

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION

SUMMARY OF LITIGATION ACCOMPLISHMENTS
FISCAL YEAR 2005



lead, and hazardous waste at federal facilities under those contracts. At sentencing, a \$3 million criminal fine and significant prison sentences for the individuals are expected.

In *United States v. W.R. Grace*, a Montana grand jury returned a 10-count indictment charging W.R. Grace and seven corporate officials with conspiracy to violate the Clean Air Act, conspiracy to defraud government agencies, knowing endangerment, wire fraud, and obstruction of justice. The indictment alleges that Grace mined, manufactured, and sold products from a vermiculite mine that it knew was contaminated with a particularly toxic form of tremolite asbestos, endangering the mine workers' families, residents of the community and others. The company then sold mine properties to local buyers without informing them of the contamination and later misled and obstructed the government by failing to disclose the nature and extent of the asbestos contamination to an emergency response team conducting a cleanup pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Protecting Homeowners and Enforcing the Clean Water Act. In *United States v. Robert Lucas*, all three individual defendants and two companies were convicted by a jury of illegally developing a large wetlands tract on Mississippi's Gulf Coast and defrauding those who bought home sites there. Despite warnings from Mississippi health officials and the United States Army Corps of Engineers that the wetlands property was unsuitable for homes, the defendants built and sold mobile home sites, most with illegal in-ground septic systems. By building these systems, the

defendants criminally violated the Clean Water Act in that they knowingly caused illegal discharges to waters of the United States. The systems discharged directly into wetlands and frequently failed, causing sewage to back-up into homes and seep into nearby yards.

Prosecuting Resource Conservation and Recovery Act Crimes. In *United States v. Donald Roeser*, the defendants, who operated a hazardous and non-hazardous waste treatment and disposal facility, directed their employees to discharge hundreds of thousands of gallons of untreated hazardous and non-hazardous liquid wastes through the sanitary sewer system on a daily basis. They also caused thousands of tons of hazardous solid waste to be illegally shipped to a non-hazardous waste landfill on a daily or weekly basis. The company previously pled guilty to Resource Conservation and Recovery Act (RCRA) crimes. This year, the two individual defendants pled guilty to similar crimes, and to conspiracy and substantive Clean Water Act violations. Both defendants were sentenced to periods of incarceration, one for 27 months and one for 12 months. Each must pay a \$60,000 fine.

In *United States v. Gary Wasserson*, the Third Circuit reversed a district court ruling that had set aside a criminal conviction under RCRA for the knowing disposal of hazardous waste at an unpermitted facility. Wasserson arranged for disposal of hazardous chemicals through an ordinary rubbish hauler. The chemicals were ultimately discharged into a municipal landfill, prompting closure of the landfill and a removal action. The Third Circuit held that "generators" may be liable for "causing" unlawful disposal of hazardous

waste even if they do not operate a disposal facility or commit disposal activities. The case is significant because it confirms that a person who knows that hazardous waste will be disposed of in violation of RCRA requirements may be subject to criminal liability even though he does not personally dispose of the hazardous waste.

Enforcing the Laws Protecting Wildlife.

In *United States v. Kenneth G. Kraft*, a husband and wife were convicted of conspiracy and false labeling for the illegal interstate sale of endangered and threatened animals – including tigers, leopards, and grizzly bears – from a wildlife park. Nancy Kraft was sentenced to 15 months in prison and two years supervised release. Kenneth Kraft pled guilty to conspiracy, false labeling and false statements. He was sentenced to 18 months in prison and three years supervised release. Indictments were also issued against others.

In *United States v. Optimus, Inc.*, a gourmet food company pled guilty last year to wildlife and smuggling charges and was sentenced to pay a \$1 million criminal fine. The money will be deposited into the Lacey Act Reward Account, a fund used by the Fish & Wildlife Service to provide financial incentives for information leading to convictions of wildlife law violators. One of the largest importers of sturgeon caviar in the United States, Optimus admitted that it bought nearly 6 tons of smuggled caviar from five separate smuggling rings. Since 1998, all sturgeon species have been listed as protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Smuggling in violation of this convention threatens the survival of the listed species, including sturgeon.

In *United States v. Antonio Pego*, a federal grand jury indicted a resident of Spain and a Uruguayan company for crimes stemming from the illegal import and attempted sale of toothfish, marketed as Chilean sea bass. The case directly involves the import of approximately 53,000 pounds of toothfish into Miami from Singapore. Related deliveries occurring in the same time frame included over 160,000 pounds of toothfish brought into Los Angeles and over 300,000 pounds brought into New York. All of the fish, valued at over \$3 million, have been seized and are the subject of civil forfeiture complaints. In all cases, the United States alleges that the defendants knew the fish were transported in violation of the Antarctic Marine Living Resources Act and other provisions of U.S. law. This species is the target of both legal and “pirate” commercial fishing operations that are believed to be substantially depleting existing stocks.

United States v. Stock Development, LLC, the defendant company pled guilty to a Class A misdemeanor for allowing an employee to cut down a tree and destroy an active bald eagle nest that had been discovered in an area slated for residential development. The company was sentenced to pay a \$175,000 fine and to pay \$181,000 in restitution to organizations that support and promote conservation of eagles and other birds of prey. This is the largest combination of a fine and restitution ever paid for the destruction of an eagle nest tree.

Punishing CFC Smugglers. In *United States v. Dov Shellef*, a jury convicted two defendants of conspiring to defeat the excise taxes on ozone-depleting chemicals, to launder money and to commit wire fraud. The defendants dodged approximately \$1.9