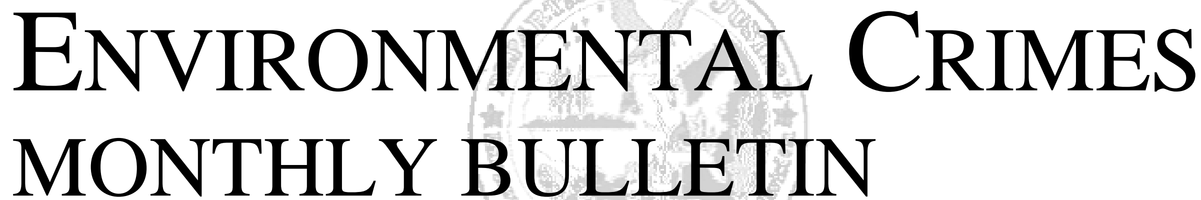

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

April 2006

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*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Johnson, 437 F.3d 157 (1st Cir. 2006)**
- **United States v. Hubenka, 438 4.3d 1026 (10th Cir. 2006)**
- **United States v. W.R. Grace et al., No. 05-CR-07 (D. Mont.)**

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C.D. Calif.	US v. Andrew Wall	*Boat Yard*/ RCRA, CWA
	US v. Robertson's Ready Mix, Ltd.	*Cement Company*/ CWA
	US v. MCP Urethanes	*Hazardous Waste Storage*/ CERCLA
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E.D. Va.	US v. ACS Environmental, Inc.	*Asbestos Abatement*/Conspiracy
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Significant Opinions

1st Circuit

United States v. Johnson, 437 F.3d 157 (1st Cir. 2006).

On February 13, 2006, the U.S. Court of Appeals for the First Circuit concluded that the federal government could exercise Clean Water Act jurisdiction over three wetlands on private property because the wetlands were hydrologically connected to a navigable waterway. In a 2-1 decision, the Court affirmed a ruling by the U.S. District Court for the District of Massachusetts that granted summary judgment in favor of the government, holding that there was sufficient basis for jurisdiction "because the undisputed evidence shows that the three wetlands are hydrologically connected" to a navigable river.

The wetlands are privately owned by a group of cranberry farmers in Carver, Massachusetts. The government initially alleged that Charles and Genelda Johnson, Francis Vaner Johnson, and

Johnson Cranberries Ltd. Partnership, violated the Clean Water Act by discharging dredge and fill material into wetlands at the three sites without a permit in November 1999. The farmers were constructing and expanding cranberry bogs at the sites, altering wetlands in the process. The sites drain into either a ditch or a stream that leads to the Weweantic River, a navigable waterway.

The district court found the cranberry growers liable for multiple violations under Section 404 of the CWA and ordered them, in January 2005 to pay a $75,000 civil fine and undertake a wetlands restoration project estimated to cost $ 1.1 million.

On appeal, the farmers asserted that the U.S. Army Corps' exercise of jurisdiction over the three parcels of land exceeded congressional authority under the Commerce Clause of the U.S. Constitution. At issue is whether a hydrological connection between a wetland and a navigable waterway, as opposed to a situation in which a wetland directly abuts a navigable waterway, is sufficient to establish federal jurisdiction. If it is, that would make Corps jurisdiction lawful under the Commerce Clause.

The Court stated that the extension of jurisdiction to the wetlands "fell safely within the Congress's power under the Commerce Clause." It further noted that the Environmental Protection Agency's ("EPA") interpretation of "tributaries" as part of a "tributary system" was entitled to deference. The wetlands fell under this interpretation of tributaries, which includes bodies of water that have a significant nexus with a navigable-in-fact water. In this case, the wetlands do have a significant nexus with the Weweantic River through a tributary system and its adjacent wetlands that link them together.

The Court concluded that the EPA's interpretation of the Clean Water Act to extend jurisdiction to the target sites "reflects a permissible, reasonable interpretation" of the Act.

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10th Circuit

United States v. Hubenka, 438 F.3d 1026 (10th Cir. 2006)

On February 21, 2006, the U.S. Court of Appeals for the Tenth Circuit upheld the conviction of a Wyoming man for illegally building three dikes on the Wind River without a Clean Water Act permit.

In March of 2000, John Hubenka, manager of LeClair Irrigation District, hired Curtis Neal to construct three earthen dikes on the north channel of the Wind River. Neal used a bulldozer to push river cobbles from the north channel to form the three dikes.

According to the government, the dikes altered the flow of the river, causing it to go more deeply into the Wind River Indian Reservation and carving out an area exceeding 300 acres of tribal property. The 300-acre parcel had been located south of the river but is now north of the river because of the dikes.

In 2004, Hubenka was charged with discharging dredge-and-fill material for the construction of the dams without a permit in violation of Section 404 of the Clean Water Act. He was convicted in September 2004 of knowingly discharging materials into a navigable water of the United States without a permit.

On appeal, Hubenka asserted that the waters of the Wind River fell outside the Clean Water Act's jurisdiction. The Tenth Circuit determined that the Wind River is a tributary of the Yellowstone

River, a navigable river. Therefore, the court determined a significant nexus exists between the rivers and that a pollutant upstream from the Wind River could migrate to navigable waters downstream.

Hubenka also contended that the use of a bulldozer to construct dikes did not amount to addition of pollutants, because the construction did not add materials from outside the river's banks. Relying on the Clean Water Act's definition of pollutant, the Tenth Circuit stated that river cobbles and sand constituted discharge within the plain meaning of the Act. Because Hubenka discharged a pollutant from a point source without a permit, the Court concluded that the Clean Water Act was properly applied.

Hubenka also disputed the admission of evidence in district court that showed he had tried previously to divert the Wind River. In 1994, Hubenka constructed a dike with river cobbles, cottonwood trees, scrap metal, car bodies, and a washing machine. The U.S. Army Corps of Engineers issued a notice of violation. After a site visit, the Corps required Hubenka to remove all unclean concrete debris from the river. The Tenth Circuit concluded that the district court did not abuse its discretion in admitting this evidence. The government had to prove that Hubenka violated the Clean Water Act knowingly, and the admission of past wrongs was probative in determining Hubenka's knowledge and intent to discharge material into the river.

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District Courts

United States v. W.R. Grace et al., No. 05-CR-07 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On March 3, 2006, the court issued an 85-page order denying most of the defendants' motions to dismiss based on facial insufficiency of the indictment. Specifically, the court denied defendants' motion to dismiss the conspiracy count as duplicitous; denied defendants' motion to dismiss the CAA knowing endangerment and conspiracy counts for failure to allege knowledge of unlawful conduct; denied defendants' motion to dismiss CAA knowing endangerment and conspiracy counts for failure to allege an underlying violation of an emission standard; and denied defendants' motion to dismiss CAA knowing endangerment and conspiracy counts for failure to sufficiently allege a release of a hazardous air pollutant. The court granted in part the defendants' motion to dismiss on statute of limitations grounds certain CAA knowing endangerment offenses charged that were completed as of November 1999. The court also granted the government's motion to dismiss without prejudice two wire fraud counts from the indictment.

The grand jury returned a ten-count indictment in February 2005 charging W.R. Grace ("Grace") and seven of its corporate officials with conspiracy to violate the CAA and to defraud government agencies, including the EPA, knowing endangerment under the CAA, wire fraud, and obstruction of justice.

Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. The indictment alleges that, in the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to EPA. It is further alleged that, despite knowledge of the

hazardous asbestos contamination, Grace continued to mine, manufacture, process and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

The indictment states that, after the mine shut down in 1990, the company sold its contaminated mine properties to local buyers without informing them of the asbestos contamination. In 1999, Grace and company officials allegedly continued to mislead and obstruct the government when it failed to disclose the nature and extent of Libby's asbestos contamination to EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Trial remains scheduled to begin on September 11, 2006.

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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 Attorney Deborah Harris [redacted] First AUSA Ralph Marra [redacted] and AUSA Norv McAndrew [redacted]

Closing arguments are scheduled to begin the week of April 3, 2006, in this trial which has run for more than 28 weeks and in which the government presented approximately 50 witnesses. Atlantic States Cast Iron Pipe Company ("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 company and current and former managers John Prisque, Scott Faubert, Jeffrey Maury, Daniel Yadzinski and Craig Davidson 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 charges stem from 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, the defendants are alleged to have systematically altered accident scenes, and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

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

Defendant Amar Alghazouli (facing camera)

On March 23, 2006, Amar Alghazouli was found guilty of five of the six counts charged for his role in a conspiracy to smuggle ozone depleting substances and to launder money. Specifically, 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. He will also be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the United States.

A 15-count indictment was filed in July 2005 charging Ahed Alghazouli, Omran Alghazouli and Amar Alghazouli with a variety of offenses related to their operation of a Freon smuggling scheme from approximately June 1997 through October 2004. The defendants operated an automotive supply store known as United Auto Supply. They purchased cylinders of R-12 from Mexico, altered the writing on the cylinders to disguise their origin, and then sold them to customers in parking lots in the San Diego area.

Ahed remains scheduled for trial to begin on July 17, 2006 and Omran is a fugitive. Amar is scheduled to be sentenced on July 7, 2006.

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. Burtram Johnson, Nos. 04-CR-10013 and 05-CR-10015 (S.D. Fla.), AUSA José Bonau

On February 3, 2006, Burtram Johnson was convicted at trial of two counts of obstruction of justice, two counts of perjury, and one count of making false statements to federal agents. Johnson twice testified falsely concerning when he first became aware of the illegal landfill activities undertaken by co-defendant Jeffrey Balch. Johnson told investigators and the grand jury that he was unaware of any illegal fill activities on Balch's bay-front property prior to being contacted by the United States Army Corp of Engineers. Evidence revealed, however, that Johnson was aware of the filling activities prior to being notified.

Balch was sentenced in January 2005 to serve five months' incarceration followed by one year's supervised release. He was further ordered to pay a $15,000 fine and $66,122 in restitution to the Florida Keys Environmental Restoration Trust Fund for damage to the Florida Bay. Balch pleaded guilty to a CWA violation for illegally discharging fill material into Florida Bay, which is located within the Florida Keys. He illegally excavated fill from his property in Marathon from February to March 2002 and dumped it in the water without a permit.

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

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Indictments

United States v. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS Trial Attorney Aunnie Steward ECS Senior Trial Attorney Richard Poole , and AUSA Barbara Bearnson .

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 into 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 defendants are further charged with exceeding the permitted monthly limit for selenium discharges during at least 12 months between January 2000 and May 2002. The defendants are also charged with concealing the illegal discharges by, among other things, deliberately choosing wastewater samples with lower selenium levels and submitting these for analysis.

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

On March 3, 2006, Robert Roberts was charged in a five-count indictment with violations stemming from his dumping significant numbers of fluorescent light tubes and lamps containing hazardous levels of lead and mercury in storage lockers across Southern California after soliciting business in which he claimed to be a certified waste recycler. Roberts is charged with one count of storing hazardous wastes without a permit, three false statement counts, and one count of obstructing justice.

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

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

Roberts is currently in state custody on unrelated charges.

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

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Pleas / Sentencings

United States v. ACS Environmental, Inc., et al., No. 05-CR-00074 (E.D. Va.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Michael Smythers [redacted].

On March 30, 2006, ACS Environmental, Inc., ACS president James Schaubach, and Air Power Enterprises, Inc., were sentenced for their involvement in a conspiracy to defraud OSHA, EPA, and the Small Business Administration ("SBA). Schaubach was ordered to pay a $1.5 million fine and serve 21 months' incarceration followed by three years' supervised release. Air Power will pay a $500,000 fine and both companies will complete a five-year term of probation.

The defendants previously pleaded guilty to conspiracy to defraud OSHA, EPA and the Small Business Administration ("SBA") for fraudulently obtaining approximately $37 million in SBA 8(a) set-aside contracts. The contracts involved construction work to be performed at federal facilities throughout Virginia, Maryland, and Washington, D.C., including a large number of jobs involving asbestos and lead abatement and hazardous waste operations.

From 1997 through 2001, the defendants purchased approximately 250 false training certificates from F&M Environmental Technologies for ACS and Air Power employees. The employees were then directed to conduct work involving asbestos, lead and hazardous waste removal at federal facilities under the SBA contracts, as well as at numerous schools.

Air Power president, Nicanor Lotuaco, was sentenced in January of this year, to serve five months' incarceration and five months' home confinement, followed by three years' supervised release. He was further ordered to pay a $1 million fine. The sentencing of the remaining three defendants was postponed until the court resolved issues related to the fine. There also were allegations that Schaubach continued to engage in illegal conduct after entering his guilty plea.

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

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United States v. Andrew Wall, Jr., et al., No. 2:04-CR-00170 (C.D. Calif.), AUSA William Carter [redacted]

On March 27, 2006, Andrew Wall, Jr., was sentenced to serve a one-year term of incarceration and was ordered to pay a $5,000 fine plus $490,000 in restitution. Wall, Jr., the owner of the bankrupt San Pedro Boat Works ("SPBW"), pleaded guilty in August 2004 to one felony count of unlawfully storing drums of hazardous wastes in the San Pedro area of the Los Angeles Harbor. Wall's son and the yard superintendent, John Wall, pleaded guilty to one misdemeanor count of unlawfully

discharging untreated and partially-treated sewage into the Harbor. He was sentenced to pay a $2,500 fine and serve three years' probation, to include six months in a community corrections' center.

In late 2002, SPBW was engaged in the repair and servicing of commercial, military and private vessels and water craft. These services required the use of chemicals such as paint thinners, cleaning solvents, petroleum naphtha, hydraulic oil, and kerosene, which generated hazardous wastes. Inspectors from the Port of Los Angeles and the Los Angeles County Fire Department inspected the business in 2003 and found numerous drums of hazardous wastes on the premises. Inspectors also discovered a discharge pipe under the wharf that was connected to an on-site septic tank that collected wastewaters from the company's restrooms. John Wall used the pipe to unlawfully discharge sewage into the harbor.

SPBW filed for bankruptcy in December 2002, soon after ceasing operations at the site. The Port of Los Angeles, which leased the berths to SPBW, spent approximately $490,000 to clean up the site. Andrew Wall was ordered to pay the restitution to the City of Los Angeles Harbor Department for reimbursement of clean up and waste removal costs.

This case was investigated by the Los Angeles Federal Environmental Task Force, which includes the Federal Bureau of Investigation; the Los Angeles County Fire Department, Hazardous Materials Unit; the Port of Los Angeles and the California Department of Toxic Substances Control.

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United States v. David Inskeep, No. 1:06-CR-10026 (C.D. Ill.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Tate Chambers [redacted].

On March 24, 2006, David Inskeep pleaded guilty to one count of negligently discharging animal waste into waters of the United States in violation of 33 U.S.C. § 1319(c)(1)(A). Inskeep was the operator of Inswood Dairy, Inc., a dairy with more than 1,200 cows, that operated a waste management system consisting of a lagoon designed to hold up to approximately 40 million gallons of animal waste. The system used water to flush cattle manure and wastewater from the barns to a central collection point. The waste then was pumped to the lagoon for storage until it could be lawfully removed. Inskeep continued to flush manure and wastewater into the lagoon after state officials repeatedly warned him that the lagoon was too full.

A judge issued an order on February 16, 2001, for the dairy to immediately cease discharging into the lagoon. On February 16 and 17, 2001, however, Inskeep lowered the level in the lagoon by pumping waste from the lagoon through a hose to a tributary that flowed downhill from the dairy, discharging more than one million gallons of waste and manure. The waste pumped from the lagoon flowed into a tributary of the West Fork of Kickapoo Creek, which eventually flows to the Illinois River.

Inskeep is scheduled to be sentenced on July 13, 2006.

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

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United States v. KS, Inc., No. CR-06-113-HG (D. Hawaii), ECS Senior Trial Attorney Jennifer Whitfield [redacted].

On March 23, 2006, KS, Inc., pleaded guilty to a one-count information filed March 1 charging negligent endangerment under the CAA for release of anhydrous ammonia, an extremely hazardous substance. The company also was sentenced to pay a $40,000 fine, serve three months' probation and make a community service payment in the amount of $12,000 to purchase respiratory equipment to be given to the LBJ Tropical Medical Center, in Pago Pago. The company also will post a letter of apology in the *Samoa News*, acknowledging the violation.

KS operated an ammonia supply business in American Samoa. In January 2003, the company was advised by the local American Samoa Environmental Protection Agency ("ASEPA") to properly dispose of approximately 180 ammonia cylinders. KS was further directed to develop a product management and leak response plan prior to disposal and to complete removal and disposal of the ammonia cylinders under the supervision and oversight of the relevant emergency response agencies.

In May 2003, a KS employee began venting residual ammonia from the cylinders without any notification to the relevant emergency response agencies, nor did the company develop the required waste management plan. A family living adjacent to where the gas was vented was taken to the hospital for emergency care, and approximately forty people had be evacuated from the area. This is the first criminal environmental case brought against a company in American Samoa.

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

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United States. v. Dov Shellef dba Poly Systems, Inc., et al., No. 2:03-CR-00723(E.D.N.Y), ECS Trial Attorney Lary Larson [redacted] and ECS Paralegal Lois Tuttle [redacted], AUSA Thomas Fallati [redacted] with assistance from Tax Division Attorney Genevieve Collins [redacted]

On March 22, 2006, Dov Shellef, doing business as Poly Systems, Inc. and Polytuff, USA, Inc., and William Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., were sentenced after being convicted at trial of 87 counts in July 2005 for conspiring to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud and a variety of tax violations. Shellef was ordered to serve 70 months' incarceration and Rubenstein will serve 18 months' imprisonment. Both will be held jointly and severally liable for $1.9 million in restitution for the taxes due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. This was the first criminal case involving CFC-113.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, inducing the manufacturers to sell it to them tax-free. The defendants then sold the product tax-free in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Dov Shellef also was convicted of personal income tax evasion, subscribing to false corporate tax returns, wire fraud and money laundering. William Rubenstein was further convicted of aiding and abetting the wire fraud.

Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes.

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

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United States v. Wallenius Ship Management, Pte., Ltd., et al., No. 2:06-CR-00213 (D.N.J.), ECS Trial Attorney Malinda Lawrence [redacted] and AUSA Thomas Calcagni [redacted].

On March 22, 2006, Wallenius Ship Management, Pte., Ltd. ("WSM"), a Singapore shipping company, and Nyi Nyi, the former chief engineer of the *M/V Atlantic Breeze*, pleaded guilty to violations associated with the illegal dumping of oily wastes over a period of approximately three years and the overboard dumping of plastics in 2005. The company pleaded guilty to conspiracy to violate APPS for failure to maintain an oil record book, making false statements and writings, and obstructing a government proceeding; three substantive APPS violations for failing to maintain the ORB; and three substantive violations of making materially false statements and using materially false writings. Nyi pleaded guilty to one false statement violation for presenting a false oil record book to investigators.

According to the plea agreement, the U.S. Coast Guard began an investigation in November 2005 after crew members on the *Atlantic Breeze*, a Singapore-registered car carrier vessel managed by WSM, sent a fax to an international seafarers' union alleging that they were being ordered to engage in deliberate acts of pollution, including the discharge of oil-contaminated bilge waste and sludge as well as garbage and plastics. As a result of this tip, the Coast Guard conducted an inspection of the ship and discovered a multi-piece bypass system, referred to on board as "the Magic Pipe", hidden in various locations of the ship.

The company has agreed to pay a $5 million fine with an additional $1.5 million payment devoted to community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects in New Jersey. The company also will serve a three-year term of probation and implement an environmental compliance plan.

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

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<u>United States v. Jeffery Springer</u>, No. 2:05-CR-01065 (D. Ariz.), ECS Trial Attorney Ruth McQuade [redacted] and AUSA Paul Rood [redacted]

On March 20, 2006, Jeffrey Springer was sentenced to pay a $2,000 fine, serve three years' probation and pay $75,000 in restitution for violating the CAA and the HMTA.

Springer pleaded guilty in October 2005 to an information charging two felony counts for violations related to an illegal asbestos abatement. Specifically, he pleaded guilty to a CAA NESHAP violation and to a HMTA violation for failing to comply with the hazardous materials packaging requirements prior to transporting the asbestos. Springer, doing business as Oljato Industries, owned an industrial facility in Phoenix that consisted of several buildings. Between July and September of 2000, Springer hired workers to demolish the buildings at the site. Since the defendant failed to perform the required site survey prior to the demolition, local environmental inspectors performed their own tests and determined that there were approximately 2,550 square feet of asbestos. Inspectors conducted subsequent inspections during the demolition and noted that Springer was not following several requirements for asbestos removal, including wetting the material and providing workers with appropriate protective equipment. None of the workers were trained in the handling of asbestos. The restitution will be paid to eight victims, including some of the workers' wives and children.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Transportation, Office of the Inspector General.

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<u>United States v. Antonio Martinez-Malo et al.</u>, No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick [redacted]

On March 16, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc., pleaded guilty to charges in connection with a conspiracy to violate the Lacey Act for smuggling 16,500 pounds of undersized spiny lobster from Jamaica into the United States. The company pleaded guilty to a smuggling and conspiracy violation, and the individuals pleaded guilty to conspiracy.

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. During this period, 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. The defendants concealed 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. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux

On March 15, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, pleaded guilty to obstructing a U.S. Coast Guard investigation into whether the ship had illegally discharged waste oil and deliberately bypassed its pollution prevention equipment. The ship's chief engineer, Gojko Petovic, pleaded guilty to lying to Coast Guard inspectors about the existence of tank sounding records and to then attempting to destroy them.

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 claimed to not know about the sounding records and attempt to delete them from his computer. The inspectors recovered the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

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

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United States v. Steven McClain et al., No. 2:06-CR-00102 (E. D. Pa.), AUSA Seth Weber and SAUSA Joseph Lisa

On March 9, 2006, a two-count information was filed charging wastewater treatment plant superintendent Steven McClain, and operator Ronald Meinzer, with felony CWA violations for allegedly dumping thousands of gallons of untreated sewage into the Delaware River.

McClain and Meinzer are alleged to have ordered workers, in August and September 2004, to wash thousands of gallons of raw sewage and sludge, which had spilled from a digester, into a storm water sewer that led to the Delaware River. Additionally, from approximately 1997 through June 2005, the defendants are charged with bleaching samples prior to their being sent to an offsite lab for analysis in order to mask fecal coliform levels. The defendants further are alleged to have tampered with plant monitoring equipment by disconnecting devices including alarms on chlorine tanks and digesters at the Bristol Plant.

Dark staining on the walls and on the ground is raw sewage that has spilled over the sides of the tank. Bristol Plant employees then used a fire hose to wash this into a storm water grate that went directly into the Delaware River.

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

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United States v. Jonathan Cory Sawyer, No. 3:05-CR-05344 (W. D. Wash.), ECS Trial Attorney Wayne Hettenbach and AUSA Micki Brunner

On March 10, 2006, Jonathan Corey Sawyer was sentenced to serve 15 months' incarceration followed by two years' supervised release for illegally importing and exporting more than 230 reptiles during an eight-month period.

Sawyer was charged in April 2005, following an investigation into illegal trafficking in rare reptiles. On June 19, 2003, undercover agents of the U.S. Fish and Wildlife Service delivered a package to Sawyer's home. The package had been inspected by customs' agents in Alaska who found it contained four Burmese Star Tortoises and two Green Tree Monitor Lizards. Both are species whose trade is restricted by international and U.S. law, and importers must obtain special permission to bring them into the United States. Sawyer did not obtain these permits and the live animals were shipped from Thailand in a box labeled "Stuffed Toys." Sawyer, a licensed animal importer and exporter, was aware of the regulations and knew how to disguise the shipments.

Sawyer pleaded guilty in August 2005 to shipping 20 Corn Snakes, 100 Leopard Geckos, one Albino Leopard Gecko, 14 Rhino Iguanas, and 98 Emperor Scorpions in mislabeled boxes. Sawyer admitted that he had shipped reptiles from the U.S. to his supplier, "Lawrence" Wee Soon Chye, a Thai citizen, on seven different occasions between 2002 and 2003. The animals were worth approximately $30,000.

Chye was sentenced in 2003 to serve 37 months' incarceration in Florida for his role in the smuggling scheme.

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

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United States v. Robertson's Ready Mix, Ltd., No. 2:05-CR-00952 (C.D. Calif.), AUSA William Carter .

On March 6, 2006, Robertson's Ready Mix, Ltd. ("Robertson's), a large regional cement company, was sentenced for illegally discharging concrete slurry in 2002. The company was ordered to pay a $200,000 fine plus $16,300 in restitution to the Los Angeles County Department of Public Works ("LACDPW").

Robertson's pleaded guilty in December of last year to one CWA misdemeanor violation for negligently discharging concrete slurry into the Los Angeles River in November 2002. The violations were discovered when LACDPW inspectors found an unpermitted PVC pipe on the defendant's premises that was unlawfully discharging slurry into a storm drain vault, which flowed into the river.

The company was further sentenced to complete a two-year term of probation and must implement an environmental compliance plan to prevent additional illegal discharges.

This case was investigated by the Federal Bureau of Investigation and the LACDPW.

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United States v. MCP Urethanes, No. 2:06-CR-00093 (C.D. Calif.), AUSAs Christine Adams and William Carter

On February 28, 2006, MCP Urethanes ("MCP"), pleaded guilty to one CERCLA misdemeanor violation relating to the unlawful storage of hazardous materials, and was sentenced to pay a $200,000 fine plus $5,000 in restitution to the Los Angeles County Fire Department, Health Hazardous Materials Division ("LACFD").

In September 1999, LACFD investigators found numerous five-gallon containers of hazardous xylene wastes and substances unlawfully stored on the premises of Mt. San Antonio College. The company had been hired to remove, replace, and repair defective portions of a polyurethane running track located at the college. Temporary employees hired by MCP used solvents containing xylene during the repair activities and unlawfully stored them in unpermitted locations.

The company was further sentenced to complete a one-year term of probation and implement an environmental compliance plan to prevent the future unlawful handling, storage, and disposal of hazardous wastes and materials.

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

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United States v. Daniel Schaffer, No. 1:06-CR-00085 (N. D. Ga.), ECS Senior Trial Attorney Dan Dooher and AUSA Paul Jones

On February 27, 2006, Daniel Schaffer, the former environmental manager of Acuity Specialty Products, Inc. (“Acuity”), pleaded guilty to a one-count information charging him with conspiracy to violate the CWA for illegal wastewater discharges from the plant.

Acuity operates a chemical blending facility and makes a variety of domestic and industrial chemicals and cleaning products. Wastewater from Acuity’s chemical blending processes contains a significant concentration of phosphorus. In November 2002, inspectors from the City of Atlanta Watershed Department (“CAWD”) discovered that Acuity personnel were diluting the facility’s wastewater. This rendered inaccurate the methods that were required by the CAWD for sampling wastewater discharge, thereby hiding the actual concentration of phosphorus that was being discharged to the POTW.

The investigation showed that from 1998 until 2002, Acuity submitted to the CAWD false information regarding the level of phosphorus in its wastewater, on forms that were signed by Schaffer. Schaffer was the company’s environmental manager from October 1998 until October 2003. Subsequent investigation also has indicated that Acuity failed to report discharges of phosphorus that were in excess of the level allowed under its pretreatment permit that had been issued to the company by the CAWD.

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

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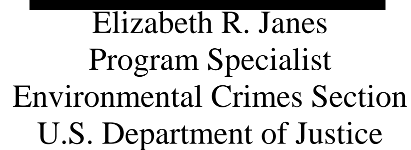

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