, shoot and cripple a second golden eagle, and attempt to take two other golden eagles. Anderson also poached a whitetail deer, instructed and aided the agents in exceeding their daily limits and possession limits of pheasants, instructed and aided in trespassing on private land while hunting, and instructed the agents to shoot and participated in shooting shotguns from a moving vehicle. The defendant took the agents to an empty grain bin where he had placed a dead bald eagle and a golden eagle, which he admitted to possessing and transporting. The agents subsequently recovered five dead hawks which Anderson had shot.

Anderson was sentenced to serve two years’ probation with six months’ home detention, and was ordered to pay a \$5,000 fine and \$55,000 in restitution to the following organizations: \$10,325 to the Clerk of Court, \$1,300 to the North Dakota Game and Fish Department, \$10,000 to the Dakota Zoo, \$25,000 to the National Fish and Wildlife Forensic Laboratory, and \$8,375 to the Lacey Act Reward Fund. Anderson’s world-wide hunting privileges were suspended during the term of probation and he is barred for life from working as a guide or outfitter. He was further ordered to forfeit several firearms and is prohibited for life from possessing any firearms.

This case was investigated by the North Dakota Game and Fish Department and the United States Fish and Wildlife Service.



**Bald and Golden Eagles**

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**United States v. Wallace Heidelberg et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa and AUSA Albert Glenn**

On January 27, 2006, Indoor Air Quality, Inc. (“IAQ”), an asbestos removal company, and the company’s president, Wallace Heidelberg, pleaded guilty to two counts of mail fraud and one count of violating the Clean Air Act National Emissions Standard for Hazardous Air Pollutants asbestos work practice standards. Heidelberg, IAQ and company supervisor Jason Scardecchio, were charged with violations stemming from illegal asbestos removal projects performed in residences, commercial buildings and a school in 2002. The mail fraud counts arose from a scheme to defraud homeowners concerning the removal of asbestos-containing material in their homes.



**Loose Asbestos**

As part of its guilty plea, the company and Heidelberg have agreed to pay for independent testing for asbestos at properties where IAQ was responsible for post-abatement air testing for jobs completed between January 1, 2001 and August 16, 2004. They also have agreed to pay for the proper removal of asbestos fibers from properties at which testing reveals unsafe levels of asbestos fibers or where bulk or visible asbestos debris is found. Finally, the defendants will pay for a medical examination for each person who was employed by IAQ during the time period of January 1, 2001, and August 16, 2004.

Scardecchio remains set for trial to begin during the spring of 2006. Heidelberg and IAQ are scheduled to be sentenced on May 2, 2006.

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

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## **Training**

During the week of May 8 – 12, 2006, an Environmental Crimes Seminar will be presented at the National Advocacy Center in Columbia, South Carolina.

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