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ENVIRONMENTAL CRIME

The authors of this article, in their latest annual review of environmental crime enforcement, analyze the Gulf of Mexico oil spill and what it may mean for the criminal prosecution of violations of environmental laws. They note that the spill has spawned legislation that may increase criminal penalties and require restitution in all future Clean Water Act prosecutions. The authors also question whether the extensive resources being used in the criminal investigation of the spill may impede the government's ability to investigate environmental crimes beyond the Gulf. As in past reviews, the authors also provide summaries of criminal cases brought around the country last year.

The State of Environmental Crime Enforcement: A Survey of Developments in 2010

BY STEVEN P. SOLOW AND ANNE M. CARPENTER

It will soon be one year since the April 20, 2010, explosion on the *Deepwater Horizon* drilling rig in the Gulf of Mexico. The resulting oil spill (the Gulf spill) has been the subject of multiple investigations and analyses. According to the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, created on May 20, 2010, the ''immediate cause'' of the spill was a ''series of identifiable mistakes'' by the companies in charge of the rig.[1]

A hundred spills could be similarly described. The significance of the Gulf spill, given its size and the tragic human losses that occurred, will be analyzed in many different ways. For the purposes of this article, we look at the spill in terms of what it may mean for the criminal prosecution of environmental violations.

[1] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Report to the President, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*, p. vii (January 2011). *See* http://www.oilspillcommission.gov/final-report.

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The Clean Water Act: Proposals to Expand Restitution and Increase Sanctions

Legislation introduced in the wake of the Gulf spill seeks to expand the scope of restitution that may be imposed following a criminal conviction of an environmental crime. At present, a federal judge has the discretion to impose restitution to an identifiable victim, but not, for example, for harm caused to natural resources.[2] In 1996, the U.S. Senate attempted to revise the federal sentencing statutes to expand the scope of restitution in criminal cases by allowing judges to order restitution to communities harmed by environmental crimes.[3] That attempt failed. The proposed post-spill legislation would expand the scope of restitution by mandating that judges order restitution to victims of criminal violations of the Clean Water Act.[4] The bill does not propose to authorize the order of restitution to communities as a whole.[5]

The bill also would direct the United States Sentencing Commission to review the sentencing guidelines for Clean Water Act offenses ''in order to reflect the intent of Congress that penalties for the offenses be increased [to] appropriately account for the actual harm to the public and the environment from the offenses.''[6] If this effort goes forward, we may see similar efforts with regard to the other major environmental statutes, or a comprehensive effort, such as that proposed in 1996, to expand the scope of restitution to all environmental criminal convictions.

Environmental Crime Investigation and Prosecution as a Zero Sum Game

Absent from the many analyses in the media has been any meaningful reporting on the impact of the criminal investigation of the Gulf spill on the rest of the government's environmental crime enforcement efforts. This is especially of note with the news that the Department of Justice has transferred the criminal investigation of the Gulf spill from the Environmental Crimes Section in the Environment and Natural Resources Division to the Criminal Division.[7]

Given the relatively small amount of federal resources typically devoted to environmental criminal matters, the impact of investigating and (if appropriate) prosecuting cases arising out of the Gulf spill is significant. EPA recently touted the growth of its Criminal Investigation Division to a ''full'' complement of 200 special agents.[8] To put this into perspective, the FBI has somewhere north of 13,000 special agents.[9] While other agencies are involved in environmental crime investigations, EPA is unquestionably the lead agency in this area, and the commitment of numerous agents to the Gulf spill investigation inevitably raises questions about EPA's ability to cover other matters.

The same resource questions existed for the Environmental Crimes Section at DOJ. During the government's investigation and prosecution efforts after the March 1989 *Exxon Valdez* spill, it has been said that, at one point or another, nearly all of the Justice Department's environmental crime prosecutors were working on the case. While it has grown in the past 20 years, the DOJ's Environmental Crimes Section has approximately 35 trial attorneys. Even if only four or five of those attorneys are spending a significant amount of time on the Gulf spill investigation, that would be more than 10 percent of the section's total. It is as yet unknown whether the department's decision to move the Gulf spill case into the Criminal Division will inject new resources into the case and free resources from the Environmental Crimes Section.

With regard to EPA, particularly in an atmosphere of budget cutting,[10] it is similarly unknown whether another impact of the Gulf spill will be a reduction in the federal government's ability to more broadly investigate environmental crimes. If EPA were so constrained it could impact more than federal cases. In recent years EPA has expanded and strengthened its role in training and supporting the work of state and local environmental investigators and police. Hundreds of state law enforcement officers have been trained by EPA at the Federal Law Enforcement Training Center in Georgia. Cuts to training budgets and other forms of state assistance could impact these resources as well.

As a means of comparison that may or may not be an artifact of resource allocation related to the spill, we can compare the reports of cases coming out of EPA Region 6 from last year to this. Last year's annual review included a total of eight matters involving cases in Region 6.[11] This year's review lists one.

As in any major case, the government will have to decide just how much investigation of the Gulf spill it can afford. As one former Justice Department lawyer has observed, ''A prosecutor is not obligated to take every possible step in the investigation of a suspected criminal offense. Rather, the prosecutor should consciously engage in an analysis of proportionality in choosing which investigative steps to pursue, and how aggressively to pursue them.''[12] The availability of resources is a legitimate consideration in determining the scope and extent of a government criminal investigation.[13] The underlying reason for the shift of the Gulf spill case to the Criminal Division is not publicly known. Whatever the reason, moving sole responsibility for prosecuting

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[2] See 18 U.S.C. §§ 3553, 3663.

[3] Environmental Crimes and Enforcement Act of 1996, S. 2096, 104th Cong. (1996).

[4] Environmental Crimes Enforcement Act of 2011, S. 350, 112th Cong. (2011) (proposing to amend 18 U.S.C. § 3663A(c)(1)(A)). *See* http://www.gpo.gov/fdsys/pkg/BILLS-112s350is/pdf/BILLS-112s350is.pdf.

[5] *See id.*

[6] *Id.*

[7] ''Justice Department Sets Up Task Force for Gulf of Mexico Oil Spill Investigation'' (46 DEN A-11, 3/9/11).

[8] ''Giles Says EPA Pursuing High-Impact Cases, Adding Criminal Investigators to Staff'' (184 DEN A-7, 9/24/10).

[9] *See* http://www2.fbi.gov/quickfacts.htm.

[10] The President's proposed budget for FY2012 cuts, among other things, the EPA budget for ''Forensic Support'' by thousands of dollars – a pittance in the deficit abyss, but potentially significant to EPA's ability to provide functional support for investigations. *See* http://www.epa.gov/planandbudget/annualplan/FY_2012_Budget_In_Brief.pdf.

[11] EPA Region 6 covers Arkansas, Louisiana, New Mexico, Oklahoma, Texas and the areas covered by 66 Native American Tribes.

[12] *See* Rory K. Little, *Proportionality as an Ethical Precept for Prosecutors in Their Investigative Role*, 68 FORDHAM L. REV. 723, 770 (1999).

[13] *See* ABA Criminal Justice Standards on Prosecutorial Investigations, 2.1(c)(vi), *available at* http://www.americanbar.org/groups/criminal_justice/policy/standards.html.

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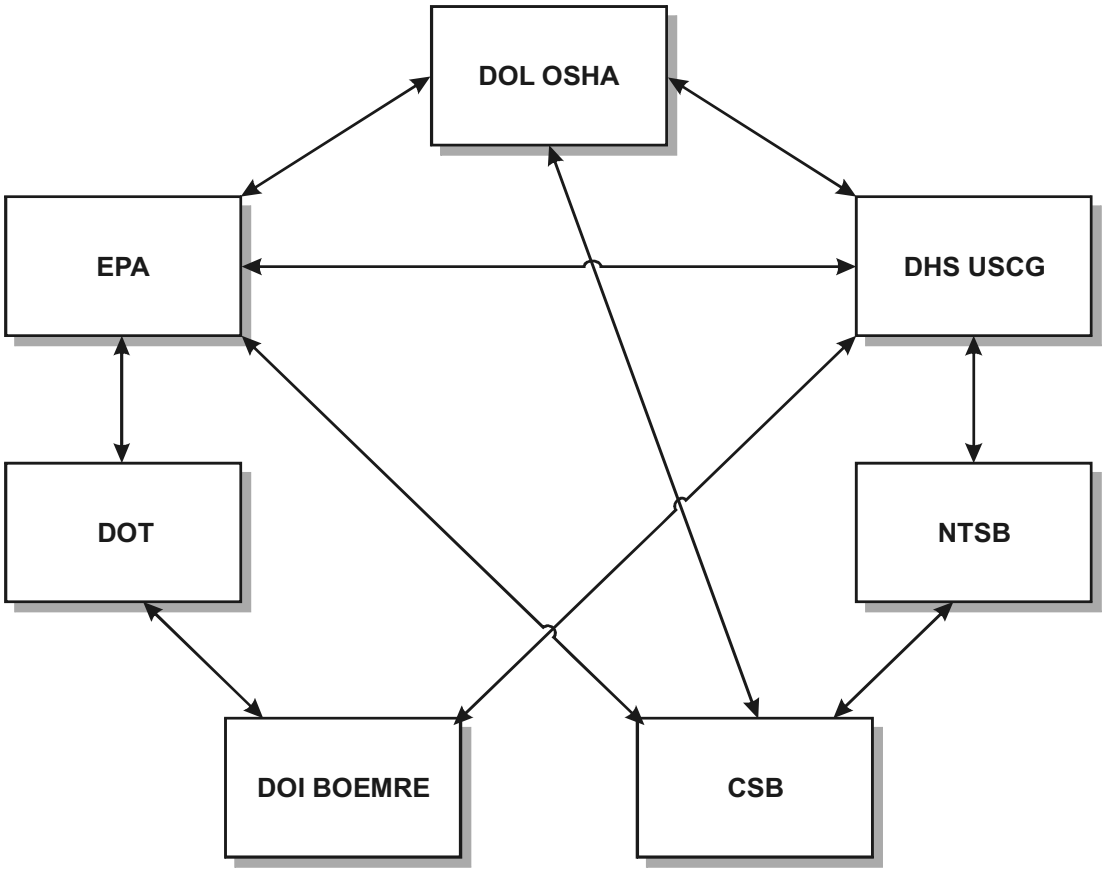
Federal Agencies with Memorandums of Understanding in Environmental and Safety Investigations



Agencies identified above (clockwise starting from top): Department of Labor, Occupational Safety and Health Administration; Department of Homeland Security, U.S. Coast Guard; National Transportation Safety Board; Chemical Safety Board; Department of Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement; Department of Transportation; Environmental Protecti on Agency.

the spill case to that division may allow the Department's Environmental Crimes Section to continue to play a leading role in investigating and prosecuting other environmental crime matters around the country.

Who's In Charge After a Major Incident?

Another issue receiving scant coverage is the remarkable, and remarkably confusing, number of agreements that address the federal government's interagency coordination following a significant event such as the Gulf spill. There is insufficient space here to address each memorandum of understanding that exists between and among the various agencies responding to the spill. Indeed, several MOUs were created specifically to coordinate work involving the Gulf spill.

Part of what is remarkable about these agreements is that they are generally the result of bilateral discussions between two agencies and do not reflect other MOUs that exist between these same agencies and other agencies. To provide a shorthand way of visualizing the MOUs between and among the federal agencies with authority to investigate environment and safety matters, we have provided the illustration above.

From the perspective of those who must represent entities and individuals who are the subject of such inquiries, these MOUs create more questions than answers. If an individual or entity is approached by one agency to provide information or to be asked for an interview, it is often impossible to know whether the agency is the ''lead'' agency, or whether it is operating in coordination with, or independently from, other agencies. This situation not only creates issues for those outside the government, but also raises questions within the government because it can result in a lack of clear lines of authority and communication with regard to issues such as evidence preservation and forensic analyses. Without doubt, as the government's criminal investigation of the Gulf spill moves forward, increasing attention should be paid to whether and how its handling of this case impacts other cases involving multiple agencies and parallel safety, civil, and criminal investigations.

Federal Sentencing Guideline Changes That Impact Companies

The Gulf spill aside, other developments last year also will affect prosecution of environmental crimes.

In November 2010, amendments to Chapter Eight of the Federal Sentencing Guidelines, which relate to the sentencing of corporations and other organizations, went into effect. Although, as is widely known, the Chapter Eight provisions are not strictly applicable to environmental offenses, they still have a significant im-

pact on environmental crime case selection and resolution.

Under the guidelines, a convicted company may face a reduced sentence if it can show that, despite the criminal violation that occurred, it otherwise had in place an effective compliance and ethics program at the time of the offense. Previously, however, companies were automatically disqualified from the benefit of this provision if ''an individual within high-level personnel of the organization . . . participated in, condoned, or was willfully ignorant of the offense.'' The new amendments remove this automatic disqualification provision. Companies may now seek leniency under the provision if the following four criteria are met:

- the top personnel with operational responsibility for the compliance and ethics program ''have direct reporting obligations to the governing authority or an appropriate subgroup thereof'' (such as an audit committee);
- the compliance program uncovered the problem before it was discovered from outside the organization or ''before such discovery was reasonably likely;''
- the company ''promptly reported the offense to appropriate governmental authorities;'' and
- ''no individual with operational responsibility for the compliance and ethics program participated in, condoned, or was willfully ignorant of the offense.''

The revised guidelines also expand on another general requirement in Chapter Eight. The pre-existing requirement provides: ''[a]fter criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.''

The amendments incorporate one unsurprising guideline and one that borders on what some might view as micro-managing by the commission. As to the first, the guidelines recommend that a company take reasonable steps to remedy the harm, which may include self-reporting the problematic conduct, cooperating with authorities and, where appropriate, providing restitution to identifiable victims. The second change urges companies to take steps to prevent further similar conduct and ensure their compliance programs' effectiveness by assessing the existing programs and making necessary changes. However, it also steps into a new area by suggesting the use of an ''outside professional advisor'' to monitor such changes.

In recent years, largely in non-environmental cases, the Department of Justice has frequently suggested the use of independent outside monitors as a condition of deferred prosecution agreements with corporate defendants. The selection of outside monitors, their expense, and ultimate value have been subjects of controversy. The amended guidelines neither mandate nor define an ''outside professional advisor,'' but they suggest that the use of such services will be increasingly considered in the resolution of criminal cases against business entities.

Criminal Exposure of Attorneys and Potential Limits to Criminal Exposure for Entities

Also in 2010, attorneys found themselves brought before the courts in criminal cases. In two recent cases, attorneys engaged in representational conduct have been indicted for alleged offenses relating to their handling of information regarding regulatory compliance matters. On Nov. 8, 2010, attorney John M. Hogan Jr. was indicted by a federal grand jury on seven counts, including wire fraud, in connection with the sale of the site of a former paper mill in upstate New York. The indictment alleges that Hogan, who was retained as outside counsel to represent both parties to the transaction, failed to reveal to the buyer several facts related to the property, including that the property was the subject of an ongoing superfund cleanup mandated by EPA.

Only a day after Hogan's indictment, another attorney was indicted on charges of obstruction and making false statements to a federal regulatory agency. On Nov. 9, 2010, federal prosecutors in Maryland obtained an indictment against Lauren Stevens, the former associate general counsel of GlaxoSmithKline LLC, alleging that in response to a letter from the Food and Drug Administration seeking information about off-label uses of a drug, Stevens had sent letters to the FDA falsely denying that GlaxoSmithKline had promoted the drug for such uses. Notably, these charges followed a letter inquiry and not a formal statutory information request or a subpoena.

In the environmental context, federal information inquiries are exceedingly common, and the government's response in the GlaxoSmithKline case underscores the need to engage in thorough reviews and responses, even in response to what some may view as less than ''formal'' information requests from a government agency.

In another interesting development, in May of 2010, the Massachusetts Supreme Judicial Court rejected the notion of corporate criminal liability on the basis of the ''collective knowledge'' and conduct of multiple employees where there was not a single individual who could be found liable for the offense.[14] The reasoning of the court raises again the long-standing questions about the legitimacy of the often-cited, but rarely followed, reasoning of the U.S. Court of Appeals for the First Circuit in *United States v. Bank of New England*, 821 F.2d 844, 856 (1st Cir. 1987), which supports the imposition of criminal liability on a corporation by combining the knowledge of its employees.

The Massachusetts court stated that it agreed with ''the majority of Federal Courts,'' in concluding that ''a corporation acts with a given mental state only if at least one employee who acts (or fails to act) possesses the requisite mental state at the time of the act (or failure to act).''[15]

Having so held, the court distinguished *Bank of New England*, noting that the offenses in that case were regulatory offenses, while the case before the court dealt with a charge of involuntary manslaughter, and a mental state that required wanton or reckless behavior. The issue of corporate vicarious liability thus remains subject to the conflicting rulings of the various courts to have considered the issue.

The More Things Change . . .

At the annual ABA Environmental Law Conference several years ago, Hank Habicht spoke on a panel with

[14] *See Commonwealth v. Life Care Ctrs. Of Am. Inc.*, 926 N.E.2d 206, 210-11 (Mass. 2010).

[15] *See id.* at 213.

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one of the authors of this article during a plenary session of the conference on the issue of, among other things, effective metrics in environmental enforcement cases. In his remarks, Habicht recalled some events from his service in the 1990s as the EPA deputy administrator during the administration of President George H.W. Bush. (Habicht subsequently served as the assistant attorney general in the Environment and Natural Resources Division at the Department of Justice). President Bush had appointed William Reilly as EPA administrator in 1989, and, as Habicht described it, Reilly early on called for a meeting with some of his most senior officials. Reilly told his top-level staff that he wanted a way to measure EPA's successes without the usual ''bean counting'' of fines and cases brought, an approach that would provide effective metrics and resource allocations based on environmental results. As Habicht recalled the events, a short time later Reilly called another meeting after a round of criticism had been fired at EPA stating that the agency's numbers were down. Reilly wanted to know how the group proposed to get those numbers up. According to Habicht, the need to respond on the numbers issue interfered with the more difficult task of creating a way to use performance measures as a means to direct efforts and to report results.

As we reported last year, Cynthia Giles, the incoming assistant administrator for the Office of Enforcement and Compliance Assurance, had previously written on this very topic. In a 1997 internal EPA white paper, Giles (then serving as the enforcement director for EPA Region 3) wrote that the agency should move ''away from counting . . . activities . . . toward environmental and compliance results.''[16]

Now, of course, Giles is the assistant administrator, and she, like Reilly, has faced the usual criticism of EPA's numbers, this time from the perennial EPA critic Public Employees for Environmental Responsibility (PEER). Last year, PEER argued that there had been a significant drop in EPA criminal referrals and prosecutions from those of a decade earlier, though PEER did not link its analysis to any environmental performance measures.

Speaking in September 2010 at a forum on Environmental Criminal Enforcement, sponsored by the American Law Institute-American Bar Association and held at the law offices of Venable LLP in Washington, D.C., Giles, according to one published report, said the best measure of effectiveness of the criminal program is ''how many people are charged and how many people are convicted, and on those scores I think we're doing pretty well.''[17]

Since 1994, EPA has been guided in the exercise of investigative discretion by the so-called ''Devaney Memo'' issued by Earl Devaney, then-director of the Office of Criminal Enforcement. The memo identified two key criteria for case selection: significant environmental harm and culpable conduct. Within those criteria it further identified harm as including actual harm, the threat of harm, a failure to report discharges in the context of actual or threatened harm, or illegal conduct that represents a trend or common attitude within the regulated community. Culpable conduct was further defined as a history of repeat violations, deliberate misconduct (meaning conduct with the intent to violate the law), the concealment or falsification of information, tampering with monitoring methods that produced false data, and operation of businesses without the required permits or other required documentation. For the past 17 years, these provisions have functioned as a well-known set of standards, guiding investigators and others.[18]

In her September 2010 remarks, Giles also stated that EPA will focus its criminal enforcement efforts on cases involving death or serious injury, multiple locations, and large or significant enterprises, or those affecting vulnerable populations, such as the poor and minorities. As noted above, this is largely consistent with the approach outlined by Devaney in 1994, though the Devaney Memo does not address the issue of vulnerable populations, and, rather than focusing on the size of entities, focused on what are often described as the emblems of criminality in the regulatory context: ''lying, cheating and stealing.''[19]

Notably, over the past several years, EPA has made efforts to use strategic planning in the OECA enforcement priority process.[20] Yet EPA has consistently struggled with meshing the resource constraints of its budget with the costs related to a robust effort to reduce the dependence on counting ''activities.'' Giles, based on her prior writing and work, may have been the assistant administrator best prepared to implement a thoughtful program of strategic planning for enforcement. Ironically, efforts to reduce EPA's funding may inhibit that effort and result in an approach more akin to the ''activities'' counting from which Reilly sought to escape 21 years ago. We will return to these issues in next year's analysis.

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[16] Cynthia Giles, Aiming Before We Shoot: A Revolution in Environmental Enforcement. *See* http://op.bna.com/env.nsf/r?Open=jsun-8esrzt.

[17] ''Giles Says EPA Pursuing High-Impact Cases, Adding Criminal Investigators to Staff'' (184 DEN A-7, 9/24/10).

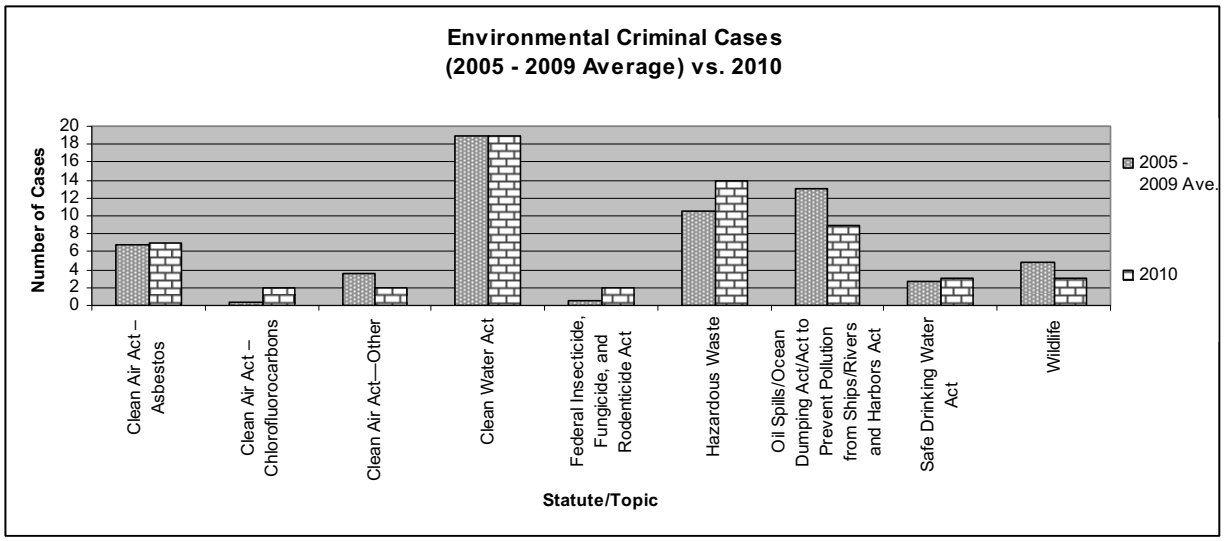
[18] The Devaney Memo is available at http://op.bna.com/env.nsf/r?Open=jsun-8essgq.

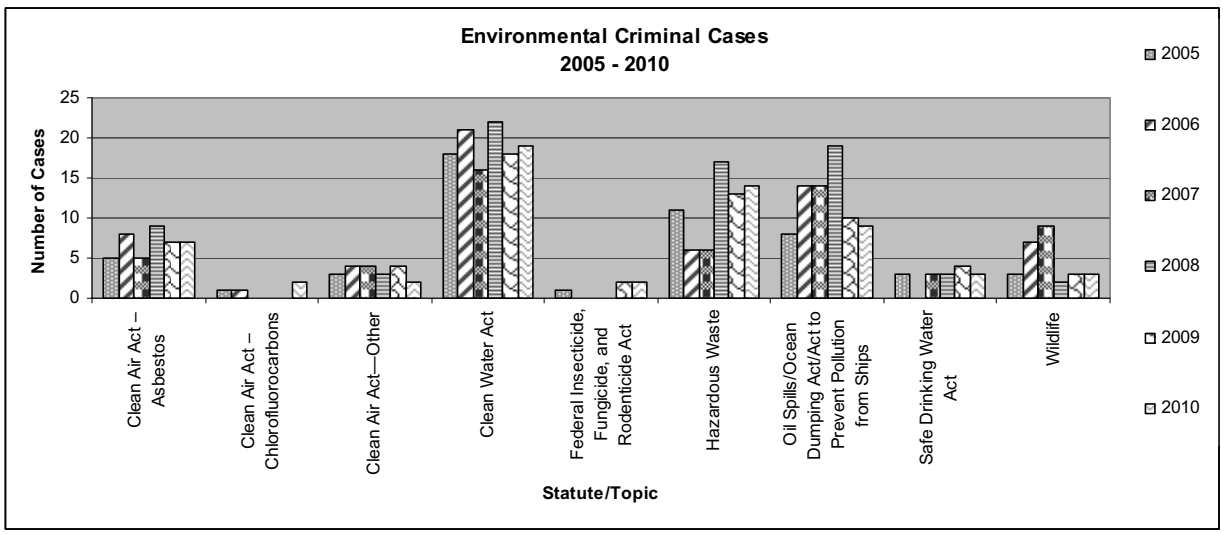
[19] In recent months, EPA has added context to the Devaney factors by indicating that it will continue a more recent trend of seeking to coordinate civil and criminal enforcement efforts, providing an opportunity for EPA's Criminal Investigation Division to consider for investigation the larger civil cases, and seeking to better coordinate the use of criminal investigations into the agency's priority enforcement efforts.

[20] *See* Office of the Inspector General, U.S. Envt'l. Prot. Agency, Report No. 2007-P-000027: EPA Has Initiated Strategic Planning for Priority Enforcement Areas, but Key Elements Still Needed, pp. 3-4 (Sept. 25, 2008 (The OIG report states, ''OECA has placed an increasing emphasis on strategic planning in recent years . . . . Since 2003, OECA's teams have developed priority area strategies for all of their priority areas . . . Each priority strategy has an overall goal, problem statement, the anticipated environmental benefits, the facilities to be addressed, the tools to be used, and OECA Headquarters and regional responsibilities.'') *Available at* http://www.epa.gov/oig/reports/2008/20080925-08-P-0278.pdf.

Environmental Criminal Case Dispositions 2005 - 2010					
2005	**2006**	**2007**	**2008**	**2009**	**2010**
53	61	57	75	46	57

Statute/Topic	Yearly Average (2005-2009)	2010
Clean Air Act – Asbestos	6.8	7
Clean Air Act – Chlorofluorocarbons	0.4	2
Clean Air Act – Other	3.6	2
Clean Water Act	19	19
Federal Insecticide, Fungicide, and Rodenticide Act	0.6	2
Hazardous Waste	10.6	14
Oil Spills/Ocean Dumping Act/Act to Prevent Pollution from Ships/ Rivers and Harbors Act	13	9
Safe Drinking Water Act	2.6	3
Wildlife	4.8	3





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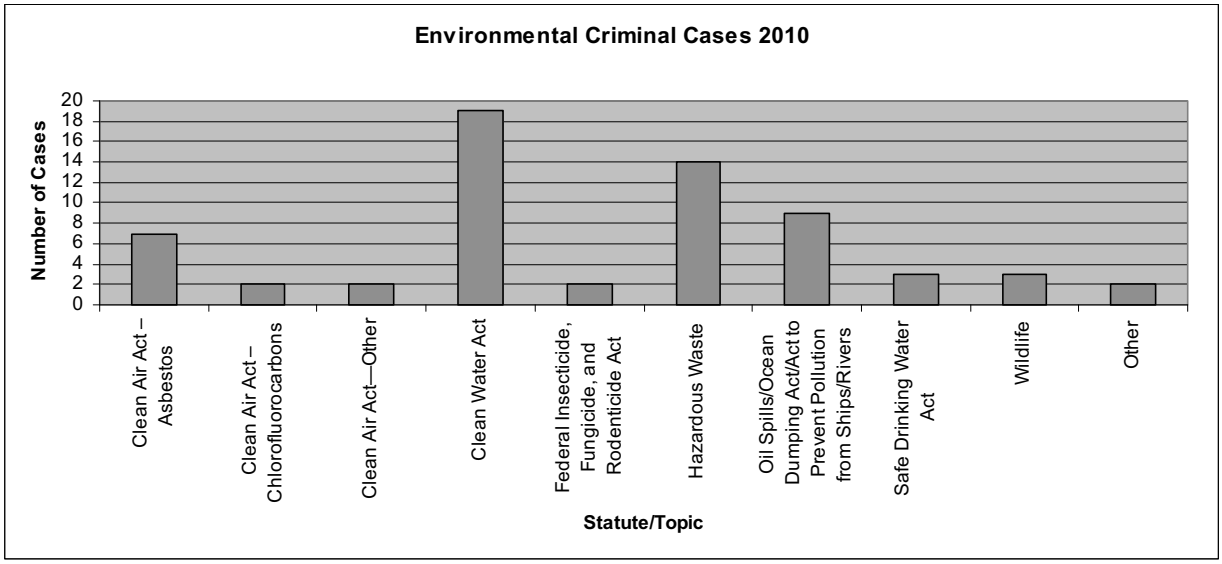

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Cases of Note

Like other sources, our data on environmental criminal cases is likely incomplete. Our sources, among others, include the websites of EPA and DOJ, as well as BNA's *Daily Environment Report*, and the always useful Environmental Crimes Blog of Walter James, accessible at http://www.environmentalblog.typepad.com.

Clean Air Act—Asbestos

United States v. Gordon-Smith, No. 6:08-cr-06019-CJS (W.D.N.Y. *jury verdict* Nov. 12, 2010)—Keith Gordon-Smith and his company, Gordon-Smith Contracting Inc., were convicted of multiple counts of violating the Clean Air Act. A jury found that during removal of copper pipes, ceiling tile, and scrap metal from a demolition site in Rochester, N.Y., Gordon-Smith knowingly exposed workers and public areas to asbestos. During the removal, asbestos flowed from the building's upper floors through drains and holes in the containment measures, and allegedly fell ''like snow'' on workers. The jury also found that Gordon-Smith and the company made false statements to an Occupational Safety and Health Administration inspector during the inspector's follow-up of complaints received from Gordon-Smith Contracting's workers. Gordon-Smith faces criminal penalties of up to five years in prison per count, as well as $250,000 in fines. Gordon-Smith Contracting faces a fine of up to $500,000 per count.

United States v. Mancuso, No. 5:08-cr-00611 (N.D.N.Y. *sentencing* June 9, 2010)—Lester Mancuso and his two sons, Steven and Paul Mancuso, were sentenced to prison terms for multiple asbestos-related crimes stemming from the operation of the family's business. Under the auspices of the business, the three men produced fraudulent documents including partnership agreements and invoices that they submitted to clients and regulatory agencies. Additionally, the men made false statements to clients, regulators, and law enforcement to cover their crimes. Lester Mancuso pleaded guilty prior to trial, and was sentenced to 36 months in prison and three years of supervised release. Previously, in 2003 and 2004, Paul Mancuso was convicted of similar crimes, and was forbidden from any further affiliation with the asbestos-removal industry. In the 2010 trial, both Steven Mancuso and Paul Mancuso were found guilty of conspiring to defraud the United States, violating the Clean Air Act, illegally dumping asbestos, and committing mail fraud. Paul Mancuso was sentenced to 78 months in prison, three years of supervised release, payment of restitution, and a $20,000 fine, while Steven Mancuso was sentenced to 44 months in prison and three years of supervised release.

United States v. Lowe, No. 3:09-cr-01013-JSW (N.D. Cal. *sentencing* Dec. 2, 2010)—Rogelio Lowe, former owner of the asbestos occupational training company E&D Environmental Safety Training, Inc., was sentenced to five months in prison, three years of supervised release, $15,000 in restitution payments, and 300 hours of community service for the provision of asbestos removal courses that did not comply with federal law. Under federal law, any person seeking accreditation as an asbestos worker must complete a four-day (32-hour) course and pass a closed-book exam covering the course material. Lowe, however, did not provide a full 32-hour course. Additionally, he provided answers to students, and forged test results for students that did not attend the final exam. Finally, Lowe issued certificates to the students attesting they had met federal requirements, charged their employers for the course, and submitted class rosters indicating that the students had successfully completed their training.

United States v. Tucker, No. 1:09-cr-57 and 1:10-cr-99 (W.D. Mich. *sentencing* May 14, 2010)—Scott Tucker, owner of H&M Demolition Company of Holland, Michigan, was sentenced for the illegal handling of asbestos at demolition projects in Ohio and Michigan in violation of the Clean Air Act. Tucker knew asbestos was present at demolition sites but failed to adequately follow federal regulations regarding asbestos removal, and failed to notify the City of Toledo's Division of Environmental Services in advance of the demolition work, as required by law. Tucker was sentenced to a fine of $1,000, 13 months in prison, and three years of supervised release.

United States v. Burks, No. 4:09-cr-00597-CEJ (E.D. Mo. *sentencing* Mar. 15, 2010)—Calvin Burks, the owner of the asbestos inspection company J&C Envi-

ronmental Services, Inc. was sentenced to one year in prison for the creation of a false asbestos inspection report for a building scheduled to be demolished by the City of St. Louis. From April 2008 through May 2009, Burks separately performed over 100 asbestos inspections and falsified information by copying sample analyses onto the letterhead of the Precision Analysis Testing Laboratory, a company that performs asbestos testing. Customers were charged approximately $150 for each of the fraudulent inspections and sampling analyses.

United States v. Roempke, No. 2:10-cr-00062-JCC (W.D. Wash *sentencing* Oct. 29, 2010 and Jan. 7, 2011)—Wolfgang ''Tito'' Roempke, owner of Auburn Valley Cars, pleaded guilty to a felony violation of the Clean Air Act for failure to properly remove asbestos during the demolition of a building in Auburn, Washington. In May 2008, a certified inspector hired by Roempke found rampant asbestos (2%-8%) in the building's ceiling, walls, windows, roofing, ventilation system, and floor tile. Roempke took bids to lawfully remove the asbestos, which totaled approximately $20,000. Roempke then employed a second inspector, Michael Neureiter, who hired another certified inspector, Bruce Thoreen, to produce another inspection report that minimized the extent of the contamination. Thoreen produced a false report stating that the building contained no asbestos. Roempke later used employees of his car dealership to demolish the facility without disclosing the presence of asbestos. Roempke was sentenced to 30 days in prison, three years of supervised release, and was fined $50,000. Neureiter pleaded guilty to conspiracy to violate the Clean Air Act and was sentenced to one year and one day in prison, followed by three years of supervised release. Thoreen pleaded guilty to making a false certification and was sentenced to two years probation and a $4,000 fine.

United States v. Certified Environmental Services Inc. No. 5:09-cr-00319-DNH (N.D.N.Y. *jury verdict* Oct. 12, 2010)—Certified Environmental Services, Inc., an environmental consulting firm, was convicted of falsifying asbestos reports certifying the proper removal of asbestos in violation of the Clean Air Act. The company, as well as two company managers, Nicole Copeland and Elisa Dunn, and one employee, Sandy Allen, were also convicted of mail fraud and making false statements to federal law enforcement officials. Sentencing in the case is scheduled for April 2010. The conspiracy, Clean Air Act, and false statements counts each carry a maximum possible prison term of five years and a fine of $250,000. The mail fraud count carries a maximum possible term of 20 years and has similar fines.

Clean Air Act—Chlorofluorocarbons

United States v. Kroy Corp., No. 1:09-cr-20913-PAS (S.D. Fla. *sentencing* Feb. 11, 2010 and Apr. 21, 2010)—Kroy Corp. and two employees, James Garrido and Amador Hernandez, were sentenced on charges of smuggling ozone-depleting substances into the United States in the form of hydrochlorofluorocarbon-22. Kroy Corp., Garrido, and Hernandez imported 418,654 kilograms of HCFC-22 in 11 separate shipments, with a fair market value of more than $3.9 million. Hernandez completed false paperwork declaring the merchandise was refrigerant gas in the form of HFC-134A, HFC-404A, or HFC-410. Garrido was sentenced to 30 months in prison followed by three years of supervised release, while Hernandez was sentenced to a three year probation term and home detention with electronic monitoring for six months. Kroy Corp. was sentenced to five years probation, and jointly and severally, Kroy Corp. and Garrido were sentenced to a fine of $40,000 and ordered to forfeit $1,356,160 in profits.

United States v. Mar-Cone Appliance Parts Co., No. 1:10-cr-20081-ASG (S.D. Fla. *sentencing* Mar. 18, 2010)—Mar-Cone Appliance Parts Co. was convicted of the illegal receipt, purchase, and sale of 100,898 kilograms of restricted HCFC-22. The company was sentenced to five years probation and a fine of $500,000. The company was also ordered to forfeit $190,534.70 in profits, and to implement a comprehensive environmental compliance plan. $400,000 of the fine will be paid to the Southern Environmental Enforcement Training Fund, Inc., a nonprofit training organization.

Clean Air Act—Other

United States v. Kinder Morgan Port Manatee Terminal LLC, No. 8:10-cr-00076-JSM (M.D. Fla. *sentencing* June 22, 2010)—Kinder Morgan Port Manatee Terminal LLC, a dry bulk material handling and storage facility covering six acres of land in Port Manatee, Fla., pleaded guilty to four separate violations of the Clean Air Act for false statements made to government officials and failure to notify the government regarding the improper handling of granular fertilizer, which may produce particulate matter when loaded and unloaded incorrectly. From approximately 2001 through 2008, Kinder Morgan failed to fully operate and maintain air pollution controls to trap, filter and separate particulate matter from the fertilizer. Kinder Morgan's local managers and supervisors falsely stated that the company properly operated the controls, and failed to report the noncompliance to the Florida Department of Environmental Protection. As a part of a plea agreement, Kinder Morgan agreed to pay a total of $1 million in penalties, including a $750,000 fine and a $250,000 community service payment to the National Fish and Wildlife Foundation.

United States v. Sivil, No. 3:09-cr-00906-SI (N.D. Cal. *sentencing* Jan. 22, 2010)—Chuck Sivil, the former senior manager of operations and compliance at a bulk fuel transfer facility owned by Shore Terminals LLC in Selby, Calif., was sentenced to three years probation, one year electronic monitoring, and 200 hours of community service for tampering with and rendering ineffective a monitoring device on a vapor recovery unit located at the facility. Sivil and other employees of Shore Terminals used a bypass switch during truck unloading that sped up the process but caused the release of volatile organic compounds. These compounds vaporized and escaped into the air. Sivil also made false statements to a Bay Area Air Quality Management District inspector regarding the bypasses.

Clean Water Act

United States v. Davis Wire Corp., No. 2:10-cr-00966-AGR (C.D. Cal. *sentencing* Oct. 26, 2010)—Davis Wire Corp., a manufacturer of galvanized wire in Irwindale, California, was sentenced to pay $1.5 million in restitution to the Los Angeles County Sanitation District, and a $25,000 fine for damage to the county sewer system caused by the discharge of highly acidic wastewater. The discharges were discovered after a LACSD

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employee detected a pH level of 3.0 in the wastewater and traced the source back to the Davis Wire plant.

United States v. Dioses, No. 3:10-cr-00138-AWT (D. Conn. *sentencing* Oct.12, 2010), **United States v. Phoenix Products Co.**, No. 3:10-cr-00001-AWT (D. Conn *sentencing* Feb. 1, 2010)—Phoenix Products Co., a company that provides formulation, blending, and packaging for pool products, was sentenced to a $50,000 fine and three years probation for knowingly discharging pollutants without a permit in violation of the Clean Water Act. The company used and stored an off-specification, highly acidic product, which they discharged into the Plymouth, Conn., sewer system. From Sept. 11, 2008, to Oct. 1, 2008, the Plymouth Water Pollution Control Authority recorded a pH of 2.0 in its influent and traced the acidic wastewater back to the Phoenix facility. Fabio Dioses, a superintendent of the facility, was also sentenced to a $5,000 fine and five years probation for the violations.

United States v. Hill, No. 4:09-cr-40045-JBM (C.D. Ill. *guilty plea entered* Oct. 14, 2010)—Leroy Hill, former environmental coordinator for Deere & Co., *aka* John Deere, pleaded guilty to violating the terms of an industrial wastewater pretreatment program in violation of the Clean Water Act. Hill failed to report accurate amounts of nickel and chromium in the company's wastewater discharge reports, which he certified as being ''true, accurate and complete.'' The statutory penalty for each violation of the Clean Water Act is up to three years imprisonment and a fine of not less than $5,000, or more than $50,000, per day of violation. The penalty for making a false statement is up to two years in prison and a fine of up to $10,000.

United States v. Oak Mill Inc., No. 5:08-cr-06016-HFS (W.D. Mo. *guilty plea entered* Nov. 30, 2010)—Oak Mill Inc., a company that uses reclaimed soybean oil in the process of removing vegetable oils from tanker trucks, pleaded guilty to the negligent discharge of pollutants in violation of their city-issued National Pollutant Discharge Elimination System permit for their October 2006 discharge of wastewater with excessive zinc into the St. Joseph, Mo., city water system. Robert Arundale, the company's vice president, also pleaded guilty to the illegal discharges.

United States v. Hebert, No. 6:10-cr-00262-CMH (W.D. La. *guilty plea entered* Sept. 22, 2010)—Environmental Compliance Solutions, LLC, and the company's on-site manager and president, Sidney J. Hebert, pleaded guilty to the negligent operation of a wastewater treatment facility in violation of the Clean Water Act for allowing wastewater to bypass the plant filtration system and discharge into the Commercial Canal located in the Port of Iberia, La. From June 2007 through June 2009, Hebert failed to maintain the required documentation and perform required testing under the terms of the facility's NPDES permit. Pursuant to the plea agreement, Hebert and ECS agreed to cease operation of the wastewater facility and to pay a fine in the amount of $50,000. Additionally, Hebert faces up to one year in prison.

United States v. Smith, No. 3:09-cr-05590-BHS (W.D. Wash. *sentencing* Jan. 10, 2011)—Philip A. Smith, a commercial land developer, pleaded guilty to knowingly discharging a pollutant into approximately 98 acres of wetlands between August 2005 to October 2007. Smith used land clearing equipment to excavate wetlands and stream channels, and discharged the excavated materials without a permit. Smith was sentenced to three years probation, 120 days of home confinement, 100 hours of community service, and ordered to pay restitution in the amount of $20,000.

United States v. Duffiney, No. 1:07-cr-20501 (E.D. Mich. *sentencing* Nov. 16, 2010)—Wayne Duffiney was sentenced to 50 months in prison and was ordered to pay $57,308 in restitution for the discharge of pollutants without a permit after he intentionally sunk his boat in waters connected to Lake Huron. In May 2007, Duffiney hauled his 44-foot boat through the town of Cheboygan, Mich., to the Cheboygan River, and dumped the boat into the river. Duffiney then towed the damaged boat into Lake Huron and left it in the navigation channel.

United States v. Still No. 3:09-cr-00042-FDW (W.D.N.C. *sentencing* Sept. 3, 2010)—Daniel Still Jr. was sentenced to eight months in prison, a $2,500 fine, and restitution in the amount of $247,500 for his role in the negligent spill of approximately 3,100 gallons of burner fuel into the Catawba River. Still, as the owner of Still Services, contracted to demolish a textile plant located on the bank of the Catawba River. Still was aware that the site housed a 5,000 gallon above-ground tank full of burner fuel surrounded by a retaining wall. Still negligently drove the demolition equipment too close to the retaining wall leading to a break in the tank's fuel line and the release of burner fuel into the river.

United States v. Guinn, No. 3:09-cr-00414-SI (N.D. Cal. *sentencing* Aug. 31, 2010)—Mark Guinn, former manager of Brusco Tug & Barge Company, dumped, and ordered employees to dump, toxic dredge into navigable waters off the coast of California without a permit. Brusco Tug & Barge Co. previously pleaded guilty to the discharge and was sentenced to a $5.1 million fine, $250,000 of which was directed to environmental projects in the San Francisco Bay. Guinn was sentenced to 21 months in prison, three years of supervised release, and 200 hours of community service.

United States v. Jackie Taylor, No. 1:09-cr-00124-JRH (S.D. Ga. *sentencing* Apr. 12, 2010)—Jackie Mitchell Taylor, the former public works director of the Sardis, Ga., Wastewater Treatment Plant and Drinking Water System, was sentenced to five years probation, a $10,000 fine, and 100 hours of community service for the falsification of monitoring reports in violation of the Clean Water Act.

United States v. Ringler, No. 2:10-cr-00118-EPD (S.D. Ohio *sentencing* Oct. 19, 2010)—William Ringler, an Ohio pig farmer, was sentenced to three months imprisonment, three months of electronic monitoring immediately thereafter, a fine of $51,750, and ordered to pay restitution in the amount of $17,250 to the Ohio EPA Division of Surface Water for discharge violations of the Clean Water Act. Ringler pleaded guilty to the negligent discharge from his farm of thousands of gallons of liquid whey, a food supplement dairy byproduct, which killed more than 27,000 fish and other aquatic animals in June 2007.

United States v. Cellamare, No. 1:10-cr-00001-SM (D.N.H. *sentencing* June 1, 2010)—Laurence Cellamare, former environmental coordinator for AeroDynamics Inc., a metal finishing and plating business, was sentenced to a $3,000 fine and three years probation for the falsification of semiannual reports to EPA. Cellamare underreported the amounts of cadmium, zinc and nickel discharged from the AeroDynamics facility.

United States v. Confluence Consulting Inc., No. 2:10-cr-00019-JCL (D. Mont. *sentencing* Dec. 1, 2010)—Confluence Consulting, Inc. was sentenced to a fine of $10,000 for the discharge of unauthorized concrete blocks into the East Gallatin River. The company was using the concrete barriers to divert the flow of the river, and did not have a permit to place the barriers in the water.

United States v. Logan City Municipal Corporation, No. 1:10-cr-00012-BCW (D. Utah *sentencing* Feb. 23, 2010), **United States v. Cook**, No. 1:08-cr-00144-BCW (D. Utah *sentencing* Apr. 15, 2009)— Logan City Municipal Corporation pleaded guilty to the negligent discharge of several thousand gallons of polluted water from the Logan City Landfill into a ditch that drained into Cutler Reservoir. The company was sentenced to a $10,000 fine. Randall Cook, former manager of the Logan City Landfill, was charged separately for the negligent discharges and was sentenced to 60 days in prison (58 days suspended), 36 months supervised release, and a $3,000 fine.

United States v. Shaw, No. 1:09-cr-00270-BLW (D. Idaho *sentencing* Apr. 13, 2010)—John Shaw was sentenced to two years probation, 100 hours of community service, and a $5,000 fine for the negligent discharge of rock without a permit during the installation of rock ''rip rap'' on the bank of the Snake River in Idaho.

Federal Insecticide, Fungicide, and Rodenticide Act

United States v. Buerman, No. 1:10-cr-00072-ML (D.R.I. *sentencing* March 1, 2011)—John Buerman, an eBay salesman with an online store called ''Catsmartplus,'' pleaded guilty to the trafficking, distributing, and selling of unregistered, unlabeled, and counterfeit pesticides for cats and dogs under the trademarked brand names ''Frontline'' and ''Frontline Plus.'' Buerman falsely represented these products as EPA approved, and made more than $174,172 in online sales. When federal agents executed a search warrant after receiving a tip from a consumer whose cat had an adverse reaction to the pesticide, they discovered an illegal firearm. Buerman was sentenced to 24 months imprisonment and three years of supervised release.

Resource Conservation and Recovery Act—Hazardous Waste

United States v. Todd Rorie, No. 3:10-cr-00079-JD (N.D. Ind. *sentencing* Sept. 27, 2010), **United States v. Robert Scott Rorie**, No. 3:10-cr-00070-JD (N.D. Ind. *sentencing* Sept. 27, 2010)—Todd Rorie, and his brother Robert Scott Rorie, pleaded guilty to illegally storing and disposing of hazardous waste accumulated from Robert Scott Rorie's painting business, Midwest Custom Painting. More than 300 gallons of hazardous waste generated by the business were dumped on a roadside in St. Joseph County, Indiana. Robert Scott Rorie was sentenced to 18 months in prison and two years of supervised release, while Todd Rorie was sentenced to 12 months and one day in prison, and two years of supervised release.

United States v. Anches, No. 1:08-cr-00577-DAE (D. Haw. *sentencing* Feb 22, 2010 and Aug. 2, 2010)—Stephen Swift was sentenced to 27 months imprisonment, three years of supervised release, and a $7,500 fine for transporting and storing perchloroethylene, a hazardous waste commonly used in dry cleaning, without a permit. Jerome Anches stored the waste on the property of another until it was removed by Swift to his property. Anches pleaded guilty and was sentenced to five years probation, a $300,000 fine, and was ordered to immediately pay $84,000 to EPA as reimbursement for cleanup costs.

United States v. Tulip Corp., No. 1:09-cr-00406-WMS (W.D.N.Y. *sentencing* May 10, 2010), **United States v. Signore**, No. 1:09-cr-00339-WMS (W.D.N.Y. *sentencing* Feb. 17, 2010)—Tulip Corp., a plastics recycling company operating in Niagara Falls, N.Y., was sentenced to three years probation and a $100,000 fine for the storage of hazardous waste without a permit. Tulip Corp. purchased shredded battery casings, known as ''chips,'' from various suppliers and then reprocessed them by washing, drying and extruding them. On July 11, 2007, an environmental inspector found approximately 80,000 pounds of chips with lead levels above the regulatory threshold stored outside the facility. John Signore, the facility's plant manager, was separately sentenced to two years probation, a $3,000 fine, and 40 hours of community service.

United States v. Frost, No. 4:09-cr-00598-RWS (E.D. Mo. *sentencing* Apr. 9, 2010)—Robert Frost was sentenced to five years probation, three months of home confinement, and 300 hours of community service for the illegal disposal of hazardous roofing waste from the Complete Roofing Company Inc. In order to avoid the $10 per drum cost of disposal, Frost transported and abandoned 26 drums of waste to an abandoned homesite off the highway in St. Francois County, Mo.

United States v. Hoffman, No. 5:09-cr-00216 (S.D.W.V. *sentencing* Aug. 25, 2010), **United States v. Mills**, No. 5:09-cr-00215 (S.D.W.V. *sentencing* Sept. 22, 2010)—Rodney T. Hoffman and Christopher Shawn Mills of the Mills Plating shop in Beckley, W.Va., were sentenced to prison terms for the illegal storage of sulfuric acid and chromic acid, byproducts of the cleaning of tank plating. The hazardous waste was stored without a permit in open containers and abandoned after the shop moved to another location in Beckley. The West Virginia Department of Environmental Protection found the illegally stored materials, and EPA subsequently expended over $133,000 in site cleanup. Hoffman was sentenced to 30 months in prison and three years of supervised release, while Mills was sentenced to 18 months in prison and three years of supervised release. Both were held jointly and severally liable for EPA's cleanup costs.

United States v. Fuhs, No. 4:09-cr-00095-JEG (S.D. Iowa *sentencing* Apr. 29, 2010)—Bernard Eugene Fuhs, owner and operator of Rainbow Service, a drum and container reconditioning business for refurbished plastic and steel barrels pleaded guilty to the storage of hazardous waste without a permit. The company used, among other materials, acids to wash the barrels, which created thousands of gallons of acidic waste. Fuhs placed this waste on a neighboring business's property, causing the owners to incur cleanup costs of $522,622.94. Fuhs was ordered to pay restitution for the clean-up costs, and was sentenced to time served and three years of supervised release, including 10 months of home confinement.

United States v. Southern Union Co., No. 1:07-cr-00134 (D.R.I. *decision upheld on appeal* Dec. 23, 2010)—Southern Union Co., a company based in Hous-

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ton, Texas, was assessed $18 million dollars for illegally storing mercury in an unattended and frequently vandalized building in a densely-populated residential community in Pawtucket, R.I. The mercury was discovered after teenagers broke into the abandoned facility, and some of the containers were taken and later dumped in a nearby apartment complex. Cleanup of the apartment complex displaced 150 tenants for about two months. The $18 million assessment included a $6 million fine, as well as a $12 million payment under an environmental compliance plan to fund community initiatives including the Rhode Island Chapter of the American Red Cross, Hasbro Children's Hospital, the Distressed Communities Recreation and Acquisition Fund, and the Pawtucket Fire Department for acquisition of chemical spill response materials.

United States v. Duffey, No. 1:09-cr-00512-RWS (N.D. Ga. *sentencing* April 12, 2010)—John and Jennifer Duffey were sentenced to one year and one day in prison, followed by three years of supervised release, including six months of home confinement, for the illegal disposal of hazardous waste generated from the operation of their military training business. The Duffeys conducted simulated naphthalene or ''napalm'' bursts during the trainings. To avoid the $15,000 cost for proper disposal of the napalm from the trainings, the Duffeys stripped the labels from 1000 pounds of napalm containers, mixed the explosive powder with water, and instructed their employee to bury it on an adjacent landowner's property. In addition to their prison sentences, the Duffeys were ordered, jointly and severally, to pay $41,238.83 in restitution.

United States v. Selective Structures LLC, No. 3:10-cr-00061 (E.D. Tenn. *sentencing* June 8, 2010)—Selective Structures LLC, a billboard manufacturer, pleaded guilty to the illegal storage of hazardous waste without a permit and was sentenced to 37 months probation and a fine of $80,000. Selective Structures generated xylene solvent, a listed hazardous waste under the Resource Conservation and Recovery Act, during the course of the company's normal operations. The xylene solvent was used to clean billboard painting equipment. Rather than disposing of the waste, the company allowed it to accumulate, and then stored it in barrels at their Athens, Tenn., facility. On or about April 17, 2008, personnel from the Tennessee Department of Environment and Conservation inspected and found more than 6,000 kilograms of the solvent stored in the facility.

United States v. Costa, No. 2:09-cr-00744-DB (D. Utah *sentencing* Dec. 15, 2010)—Andrew Costa, of Salt Lake City, Utah, was sentenced to 21 months in prison, 36 months of supervised release, and $70,392.51 in restitution payments to cover the cost of clean-up for the illegal disposal of 67 drums of hazardous waste. Costa left drums containing leachable lead on the shoulder of a Salt Lake City public road, where some of the contents spilled onto the roadway. EPA spent more than $70,000 to remove and clean up the hazardous waste.

Lead Hazard Reduction Act—Hazardous Waste

United States v. Sattler, No. 3:09-cr-00278-JGM (D. Conn. *sentencing* Mar. 4, 2010)—Sandra Sattler, the former supervisor of leasing agents for the Carabetta Management Co., which owns thousands of residential units in Connecticut and Massachusetts, was sentenced to six months probation, 15 hours of community service, and ordered to pay a fine of $2,500 for her failure to ensure that leasing agents under her direction provided lead-based paint disclosures to tenants as required under the Lead Hazard Reduction Act. Additionally, Sattler and other leasing agents forged tenant signatures on the lead paint disclosure forms.

Toxic Substances Control Act—Hazardous Waste

United States v. Todaro, No. 1:10-cr-00268-KMW (S.D.N.Y. *sentencing* Dec. 21, 2010)—Saverio Todaro, a former EPA certified lead risk assessor and New York State asbestos air sampling technician, pleaded guilty to falsifying hundreds of lead and asbestos inspection reports throughout the New York City area. In February 2004, the City of New York suspended Todaro's asbestos investigator certificate but Todaro continued to work, operating through a company called SAF Environmental Corp. Todaro was sentenced to 63 months in prison, three years of supervised release, a $45,000 fine, restitution in the amount of $107,194.00, and forfeiture of $304,395.

Oil Pollution Act/Act to Prevent Pollution From Ships/Ports and Waterways Safety Act—Ocean Dumping

United States v. Fleet Management Ltd., No. 3:08-cr-00160-SI (N.D. Cal. *sentencing* Feb. 19, 2010)—Fleet Management Ltd., a Hong Kong-based ship management firm, pleaded guilty to a criminal violation of the Oil Pollution Act of 1990, as well as felony obstruction of justice and false statement charges. The firm was ordered to pay $10 million and sentenced to three years probation for its role in the Cosco Busan oil spill and related cover-up after the ship struck the San Francisco Bay Bridge in November 2007. Fleet Management concealed ship records and falsified and forged documents to influence the Coast Guard's investigation. The collision killed at least 2,000 migratory birds including Brown Pelicans, Marbled Murrelets and Western Grebes. Pursuant to the plea agreement, Fleet Management was ordered to direct $2 million of the $10 million penalty to fund marine environmental projects in the San Francisco Bay. The firm was also ordered to implement a comprehensive compliance plan to heighten training and voyage planning for ships engaged in trade with the United States.

United States v. Irika Shipping S.A., Nos. 1:10-cr-00403-JSM and 1:10-cr-00372-JSM (D. Md. *sentencing* Sept. 21, 2010)—Irika Shipping S.A., a ship management corporation, pleaded guilty to felony obstruction of justice charges and violation of the Act to Prevent Pollution from Ships. Irika was ordered to pay more than $4 million in fines and community service restitution for deliberately concealing vessel pollution from the *M/V Irana*, one of the company's cargo ships that made port calls in U.S. cities. The ship's chief engineer directed the dumping of approximately 6,000 gallons of waste oil overboard through a bypass hose that circumvented pollution prevention equipment. Irika also received five years probation, during which the company is required to develop an enhanced environmental compliance plan covering all its ships, including any new vessels.

United States v. Sikharulidze, No. 4:10-cr-00032-D (E.D.N.C. *sentencing* Aug. 17, 2010)—Vaja Sikharulidze, former chief engineer of the Motor Tanker *Chem Faros*, operated by Cooperative Success Mari-

time S.A., pleaded guilty to violating the Act to Prevent Pollution from Ships for failure to properly maintain an oil record book recording disposal of contaminated waste. On at least one occasion, Sikharulidze directed subordinate crew members to bypass the ship's oil-water separator, and pump oil-contaminated waste directly overboard. Approximately 13,200 gallons of oil-contaminated waste was discharged into the ocean. Sikharulidze received one year probation and 7 days of home confinement for his conduct.

United States v. Avaz, No. 8:10-cr-00286-JSM (M.D. Fla. *sentencing* Sept. 7, 2010), **United States v. Mogultay**, No. 8:10-cr-00264-JDW (M.D. Fla. *sentencing* Aug. 26, 2010); **United States v. Atlas Ship Management Ltd.**, No. 8:10-cr-00363-SDM (M.D. Fla. *sentencing* Dec. 2, 2010—Gunduz Avaz, a Turkish citizen and the chief engineer on the cargo ship M/V *Avenue Star*, operated by Atlas Ship Management Ltd., was sentenced to five years probation for failing to fully and accurately maintain an oil record book in violation of the Act to Prevent Pollution from Ships. Avaz failed to record illegal discharges of oil-contaminated waste from the engine room of the ship that was transferred to a ballast storage tank, and then disposed of at sea as the vessel traveled from Honduras to Tampa, Fla. Yavuz Mogultay, the second assistant engineer, was charged separately for the use of a bypass hose to discharge waste and the failure to record the discharges in the ship's oil record book. Mogultay was sentenced to five years probation. Atlas Ship Management Ltd. separately pleaded guilty to making false statements and knowingly failing to accurately maintain an oil record book. The company was sentenced to three years probation and a $800,000 fine. The company was also ordered to pay $100,000 to the National Fish and Wildlife Foundation, and implement an environmental compliance program covering inspection and audit of its ships that sail into the United States.

United States v. Aksay Denizcilik Ve Ticaret A.S., No. 8:10-cr-00116-RAL (M.D. Fla. *sentencing* May 21, 2010)—Aksay Denizcilik Ve Ticaret A.S., a Turkish corporation that operated the ship *M/T Kerim*, pleaded guilty to making a false statement and failure to fully and accurately maintain an oil record book. Between 2006 and 2009 officers and crew of the *M/T Kerim*, under the direction of Aksay, used a pipe to bypass the ship's oil pollution prevention equipment and discharge oil-contaminated waste directly into the ocean. Aksay was sentenced to three years probation and a $725,000 fine, and ordered to implement an environmental compliance program.

United States v. DRD Towing Co. LLC, No. 2:10-cr-00191-ILRL (E.D. La. *sentencing* Jan. 19, 2011), **United States v. Dantin**, No. 2:10-cr-00190-ILRL (E.D. La. *sentencing* Jan 19, 2011)—DRD Towing Co. LLC pleaded guilty to a felony violation of the Ports and Waterways Safety Act, and a misdemeanor violation of the Clean Water Act. Randall Dantin, a co-owner of the company, also pleaded guilty to a separate charge of obstruction of justice. DRD Towing assigned employees to operate vessels without proper Coast Guard licensing, paid captains to operate without a relief captain, and created environmentally hazardous conditions by negligently discharging oil. The company admitted that the *M/V Mel Oliver* was pushing a tanker barge of fuel oil when it crossed the path of the *M/T Tintomara* and caused a collision resulting in the discharge of 282,686 gallons of fuel into the Mississippi River. DRD Towing was sentenced to two years probation and a $200,000 fine, while Dantin was sentenced to 21 months in prison, two years of supervised release, and a $50,000 fine.

United States v. The China Navigation Co. Pte. Ltd., No. 3:10-cr-05181-BHS (W.D. Wash. *sentencing* Mar. 22, 2010)—The China Navigation Co. Pte. Ltd., a marine cargo vessels operation, pleaded guilty to a felony violation of the Act to Prevent Pollution from Ships based on its failure to maintain an oil record book. The oil record book failed to note that the crew had discharged approximately 275 gallons of oil-contaminated waste collected by crew members after an on-board oil spill in violation of the International Convention for the Prevention of Pollution from Ships. Pursuant to the plea agreement, the company agreed to pay a $75,000 fine, serve two years probation, implement an environmental compliance plan, and pay $25,000 to the Columbia River Estuarine Coastal Fund.

United States v. Cooperative Success Maritime S.A. , No. 4:10-cr-00035-D (E.D.N.C. *sentencing* June 7, 2010)—Cooperative Success Maritime S.A., the operator of the *M/T Chem Faros*, a cargo ship that regularly transported cargo between foreign ports and the United States, pleaded guilty to violation of the Act to Prevent Pollution from Ships and making false statements. The crew of the *M/T Chem Faros* discharged approximately 13,200 gallons of oil-contaminated waste into the ocean, and falsified entries in the oil record book to conceal the amount of oil-contaminated bilge waste that was actually stored aboard the ship. The company was sentenced to a $850,000 fine, of which $150,000 was directed to the National Fish and Wildlife Foundation, five years probation, and the implementation of an environmental compliance program.

United States v. Dimitrios Dimitrakis, No. 4:10-cr-00552-DLJ (N.D. Cal. *sentencing* Sept. 30, 2010)—Dimitrios Dimitrakis, chief engineer of the *M/V New Fortune* cargo ship, was sentenced to three years probation, and a $5,000 fine for aiding and abetting the failure to maintain an oil record book. Dimitrakis routinely ordered his crew to bypass the oil pollution prevention equipment and discharge oil-contaminated materials directly into the ocean when entering U.S. waters. Dimitrakis concealed these discharges via false entries into the ship's oil record book. Volodymyr Dombrovskyy, another crew member, was sentenced to two years probation, and a $500 fine for aiding and abetting the failure to maintain an oil record book. Transmar Shipping Co. S.A., the ship's operator, was separately sentenced for failure to maintain an oil record book and false statements made to a federal official, three years probation, a $750,000 fine, a $100,000 community service payment to the National Fish and Wildlife Foundation, and was ordered to implement an environmental compliance program.

Safe Drinking Water Act

United States v. Morgan, No. 1:10-cr-00017-SJM (W.D. Pa. *sentencing* June 24, 2010)—Michael Evans, 25 percent owner of Swamp Angel Energy LLC, an oil and gas development company, and site supervisor John Morgan, pleaded guilty to charges of violating the Safe Drinking Water Act for dumping 200,000 gallons of brine produced during oil drilling into the Allegheny National Forest. Evans was sentenced to three years probation, 10 months home detention, a $5,000 fine,

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and 80 hours of community service. Morgan was sentenced to 3 years probation, 8 months home detention, and a $4,000 fine.

United States v. Sparks, No. 2:10-cr-04021-NKL (W.D. Mo. *guilty plea entered* Aug. 13, 2010)—Richard Sparks, maintenance supervisor and public works superintendent for Stover, Mo., pleaded guilty to charges of violating the Safe Drinking Water Act. According to the plea agreement, Sparks submitted a public water supply chain of custody record to the Missouri Department of Natural Resources that contained a false sampling location. Sparks faces up to five years in prison, three years of supervised release, a $250,000 fine, and an order of restitution.

MULTIPLE STATUTES

Clean Water Act & Endangered Species Act

United States v. McConnell, No. 3:10-cr-00205-CWD (D. Idaho *sentencing* Dec. 14, 2010)—Paul McConnell, Donna McConnell, and James Renshaw, all residents of Kooskia, Idaho, were each sentenced to two years probation, and fine of $2,500 fine for the discharge of a pollutant in violation of the Clean Water Act, as well as the unlawful taking of a threatened species in violation of the Endangered Species Act. A fourth defendant, Barton R. Wilkinson, was sentenced to two years probation and a $2,000 fine for the unlawful taking of a threatened species. In August 2007, the McConnells engaged their neighbors, Renshaw and Wilkinson, to help them channel a creek on their property to prevent flooding. The channelization produced large amounts of silt and severely damaged a steelhead trout habitat downstream at the Kooskia National Fish Hatchery.

United States v. West, No. 3:10-cr-00078-HA (D. Or. *sentencing* Mar. 29, 2010)—Gary West was sentenced to three years probation for intentionally rerouting the flow of the South Fork Little Butte Creek, thereby harming a population of endangered coho salmon in violation of the Clean Water Act and the Endangered Species Act. West, without a permit, used fill to create a berm to divert the stream flow into a newly excavated channel between October 2007 and November 2007.

Clean Water Act & Resource Conservation and Recovery Act

United States v. Ken-Dec Inc., No. 1:10-cr-00003-JHM (W.D. Ky. *sentencing* June 7, 2010)—Ken-Dec, Inc., a former metal plating business, and the plant's former manager, David Lester Becker, were sentenced for felony violations of the Clean Water Act and the Resource Conservation and Recovery Act. Becker and the company discharged electroplating wastewater to a local publicly owned treatment works in violation of the Clean Water Act, and disposed of electroplating waste through a hose that emptied onto the ground outside the facility in violation of the Resource Conservation and Recovery Act. Ken-Dec Inc. was sentenced to a fine of $700,000, and Becker was sentenced to 18 months in prison and two years of supervised release.

Federal Insecticide, Fungicide, and Rodenticide Act & Migratory Bird Treaty Act

United States v. Bee, No. 3:10-po-00044-MRM (S.D. Ohio *sentencing* June 3, 2010)—Richard A. Bee, the operator of a small feed crop farm in Batavia, Ohio, pleaded guilty to two misdemeanor counts of the unlawful use of a pesticide in violation of FIFRA, and the killing of migratory birds in violation of the Migratory Bird Treaty Act. Bee, with the intent of killing migratory birds, mixed Furadan, an insecticide that works like a nerve agent, with corn into buckets in his field as bait. Bee killed 16 birds including two Canada Geese, one American Crow, two Mallard Ducks, seven Mourning Doves, one Red-tailed Hawk, and three other unidentifiable birds. Bee was sentenced to a fine of $18,750, one year probation, and a community service payment of $6,250 to the Animal Rescue Fund Inc. of Ohio.

Resource Conservation and Recovery Act & Safe Drinking Water Act

United States v. Texas Oil and Gathering, No. 4:07-cr-00466 (S.D. Tex. *sentencing* July 21, 2010)—Texas Oil and Gathering, Inc. (TOG), an oil and gas refinery was sentenced for conspiracy to dispose of hazardous waste without a permit in violation of the Resource Conservation and Recovery Act. TOG was sentenced to three years probation and ordered to pay an $80,000 fine, but was given credit for $50,000 paid by John Kessel, the company owner. Edgar Pettijohn, the operations manager, and Kessel each received five years probation for conspiracy to violate, and violations of, the Safe Drinking Water Act. The two men disposed of oil-contaminated wastewater from TOG's refinery process in an underground injection well permitted to accept only wastes generated by oil and gas production.

OTHER

United States v. Quinn, No. 2:10-cr-00106-DBH (D. Me. *sentencing* Nov. 16, 2010)—Daryl Quinn, a salesperson for Water Treatment Equipment Inc., pleaded guilty to one count of mail fraud for a scheme in which Quinn falsified water tests. The company analyzed water issues such as contamination, offensive odor, and taste, and offered solutions such as water demineralization and removal filter systems. In 2008, the company installed a water purification system for a customer that allegedly was capable of removing uranium from the customer's well water. Quinn told the customer that the uranium levels in the well after testing were acceptable when they were not. Quinn was sentenced to three years probation, a $3,500 fine, and $950 in restitution.

United States v. Harris, No. 2:10-cr-01006-LRR (N.D. Iowa *sentencing* Aug. 26, 2010)—Scott John Harris, a former operator of the City of Edgewood Water Treatment Plant, pleaded guilty to submitting false testing reports for fluoride, chlorine, and manganese in violation of 18 U.S.C. § 1001. Harris did not perform the tests but submitted false entries indicating the tests had been performed to the Iowa Department of Natural Resources. Harris was sentenced to two years probation, 100 hours of community service, and a fine of $1,000.

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The opinions expressed here do not represent those of BNA, which welcomes other points of view.

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