

## **Office of Criminal Enforcement, Forensics and Training Highlights 2009**

The mission of EPA's criminal enforcement program is to investigate, prosecute and deter the most egregious environmental offenders. We level the playing field for businesses, eliminate the option of "paying to pollute," and deter environmental crimes by putting criminals in jail.

***Successful case outcomes:*** In 2009, criminal enforcement increased judicial outcomes for incarceration, defendants charged, and fines and restitution over 2008 levels. We

- Opened 387 investigations -- 32% of which were in priority areas (National Enforcement Priorities, Regional Enforcement Priorities, OCEFT priorities, and high impact cases)
- We pursued emerging environmental crimes, for example, we identified 31 cases under the new OCEFT Import/Export initiative, 22 of which were opened this year
- Charged 200 defendants, 73% of which were individuals (27% companies)
- Sentenced criminals to a total of 76 years in jail
- Levied a total of \$96 million in fines and restitution

***High quality investigations:*** Criminal enforcement's successes are the result of high quality investigations:

- We open only a small percentage of the leads we receive, generally about 20% overall, meaning we focus on those cases that truly merit criminal investigation while referring the majority of the leads for civil or administrative review
- In those cases where charges were brought, we have a 95% conviction rate
- Of all the closed cases with EPA-lead search warrants, 67% resulted in charges being filed

***Bringing fugitives to justice:*** We created and launched innovative technologies that supported our mission and increased transparency:

- We launched a new and highly effective means to enlist the public and other law enforcement agencies in tracking down fugitives accused of violating environmental laws and evading arrest by merging an old law enforcement tool (the "Wanted Poster") with the Internet to create the EPA Fugitive website
- Since the site went live in December 2008, five individuals have been captured or surrendered
- The site gets an average of 15,000 hits a month – one of the highest of all agency websites
- The interest generated by the website resulted in approximately 200,000 other websites that link to the fugitive page

## Case Highlights 2009

**ExxonMobil Pipeline Company.** ExxonMobil Pipeline Company, a wholly owned subsidiary of Exxon Mobil Corporation, paid a total of \$6 million in projects and fines for a Boston Harbor oil spill. ExxonMobil's inadequate oversight and maintenance of its Everett, Massachusetts marine distribution terminal resulted in a spill of approximately 15,000 gallons of diesel oil into the Mystic River and Boston Harbor in January 2006.

**American River Transportation Company.** The American River Transportation Company (ARTCO) pleaded guilty and paid a \$3 million fine for the illegal discharge of oil and other pollutants into the Mississippi River, and for concealing the source of the oil from emergency responders. Two ARTCO employees also pleaded guilty to making a false statement to authorities and were sentenced to one year probation.

**Comprehensive Environmental Solutions Inc.** Executives and managers of Michigan wastewater treatment company Comprehensive Environmental Solutions Inc. were sentenced to prison for conspiring to discharge nearly 13 million gallons of untreated liquid waste into the Dearborn, Michigan sanitary sewer and concealing evidence of the discharges. Michael Panyard, the former general manager, was sentenced to 15 months in prison. Charles Long, also a former plant manager, was sentenced to two years in prison. Previously, CESI pleaded guilty to related charges and agreed to pay a fine of \$600,000 plus an additional \$150,000 to fund a community service project to enhance the waters adjoining the Rouge River and Detroit River.

**Eco Finishing Co.** Keith David Rosenblum, the Chief Executive Officer and President of Eco Finishing Co., a Fridley, Minnesota metal finishing business, was sentenced to 15 months in prison and paid a \$250,000 fine for violating the Clean Water Act. Rosenblum conspired to discharge metals and cyanide in the company's industrial wastewater at well above permitted levels and altered the company's production and wastewater treatment practices when regulators conducted on-site compliance testing, limiting the discharge of pollutants when the company was being monitored

**Johnson Matthey, Inc.** Johnson Matthey, Inc., a Pennsylvania corporation, was sentenced to pay \$3 million in projects and fines for violating the Clean Water Act at its Salt Lake City precious metals refining facility. The company knowingly submitted false reports of selenium levels to environmental regulators in order to cover up that the discharge consistently exceeded permit limits. The former plant manager and the former general manager were also sentenced to one year probation.

**Brusco Tug & Barge, Inc.** Brusco Tug & Barge, Inc., plead guilty to one felony count of violating the Clean Water Act by discharging dredged material without a permit directly into waters of the United States near San Francisco. The company was sentenced to pay a total monetary payment of \$1.5 million, with \$750,000 to be paid as a fine, and \$250,000 to be paid to the National Fish & Wildlife Foundation to fund environmental projects relating to marine and coastal habitats and watersheds in the Bay Area. The remaining \$500,000 will go to fund the creation and implementation of an Environmental Compliance Plan (ECP) at Brusco.

**STX Pan Ocean Co., Ltd.** STX Pan Ocean Co., Ltd., owner of the Korean cargo ship *M/V Ocean Jade*, paid a \$2.2 million fine for improper disposal of oily waste and sludge. In July and September

2008, crew members discharged oily waste directly overboard before filtering it through proper pollution prevention equipment as is required by federal and international law. Furthermore, when the ship arrived in the Port of Tampa in October 2008, its officers presented false oil and garbage record books, and several crew members made false statements to the U.S. Coast Guard regarding the dumping.

**Novozymes Biologicals, Inc.** Novozymes Biologicals, Inc. (“Novozymes”), a local subsidiary of Denmark-based Novozymes A/S, one of the largest biotechnology firms in the world, was sentenced to three years probation, a \$275,000 fine and spend a minimum of \$250,000 in community service projects after pleading guilty to one count of illegally discharging pollutants into Masons Creek, a tributary of the Roanoke River, without a permit.. Novozyme’s Salem, Va. Plant makes and distributes a wide variety of industrial microbiological products The company dumped over 4,000 gallons of off-specification and outdated products through a floor drain at its Salem plant which ultimately entered a creek. Three minor children playing in and around the creek suffered minor skin rashes and eye irritation. In addition, approximately 6,670 fish were killed along the stream.

**Extreme Metal Finishing, Inc.** Dile Kent McNair, operator of the Texas metal plating business Extreme Metal Finishing, Inc., was sentenced to 37 months in federal prison and pay over \$72,000 in restitution for storing thousands of gallons of hazardous wastes without a permit. McNair is a repeat offender: he and the former metal plating companies that he has operated have extensive histories of environmental noncompliance

**Hassan Barrel Company.** Alan D. Hersh, former owner of the Fort Wayne, Indiana barrel recycler, Hassan Barrel Company, was sentenced to 15 months in prison and to pay \$1.7 million in restitution for violating the Resource Conservation and Recovery Act when he abandoned the recycling site, leaving behind thousands of chemical-containing drums.

**Simply Aquatics.** Kevin Wayne Hester, owner of Simply Aquatics, Inc., Kirbyville, TX, and his father, Lyle Hester, were sentenced to prison for the disposal of hazardous waste without a permit. Kevin Hester was sentenced to 20 months in federal prison. His father was sentenced to 14 months. With the help of his father, Kevin Hester, buried 113 compressed gas cylinders on the residential and ranching property located on County Road 3065 in Kirbyville. It was also determined during the investigation that 33 of the compressed gas cylinders were under high pressure and contained a combined total of 952 pounds of chlorine gas.

**Montex Textiles.** Moshe Rubashkin of Brooklyn, New York, owner and operator of Montex Textiles, was sentenced to 16 months in prison for illegally storing hazardous waste at a Pennsylvania factory. His son, Shalom, was sentenced to four months in prison for making a false statement to the Environmental Protection Agency and obstructing the investigation. The Rubashkins also jointly paid \$450,000 in restitution for a superfund removal that had to be taken at the site.

**BP Products North America.** BP Products North America Inc. paid a \$50 million criminal fine (the largest ever assessed under the Clean Air Act) and will serve three years of probation after pleading guilty to a felony violation of the Clean Air Act. BP was criminally investigated by EPA for its conduct that resulted in the fatal explosion on March 23, 2005 at their Texas City Refinery which killed 15 contract workers and injured over 170 others. This is the first prosecution under a

section of the Clean Air Act specifically enacted to prevent accidental releases that may result in death or serious injury. The provision was passed by Congress in 1990 in response to an explosion at the Union Carbide chemical plant in Bhopal, India causing thousands of injuries and deaths.

**J & W Construction, Inc.** John Wood, operator of J & W Construction, Inc., a New York asbestos abatement company, and Curtis Collins, an employee, pleaded guilty and were sentenced for violating the Clean Air Act through illegal asbestos removal and disposal activities. Wood was sentenced to serve four years in prison and paid restitution to victims of \$854,166.06. Collins was sentenced to two years in prison. Wood directed his employees to perform “rip and run” removals that left substantial quantities behind, significantly contaminating numerous businesses and homes. Wood also deceived clients into believing that all asbestos had been removed by working with a licensed air monitor to falsify air samples.

**Shore Terminals.** Shore Terminals LLC, and was sentenced to pay \$2.5 million -- a \$1.75 million fine and a \$750,000 to community service projects that are designed to improve air quality in the Bay Area -- after pleading guilty to four felony counts of submitting false annual reports to the Bay Area Air Quality Management District and the U.S. EPA Shore Terminals distributed petroleum products and ethanol stored in its tank farm in Selby, Calif. When Shore Terminals loaded trucks, significant amounts of volatile organic compounds would be emitted into the ambient air unless Shore Terminals captured those pollutants with a vapor recovery unit to avoid the creation of smog. Shore Terminals vapor recovery unit periodically malfunctioned and shut down. But the company falsely certified its facility was in compliance with the CAA.

**Heraeus Metal Processing.** Heraeus Metal Processing, Inc. paid a \$350,000 fine and will serve 18 months probation after pleading guilty to making a false material statement regarding the operation of air pollution control equipment at its metal processing plant in Wartburg, TN. The company falsified the record books (logs) for baghouse pressure and scrubber systems, which are pollution control devices which remove dust and other pollutants from furnace flue gases.

**Erler Industries.** Erler Industries Inc., pled guilty to two CAA felony counts of knowingly submitting false quarterly air monitoring reports. Erler owns and operates a paint coatings facility for metal and plastic parts in North Vernon, Indiana which emits volatile organic compounds (VOC). In 2003 and 2004, Erler falsely reported its VOC emissions to appear to have stayed within the required emissions limitations on each plant. Erler was ordered to pay a \$1,000,000 criminal fine (\$500,000 to be suspended if Erler complies with all terms of its probation), as well as pay \$25,000 in restitution to the Midwest Environmental Enforcement Association (MEEA) and \$100,000 in restitution to the Indiana Department of Environmental Management. In addition the firm must serve one year on probation for one year with the special provisions that it 1) develop an environmental training program for its employees, 2) develop and implement a zero tolerance policy for environmental violations, 3) conduct an environmental audit of its facility, and 4) make a public apology in a local newspaper.

**Hershey Creamery Company.** The Hershey Creamery Company paid a \$100,000 fine and was placed on one year of probation after it pled guilty to a CAA felony involving its failure to develop and implement a Risk Management Plan (RMP) concerning the storage and use of a regulated substance, anhydrous ammonia, at two of its facilities in Pennsylvania, Anhydrous ammonia is flammable and can irritate both the skin and eyes. The CAA regulations required Hershey to develop and implement a RMP Program for each facility to, among other things, protect worker

safety, minimize the chance of a release from refrigeration processes at the facilities that would endanger workers and surrounding communities, and to develop and implement prevention and emergency response plans.

**Greenleaf, L.L.C.** Greenleaf, L.L.C paid a \$200,000 fine – the maximum fine allowable -- for violating federal statutes that regulate the sale and distribution of pesticides. Greenleaf received broken bags and unwanted pesticides from Wal-Mart stores across the country and then resold the products after removing or defacing the labeling on the package. The amount of pesticides distributed in this fashion exceeded 2 million pounds.

**Atlantic States Cast Iron Pipe Company.** A New Jersey-based pipe manufacturing company Atlantic States Cast Iron Pipe Co. (a division of McWane, Inc. of Alabama) paid an \$8 million fine for engaging in an eight-year conspiracy to pollute the air and Delaware River in violation of the Clean Air and Clean Water Acts, expose its employees to dangerous conditions, and impede and obstruct federal regulatory and criminal investigations. Four former Atlantic states managers were also sentenced to federal prison terms. Former plant manager John Prisque was sentenced to 70 months, former human resources manager Scott Faubert was sentenced to 41 months, former maintenance superintendent Jeffrey Maury was sentenced to 30 months, and former finishing department head Craig Davidson was sentenced to six months.

**IMS Safety, Inc.** John Meyer, former Vice President of IMS Safety, Inc. of Middletown, NY was sentenced to two years in prison to participating in a conspiracy to defraud the New York City Department of Environmental Protection (DEP). Meyer was ordered to pay \$1,035,000 to DEP in restitution and was ordered to forfeit \$1,035,000 to the United States. Christopher Rotante, another former Vice President of IMS, was sentenced to one year in prison and three years probation and will also pay restitution in the amount of \$1,035,000, and will forfeit \$1,035,000. The conspiracy occurred in connection with IMS's contracts to provide safety oversight at DEP construction sites. The IMS contracts with DEP required that safety oversight personnel be trained in rules and regulations relating to worker safety and be experienced in the construction industry. From 2006 through January 2008, the defendants made false representations to DEP as to the oversight personnel's experience and training. As a result of the fraud, DEP paid more than \$1 million for jobs performed by the personnel about whom the false representations were made.

**Ford Condominiums.** Matthew Burghoff, owner and developer of Ford Condominiums, was sentenced to 24 months in prison for bank fraud and violations of the Clean Air Act involving his renovation of the Ford Building and other buildings and businesses in the St. Louis area, Burghoff was the owner, operator and developer of the Ford Building and was overseeing renovation work at the building. Samples taken ultimately showed that the renovation was violating the requirements regarding the safe handling and removal of asbestos containing material. In addition the defendant received over \$1.6 million in bank loans to renovate building for commercial use. Ultimately, those funds were used for personal expenses and acquisitions.

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### **Innovative Forensic Science**

**E-Waste Analysis.** This past year presented a new challenge to criminal enforcement's forensic laboratory (NEIC) with the start of E-Waste cases. Specifically, providing laboratory support to

several cases by testing computer monitors which contain cathode ray tubes (CRTs) for the RCRA characteristic of toxicity to help identify illegal shipments of E-Waste to foreign countries. This required the NEIC laboratory to develop a stratified sampling technique to obtain a representative subsample of the computer monitor to be extracted by TCLP. Each monitor was disassembled and stratified into nine components of plastic, electronic boards, ferrous metal, nonferrous metal (aluminum), copper (wire), funnel glass, face panel glass, frit glass, and phosphor. A labor-intensive particle size reduction was then conducted on each group. The component groups were weighed and subsamples for extraction comprising all nine groups were prepared by weight proportioning. The TCLP results for the standard subsample mass of 100 grams of the computer monitors had high variance. A variance reduction technique of increasing subsample mass was employed. Subsample masses of approximately 870 grams, and 9,400 grams were extracted using a Drum Tumbler. The stratified subsampling and reduction of variance in the TCLP results with the larger subsample masses has provided good evidence that computer monitors are hazardous waste by exhibiting RCRA characteristic of toxicity for lead.

**Surface Impoundment Initiative.** Working with the Office of Civil Enforcement and the Office of Compliance, as well as the Regions, NEIC RCRA experts continued to take the technical lead to further develop the RCRA surface impoundment initiative. Specifically, NEIC developed and presented a "webinar" to the Regions and states regarding RCRA surface impoundment inspection and regulatory issues. Additionally, NEIC provided the Regional offices with classroom and on-the-job training in conjunction with actual RCRA surface impoundment investigations. NEIC also worked with OC to identify facilities with potential surface impoundment targets for investigation. This work is continuing into FY10 as OECA has identified RCRA surface impoundments as a "Tier 1" issue for consideration as a national priority.