

Environmental Enforcement and Crimes Committee Newsletter

Vol. 6, No. 3

May 2005

MESSAGE FROM THE CHAIR

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Greetings from the Chair!

It seems that every Message from the Chair opens with "Once again, we have been somewhat busy since the last newsletter." It is no different this time . . . we have been busy.

We submitted a proposal for a panel at the 13th Section Fall Meeting which has been accepted, in part. Other committees submitted similar proposals on electronic discovery and so we are cosponsoring a panel. Mark your calendars now for Sept. 21-24, 2005 for the 13th Section Fall Meeting in Nashville, Tennessee.

As I previously reported, the committee met in Atlanta, Georgia, on Aug. 10, 2004, to discuss the upcoming year and what the committee will try to accomplish. We had a follow-up meeting in Scottsdale, Arizona, on Feb. 8, 2005. At this latest meeting, we tried something new . . . we invited Environmental Enforcement and Crimes Committee (EECC) members in the area to attend. Several took us up on the offer. Those that did heard Bruce Pasfield talk about the U.S. EPA's enforcement accomplishments report and enforcement trends. They also heard another one of our vice chairs, Larry Gustafson, give

the overview of the internal investigations teleconference material.

The last newsletter was chock full of good, useful information. We are continually working on creating and presenting even better newsletters. While we have regional reporters in place, we are always looking for more participation. If you have an interest in getting timely regional information into the newsletters for your colleagues, please let me know. The newsletter editors work very hard to put a quality product together and with the help of our membership, it can only get better.

Now is also the time to get involved in the committee. If you have an interest in participating on this committee as a vice chair, let me know and I will pass your name on to the ABA leadership for consideration for next year's committee leadership. We would love to have your active participation!

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**MESSAGE FROM THE
PUBLIC SERVICE VICE CHAIR**

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In the last issue of the Environmental Enforcement and Crimes Committee (EECC) Newsletter, I mentioned that I was able to spend some time with Public Service vice chairs of other committees at the 12th Section Fall Meeting in San Antonio in October 2004. Those discussions led to a plan to compile a list of contacts in each U.S. EPA region for environmental whistleblowers. We are seeking assistance from EECC members from each region to help with providing contact information for whistleblowers, and ideas on who might be interested in receiving the information we compile. Please contact me directly at (317) 236-2262 or terri.czajka@icemiller.com with any feedback or information you may wish to provide on this issue. Thank you.

COMMITTEE NEWS

**SUCCESSFUL EECC MEETING IN
SCOTTSDALE, ARIZONA**

Laurence K. Gustafson
Haynes and Boone, L.L.P.
Dallas, Texas

On Feb. 8, 2005, the Environmental Enforcement and Crimes Committee (EECC) met in a public session in Scottsdale, Arizona, to conduct committee business and to provide a resource for environmental practitioners in the Phoenix area interested in learning about environmental enforcement developments. During the morning meeting, Bruce Pasfield, Assistant Section Chief, Environmental Crimes Section, U.S. Department of Justice, presented an informative survey of environmental enforcement trends and a summary of new initiatives by the Environmental Crimes Section. Larry Gustafson, a former

Department of Justice prosecutor and currently a partner with Haynes and Boone, L.L.P., provided a summary of many of the new and still unsettled issues involved in conducting an internal investigation of a corporation. Larry recounted many of the difficult problems faced by the government, the company being investigated and counsel conducting the investigation.

The format of the Scottsdale meeting was new. Walt James, chair of the EECC, is striving to make the committee more responsive and more accessible to its membership throughout the country. In this vein, the EECC Scottsdale meeting was designed with a dual purpose in mind: a regularly scheduled committee meeting to discuss committee work and upcoming projects, and an open public meeting to present useful information to local practitioners and to elicit feedback from those practitioners to make the committee more responsive to their needs.

The response at the Scottsdale meeting confirmed the need for such an “outreach” format in regional areas of the country. With the success of the Scottsdale meeting, and with the promise of future interest in such meetings by committee members, the EECC is now planning similar public sessions to be held several times a year in additional regions.

For more information about the Scottsdale meeting, contact Larry Gustafson at (214) 651-5635 or laurence.gustafson@haynesboone.com.

MEMBERSHIP NEWS

Matthew Klein, formerly of Kroger, Gardis & Regas, LLP, has been appointed by Indiana’s governor Mitch Daniels to the position of assistant commissioner of Compliance & Enforcement with the Indiana Department of Environmental Management. Congratulations Matt! Mr. Klein’s new contact information is Matthew T. Klein, Esq., Assistant Commissioner of Compliance & Enforcement Indiana Department of Environmental Management, 100 North Senate Ave., Indianapolis, Indiana 46206-6015, (317) 233-3978 phone, (317) 233-6647 fax, mklein@idem.in.gov.

TOPICAL REPORTS

INTENTIONAL RELEASE HELD “USE OF A DEADLY WEAPON” – *State v. Lashley*, No. F04-01663 (283rd Dist. Ct. Dallas County, Tex. Jan. 4, 2005)

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[In order to timely report this case, this synopsis was prepared from facts obtained from interviews of the Honorable Judge Vickers L. Cunningham, Sr., Judge, 283rd Criminal District Court; Jay Ethington, counsel for the defendant; and Robert P. Abbott, appellate counsel, without the benefit of the trial transcript.]

Introduction

The state of Texas may have set a national precedent last month by successfully convincing a Dallas jury that an intentional release of sewage was “use of a deadly weapon” with the intent to cause harm. In addition to the ruling, the facts and trial of this case are loaded with enough “smoking guns” to cause some corporate and municipal officials to run for cover.

The defendant, an unemployed computer specialist, found work maintaining portable toilets. His job was to empty “porta-potties” after adding disinfectant to the human waste and, when his vacuum truck was full, to transport the material to a wastewater treatment plant for disposal. He had worked for less than four months when, during “Sweeps,” a local television station broadcast a videotape showing the defendant releasing the contents of his truck into a ditch/creek on four separate occasions. The intermittent stream eventually led to the Trinity River, the longest river in Texas, whose water in the Dallas area is approximately 85 percent wastewater effluent from publicly-owned treatment works.

Not surprisingly, the bill of indictment, addressing only the release in January 2004, charged the defendant

with the intentional and knowing discharge of waste and pollutant, “to wit: sewage” into a water of the state without a permit in violation of Section 7.145 of the Texas Water Code. The penalty – no more than 5 years imprisonment and/or a fine of \$1,000-\$100,000.

However, in a surprise tactic after the defendant would not accept the state’s offer of a plea bargain requiring mandatory incarceration, the State re-indicted the defendant a month before trial to include the allegation that the defendant intentionally and knowingly used a deadly weapon, “to wit: sewage” in a manner that was capable of causing death and serious bodily injury in violation of Section 1.07(17) of the Texas Penal Code.

Analysis

The “deadly weapon” offense is traditionally used when firearms are involved with a crime or sometimes when an automobile is driven so recklessly that it causes a death. However, the definition is broader. The Texas Penal Code at 1.07 (17) (B) defines “deadly weapon” to mean: “anything that is used or intended to be used with the intent to cause and is capable of causing death or serious bodily injury.” So, theoretically, anything can be a deadly weapon depending upon the manner and means used so long as it is capable of causing a serious tort. In a strange way, it arguably supports the scientifically recognized principle that “the dose makes the poison.”

In reality, the deadly weapon offense carries more punishment than meets the eye – especially when compared to pollution cases. The rules governing the opportunity for parole/probation are different and more stringent. Most importantly, if a defendant is sentenced to prison, he is not eligible for parole until one-half of the sentence has been served. The appeal bond considerations are different and usually more stringent. And, prisoner privileges and work assignments are more restricted than for polluters.

At trial, the judge allowed the television station to film the proceedings. The original broadcast and additional footage was shown to the jurors – including a scene where the television reporter waded in the waste to sample the water wearing minimal protective gear. The

television producer offered testimony about the incidents. No mention was made of the timing of the disclosure or why the media taped four events (rather than one or two) before coming forward. There was no videotape of the state-approved clean up conducted by the defendant’s employer.

The County Health officer testified that 500 gallons of sewage (the maximum that the vacuum truck could hold) was capable of causing serious bodily injury, particularly in children. The defense proffered a recent unprosecuted incident by way of comparison. In March 2004, a sluice gate malfunctioned at the Trinity River Authority (TRA) sewage treatment plant dumping millions of gallons of raw sewage “launching manhole covers into the air and sending geysers as high as 4 feet” before depositing the waste onto a golf course and into the Trinity River. The health official discounted the seriousness of the incident explaining that the TRA’s raw sewage was diluted and would not likely cause harm because the spilled sewage contained both toilet waste and waste from domestic activities, such as washing, bathing and food preparation. A TRA spokesman, commenting on television about its incident, said the spill would not harm people although it could kill a few fish.

The defendant admitted that he released the material but denied that he intended to hurt anyone. He pointed out that the ditch was already contaminated with other refuse and the river in the area had previously been classified as “septic.”

The jury was charged with determining not only whether the defendant had intentionally caused water pollution without a permit but also whether the defendant “used a deadly weapon, namely sewage, during the commission of the offense?” The jury charge defined “deadly weapon” as: “anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.”

The jury found the defendant guilty of the water pollution offense and made a deadly weapon finding. The jury assessed punishment at 5 years imprisonment with a \$10,000 fine and recommended probation. The judge, incensed by the crime, required 5 months of

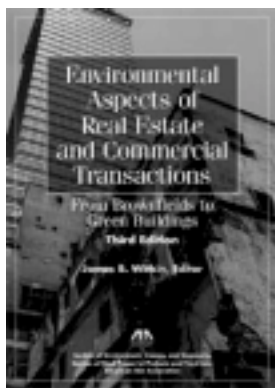
incarnation in the county jail, “one month for each month of employment” in addition to a 10-year term of probation and a \$10,000 fine. Before the defendant was led away in handcuffs to begin serving his sentence, the judge further chastised the defendant stating that the offense was, “Nasty.”

Conclusion

The case is being appealed by a court appointed lawyer who will likely argue that there was insufficient evidence to support the finding of use of a deadly weapon. However, until such time as an appellate decision is rendered, this case stands as Texas precedent. Terrorists, septic tank owners, businessmen and city employees beware – if you consciously release anything “nasty” into waters of the state of Texas – the release may trigger a finding and punishment more egregious than merely causing pollution. And, at least in Texas, a dose of sewage may be poison.

Perhaps another court on another day will determine whether the media has an immediate duty to report its observation of a crime when a deadly weapon is involved.

Books from the Section of Environment, Energy, and Resources and ABA Publishing



www.ababooks.org

ENVIRONMENTAL ENFORCEMENT: HOW TO GET, AND KEEP, THE ATTENTION OF THE GOVERNMENT

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[The editors solicited this article from EECC member Mitchell Klein, formerly the senior environmental civil prosecutor for the Arizona Attorney General's Office. Among Mitchell's many talents and abilities, he is well known to his Arizona colleagues for his sense of humor. In this article Mitchell provides us with some tongue-in-cheek advice for those who use a terminally gaffe prone approach to dealing with government officials. Thanks Mitchell, we'll put this advice into practice right away!]

Overcoming Regulatory Attention Deficit Disorder

You have just been retained by a client that has received a letter from an environmental agency alleging various violations. The letter demands that the activities complained of cease immediately, and the payment of penalties to resolve the matter. Let us assume that the agency's claims are arguable, and your client has some legitimate defenses. You know that the agency is overwhelmed and overworked. It has other, more serious problems to deal with. Not to mention newer issues, inspections and permits to concentrate on. With the agency facing such pressing demands, how can you keep the agency's attention focused on your client? That is what your client needs, right – *the full attention of the regulators and their attorneys?*

The following tips can assist you in preventing those regulators from being distracted by other things, and keep them focused on your client's case. By following these tips, you will ensure that the regulators take a deep and abiding interest not just in this case, but in all aspects of the client's business. It is just what your client needs.

The Underlying Allegations

The first thing to recognize is that if a perceived problem is corrected, the agency will lose a lot of interest. Do not let this happen. Do not correct or change the so-called problem. After all, the client has a legitimate defense, so there is no reason to change anything. Even if correcting the so-called problem will not cost very much or affect the client's business in a negative manner, do not give in to temptation. Do not examine why the situation is perceived as a problem. Do not offer any reasonable changes or compromises that would give the regulator an opportunity to close the file. Simply insist upon the righteousness of your position, and make it a matter of principle. Do not give the agency an opportunity to make a graceful exit. If you put the regulator into a position where they can not do anything to resolve the situation other than admit their position is totally wrong and the letter was completely unwarranted, it will prevent the regulator from ever losing focus on the case.

Next, make sure to frustrate the investigation. Do not provide documents or even explanations. After all, the regulators must already know everything, or else they would not have sent the letter. If you are forced to respond, wait for months before sending anything. Then, send the information piecemeal. Behave as though you misunderstood what was requested. Some attorneys mistakenly believe that acting like this will get the government frustrated, and the regulators will lose focus. Not to worry. This type of behavior keeps your client's file on top of the pile. It's like playing hard to get with a date. Mystery demands attention. With any luck, the regulators will call in their attorneys for assistance. That is always a good thing.

The only thing better than failing to cooperate, is pretending to cooperate. Write carefully phrased letters that sort of answer questions, but in reality do not. Use misdirection by omitting certain facts and details. If you get caught later, you can always tell them that you never lied; you merely failed to correct their misconceptions. They will be very impressed with your cleverness. Because such cleverness would only be devoted toward something important, they will want to continue to look into the matter ever more carefully. Now they will be interested!

The next thing to do is write long detailed letters on the legal issues. Try to include obscure references to guidance at other agencies and lengthy quotes from cases discussing the complex interplay of statutory construction. Regulators love that stuff. Make sure to stay away from anything that would be a common sense approach to the subject. The regulators do not want simple and straightforward responses, they like anything that makes the evaluation of the problem seem complex and difficult. A complex case is an important case. The more important the case, the more attention will be paid.

If the issue involves guidance documents, remind the regulators that your client is special. Rather than explaining how the situation fits in with the guidance, suggest that the guidance should be ignored in your case. Its just *guidance*. Your case is so important that it deserves special attention.

If there is no question that your client is violating the law, make sure to insist that the regulator prove to you that everyone else in the regulated community is in compliance. There is no justification for your client to be compelled to obey the law unless everybody else has been compelled as well. Regulators have the same respect for this argument as traffic patrol officers, and it is guaranteed to grab attention.

Finally, make an offer to resolve the matter that is so low or ridiculous that you can be certain the regulators recognize how little your client cares about this matter, and regulatory compliance in general. This will definitely keep their attention.

Dealings with the Regulators

But what if your client really hasn't done anything very wrong, and its position is righteous or the violations are minimal? How can you make sure to keep the regulator's attention in this difficult scenario?

Easy - all you have to know is how to act with regulators, and it is very simple: Make sure that the regulators believe you think they are inept, poorly educated and lazy. The easiest way of doing this is to simply tell them. Remind them that you and your consultants are much smarter than they are. (It is

always helpful to have a smug, dismissive consultant in these matters). Be condescending in your tone, and insult their education or background. Remind them that your client's taxes pay their salaries. A personal favorite is to vaguely remind them that their inferiority is why they work for the government. Tell them about all the politically powerful people you know, and how easy it would be to have them fired. That will definitely get their attention.

Another easy way of accomplishing this goal is to go over their heads. Ignore the project manager and call the boss. Direct all of your correspondence to only the top program people. If you are one of those people whose personality does not fit with personal confrontation, this is an easy way of saying "I am much too important to deal with a low level peon like you." It is very important that you do these things in person. At meetings, you want to make the right impression, so make sure to talk down to the regulators and scream a lot. This is even more effective if there are a lot of people at the meeting, and it works particularly well if you insult the high level regulators in front of their staff. Make sure your client is present. Even if the client does not join in the insults, it is important that the regulators be humiliated in front of the client. That way, the regulator does not forget who really deserves the attention.

This sort of behavior is guaranteed to keep the regulators attentive, even if the case does not really merit the attention. You need not worry about how this behavior may affect any future dealings with the agency. Regulators and government attorneys never let their emotions or personal feelings about cases or individuals affect the way that they handle cases.

In summation, you must deal with government regulators like they are small children with short attention spans. Do not allow them to get distracted from your case. Make sure you regularly remind them how important your case is by keeping things interesting and mystifying. If you treat them with respect and recognize their positions as legitimate concerns, their minds will wander off onto other cases. You would not want that to happen, would you?

ACCESS TO GOVERNMENT PROSECUTOR NOTES

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It is one of the most sacred and cherished tenets of the legal profession: a lawyer's notes are shielded from production in litigation. Sounds good, doesn't it? In a criminal prosecution, however, the rules are different and a defendant may actually get access to at least a portion of the government prosecutor's handwritten notes in at least four different situations. While three of these situations are commonly recognized, the fourth is not. Obviously, such access can provide defense counsel with a potential gold-mine of information.

The first three situations where a government lawyer may have to disclose a portion of her notes arise from three U.S. Supreme Court cases: *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Jencks v. United States*, 353 U.S. 657 (1957) (which was codified at 18 U.S.C. § 3500). Under these cases, the government must produce to a criminal defendant all exculpatory material (*Brady*), all discussions of leniency with an accomplice witness (*Giglio*) and all statements made by a testifying witness (*Jencks*). In these situations, the fact that the relevant information is contained in the notes of a government prosecutor does not bar its production. This is not to say that the government has willingly conceded this point. Indeed, in *Goldberg v. United States*, 425 U.S. 94 (1976), the government litigated this issue in the *Jencks* context all the way to the Supreme Court (where it lost).

But what about the fourth situation? Imagine a zealous prosecutor leading the investigation into XYZ Corp.'s environmental practices. The criminal investigation focuses on alleged violations of federal air and

hazardous waste laws. Not content to merely sit on the sidelines and serve as an advocate, the government lawyer participates in and indeed leads the investigation of XYZ Corp. Throughout the investigation, the government lawyer, along with case agent, conduct interviews of numerous current and former employees of XYZ Corp. Further, both the government lawyer and case agent take copious notes during the interviews. Now flash forward a year later and XYZ Corp. has been indicted, along with the president and vice president of EHS for XYZ Corp. Assuming that the prosecutor's notes are not discoverable under any of the three theories described above, how can defendant XYZ Corp. get access to them?

The answer is that the government lawyer's notes may be "a written record containing the substance of . . . [a] oral statement" made by the defendant and may thus be discoverable under Rule 16(a)(1)(B)(ii) of the Federal Rules of Criminal Procedure. Tellingly, the Rule does not differentiate between different types of records – once a record contains the type of information covered by Rule 16(a)(1)(B)(ii) it *must* be furnished to the defendant upon his request. Rule 16(a)(1)(B)(ii) is narrow in that it only applies to written records of oral statements made by the *defendant*. The rule does not require the government to disclose statements which relate to a witness. *See* 18 U.S.C. § 3500.

In this example, it is important to keep in mind that the government lawyer interviewed a number of current and former employees of XYZ Corp. Under Rule 16(a)(1)(C), if the government contends that any of these employees made a statement that was legally able to bind XYZ Corp., then XYZ Corp. is entitled to that statement. This is because XYZ is essentially seeking its own statements as a corporate defendant. The situation is analogous to one where an individual defendant charged with a federal crime seeks the production of a statement that he himself made to the government.

It goes without saying that the government will almost certainly strongly oppose this argument. In addition to a broad, totemic invocation of the work-product privilege, the government will likely invoke Rule

16(a)(2), which incorporates the work-product privilege into Rule 16. In doing so, the government will ignore the exclusion that begins Rule 16(a)(2), which excepts out Rule 16(a)(1) from the scope of Rule 16(a)(2). Using a common sense reading of Rule 16(a)(1) and Rule 16(a)(2) yields the following: to the extent that a document falls within the scope of Rule 16(a)(1), it may not be withheld by the government under Rule 16(a)(2).

When you think about it, this approach makes perfect sense. A government lawyer's notes should not be protected merely because she happens to be a lawyer. Instead, the protection should only apply when the lawyer is acting as a lawyer. If the government lawyer participates in an investigation, and takes notes that fall within the scope of Rule 16(a)(1), then the lawyer is acting like an investigator and her notes should not receive heightened protection. Conversely, as long as the government lawyer is taking notes as lawyer – addressing her internal thoughts and trial strategy – those notes will not fit within the limited reach of Rule 16(a)(1) and will be protected from production under Rule 16(a)(2). In many cases, a defendant will be provided a copy of the case agent's FBI 302 report, which is a typed statement containing the statement of the employee that the agent deemed relevant. However, to the extent that the government lawyer writes down the substance of any relevant oral statement (*i.e.*, Mr. Smith said. . .), than that statement must also be provided to the defendant upon request, even if the defendant has been provided a copy of the FBI 302 report.

The focus on the actions of the prosecutor, as opposed to her title, is consistent with long-standing Supreme Court precedent. In the 42 U.S.C. § 1983 context, government prosecutors initially argued that they were entitled to absolute immunity for *all* of their actions because they were lawyers. Starting in 1976, however, the Supreme Court handed down a series of cases where it rejected this "absolutist" view and opted instead for a "functional" analysis. *Imbler v. Pachtman*, 424 U.S. 409 (1976), *Burns v. Reed*, 500 U.S. 478 (1991), *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), *Kalina v. Fletcher*, 522 U.S. 118 (1997). In these cases, the Court held that a

government lawyer was only entitled to absolute immunity if he was acting as an advocate. If the lawyer acted as an investigator, he lost the shield of absolute immunity and only received the qualified immunity of a police officer or other investigative agent. The analogy which can be drawn from this line of cases is clear: a court should not grant a government lawyer's notes heightened protection from Rule 16 when she is acting as an investigator and interviewing witnesses.

While the application of Rule 16 to government lawyer notes can be an important tool for defense lawyers, the limitations on its use should be recognized. The government will likely fight vigorously any attempts to obtain such notes under Rule 16. Courts also may well be reluctant, as a matter of principle, to allow a defense lawyer access to another lawyer's notes. Furthermore, the government will likely be able to redact non-relevant portions of the notes. Finally, in order for the Rule 16 analysis even to be applicable to the government lawyer's notes, the government lawyer must affirmatively decide to participate in the interview and take detailed notes of that interview.

Despite these limitations, however, defendants should consider seriously drafting Rule 16 discovery requests in a sufficiently broad manner to cover a prosecutor's notes which fall within the scope of Rule 16(a)(1)(B)(ii). Making such a request, particularly at an early stage in the prosecution, may give the defendant access to potentially significant information. This issue has, surprisingly, not been the subject of many published decisions and it will be interesting to see how the federal courts address it in the future.

**Environmental Enforcement and
Crimes Committee Online**

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[http://www.abanet.org/environ/committees/
environcrimes/home.html](http://www.abanet.org/environ/committees/environcrimes/home.html)

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**THE TRIAL OF AN ENVIRONMENTAL
CRIMINAL CASE: A RETROSPECTIVE ON
UNITED STATES V. BAYTANK (HOUSTON),
INC., 934 F.2d 599 (5th Cir. 1991)**

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On Sept. 3, 1987, the grand jury impaneled in the Southern District of Texas, Houston Division, handed down a 37-count indictment against two corporations and 19 individuals, charging crimes under the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation Liability Act (CERCLA) and, for the first time, the Marine Protection, Research and Sanctuaries Act (MPRSA). The indictments also charged all individuals and the two corporate entities with conspiracy and each individual with aiding and abetting all crimes. In all, over 200 different charges were leveled against Odfjell Westfal-Larsen (U.S.A.), Inc. (OWL), a wholly-owned subsidiary of Odfjell Westfal-Larsen S.A. (a Norwegian shipping company); Baytank (Houston), Inc. (Baytank), a wholly-owned subsidiary of OWL; Baytank's president, operations manager, traffic manager and technical manager; the engineer employed by OWL who designed Baytank; as well as 14 ship officers employed by Odfjell Westfal-Larsen Tankers S.A. This matter was styled *United States v. Odfjell Westfal-Larsen (USA), Inc., et al*, Crim. No. 11-87-220.

After numerous pre-trial skirmishes over discovery and the Department of Justice's attempts to disqualify defense counsel, the trial began on Oct. 18, 1988. One month later, after hearing over 45 witnesses from both the prosecution and the defense, and after having the case pared down significantly by the judge, the jury returned its verdict and found Baytank and three individuals guilty on nine counts. On post-trial motions, the district court granted judgments of acquittal to the individuals, denying the motion to Baytank and granted conditional new trials to all defendants on all of the misdemeanor counts. Baytank was subsequently fined \$50,000.00 and was ordered to undertake community

service. On appeal, the Fifth Circuit upheld the conviction of Baytank and reversed the grant of a new trial to Baytank on all other counts. The Fifth Circuit also reversed the judgments of acquittal as to the individuals; however, it upheld the grant of new trial to the individuals on each count. As a result of the Fifth Circuit's opinion and extensive negotiations, a settlement and plea was entered as to all parties disposing of all matters left in the case. The government had obtained two felony and six misdemeanor convictions against Baytank and, through plea agreements, two misdemeanor convictions against each of two of the individuals and one misdemeanor conviction against one individual. The fine paid by Baytank and the individuals totaled \$1,150,000.00, plus the special assessments. With that background, this article will explore selected aspects of the trial.

Jury Selection

Selecting a jury in any case is a daunting task, even more so in an environmental criminal case. This case provided some unique twists as well, as there were two corporate entities of foreign parentage, of the 19 individual defendants, two were U.S. citizens, one was Yugoslavian-born claiming Argentinean citizenship (and holding a Brazilian passport) and 16 were Norwegian citizens. The actual jury selection process involved a two-prong approach. First, the defense requested additional time to conduct *voir dire*; and second, the defense retained a jury consultant to develop an ideal juror profile and a juror questionnaire. The decision to ask for additional time for counsel to examine the panel during *voir dire* was required because the district court's procedure manual only allowed each side 15 minutes to examine the jury panel. Due to the sensitive nature of the charges brought, the complexity of the issues, the scope of the indictment, the number of defendants, as well as the nationality of the defendants, the district court granted the defendants' request and allowed each side one hour to conduct *voir dire* after the district court conducted its preliminary questioning. The other area which the defense concentrated on was the actual jury selection. The defense submitted a questionnaire which it requested the court have the venire men fill out and attach to the court's standard jury questionnaire. The court allowed the use of the

questionnaire; however, the court asked the questions from the questionnaire rather than having the venire men fill it out in advance.

Mastery of Documents

During the trial, a disgruntled ex-employee was called to testify regarding an overt act alleged under the conspiracy charge that drums of hazardous waste were loaded aboard a ship for disposal at sea. The indictment alleged that drums of ethylene dibromide were loaded onboard a ship in December 1984, and disposed of at sea. In response to a specific request by the defense team, the district court ordered the government to identify its evidence as to that overt act. In response, the government identified one document and six individuals. The one document identified by the government, an invoice dated July 16, 1983, described six drums of deionized water (purified drinking water) which was used by the ship in rinsing its tanks. Upon cross-examination with the document provided by the government during pre-trial discovery, it became eminently clear that the government's proofs were seriously defective as the ex-employee called to support the document was not employed by Baytank at the time the document was generated. Upon eliciting these facts on cross-examination, the defendants moved that the testimony be struck as being in fatal conflict with the indictment and the discovery provided by the government

THE COURT: . . . I have been sitting here for three weeks, this is a two-year enterprise, it has in [sic] engaged the government several different departments of the government and in response to my order I don't care that you charged them with a continuing enterprise, I told you to disclose the basis of your proof for an incident. And you give them an '83 document and the name of somebody who wasn't employed in '83, who does not know anything, you know that's not beyond a reasonable doubt. That evidence won't get you anywhere. He doesn't know anything about the operative events except he thinks he recalls having done it once.

PROSECUTION: With all respect your Honor, that's a mischaracterization. Those are different drums.

THE COURT: Which drums are which?

PROSECUTION: Well.

THE COURT: And if you know which drums are which, why didn't you disclose it to the defendants in response to my order? You give them one invoice and a witness.

PROSECUTION: Who agree.

THE COURT: No, you gave them a witness that didn't know anything about the invoice. Apparently you gave them an '83 invoice, the name of a witness who wasn't even there in '83. And then; oh, well, it was a continuing enterprise, could have been any time during the four-year period. The defense motion will be granted.

In an example of cross-examination by use of rebuttal evidence, another disgruntled ex-employee was totally discredited. Count 25 of the indictment charged the defendants with the discharge of raw sewage from a septic tank into the turning basin. This ex-employee testified that he had been ordered by one of the defendants to stop calling vacuum trucks out to the facility to remove septic waste because it was too expensive. The government also sought to prove that the ex-employee was told to pump the septic waste out into the turning basin. In the pre-trial investigation, it was learned that the ex-employee had been fired for being uncooperative with management and for incompetence. In stair-step cross-examination, the ex-employee, after denying calling a vacuum truck on each occasion, was presented with paid invoices bearing his own signature for each of the vacuum trucks he had testified that he had been ordered not to call. When the government objected to the exhibits, the district court commented: "Your man got up there and lied through his teeth and they sprung a trap on him." The specific cross-examination is roughly 35 pages and too long to reproduce in the Newsletter format.

To be fair, the government cannot select the witnesses it uses at trial to prove up its case because the fact witnesses come with the case. In this particular case, the defense team was extremely fortunate that it had

sufficient time to properly and fully investigate the facts and to fully prepare for the cross-examination of the disgruntled ex-employee.

Technical Experts

One of the most time-consuming pre-trial projects was finding, interviewing, retaining and educating the technical experts. Because of the tight timeframes dictated by the Speedy Trial Act, it is imperative that experts and consultants be retained early on in the process. This assures that you will get the expert of your choice and gives the expert a longer learning curve with both the lawyers and the defendants. Many of the fields of expertise overlap. For this case, the defense team retained a wastewater/stormwater design expert, a toxicologist, an expert on hazardous waste identification, dispersion modeling experts, terminaling experts and a tank cleaning expert, as well as a forensic/clinical psychologist. Each expert was given full access. Details of areas of testimony were discussed and further refined as dictated by the discovery and the trial preparation.

The defense also sought to limit expert opinions and testimony in the government's case. One of the primary areas of concern was the tendency of the government inspectors and investigators, and other technical people, to refer to substances as "hazardous wastes." There was also a concern that various definitions outlined in the statutes might be construed or misconstrued by government witnesses. To address these concerns, the defendants filed a motion *in limine* to keep unqualified persons from expressing opinions of law including "knowingly," "willfully," "hazardous," "material," "treatment facility" and "solid waste." The motion *in limine* was granted and as a result, the government's technical witnesses limited their use of the word "hazardous," as well as other terms in rendering opinions. It seemed a small victory at the time; however, it was a key ruling preventing the government from portraying the defendants as purveyors of hazardous materials without regard to the environmental hazards associated with the handling of those materials.

Jury Instructions

Much like the selection of the jury for this case, the jury instruction posed some problems in that there are no pattern jury instructions for an environmental crimes case. The defense began working on the jury charge approximately six months prior to trial and continually refined them up through the time of trial. The defense submitted 42 pages of proposed jury instructions and interrogatories covering all elements in the 37-count indictment. When the case finally went to the jury, the special instructions were reduced to nine pages, and the court's instructions to the jury were reduced to seven pages. During the preparation of the matter for trial, the jury instructions were considered to be one of the key components of trial preparation.

Conclusion

The defense in an environmental crimes case, in many respects, is no different than the defense of any criminal prosecution and, in fact, is truly no different than any civil environmental prosecution. There is one big difference, however; jail looms as the ultimate penalty. Ultimately, the same basic rules of trial preparation apply to an environmental crimes case. In that respect, preparation is paramount.

LIKE TO WRITE?

The Environmental Enforcement and Crimes Committee welcomes the participation of members who are interested in preparing this Newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues please contact one of the co-editors:

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INTERVIEW WITH DAVID M. UHLMANN, CHIEF ENVIRONMENTAL CRIMES SECTION OF THE U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

[On Feb. 23, 2004, David M. Uhlmann, Chief Environmental Crimes Section of the United States Department of Justice, sat for an interview with the Corporate Crime Reporter (CCR). That interview is reproduced below with the permission of Mr. Uhlmann and the CCR.]

Last year, we interviewed Dan Webb, the high-profile Chicago criminal defense attorney. We asked Webb about the prosecution of environmental crimes. This was his answer: "I don't think anyone ever viewed environmental crimes to be in the same category as major business crimes and major public corruption crimes. There really is no comparison. Environmental crimes are almost strict liability crimes, they are easy to prosecute, and they result in pleas of guilty. I always questioned how much impact those prosecutions had on cleaning up the environment. Probably administrative and civil actions have had a much greater impact." (See Interview with Dan Webb, 17 Corporate Crime Reporter 21 (13), May 26, 2003). To be sure, in this day and age of Enron, World Com, Martha Stewart and Tyco, and the President's Corporate Fraud Task Force, environmental crimes and their prosecutions aren't getting the respect they deserve. But contrary to Webb's view, dumping wastes into the oceans is nothing if not a major business crime. And some are not "easy to prosecute." To gain some insight into the field, we called on David Uhlmann, the chief of the Environmental Crimes Section at the Justice Department. We interviewed Uhlmann on Feb. 23, 2004.

CCR: What law school did you graduate from, when, and what have you been doing since?

UHLMANN: I graduated from Yale Law School in 1988. I clerked for two years in federal district court in Atlanta before joining the Justice Department in 1990. I started in the Justice Department as a trial attorney in the Environmental Crimes Section, and served in that

capacity until 1997. After that I was a senior trial attorney, and then an assistant chief, until I became chief of the Environmental Crimes Section in June 2000.

CCR: Give a sense of the nature and scope of the Environmental Crimes Section: number of attorneys, budget, and your work.

UHLMANN: We prosecute environmental crimes nationwide in conjunction with United States Attorney's offices. Today, we have 30 attorneys, as well as paralegals and support staff. In addition to our work on cases, we address policy issues that arise in environmental criminal cases and provide training to federal, state, and local environmental prosecutors and investigators.

CCR: What is your budget?

UHLMANN: The Environment and Natural Resources Division, which includes the Environmental Crimes Section, has a budget of approximately \$100 million.

CCR: How many attorneys does the Environment Division have?

UHLMANN: The Environment Division has approximately 400 attorneys. The Environment Division is responsible for representing the United States in all litigation involving environment and natural resource issues, both civil and criminal enforcement cases brought under the various environmental laws, and also the defense of lawsuits brought by industry and by citizens groups challenging government actions in the environment and natural resource areas.

CCR: My sense is that over the past couple of years, criminal prosecutions of major environmental crimes by big business has dipped. Is that right?

UHLMANN: No, I think that is wrong. Our office and the United States Attorney's offices that prosecute environmental crimes with us have aggressively prosecuted corporate crime throughout the last decade or more. And that prosecution activity has continued in the last several years.

CCR: How many major American corporations have been prosecuted in the last couple of years?

UHLMANN: We do not track that per se, but you do.

CCR: We do, and my sense is that there haven't been that many criminal prosecutions of major corporations in the environmental area in the last couple of years.

UHLMANN: Well, you recently put out a report entitled The Top 100 Corporate Criminals of the 1990s, and 38 of those 100 were environmental crimes cases. By a margin of two to one, environmental crimes led all other areas of corporate crime, in terms of number of prosecutions. That prosecution activity has continued since the end of the 1990s. In the last two years, we have successfully prosecuted Tyson Foods, Emery Worldwide Airlines, Ashland Oil Company, Carnival Cruise Lines, and the list goes on. So, I do not think it is fair to say that corporate prosecution has dipped. It has continued at a pace that has equaled, if not exceeded, the rate of prosecution activity in the preceding years.

CCR: Are most of these criminal prosecutions of major environmental crimes generated in your office, or at the U. S. Attorneys level?

UHLMANN: The majority of environmental crimes prosecuted nationally are handled by United States Attorney's offices. When you look at the big corporate cases and the more complex matters, those tend to be the ones where we are involved, but almost always with a United States Attorney's office as our full partner. Our office specializes in complex multi-district cases, in cases that involve new areas of enforcement activity, and in the kind of big cases that you are asking about involving major corporations, where frequently we will see 10 or 12 or even more lawyers on the other side.

CCR: Does the Environmental Crimes Section have a separate voluntary disclosure program?

UHLMANN: The Environment Division has a voluntary disclosure policy, which has been in effect since 1991. Voluntary disclosure also is addressed in the Holder and Thompson memos.

CCR: Did the Holder and Thompson memos change the policy at all?

UHLMANN: No, I do not think so. Holder and Thompson require that we consider a corporation's voluntary disclosure as one of several factors in deciding how to exercise our prosecutorial discretion with regard to corporate prosecution. If you look over time at how we have handled voluntary disclosure, you see a clear pattern emerge. Corporations who come forward and provide evidence of criminal activity almost always receive substantial credit for doing so. But leniency, not amnesty, is most often the result of a voluntary disclosure. I say leniency, not amnesty, because if you come forward and confess to a crime, you should get credit. You should be treated more leniently than somebody who does not cooperate in that way. But a disclosure alone does not excuse criminal liability. We have never treated it that way, and neither have our partners in the United States Attorney's offices.

CCR: Do you believe that how a corporation responds to a criminal charge is indicative of wrongdoing, one way or another?

UHLMANN: A corporation's response when it learns of wrongdoing within the corporation is one of many factors that prosecutors consider in deciding whether or not a corporation should be charged criminally. We have already talked a little bit about voluntary disclosure. Certainly, a company that learns it has committed criminal activity, voluntarily comes forward with that information, cooperates with the government, and does all of that before the government already is investigating the company stands in a lot better shoes than a company that learns of misconduct within the organization, tries to hide it from regulators and prosecutors, and then fights the government every step of the way once that information has been brought to light.

CCR: When a defense attorney comes to you to negotiate a global settlement, they clearly want to rid themselves of the matter in all aspects. If they offer up the corporation in exchange for executives not being charged, can you take that kind of plea into consideration?

UHLMANN: Corporations frequently come to us and say they want a global resolution, and by that they mean that they want all claims that can be brought against the corporation addressed at once. They also frequently ask what our intentions are with regard to corporate officials and other individuals who might have been involved in the wrongdoing. Our policies on both subjects are clear. With regard to global settlements, we do not negotiate global settlements, and neither do our partners in the United States Attorney's offices. The authority over civil enforcement matters and administrative actions does not reside with criminal prosecutors. Any agreements between a corporation and administrative or civil authorities need to be negotiated separately with those authorities. With regard to individuals, we do not negotiate or discuss the status of individuals with counsel for the corporation. We always are willing to discuss the status of individual defendants or targets with the attorneys who represent those individuals. But we will not have those discussions with the corporation, and we will not in any circumstance agree to a corporate plea that provides release language for individuals. By release language, I mean a plea agreement that says the government will not prosecute responsible individuals.

CCR: Putting aside any formal agreement, is there give and take on the question of whether individuals should be charged in exchange for charging the corporation?

UHLMANN: There is not give and take on that subject, and there should not be. If there were give and take on that subject, what we would be saying is that a corporation, if it is willing to pay a big enough fine or take other actions, could effectively buy off the criminal prosecution of its corporate officers and any responsible individuals. We simply cannot agree to do that. It would be wrong for the government to do that. There may be cases, and there certainly have been cases, where we will make a separate and independent decision that, having charged the corporation, there is not an appropriate evidentiary basis to go forward against individuals. But we always keep those decisions separate.

CCR: You have written and spoken about the question of science in the courtroom. This week, a group of

environmental scientists released a statement saying that the Bush administration is distorting science in the environmental area. Russell Train, a former Republican EPA administrator, also signed on to that letter. How important a role in a prosecutor's work does science play, and what's your take on this accusation?

UHLMANN: We have received consistent support across administrations for our efforts to enforce the nation's environmental laws. That support has not waned in the last three years. To the extent that our cases involve difficult issues of science, we have had the benefit of some of the nation's best scientific experts at the EPA. In the final analysis, however, most of our cases are not decided based on science. Science plays a role, but our cases are criminal cases, and they are decided based on our ability to persuade a jury that the defendants committed criminal acts.

CCR: One area where you have made a lot of progress is vessel pollution enforcement. How did those cases come in the door?

UHLMANN: Vessel pollution enforcement has been a major part of our efforts, starting in the mid-1990s, and it continues to be a centerpiece of our work today. The first cases came to us in large part as a result of Coast Guard surveillance activities. The biggest case was the prosecution of Royal Caribbean Cruise Lines. In that case, Coast Guard surveillance planes videotaped Royal Caribbean ships as they were dumping bilge and other waste materials into the oceans. When those cruise ships came into port, the records that were required to be maintained on the ships had been falsified to conceal the fact that the discharges had occurred. Bypass lines were discovered on the ships, which had been used to dump waste overboard, rather than having the waste go through the pollution control equipment that is required to be on board ships of that size. Since that prosecution, we have prosecuted other cruise ships. We have prosecuted in other areas of the maritime industry. We found that there was widespread noncompliance with the law. Fortunately, as our prosecution activity has continued, we have started to see changes in the industry, and I am confident that there is a much higher rate of compliance than in the past. But the reality remains that for decades, if not

more, this kind of conduct occurred on the high seas, and occurred on ships coming into American ports. For a long time it was not illegal. Once it was prohibited, it was not always aggressively prosecuted. So, we still see a fair amount of illegal activity in the vessel area, and we are committed to vigorously prosecuting it.

CCR: Given that the cases keep coming, how do you know that you are having a deterrent impact?

UHLMANN: Deterrent impacts are difficult to demonstrate, particularly when the cases keep coming through the door. The cruise ship industry is a good example of how we continue to prosecute major companies. Within the last year and a half, we prosecuted both Carnival Cruise Lines and Norwegian Cruise Lines. The cruise line industry now gets it, however, and they are making concerted efforts to ensure that they are complying with environmental laws. If you look at their advertising campaigns and promotional materials, they all talk about the efforts they are making to comply with environmental laws. It has become part of their marketing, which shows that cruise ship companies are finally coming on board and making a concerted effort to comply with the law. As for the rest of the maritime industry, they still may be playing catch up. There are many cases being brought. We are seeing cases involving freighters, tankers, and other parts of the maritime industry. But, if you look at the industry as a whole, and the efforts they are making to ensure compliance, there is a level of deterrence, no question.

CCR: Is there a unit within the Justice Department that prosecutes just occupational safety cases?

UHLMANN: There is not a worker safety unit within the Justice Department.

CCR: Should there be?

UHLMANN: The worker safety laws are largely civil and administrative laws. The only criminal provision is a misdemeanor provision that applies when there is a willful violation of worker safety standards and somebody dies.

CCR: Should that law be upgraded?

UHLMANN: I am not in a position to comment on whether that law should be upgraded. But I do have some experience prosecuting in the worker safety area. Before becoming Section chief, I prosecuted a case called *United States v. Alan Elias*. Alan Elias was an Idaho fertilizer manufacturer who repeatedly subjected his workers to wantonly unsafe working conditions. In 1996, he sent his workers into a tank of cyanide waste, and a 20-year old Idaho man was left permanently brain damaged. We prosecuted the *Elias* case, along with the United States Attorney's office in Idaho. He was convicted after a three-and-one-half week jury trial and sentenced to 17 years in jail. But our ability to prosecute *Elias* was limited to the knowing endangerment provisions of the environmental laws. That was a felony conviction. But there was not an OSHA statute that we could have prosecuted under.

CCR: Because?

UHLMANN: Fortunately, nobody died in that case.

CCR: The OSHA criminal provision only deals with death?

UHLMANN: Yes.

CCR: As a prosecutor, you must cringe when you look at this OSHA law.

UHLMANN: There has been much comment in the press about OSHA, and the challenge of administering the worker safety laws in this country. But, as prosecutors, our job is to enforce the laws as they are written.

CCR: If Congress decided that there should be felony sanctions for any employer who willfully violates the OSHA laws that result in injury or death, would you have jurisdiction to prosecute those laws?

UHLMANN: That is a hypothetical that I cannot answer. But there is an important connection between worker safety and environmental protection laws.

What we have seen over the years is that companies frequently designate the same people with responsibility for assuring compliance with environmental and worker safety laws. They are often called environmental, health, and safety (EHS) officers. There have been many cases that came through our section where the EHS officers were really only handling health and safety. They made significant efforts to ensure that their companies complied with worker safety laws. But they did not always make the same efforts to comply with the environmental laws. In fact, in many cases, they made no effort to comply with the environmental laws. If companies are not even bothering to protect their workers and comply with worker safety laws, it is a fair bet that they also are not complying with the environmental laws. We have seen that in a number of cases. I mentioned the *Elias* case. We also saw that in a major prosecution down in Georgia where workers were being exposed to hazardous mercury wastes. We have seen it in the asbestos area. We have seen it pretty much across the board in a host of cases. We are committed to prosecuting environmental crimes where there also are worker safety issues, and where people are being exposed to unsafe working conditions in the course of environmental crimes.

CCR: At the end of last year, there was an indictment handed down against Atlantic States, a unit of McWane. The company was a subject of a long series in the New York Times. Did the coverage in the Times trigger the investigation?

UHLMANN: The New York Times articles and the Frontline stories that ran about McWane were extremely helpful to that investigation. That case is being run out of our office and the United States Attorney's office in New Jersey. We are prosecuting Atlantic States for a whole host of environmental crimes and worker safety violations in New Jersey. There is a 35-count indictment alleging a far reaching conspiracy to violate environmental and worker safety laws, and to cover up those violations through false statements, witness intimidation and obstruction of justice. The allegations in that case are very serious. It will be up to a jury to decide what happened, but the case is a top priority for our office.

CCR: Some states have what are called audit and immunity statutes. What is the Justice Department's position on them?

UHLMANN: In the mid-1990s, several states passed laws that provided protection for environmental audits. Some state laws created a privilege for environmental audits, so regulators could not require companies to produce them. Other states created immunity provisions, so that companies who disclosed violations uncovered by audits could not be prosecuted. That was a big issue in the mid-1990s. But in recent years, there has been an understanding that, while companies should have programs to make sure they are uncovering violations, prosecutors need to be free to evaluate all of the evidence. Moreover, the public is entitled to have access to information about violations occurring in their communities, and that information should not be shielded from discovery by privilege laws.

CCR: You have a limited budget and staff. What is your case load?

UHLMANN: At any point in time, we have approximately 200 cases in the office.

CCR: Those are active cases?

UHLMANN: Yes, they are either under investigation, or a prosecution is going forward. That number has been consistent over the past five or six years, even though the number of prosecutors in our office has dropped somewhat over the last five or six years.

CCR: What's the screening process like?

UHLMANN: When we first hear about a case, we have to decide whether it is a case that warrants consideration by our office. Does it involve the kind of criminal activity appropriate for a national environmental crimes office? Or is it happening in a part of the country where there are few of these cases, and it would be helpful in developing the environmental crimes program in that part of the country? In the course of an investigation, we are constantly evaluating the information that is being received to determine

whether there is a basis to continue to go forward with a case. That process is ongoing throughout the investigation of a case. The final stage is our prosecution review process. Before any case goes forward to indictment by our office, we present the case to a committee of attorneys in the office. It is chaired by the Section chief, and includes the immediate supervisor of the case, the prosecutors from our office and the United States Attorney's offices, as well as other people in the section who have subject matter expertise. We discuss whether there is sufficient evidence to support criminal charges. We talk about legal issues and potential defenses that may be raised. We consider whether the case is an appropriate exercise of prosecutorial discretion, whether other defendants should be added, whether other charges should be considered, or whether charges that have been proposed should not be brought. So, it is a fairly thorough process. By the time a case comes through our section and is selected for prosecution, we are confident in our ability to present the case to a jury and to successfully prosecute the case.

CCR: Are there any guidelines in the U.S. Attorney's Manual or elsewhere governing how a prosecutor deals with overt political interference – say a letter or call from Congress or from someone in the executive branch?

UHLMANN: Any calls from Congress are referred to our office of legislative affairs, and the Department's policy is that we do not comment about pending matters. I have been here 13 years, and I cannot think of a single instance when our office's prosecutorial judgment concerning an environmental crime was influenced because of a Congressional inquiry. It has not happened.

CCR: Defense attorneys will tell us that there are opportunities to lessen the impact of an environmental crime by pleading out a defunct unit.

UHLMANN: We charge the corporate entities that are criminally responsible for the violations. In the course of plea negotiations, we frequently have discussions with a company about which of the various corporate entities might be required to plead guilty in a particular

case. When we prosecuted Koch Industries three years ago for criminal violations of the Clean Air Act in Texas, we ultimately decided to accept a plea from Koch Petroleum Group, which also was charged in the case and which was the Koch facility that was most directly responsible for the crimes that occurred.

CCR: Why did you decide to settle with the subsidiary?

UHLMANN: As I indicated, in that case, we made a determination that Koch Petroleum Group was the entity most responsible for the criminal conduct that had occurred.

CCR: Is there a correlation between the number of prosecutors you have to the number of cases you can bring?

UHLMANN: Yes, there is a correlation. But that is only one factor. It is also important to look at investigative resources, and the type of cases we are handling. Number of cases that are brought is not the best measure of how successful we are as prosecutors.

CCR: Do you think to yourself that had I more resources, I could have brought charges in an important case?

UHLMANN: It has never been the case that we did not prosecute a matter that we thought should have been prosecuted because we did not have enough resources to do it.

CCR: What are going to be the hot areas in the years to come?

UHLMANN: Within the last year, we have launched an initiative to prosecute hazardous material transportation violations, which historically has not been an area where significant prosecution activity has occurred. We are looking at the connection between environmental crimes and worker safety violations. That is an area where there will be more prosecution activity in the years to come. We also are looking at the Clean Air Act, where historically there has been civil enforcement activity, but not as much criminal activity. We have done criminal cases for asbestos

violations, but we have not done many criminal Clean Air Act cases outside of the asbestos area. That is also an area where I believe you will see increased activity in the coming years.

CCR: How do cases come in the door?

UHLMANN: We receive information from a wide variety of sources. We do not discriminate. We are willing to consider cases wherever they come from. Major sources include whistleblowers, employees who have been asked to do something wrong, workers who lost their job because they have protested a corporation's wrongdoing. People working in the regulatory fields report wrongdoing to us. From time to time, we learn about wrongdoing from the newspapers, and we will pursue it as we did in the Atlantic States prosecution. We also receive information from the general public, from citizens groups or regular folks who witness a crime and report it to law enforcement.

CCR: Do you have a hotline number where people can call in tips?

UHLMANN: We do not, but the EPA and state environmental agencies have them.

CCR: Does the EPA have a criminal unit?

UHLMANN: They have an office of criminal enforcement with about 200 agents that investigate environmental crimes.

CCR: Who heads that unit?

UHLMANN: Peter Murtha, who is a former colleague of ours in the Environmental Crimes Section, was recently named the new director of EPA's criminal program. We have an extremely close working relationship with his office. There was a time some years ago where there were some strains in that relationship, but we have worked very hard to build a strong partnership. We work with EPA on nearly every case that we prosecute.

CCR: Does the FBI have an environmental unit?

UHLMANN: They continue to devote resources to environmental crimes investigations. They have a physical presence in every part of the country, which EPA with just 200 agents cannot provide, so the FBI's continued participation is important.

CCR: When a defense attorney raises suspension and debarment issues with you, what do you say?

UHLMANN: We tell defense counsel that any suspension and debarment issues must be addressed with the suspension and debarment officials at the agencies where their clients are doing business. We do not try to influence suspension and debarment officials in the exercise of their discretion about whether a company should be suspended or debarred. Doing business with the federal government is a privilege. Indeed, there is much competition to do business with the government. That privilege should not be extended to companies that are violating the law and do not have programs in place to make sure that any violations that have occurred in the past are not repeated.

CCR: Finally, on corporate waivers of privilege – your take?

UHLMANN: Our view is that corporations who cooperate and waive privilege are entitled to greater consideration in the plea negotiation process than corporations who do not. Beyond that general principle, whether we will require waiver as a condition of cooperation depends upon the type of information being withheld on privilege grounds. If most of the privilege claims concern information gathered by defense counsel in response to our investigation or prosecution, we are not as likely to seek waiver, particularly where the withheld information concerns mental impressions of counsel. On the other hand, if information is being withheld about communications that occurred at the time of the events we are investigating, we are more likely to require waiver, because without waiver we will not be able to shed light on the full extent of corporate wrongdoing. For example, if corporate officials committed crimes notwithstanding warnings from in-house attorneys, a law-abiding corporation should not be shielding its officials, and should be willing to waive privileges, so that corporate criminals can be brought to justice.

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PRESS RELEASES

Statement of the Attorney General Alberto R. Gonzales on the Resignation of Assistant Attorney General Thomas L. Sansonetti

U.S. DOJ Headquarters, Washington, D.C. – March 10, 2005:

Attorney General Alberto R. Gonzales issued the following statement on the resignation of Assistant Attorney General Thomas L. Sansonetti of the Environment and Natural Resources Division (ENRD):

“Tom Sansonetti vigorously enforced our nation’s environmental laws during his tenure at the Department of Justice. Although our time together at the Department was short, our relationship as friends and colleagues dates back to the beginning of the Bush Administration when Tom returned to public service. I admire Tom’s career accomplishments, value his interest in taking on new challenges, and thank him for his service to our nation, President Bush, and the pursuit of justice.”

Sansonetti was confirmed by the United States Senate in November 2001 and presided over historic times in the ENRD. Under his leadership, the ENRD set new records in securing civil penalties and obtaining remedial action by polluters under environmental laws. Over the last four years, the ENRD promoted the health and safety of America’s citizens, combated illegal shipments of hazardous materials, achieved significant progress in assuring cleaner water, obtained prison sentences for those who pollute the oceans, secured substantial Superfund settlements, and joined federal, state, and local efforts in cleaning up America’s air and protecting its natural resources. Sansonetti’s resignation will be effective April 8, 2005.

Two Corporations and Three South Mississippians Convicted of Filling Wetlands and Defrauding Homeowners About Suitability of Lots for Development

U.S. DOJ Headquarters, Washington, D.C. – March 1, 2005:

The Department of Justice and the U.S. Attorney's Office for the Southern District of Mississippi announced that on Friday, February 25, 2005, a petit jury in Jackson, Mississippi, returned guilty verdicts on all counts in an indictment brought against Robert Lucas, Jr., of Lucedale, Mississippi; his daughter, Robbie Lucas Wrigley of Ocean Springs, Mississippi; and M. E. Thompson, Jr., of D'Iberville, Mississippi, and two affiliated corporations; Big Hill Acres, Inc., and Consolidated Investments, Inc. The three individuals and two corporations were charged with Clean Water Act violations in connection with their development of wetlands in a 2600 acre subdivision on property in Vancleave, Mississippi, known as Big Hill Acres.

In addition, the individuals and corporations were convicted of conspiracy and mail fraud for having sold hundreds of home sites in wetlands despite numerous warnings from public health officials that they were illegally installing septic systems in saturated soil. Warnings stated that these systems were likely to fail and contaminate the property and the drinking water aquifer below it.

"These defendants endangered the environment and public health by disregarding the law and by ignoring repeated warnings from federal, state, and local officials," said Tom Sansonetti, the Assistant Attorney General for the Justice Department's Environment and Natural Resources Division. "In his Earth Day message, President Bush made it a priority of this Administration to preserve and protect wetlands. This case demonstrates the Department's commitment to that goal."

"The defendants illegally filled hundreds of acres of wetlands and defrauded low-income residents of Big Hill Acres who ended up with leaking sewage that put

the health of their families at risk," said Thomas V. Skinner, EPA's Acting Assistant Administrator for Enforcement and Compliance Assurance. "The convictions should send a clear message that those who knowingly jeopardize public health will be held accountable for their crimes."

The indictment charged that as early as 1996, inspectors from the U.S. Army Corps of Engineers informed Mr. Lucas that substantial portions of the Big Hill Acres property contained wetlands and could not be developed as home sites. The indictment recites a long record of warnings that the Mississippi Department of Health and other regulatory agencies issued to the defendants notifying them of the public health threat they were creating by continuing to install septic systems in saturated soil. Neither those warnings nor cease and desist orders from the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency restrained Lucas, Wrigley, and engineer M. E. Thompson from improperly installing systems that did not conform to state health department regulations in lots that they continued to develop and sell.

The Big Hill Acres residents have suffered from seasonal flooding and the discharge of sewage from failing septic systems on the ground around their homes. The development has been the subject of numerous civil lawsuits by tenants against the developers.

This case was investigated by the FBI and the EPA with the assistance of the Department of Agriculture's Soil Conservation Service and the Mississippi Department of Health. It is being prosecuted by Trial Attorneys Jeremy Korzenik and Deborah Hillmann of the Department of Justice's Environmental Crimes Section and by Assistant United States Attorney Peter Barrett of the United States Attorney's Office for the Southern District of Mississippi.

EPA Acting Administrator Steve Johnson Signs Final Clean Air Interstate Rule (CAIR)

EPA Region 1, Boston, Massachusetts – March 16, 2005

BOSTON - Acting Administrator Steve Johnson today signed the final Clean Air Interstate Rule (CAIR), a rule that will ensure that Americans continue to breathe cleaner air by dramatically reducing air pollution that moves across state boundaries in 28 eastern states – including Connecticut and Massachusetts. When fully implemented, pollution in the eastern part of the United States will be dramatically reduced and “smog days” in New England should be a thing of the past.

“CAIR will result in the largest pollution reductions and health benefits of any air rule in more than a decade,” said Acting EPA Administrator Steve Johnson. “The action we are taking will require all 28 states to be good neighbors, helping states downwind by controlling airborne emissions at their source.”

CAIR will permanently cap emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) in the eastern United States. When fully implemented, CAIR will reduce SO₂ emissions in 28 eastern states and the District of Columbia by over 70 percent and NO_x emissions by over 60 percent from 2003 levels. This will result in the largest health benefits of any EPA air rule in more than a decade – amounting to savings of almost \$100 billion per year in health care costs by 2015, and preventing 17,000 premature mortalities; 1.7 million lost work days; and 500,000 lost school days, annually.

CAIR requires that the 28 states that play a large role in polluting the air of their downwind neighbors, control the pollution that moves across state boundaries. CAIR will help over 450 counties in the eastern United States meet EPA’s protective air quality standards for ozone and fine particles.

The rule has profound regional impacts. CAIR is expected to bring almost all of New England into compliance with the nation’s smog standard within the next five years. Most of New England’s most populated areas are currently out of compliance with the ozone standard, including all of Massachusetts,

Rhode Island, Connecticut and parts of Maine and New Hampshire. The region had 13 smog-alert days last summer, but had 43 smog-exceedance days in 2002 – when more typical hot summer weather occurred.

“This action, together with other air quality regulations previously adopted, ensures dramatic air quality improvements in New England and the rest of the country over the next decade,” said Robert W. Varney, regional administrator of EPA’s New England Office. “The benefits of this rule to New England’s air quality are enormous.”

CAIR is an extremely cost effective rule, with health and environmental benefits valued at more than 25 times the cost of compliance by 2015. The rule creates one of the largest investments ever in clean air technology, requiring nearly \$17 billion of investment in pollution controls.

CAIR will mandate the largest reduction in air pollution since the reductions set by the Acid Rain Program under the Clean Air Act Amendments of 1990. Under CAIR, states will achieve the required emissions reductions using one of two options for compliance: (1) require power plants to participate in an EPA-administered interstate cap and trade system that caps emissions in two stages, or (2) meet an individual state air emission limits through measures of the state’s choosing. By addressing air pollutants in a cost effective fashion, EPA and the states will protect public health and the environment without interfering with the steady flow of affordable energy for American consumers and businesses.

[For more information, go to: <http://www.epa.gov/CAIR>. EPA Contact: Sheryl Rosner, EPA Office of Public Affairs, (617) 918-1865, rosner.sheryl@epa.gov.]

EPA Announces First-Ever Rule to Reduce Mercury Emissions from Power Plants

U.S. EPA Headquarters, Washington, D.C. – March 15, 2005:

Acting Administrator Steve Johnson will sign the Clean Air Mercury Rule, a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. Taken together, the recently issued Clean Air Interstate Rule and the new Clean Air Mercury Rule will reduce electric utility mercury emissions by nearly 70 percent from 1999 levels when fully implemented.

“This rule marks the first time the United States has regulated mercury emissions from power plants,” Acting Administrator Steve Johnson said. “In so doing, we become the first nation in the world to address this remaining source of mercury pollution.”

The Clean Air Mercury Rule will require reductions at our largest remaining source of human-generated mercury emissions, electric utilities. Mercury is a persistent, toxic pollutant that accumulates in the food chain. While concentrations of mercury in the air are usually low, mercury emissions can reach lakes, rivers and estuaries and eventually build up in fish tissue. Americans are exposed to mercury primarily by eating certain species of fish. Fish and shellfish are an important part of a healthy diet. However, pregnant women, women of childbearing age, nursing mothers and young children should avoid certain types of fish that are high in mercury.

Johnson noted that close to 80 percent of the fish Americans buy comes from overseas, from other countries and from waters beyond our reach and control. The United States contributes just a small percentage of human-caused mercury emissions worldwide – roughly three percent with U.S. utilities responsible for about one percent of that.

“Airborne mercury knows no boundaries; it is a global problem. Until global mercury emissions can be reduced – and more importantly, until mercury concentrations in fish caught and sold globally are

reduced – it is very important for women of child-bearing age to pay attention to the advisory issued by EPA and FDA, avoiding certain types of fish and limiting their consumption of other types of fish,” Johnson added.

Today’s rule limits mercury emissions from new and existing coal-fired power plants, and creates a market-based cap-and-trade program that will permanently cap utility mercury emissions in two phases: the first phase cap is 38 tons beginning in 2010, with a final cap set at 15 tons beginning in 2018. These mandatory declining caps, coupled with significant penalties for noncompliance, will ensure that mercury reduction requirements are achieved and sustained.

The cap-and-trade system established under today’s rule also creates incentives for continued development and testing of promising mercury control technologies that are efficient and effective, and that could later be used in other parts of the world. In addition, by making mercury emissions a tradable commodity, the system provides a strong motivation for some utilities to make early emission reductions and for continuous improvements in control technologies.

“We remain committed to working with Congress to help advance the President’s Clear Skies legislation in order to achieve greater certainty and nationwide emissions reductions,” said Steve Johnson. “But we need regulations in place now.”

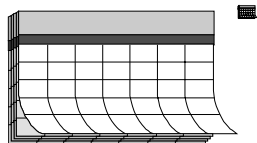
[For more information about the new rule, go to: <http://www.epa.gov/mercuryrule> or contact Cynthia Bergman, 202-564-9828 or bergman.cynthia@epa.gov.]

BACK ISSUES

Back issues of this Newsletter can be viewed on the Environmental Enforcement and Crimes Committee Web page at <http://www.abanet.org/environ/committees/enviromcrimes/newsletter/archive.html>.

**AMERICAN BAR ASSOCIATION
SECTION OF ENVIRONMENT,
ENERGY, AND RESOURCES**

Calendar of Section Events



**“Little NEPA” Conference
State-Level Environmental Impact
Assessment**
May 30, 2005
Boston, Massachusetts
(Cosponsored with the International
Association for Impact Assessment, for
information see www.iaia.org)

Wetlands Law and Regulation
June 8-10, 2005
Washington, D.C.
(Cosponsored with ALI-ABA and ELI, for
information see www.ali-aba.org.)

ABA Annual Meeting
Aug. 4-9, 2005
Chicago, Illinois

13th Section Fall Meeting
Sept. 21-25, 2005
Nashville, Tennessee

**35th Annual Conference on
Environmental Law**
March 9-12, 2006
Keystone, Colorado

***For more information, see the
Section Web site at
<http://www.abanet.org/environ> or
contact the Section at 312/988-5724.***

REGIONAL REPORTS

Region 1: No report this issue.

Region 2:

NSR Enforcement Initiative in New York

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New York electric generating companies have entered into consent decrees with New York State, based on State allegations of Clean Air Act PSD and Title V violations, to reduce emissions from six upstate coal-fired power plants. Under settlement with NRG Energy Inc. (NRG), NRG will reduce SO₂ emissions by 87 percent and NO_x emissions by 81 percent at its Huntley and Dunkirk plants. NRG will accomplish these reductions via a combination of installing new pollution controls, switching to cleaner burning low-sulfur coal, and retiring units. The agreement also requires Niagara Mohawk Power Corp. (NiMo), the previous owner of the plants, to pay a \$3 million penalty, provide an additional \$3 million in environmental benefit projects, and to convey 2,500 acres of land along the Salmon River to the state.

In addition, the state has reached an agreement with AES and New York State Electric and Gas Corporation (NYSEG) to reduce emissions at four former NYSEG power plants. AES will reduce emissions of SO₂ emissions by at least 90 percent and NO_x emissions by at least 70 percent. AES will accomplish these reductions via a combination of the installation of innovative clean coal technology, and either the ceasing of operations of, or the installation of pollution control technology at, its Greenidge, Westover, Jennison and Hickling plants. In addition, NYSEG will pay a \$700,000 penalty, and AES will provide \$1 million for environmental benefit projects.

EPA Region 2 Enforcement Snapshots

The Department of Justice (DOJ) and EPA Region 2 have announced the lodging of a proposed Consent Decree “in which twelve defendants, including Waste Management, Inc., Transtech Industries, Inc., and certain of their affiliates, will pay \$2,625,000, to reimburse EPA’s costs for the ongoing clean-up of the Kin-Buc Landfill Superfund site, in Edison, New Jersey.” Each defendant will also pay \$100,000 in civil penalties due to late performance.

EPA Region 2 has announced that it “reached an agreement with 11 private parties, requiring them to immediately pay \$800,000 for part of the \$3 million in cleanup work conducted by EPA at the Bayonne Barrel & Drum Superfund site in Newark, New Jersey.” The private parties will pay the \$2.2 million balance of EPA’s past cleanup expenditures, minus the value of their future work.

EPA Region 2, pursuant to the Clean Air Act, issued Happy Ice, a packaged ice manufacturing and cold storage facility in Fairport, New York, an administrative order to bring the company’s ammonia refrigeration systems into compliance.

Region 3: No report this issue.

Region 4: No report this issue.

Region 5:

Salvage Yard Owners and Operators Face State Enforcement, Possible Penalties

Indiana Department of Environmental Management E-News Release – March 22, 2005

Enforcement actions taken by the Indiana Department of Environmental Management (IDEM) mark a milestone in the state’s four-year effort to help auto salvage facility owners and operators understand and follow Indiana’s environmental rules. In 2000, staff members in the agency’s pollution complaint clearinghouse recognized the need to provide technical assistance and ensure continual compliance at Indiana’s auto salvage facilities. In response, IDEM obtained a

grant for \$190,000 from the United States Environmental Protection Agency for an auto salvage facility initiative.

After working to identify and locate auto salvage facilities around the state, staff members sent out letters about the initiative. Through a series of regional workshops and multi-media inspections, IDEM technical staff provided education about managing storm water, waste tires and used oil, and preventing illegal open burning and illegal open dumping. Staff members also educated the business people about removing mercury switches prior to shredding or crushing vehicles.

“IDEM’s auto salvage facility initiative shows that clear direction and information from our technical staff helps businesses successfully comply with environmental rules,” said Thomas Easterly, IDEM commissioner. “Many auto salvage facility owners and operators have worked cooperatively with our staff and we commend them for their commitment to preventing pollution.”

“The facilities receiving Notices of Violation have, unfortunately, disregarded the agency’s attempts to inform them about and help them comply with rules that are designed to protect the public health and environment,” said Easterly. “Their disregard for compliance leaves us no other choice but to take this formal action.” IDEM has issued NOV’s to eight salvage operators. Each Notice of Violation outlines specific environmental problems that the agency believes the facility must correct and requires the recipient to present IDEM with an acceptable plan for preventing future violations. There is a potential for penalties, as well.

“We at IDEM prefer to put our efforts toward working with businesses, and providing them with the technical assistance they need to understand and comply with environmental regulations,” said Easterly. “But, we will take action against anyone whose disregard for compliance presents a threat to public health and the environment.”

In addition to distributing the comprehensive Compliance Manual for Indiana Auto Salvage

Facilities, the agency is distributing a booklet called "Make the Switch," with information and instructions about mercury switches in vehicles, and a poster to help raise awareness. Auto salvage facilities and the public can find more information, including an on-line version of the compliance manual, on the IDEM Web site at: <http://www.IN.gov/idem/autosalvage>.

[IDEM contact person: Amy Hartsock, IDEM, Office of Media and Communications Services, (317) 233-4927; 1-800-451-6027 ext. 3-4927; ahartsoc@dem.state.in.us]

Region 6: No report this issue.

Region 7:

Landowners in Western Nebraska Cited for Clean Water Act Violations

U.S. EPA Region 7, Kansas City, Missouri – March 23, 2005:

EPA Region 7 has cited two landowners in western Nebraska for violating the wetlands provisions of the Clean Water Act, stemming from illegal dumping of fill material into a stream or river without first obtaining the necessary permit from the U.S. Army Corps of Engineers. EPA and the Corps of Engineers share responsibility for protection of our nation's wetlands resources, and worked together closely on both cases. EPA ordered both landowners to undertake restoration projects to address the environmental harm caused by their illegal activities.

EPA cited Wayne Hansmeier and the Kingsley Cattle Company in Keystone, northeast of Ogallala (Keith County), for the unauthorized diversion of Whitetail Creek, a tributary of the North Platte River. Hansmeier and the Kingsley Cattle Company dug a new channel for the creek and filled about 1,200 feet of the creek and one acre of wetlands to expand their cattle grazing area in the spring of 2003. Whitetail Creek is part of the Sandhills ecosystem, which is a unique, fragile and valuable natural resource area in Nebraska. The creek also provides habitat for the Northern Redbelly Dace, a Nebraska-listed sensitive fish species. EPA ordered

Hansmeier and the Kingsley Cattle Company to recreate the lost wetland area and replace the lost stream channel length, and assessed a penalty of \$20,000. The case was finalized Feb. 14.

EPA also cited Jim Jessen of Lisco for the unauthorized construction of a culvert crossing and three sand dikes in channels of the North Platte River in Morrill County during August and September 2003. (Lisco is about 50 miles northwest of Ogallala). Jessen's construction restricted the normal flows of the river, creating a flood hazard and damaging aquatic habitat. EPA ordered Jessen to remove the culvert crossing and sand dikes. Jessen agreed to perform two environmental projects for wetland enhancement and conservation in Morrill County at an estimated cost of \$52,000, as part of a settlement agreement. Jessen will also pay a penalty of \$4,200. The case was finalized March 18.

Region 8:

Developer to Pay \$330,000 to Restore Indian Creek Wetlands Plus \$110,000 Penalty

U.S. EPA Region 8, Denver, Colorado – February 24, 2005:

A Loveland, Colo. development group will provide approximately \$330,000 to correct environmental damage it caused on Indian Creek and its adjacent wetlands in violation of the Clean Water Act and pay a penalty of \$110,000, according to the U.S. Environmental Protection Agency's Denver office.

The U.S. Department of Justice, on behalf of U.S. EPA Region 8, filed a civil complaint and lodged a proposed consent decree on Feb. 10, 2005 against Frederic M. Bernstein, Henry Y. Yusem, K & J Properties, Inc., Y & B Properties, LLC, Indian Creek Investments, LLC, and ICR, LLC of Loveland for the unauthorized discharge of fill material into Indian Creek and its adjacent wetlands.

EPA had ordered Frederic Bernstein, developer of the Indian Creek Ranch northwest of Loveland on Aug. 30, 1999 and May 15, 2000, to stop further discharges into Indian Creek, its wetlands or tributaries

and to submit a plan for assessing and restoring the damage. After the developer failed to comply with the orders, EPA referred the case to DOJ for civil action. Since half of the defendants filed for bankruptcy in October 2002, DOJ has been negotiating a settlement for the claims.

EPA's concerns are for the removal and stabilization of the sediment that was pushed down the river bank and into the creek, as well as the full impact of the proposed development activities on Indian Creek and its adjacent wetlands and tributaries. The developer impaired or destroyed approximately two acres of stream channel and adjacent wetlands. "EPA acknowledges the complexity of the negotiations that were required in light of the bankruptcy action and appreciates the developer's willingness to perform the restoration," said Region 8 Assistant Administrator Carol Rushin, Office of Enforcement, Compliance and Environmental Justice. "Colorado's scarce waters and wetlands must be protected from all forms of pollution that are discharged by un-permitted activities."

Air Quality in Rocky Mountain National Park Focus of Colorado Air Quality Control Commission Meeting

U.S. EPA Region 8, Denver, Colorado – March 16, 2005:

Representatives from federal and state agencies, including research scientists and air pollution experts, will provide an update on air quality within Rocky Mountain National Park at a meeting of the Colorado Air Quality Control Commission Friday. The meeting is scheduled to begin at 8:30 a.m. in the conference center at the Rocky Mountain Park Holiday Inn, 101 South Saint Vrain in Estes Park. It is open to the public. Although the commission regularly meets in Denver, one or more meetings a year are held in locations elsewhere in Colorado if issues affecting a particular community or region within the state are a large part of the agenda.

The U.S. Congress has expressed concern in recent years about air quality in pristine wilderness areas scattered throughout the country. These areas are

known as Class I areas, and Rocky Mountain National Park is one of 12 in Colorado. Congress has said that air quality and other environmental conditions in these areas need to be protected.

Technical staff from the U.S. Environmental Protection Agency's Region 8 Office of Air and Radiation, U.S. Department of the Interior's National Park Service and the Colorado Department of Public Health and Environment will present information about current air quality and environmental conditions that are believed to be occurring in Rocky Mountain National Park, as well as the issues the scientific data represent and possible options to address those issues. It is expected that these presentations will introduce a discussion on what next steps would be appropriate to better understand the environmental mechanisms involved.

[The agenda for Friday's meeting can be viewed online and downloaded at: <http://www.cdphe.state.co.us/op/aqcc/aqccdown/Agenda.pdf>. Those interested also can visit the Web site of the Rocky Mountain National Park Initiative, a group formed to study and formulate options to address air quality issues facing the park. This site provides a clearinghouse for the initiative's information: <http://www.cdphe.state.co.us/ap/mnp.html>]

Region 9: No report this issue.

Region 10: No report this issue.

ABA SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

13TH SECTION FALL MEETING
Sept. 21-25, 2005
Nashville, Tennessee

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SAVE THE DATE!