

Testimony of

The Honorable Thomas L. Sansonetti

July 30, 2002

Chairman Biden, Senator Grassley, and Members of the Subcommittee, I am pleased to be here today to discuss the Department of Justice's environmental crimes program. Attorney General Ashcroft has identified protection of our natural resources through strong enforcement of environmental law as a top priority for the Department of Justice, and our environmental crimes program is a crucial part of our enforcement efforts.

In my testimony today, I will provide the Subcommittee with a picture of how environmental criminal prosecutions fit into the larger picture of enforcement of the environmental laws.

Virtually all of the major environmental statutes such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act authorize civil and administrative enforcement as well as criminal enforcement for violations of their provisions, and I will discuss the types of factors we take into consideration in determining whether a violation should be pursued civilly or criminally, including examples of recent criminal cases. I will then explain who is involved in federal environmental criminal enforcement efforts, with a focus on the work of the Environmental Crimes Section (ECS) within my Division and the United States Environmental Protection Agency's (EPA's) Office of Criminal Enforcement, Forensics, and Training (OCEFT). ECS has 28 attorneys devoted full-time to criminal enforcement. To leverage the tremendous expertise of these prosecutors and to enhance our enforcement efforts, we have forged partnerships with U.S. Attorneys' Offices, EPA, the Federal Bureau of Investigation (FBI), and other federal, state and local agencies across the nation. Through Law Enforcement Coordinating Committees and environmental task forces developed in U.S. Attorneys' Offices across the country, we have increased cooperation among local, state, and federal environmental enforcement offices.

Finally, I will discuss some of the enforcement initiatives that ECS, working with the U.S. Attorneys' Offices, FBI, EPA, and other federal, state, and local investigative agencies, have developed. These initiatives address problems as diverse as vessels polluting our oceans, environmental testing laboratories engaging in systematic fraud, and smuggling of chlorofluorocarbons (CFCs) that destroy the protective ozone layer in our atmosphere.

THE BIG PICTURE OF ENVIRONMENTAL ENFORCEMENT

Firm and fair enforcement of the laws is an important component of environmental protection. It helps ensure that (1) our citizens can breathe clean air, drink pure water, and enjoy our Nation's natural resources; (2) law-abiding businesses have a level economic playing field on which to compete; and (3) those who fail to comply with the law know they will be penalized and will as a result be deterred from non-compliance.

As I have already mentioned, virtually all of the major environmental statutes have provisions authorizing civil and administrative enforcement for violations of statutory and regulatory requirements. These environmental statutes also have criminal provisions for knowing violations of those same statutory and regulatory requirements. Some environmental statutes, including the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5127, also require that the criminal violations be willful,

that is, that the violations be committed with an intent to do something that the law forbids, while the Clean Water Act, 33 U.S.C. § 1319, has misdemeanor provisions making it a crime to negligently violate the statute.

The vast majority of environmental violations are addressed and resolved administratively by state and local governments. At the federal level, administrative enforcement is done by agencies, primarily EPA.

Civil judicial cases constitute the next largest category of environmental enforcement matters. The major federal environmental laws such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act provide for EPA authorization of State environmental programs. Accordingly, the States handle many civil enforcement actions under those laws. However, the Department of Justice also plays a significant role in this area. My Division's Environmental Enforcement Section brings civil enforcement cases that seek to control and/or prevent pollution of our air and water and to obtain cleanup of hazardous waste sites across the country, with a focus on multi-state and large, resource-intensive cases. In the hazardous waste area, cases are brought under the Superfund statute for the purpose of protecting the public health and ensuring that the parties responsible for contamination, rather than the public, bear the burden of paying for the cleanup of the sites.

Although the threat of civil and administrative sanctions are sufficient in most cases to deter potential violators of the environmental laws, there will always be those who see a civil or administrative penalty as little more than a cost of doing business. For those individuals and corporations, civil and administrative sanctions are not enough to secure the protection of public health and the environment. As a result, a vigorous criminal enforcement program is an essential component in environmental enforcement.

In my Division, it is the Environmental Crimes Section that is primarily responsible for prosecuting individuals and corporations that have violated the major environmental laws. (The Division's Wildlife and Marine Resources Section is responsible for our efforts to crack down on international wildlife smuggling, which constitutes a major worldwide black market.) As I will discuss in greater detail later in my testimony, ECS works closely with criminal investigators for the EPA, the FBI, the Coast Guard, the Department of Transportation Inspector General's Office, and the Defense Criminal Investigative Services, among others.

WHAT MAKES A VIOLATION OF THE ENVIRONMENTAL LAWS CRIMINAL

In deciding whether to bring a criminal prosecution in an environmental case, we look carefully at the facts and the law in each case. Among other factors, we consider the sufficiency of the evidence to establish violations, the seriousness or risk of environmental harm and the public health impacts, the nature of the acts (i.e. were there deliberate acts of pollution or blatant failures to obtain permits or meet core regulatory requirements), the violator's compliance history (e.g. were there repeat violations?), and whether the conduct involved deception or false statements. To give you a flavor of what this means in practice, I will discuss some recent examples of prosecutions that we have brought.

An example of deliberate conduct that endangered the health of workers and our communities is *United States v. Elias*, in which my Division worked closely with the U.S. Attorney's Office in Idaho to prosecute Allan Elias, a Wharton-educated businessman, for criminal violations of the Resource Conservation Recovery Act (or "RCRA."). Elias, who owned a fertilizer manufacturing facility in Soda Springs, Idaho, ordered his employees to clean sludge from the bottom of a 25,000 gallon tank containing sodium cyanide, and the workers were given no safety equipment. One of his workers was overcome by cyanide gas and now has serious brain damage, which

make it difficult for him to accomplish even the simplest physical tasks, such as brushing his teeth.

Elias was convicted of knowingly endangering the health and safety of his employees, illegal hazardous waste storage and disposal activities, illegal disposal of hazardous waste, and making false statements to federal inspectors in an effort to conceal the knowing endangerment of his employees, and was sentenced to seventeen years in prison, the longest sentence ever given in the United States for a federal environmental crime. The court also ordered him to pay \$5.9 million in restitution to the worker's family and \$400,000 in cleanup costs. Last fall, the Ninth Circuit affirmed the sentence, holding among other things that the federal government's ability to enforce federal laws and penalties both criminally and civilly is not affected in states with authorized RCRA programs. Although we were disappointed by the Court's decision to reverse on the issue of restitution to the immediate victim of Elias' outrageous conduct, we believe that Elias' sentence will deter others from engaging in similar behavior.

Our asbestos prosecutions are another example of our ongoing efforts to protect worker health and safety. For example, at the end of May, we obtained guilty pleas in a Virginia case for asbestos-related violations of the Clean Air Act. The defendants in *United States v. David Klein et al.* hired homeless people and other workers to remove asbestos insulation from pipes and boilers. These workers were neither told that the material they were removing was asbestos, nor were they provided with any protective equipment adequate to prevent the inhalation of asbestos fibers during the removal or transportation for disposal of the asbestos-containing insulation, thereby putting their health in jeopardy. The investigation revealed that not only was asbestos improperly disposed of at a municipal landfill, but also at various other locations including a dumpster at a high school, by a restaurant and in a cistern. The individual defendant faces up to five years in prison and a \$250,000 fine, while the defendant real estate partnership faces up to five years of probation and a \$500,000 fine.

WHO IS INVOLVED IN FEDERAL ENVIRONMENTAL CRIMINAL LAW

As in other areas of law enforcement, the two major categories of participants in the environmental crimes arena are investigators who initially develop the evidence and prosecutors who put the cases together for indictment and trial. The investigators in our cases are typically agents from the EPA's Criminal Investigative Division (EPA-CID) and the FBI, but we have also received substantial support in this area from other federal agencies, including the Department of Transportation, the Coast Guard, the Fish and Wildlife Service, the Army Corps of Engineers, the U.S. Customs Service, the Defense Criminal Investigative Service, the National Oceanographic and Atmospheric Administration, and countless other state and local environmental-protection-related offices and agencies. All of these entities - but particularly the EPA-CID and the FBI - are critical to the success of our criminal enforcement efforts.

On the prosecution side, we in the Division share responsibility with the United States Attorney's Offices around the country for bringing cases. As a general rule, U.S. Attorney's Offices initially decide whether they wish to handle cases referred by investigators. Sometimes they decide to handle a case entirely on their own, while in other cases they prosecute them jointly with attorneys from ECS. In other instances, ECS ends up handling a case in its entirety. Regardless of which office ends up handling a given case, we cooperate and offer assistance as needed. In addition to the front-line work of bringing prosecutions, ECS also acts as a resource for the training of, and the dissemination of information to, the FBI, the EPA, U.S. Attorneys' Offices, and state and local investigators and prosecutors. In fact, one of ECS's most important roles has been to provide training to prosecutors, investigators, and regulators on the federal, state and

local levels to enhance their interest and effectiveness in the area of environmental criminal enforcement. For example, each year the section puts on a three or four day training course for Assistant U.S. Attorneys, EPA, FBI, and other federal and state agency personnel. ECS attorneys also serve as instructors at the FBI's in-service environmental crimes training course in Quantico, Virginia. Attorneys also have worked closely with the EPA in providing training to federal, state, and local agents at the Federal Law Enforcement Training Center in Glynco, Georgia. ECS also holds quarterly Environmental Crimes Policy Committee meetings, where a group of approximately 25 experienced Assistant U.S. Attorneys, ECS attorneys, and EPA attorneys meet to discuss policy, legislation, and litigation issues that affect the prosecution of environmental crimes. The Committee provides the Division and the Department with the perspectives gained by those most experienced in the day-to-day investigation and prosecution of environmental criminal cases.

EPA's Criminal Enforcement Program

The mission of EPA's Office of Criminal Enforcement, Forensics, and Training (OCEFT) is to establish and oversee implementation of the agency's strategy for investigation of federal environmental crimes. OCEFT's primary investigative unit is CID, which houses the agents who investigate potential crimes under all environmental statutes nationwide. At the end of December 2001, CID had approximately 186 special agents located in 50 duty stations throughout the United States. Like their counterparts in the Secret Service, Customs Service, FBI, and other federal law enforcement agencies, and pursuant to the authority set forth in Title 18, United States Code, Section 3063 (18 U.S.C. § 3063), CID agents are fully-authorized federal law enforcement officers, empowered to execute arrest and search warrants, conduct investigations, and carry firearms. Those agents participate in 93 interagency federal, state, and local environmental crimes task forces organized under the direction of United States Attorneys. Many of CID's cases involve criminal violations of not only federal environmental statutes, but also non-environmental criminal laws, such as mail fraud, smuggling, money laundering, racketeering, and other related crimes. To develop the skills required for this work, CID agents receive extensive training at the Federal Law Enforcement Training Center in Brunswick, Georgia, in basic criminal investigative skills and from the National Environmental Training Institute in the more complex and skills necessary to investigate environmental crimes. OCEFT's National Enforcement Investigations Center provides technical and forensics support.

CRIMINAL ENFORCEMENT TASK FORCES AND INITIATIVES

Two of the most important fruits of the cooperation promoted by ECS are the development of task forces and enforcement initiatives. The formation of an environmental crimes task force, which is typically comprised of representatives of local, state and federal agencies, offers one of the most effective means of investigating and prosecuting environmental violations in a district. Task forces provide two important benefits: (1) the opportunity to gather and exchange information with others interested in the enforcement of environmental laws in an efficient and systematic manner; and (2) the ability to mobilize quickly the investigative, technical and legal staff and resources of many diverse agencies in the investigation of a serious environmental violation or concern. Formal and informal task forces now exist in approximately half the 94 federal districts in the nation, and have been instrumental in increasing the number and complexity of cases developed in those districts.

While task forces are centered on particular districts, enforcement initiatives are national in character and are focused on a particular category of environmental violation. What follows is a description of some of our current enforcement initiatives.

Vessel Pollution Enforcement Effort

Vessel pollution is a major problem throughout the world. ECS has led the effort, both nationally and internationally, to confront this problem (which includes the dumping of oil, plastics, and hazardous wastes) through the creation of a Vessel Pollution Enforcement Initiative. The Initiative is a concentrated effort to deter pollution from ships into oceans, coastal waters and inland waterways through the vigorous prosecution of intentional and negligent violators. In coordinating this program, ECS works closely with the Coast Guard, the EPA, the FBI and U.S. Attorneys' Offices. One of the critical elements of the Initiative has been the training of key Coast Guard personnel and enforcement personnel from other federal and state agencies that have enforcement authority over vessel pollution. Another fundamental component of the initiative has been a highly coordinated federal approach to the prosecution of serious violations. In the past year, the work of the Vessel Pollution Initiative has contributed to a number of important prosecutions. For example, this past March, D/S Progress, an oil tanker management company, pled guilty in Maryland to violations of the Ports and Waterways Safety Act, the Act to Prevent Pollution from Ships, and to conspiracy for its attempts to conceal a hazardous leak in the hull of one of its tankers. Despite the risk that this hazardous condition posed to the safety of the vessel's crew and to other maritime traffic, the company's managers directed that false logs be presented to the Coast Guard in order to disguise the leak and to hide the deliberate acts of oil pollution that resulted from the leak.

Following the events of September 11, 2001, ECS has intensified its coordination with the Coast Guard to ensure that the Coast Guard's environmental enforcement mission is effectively integrated with its expanding mission involving port and coastal security. ECS has made presentations to the Coast Guard's Chiefs of Port Operation regarding the integration of environmental enforcement with the Coast Guard's other critical missions, and has worked with Coast Guard Captains of the Port to integrate environmental protection safeguards into port security plans that are being revised in the wake of September 11.

Chlorofluorocarbon (CFC) Initiative

Over the last five years, smuggling of the refrigerant popularly known as "Freon" has threatened to undermine an international agreement intended to phase out world-wide production and use of the chemicals called chlorofluorocarbons, or CFCs. CFCs endanger human health and the environment by destroying the high-altitude, or stratospheric, ozone layer that shields the Earth from harmful ultraviolet solar radiation. The black market in Freon, used principally in car air conditioners, has been driven by the markup available to smugglers, which is higher than for narcotics.

Nationwide to date, 114 individuals have been convicted in illegal CFC import schemes and over 56 years of imprisonment and \$67 million in fines and restitution have been imposed. We have brought a number of actions prosecuting CFC smugglers. Most recently, Barry Himes, John Mucha and Richard Pelletier pled guilty in March to conspiring to smuggle CFCs into the United States. Under the terms of their plea agreements, Himes agreed to a term of 78 and 97 months in prison, and Mucha and Pelletier agreed to a term of between 70 and 87 months in prison as a consequence of the illegal importation scheme to import over 660 tons of CFCs. Their pleas were accompanied by agreements to civilly forfeit a \$2 million mansion on the Connecticut River, and various luxury goods, all of which were purchased from the smuggling proceeds.

Underground Storage Tank Initiative

There are approximately seven hundred thousand Federally regulated underground storage tanks in this country which store petroleum and hazardous substances. Based on State reporting, as

many as 25% of the tanks may not be in compliance with UST regulations. Investigators also have reported widespread fraud by environmental contractors cleaning up sites contaminated by leaking USTs. The victims of the frauds range from small gas station owners to large state and federal government facilities. Not only have tank owners and operators been defrauded by unscrupulous contractors, but federal and state trust funds established to help pay for site remediation have been defrauded of millions of dollars, according to criminal investigators. Most important, the unscrupulous contractors involved in these scams are risking the contamination of millions of gallons of groundwater.

The UST Initiative represents an aggressive effort at addressing these problems. One recent success in this area involved the case of a former environmental contractor, James Edward Adams of Inman, S.C., who pled guilty to charges that he directed employees of his company to fraudulently provide false UST test reports to owners and operators of UST facilities located in South Carolina, North Carolina, Florida, Georgia, Virginia and Tennessee. In January, Adams was sentenced to 27 months in prison and three years of supervisory release for conspiracy to commit mail fraud and related crimes.

Laboratory Fraud Initiative

Laboratories are used to analyze soil, water and other media to determine their chemical composition, to assess whether such chemicals pose human health risks, and to determine whether such media is contaminated and in need of remediation. In light of the role that labs play in the environmental arena, maintenance of the integrity of laboratory sample tests, results, and reports is critical.

Some years ago, the federal law enforcement community became aware of widespread fraud by a growing number of laboratories across the country. As a result, the Lab Fraud Task Force was established to survey the problem of fraudulent laboratory testing and to determine how best to tackle it. Since that time, we obtained pleas from defendants in several cases of lab fraud, including last fall in *United States v. Kaminski, et al.* (D.N.J.), when three executives and one corporation pled guilty in connection an investigation into fraudulent testing of petroleum products, including reformulated gasoline, by Caleb Brett, Inc., a testing laboratory in Linden, New Jersey. We had successfully prosecuted Caleb Brett and six Caleb Brett officials during the previous year.

WILDLIFE SMUGGLING

Before I close, I would like to take a moment to tell the Subcommittee about our wildlife criminal enforcement program. Many people are not aware that the market in illegal traffic in wildlife and flora is second only to drugs in size, and that we have a criminal program targeting this traffic for enforcement. For example, we announced earlier this year that Alfred Yazback, president and owner of Connoisseur Brands Ltd., will serve time in prison and pay fines for conspiring to smuggle protected sturgeon caviar and making false statements to the U.S. Fish and Wildlife Service, as well as selling counterfeit caviar to retail food companies with false labels in violation of the Lacey Act, a wildlife protection statute. Yazback and Connoisseur Brands sold specialty food stores counterfeit caviar using protected American Paddlefish in jars and tins labeled as Russian caviar.

Another successful prosecution in this area occurred last year in the Northern District of California against Anson Wong. Nearly two years after his apprehension by Mexican authorities on a provisional U.S. arrest warrant, Wong, an international live reptile-trafficker from Malaysia, waived extradition and pled guilty in San Francisco to 40 felony counts including conspiracy, smuggling, money laundering and Lacey Act violations stemming from a 1998 federal

indictment for trafficking in some of the most rare and endangered reptile species on earth. Among other methods of smuggling, he and his co-conspirators would use FedEx shipments to illegally import live animals. Wong was sentenced to almost six years in prison.

CONCLUSION

The Department of Justice takes seriously its obligation to protect public health and the environment and is committed to strong enforcement of the environmental laws, criminal as well as civil. The cases that I have described in my testimony provide only a sampling of the many criminal prosecutions in which we are involved, and we will continue to press forward in this area to ensure the protection of all Americans and of our environment. I would be happy to answer any questions that you may have about my testimony.