



**PROTECTING HUMAN HEALTH AND
NATURAL RESOURCES
FOR ALL AMERICANS**

**Summary of the Litigation Accomplishments
of the Environment and Natural Resources Division**

**U.S. Department of Justice
Fiscal Year 1997**

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TABLE OF CONTENTS

	Page
FOREWORD	-ii-
I. CIVIL ENFORCEMENT: RECORD RECOVERIES FOR THE ENVIRONMENT	1
A. Enforcing Clean Air and Clean Water Protections	1
B. Enforcing Protections Against Toxic Waste	3
II. CRIMINAL ENFORCEMENT: PUNISHING KNOWING VIOLATIONS OF THE ENVIRONMENTAL LAWS	5
A. Introduction	5
B. Protecting Stratospheric Ozone: The CFC Initiative	5
C. Cracking Down on International Wildlife Smuggling	6
D. Prosecuting Other Environmental Crimes	7
III. NATURAL RESOURCE PROTECTION	9
A. Protecting Endangered and Threatened Species	9
B. Safeguarding Water Resources	10
C. Preserving Public Lands	11
IV. DEFENDING ENVIRONMENTAL PROTECTIONS	12
A. Defending the Public's "Right to Know"	12
B. Defending Clean Water Protections	12
C. Defending Protections Against Toxic Wastes	12
V. DEFENDING THE SOVEREIGN AND PROTECTING THE PUBLIC FISC	14
A. Defending Vital Federal Programs	14
B. Protecting Taxpayers from Invalid Monetary Claims	15
VI. PARTNERSHIPS WITH NATIVE AMERICANS	16
VII. LAND ACQUISITION FOR THE AMERICAN PEOPLE	17

FOREWORD

I am pleased to present this summary of the litigation accomplishments of the Environment and Natural Resources Division of the U.S. Department of Justice for fiscal year 1997. This report provides a sense of the breadth of our mission as we seek to ensure that all Americans enjoy clean air and water, live in healthy communities, and benefit from our nation's natural resources.

The Environment Division is our nation's largest environmental law firm, and our docket continually raises vitally important, cutting-edge issues in environmental law. The Division's career attorneys and other staff have built a record that shows their abiding commitment to environmental protection and the American people. I am proud to serve with these able lawyers and dedicated public servants. They deserve full credit for the accomplishments described below.

Critical to our success are the partnerships we have forged with U.S. Attorney's Offices and state and local officials across the country. This report reflects the spirit of teamwork, cooperation, and federalism that is the hallmark of sound environmental protection.

The Division also effectively promotes one of the Attorney General's highest priorities: Alternative Dispute Resolution or "ADR," which involves the use of an outside professional to assist the parties in resolving litigation. When used in appropriate cases, ADR can promote public health and

environmental protection by leading to more comprehensive solutions to environmental problems, faster cleanup of contamination, and quicker implementation of environmental protections. ADR also can offer litigants quality solutions to legal disputes, save the parties time and attorney costs, and increase public confidence in the judicial system.

Many of the Division's victories demonstrate that environmental protection and economic improvement go hand in hand. We cleaned up contaminated "brownfield" sites to promote redevelopment of depressed urban areas; we protected our nation's wetlands which generate billions of dollars in revenue from fishing, tourism, and other industries while preventing billions of dollars in damage from floods and erosion; and we defended and enforced clean air protections, whose estimated economic benefits far exceed compliance costs.

The firm and fair enforcement of our nation's environmental laws is absolutely essential to environmental protection. Many of our enforcement actions directly reduce the amount of pollution released into the environment. Just as important is the deterrent effect that results from strong enforcement, for some members of the regulated community will protect the environment only when they realize that violations will result in sure, swift, and just punishment. Effective enforcement also levels the playing field for businesses by ensuring that violators do not gain a competitive advantage over corporate good citizens by pocketing the cost of compliance.

Last year, as a result of our civil enforcement efforts, corporations and other responsible parties agreed to spend nearly \$430 million to clean up toxic waste sites under the Superfund program and almost \$190 million to come into compliance with other environmental laws. Polluters were required to pay another \$56 million for special projects to improve environmental quality. We also obtained record penalties. For instance, in response to thousands of violations of clean water protections that impaired the recovery of the Chesapeake Bay, we obtained a \$12.6 million penalty, the largest civil penalty ever imposed by a court for environmental violations. We also secured important victories against violators of clean air standards, wetland protections, toxic waste restrictions, and other environmental safeguards. Overall, we obtained more than \$55 million in civil penalties in 1997.

For the most serious violations, criminal sanctions are sometimes the only adequate vehicle to achieve justice and express our society's moral outrage at those who knowingly benefit at the expense of human health and the environment. Environmental crimes are real crimes with real victims. They can lead to catastrophic oil spills, contamination of drinking water supplies, and other widespread injury.

In 1997, one major environmental criminal enforcement initiative involved our continued crack down on the illegal importation chlorofluorocarbons (also referred to as CFCs), which destroy the stratospheric ozone layer. This protective ozone layer shields us from

ultraviolet radiation that can cause skin cancer, retard growth in plants and animals, and disrupt the human immune system. As of the close of 1997, prosecutions targeting illegal CFC imports had resulted in the confiscation of nearly 12 million pounds of CFCs with an estimated value of \$92 million, the conviction of 50 smugglers, the imprisonment of 20 individuals, and criminal fines exceeding \$38 million. We also continued to target international wildlife smuggling, a multibillion dollar black market that threatens the natural treasures of countries across the globe.

In addition to our enforcement efforts, the Division achieved many other victories in 1997 that protected our nation's natural resources. We assisted the Department in obtaining a ruling from the U.S. Supreme Court that certain Alaskan coastal lagoons -- critical to the protection of caribou, polar bears, and migratory birds -- are part of the Arctic National Wildlife Refuge. The ruling will not only help protect the wildlife but also give the United States more than \$1.5 billion in revenue from offshore oil and gas leases. In Montana, the Division resolved an important water rights dispute in a way that will ensure that the Upper Missouri Wild and Scenic River will be preserved for the enjoyment of future generations. We obtained a significant appellate court victory that will assist the Department in protecting federal officials from frivolous allegations of wrongdoing for simply performing their duties and protecting the public good. The Department also conducted litigation to acquire ecologically sensitive land for the American people, including 12,000

acres of land for the Lower Rio Grande Valley National Wildlife Refuge in Texas.

Another essential part of our mission is to defend environmental protections and other vital federal programs. After a trial court struck down the retroactive application of the Superfund cleanup statute and deemed it to be unconstitutional in crucial respects, we obtained an appeals court ruling upholding this important program. We successfully defended the constitutionality of federal protections for endangered species. We protected the public's right to know about toxic releases by successfully defeating efforts to eliminate public disclosure requirements for chemicals that cause chronic health problems, as well as for nitrate compounds that impair the blood's ability to carry oxygen. We successfully defended water quality protections for the Great Lakes. We also defeated challenges to the Cassini Space Mission and to the Army's disposal of chemical weapons at its Chemical Agent Disposal Facility in Tooele County, Utah.

The President and the Attorney General have emphasized the need to build effective partnerships with Indian tribes. In 1997, we intervened in two tribal land claims on behalf of tribes in New York, which helped ensure that the claims would not be dismissed. The Division also reached an historic agreement settling Indian water rights issues related to the Metolius and Deschutes Rivers on the Warm Springs Indian Reservation in central Oregon. We engaged in extensive outreach to tribes through conferences and other public

gatherings to increase environmental protection and enforcement in Indian Country.

A number of our cases promote the goals of the President's 1994 Executive Order on Environmental Justice. This Order is designed to enhance fairness in environmental decision-making so that minorities and low-income communities do not bear a disproportionate burden of environmental harm. In addition to bringing cases to promote environmental justice, we emphasize to all Division attorneys the importance of being sensitive to environmental justice concerns in our work.

We also helped resolve many significant environmental policy issues in 1997. A particular note is our international environmental work. Division attorneys participated in the negotiation of environmental agreements concerning global climate change, and we worked with Canada and Mexico to promote environmental enforcement and move toward an agreement on transboundary environmental impact assessments. The Division also worked on international issues regarding biodiversity, transboundary movement of hazardous waste, protection of the world's oceans, and environmental protection in Antarctica. In 1997, we provided training on developing and enforcing environmental laws in Mexico, Guatemala, Panama, Colombia, and South Africa, and we participated in discussions of environmental law issues with officials from South Korea, China, France, India, and Russia.

The American people support strong environmental protection. As President Clinton has said many times, our nation's commitment to environmental protection defines us as a people. In the Environment Division, we frequently refer to an Indian concept known as "Seventh Generation" decision-making. Seventh Generation thinking forces us to consider the future, to take into account not only our children and our grandchildren, but their children and so on, seven generations out. It compels us to take the long view. In everything we do to protect the environment, the Environment Division seeks the wisdom that comes from taking the long view. We appreciate the leadership of President Clinton, the encouragement of Attorney General Reno, and the support of the American people as we seek to protect human health and the environment.



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
April 1998

I. CIVIL ENFORCEMENT: RECORD RECOVERIES FOR THE ENVIRONMENT

A. Enforcing Clean Air and Clean Water Protections

Securing a Record Penalty to Protect the Chesapeake Bay: On August 8, 1997, we obtained a \$12.6 million civil penalty -- the largest civil penalty ever imposed by a court for environmental violations -- against Smithfield Foods, Inc. and two subsidiaries for thousands of violations of the Clean Water Act at two pork slaughtering and processing plants in Smithfield, Virginia. The two plants illegally discharged phosphorous, ammonia, cyanide, oil, grease, and fecal coliform. The penalty reflected the serious harm caused by Smithfield's chronic violations, which accounted for about 80 percent of the phosphorus flowing into the Pagan River, a tributary of the Chesapeake Bay. This illegally discharged phosphorus slowed recovery of the eutrophied Pagan River and impeded the recovery of the Bay. In assessing the penalty, the court considered Smithfield's failure to train its staff, to staff the plant for certain periods to save money, and to pay adequate attention to the advice of its staff and consultants regarding the requirements of the law.

Protecting a Colonia's Drinking Water Supply: In April 1997, we obtained a consent decree to protect the drinking water supply at the Cuna del Valle ("Cradle of the Valley") colonia in El Paso County, Texas near the Rio Grande. A "colonia" is a community of low-income residents living in self-built houses on small lots. The decree resolves allegations

brought under the Safe Drinking Water Act that Rio Bravo Farms, Ltd. sold lots without a safe drinking water supply to low-income residents at the colonia. The residents used shallow water wells to obtain drinking water and had no choice but to dispose of human sewage in a manner that could contaminate the well water with disease-causing bacteria and viruses. As a result of our enforcement action, the first of its kind, the defendants will construct and maintain a temporary water station to provide potable water to residents of Cuna del Valle until the El Paso County Lower Valley Water District Authority extends water service lines and residents are able to obtain potable water from the Authority. The defendants also will pay any costs associated with connecting the residents' homes to the water lines. This precedent-setting action is designed to deter similar violations at other colonias.

Protecting the Cahaba and Black Warrior Rivers: Last year, we concluded a Clean Water Act case brought to protect the Cahaba and Black Warrior Rivers from massive sewer system overflows and other illegal discharges. The United States, three citizen plaintiffs, and the Cahaba River Society alleged that Jefferson County, Alabama illegally discharged billions of gallons of raw and partially treated sewage into the rivers. The Cahaba River is the source of one fourth of the drinking water for the state, home to many endangered species, and a source of local recreation. The Black Warrior runs through downtown Birmingham, and its offshoots are important urban creeks that are seriously

degraded. The consent decree requires a massive rehabilitation plan for the County's treatment plants and collection system, payment of a \$750,000 civil penalty, and funding of a Supplemental Environmental Project valued at \$30 million for the acquisition of riparian lands to be held as conservation easements.

Fighting Nationwide Clean Air Violations: We reached a major settlement of allegations that Georgia-Pacific Corporation violated the Clean Air Act at eighteen wood product facilities nationwide. In a consent decree resolving the case, the court ordered Georgia Pacific to apply for permits at the eighteen facilities, install advanced pollution control technology at eleven facilities, and conduct comprehensive audits at all 26 of its wood product plants. In addition, Georgia Pacific was ordered to pay a penalty of \$6 million, and to undertake other projects to improve the environment costing \$4.25 million, making the total settlement worth over \$35 million.

Punishing Treasure Hunters for Destroying Valuable Sea Grass: In the first case to go to trial under the 1988 Marine Protection, Research and Sanctuaries Act, a federal court in Florida ordered a company owned by an infamous treasure hunter, Mel Fisher, to pay \$589,000 in damages resulting from illegal treasure-hunting activities that destroyed valuable sea grass beds in the Florida Keys National Marine Sanctuary. The payment was used to reimburse the National Oceanic and Atmospheric Administration for its restoration costs, and to implement a sea grass

restoration project in the Keys. The court also ordered the defendants to return all the recovered artifacts to the United States. The ruling effectively ended unpermitted treasure hunting in the Sanctuary.

Enforcing Wetlands Protections: In fiscal year 1997, 3746 acres of wetlands were restored, mitigated, or preserved as a result of the Division's enforcement efforts against violations of federal wetland protections. Total penalties and supplemental environmental projects in these cases were valued at over \$9 million. For instance, the Simpson Timber Company and Simpson Redwood Company unlawfully discharged dredged and fill material into wetlands at the Tehama Fiber Farm, a 12,000-acre eucalyptus plantation near Corning, California owned and operated by Simpson. Simpson's tree-planting operations required "deep-ripping," which involves dragging a device with long prongs through the earth to puncture the clay hardpan. This practice effectively obliterated an extensive network of important vernal pools and ephemeral streams on the Fiber Farm. Simpson also discharged dredged or fill material during the construction of roads and trenching for irrigation pipes. On April 28, 1997, a consent decree was entered by the court imposing a \$120,000 civil penalty and requiring Simpson to set aside 3534 acres of the Fiber Farm that contain vernal pools for use as an ecological preserve area.

B. *Enforcing Protections Against Toxic Waste*

Civil enforcement of the Superfund statute -- the program designed to clean up the worst contaminated sites across the country -- was very impressive during 1997. We filed 147 Superfund cases, and we achieved 132 settlements or judgments calling for the reimbursement of \$350 million to the Fund in repayment for governmental cleanups. We also received commitments to site cleanup valued at nearly \$430 million.

Cleaning up a Dangerous "Toxic Soup" at the BROS Superfund Site:

On January 17, 1997, we obtained a consent decree resolving claims by and against the United States, the State of New Jersey, and 89 private parties for cleanup costs at the Bridgeport Rental and Oil Services Superfund Site (also known as the BROS Site) in Bridgeport, New Jersey. The BROS Site has long been considered one of the most technically challenging sites under the Superfund program. It was used as a waste oil collection facility and chemical waste storage site for almost three decades. When it closed in the late 1970s, millions of gallons of waste oil and other dangerous pollutants were left at the site, much of it in a thirteen-acre lagoon that had become a "toxic soup" of waste material. Under the decree, the settling defendants, including the U.S. Army, Navy, Air Force, and Coast Guard, agreed to reimburse cleanup costs to EPA and New Jersey and to perform future cleanup with a combined total value of at least \$221.5 million. This settlement, one of the largest under the

Superfund program, is the result of more than two years of complex negotiations between the Environment Division, EPA, New Jersey and the settling parties. It reflects recent Superfund reform policies that allow EPA to share in the cleanup costs when some of the responsible private parties are defunct or financially insolvent. The settlement avoided years of litigation, and the court commended the mediation process that led to the successful resolution of this case.

Transforming an Infamous Toxic Waste Site into a Park:

In July 1997, the Division announced the completion of the cleanup of the Times Beach, Missouri Superfund Site, a former dioxin-laden dump. This cleanup was the last cleanup of three toxic waste sites that are said to have inspired the passage of the federal Superfund law in 1980. The Times Beach site was contaminated in the early 1970s when a waste oil recycler was hired to spray used oil on local roads to control dust. Unbeknownst to property owners, the oil recycler had mixed dioxin wastes from a chemical plant into the oil, creating one of the most notorious toxic waste crises in the nation. The area has now been cleaned up and transformed into a 409-acre state park. The Division's enforcement efforts under the federal Superfund statute ensured that those responsible for the contamination paid for the cleanup.

Protecting Homeowners from Unfair Litigation and Cleanup Costs:

The Environment Division, in cooperation with the State of Connecticut, moved to protect neighboring homeowners from an attempt by

Raymark Industries to impose the cost of cleaning up contamination Raymark caused at its Superfund site in Stratford, Connecticut. Under a settlement filed in federal court, homeowners whose property is contaminated will each pay \$1 and thereby be shielded from claims Raymark brought against them. The agreement reflects the Division's efforts to avoid unfair litigation and the imposition of unfair cleanup costs by polluters who try to avoid their cleanup obligations. The settlement stems from a suit the Division and Connecticut brought in January 1997 against Raymark to recover cleanup costs for contamination caused when Raymark dried waste material from its manufacturing operations and made it available to the Stratford community as fill material for lawns, playgrounds, and schoolyards. Cleanup costs may exceed \$200 million.

Achieving a \$35 Million Settlement with a Louisiana Incinerator Operator: We reached an agreement requiring Marine Shale Processors, which operated a hazardous waste incinerator in Morgan City, Louisiana, to pay more than \$10 million in civil penalties to settle allegations that it incinerated hazardous waste without a permit and planned to sell the contaminated ash as fill material to the public. A second company, GTX Inc., will spend \$25 million to buy and upgrade the incinerator and clean up about 350,000 tons of contaminated ash that remain in Morgan City. In 1990, the United States and Louisiana sued Marine Shale over whether the company could distribute its ash as a recycled product under the hazardous waste laws. The suit alleged that the recycling was a sham, and that Marine Shale violated

federal clean air and clean water protections. After a series of rulings by a federal appeals court sustaining the government's arguments, EPA shut down the incinerator.

Spurring Redevelopment at a South Chicago Paint Factory: We lodged a consent decree with a federal court in Illinois to resolve claims against The Sherwin-Williams Company for violations of the federal hazardous waste laws, the Clean Air Act, the Clean Water Act, and the federal "Right-to-Know" disclosure law at the company's south Chicago paint manufacturing facility. The facility is located in a low-income minority area, and the settlement will provide significant environmental and economic benefits to the community. Under the decree, Sherwin-Williams has agreed to: (1) undertake extensive measures to assure its future compliance with the environmental laws; (2) investigate and address releases of toxic wastes from its facility, which may require expenditures up to \$20 million; (3) undertake \$1.1 million worth of work to clean up a contaminated industrial site and restore wetlands near the facility; (4) and pay a civil penalty of \$4.7 million. The nearby industrial site that Sherwin-Williams agreed to clean up is in a "brownfields" area, an area that cannot attract economic investment due to contamination for which no responsible party can be located. Brownfields cleanup is a top Division priority and critical to redevelopment of many low-income communities.

II. CRIMINAL ENFORCEMENT: PUNISHING KNOWING VIOLATIONS OF THE ENVIRONMENTAL LAWS

A. Introduction

The mission of the Division's environmental criminal enforcement program is to deter knowing violations of the federal environmental laws and to ensure compliance with the regulatory programs that protect human health and natural resources.

We regularly provide training programs to federal, state and local prosecutors, investigators and inspectors, regulatory agency attorneys, and technical personnel. In September 1997, with the assistance of a number of veteran Assistant U.S. Attorneys, we planned and conducted an advanced Environmental Crimes Conference for experienced federal prosecutors in Philadelphia. We also continued to work closely with EPA in developing training programs for the Federal Law Enforcement Training Center in Glynco, Georgia. These courses are attended by federal agents and state and local investigators.

Through "Law Enforcement Coordinating Committees" and environmental task forces, in conjunction with the U.S. Attorney's Offices across the country, we have worked to support increased cooperation among local, state and federal environmental enforcement offices. In 1997, we participated as invited faculty for training seminars conducted by such groups in various federal districts. We also provided speakers for

environmental enforcement seminars for chiefs and staff attorneys from offices of state attorneys general throughout the country, sponsored by the National Association of Attorneys General.

B. Protecting Stratospheric Ozone: The CFC Initiative

One of our most important criminal initiatives now under way is our crackdown on the illegal importation of chlorofluorocarbons or CFCs, and other ozone-depleting substances. The stratospheric ozone layer shields us from ultraviolet radiation that can cause skin cancer, retard growth in plants and animals, and disrupt the human immune system. Following a ban on the importation of CFCs used principally in car air conditioners, a black market developed in the United States. The Environment Division, with the cooperation of U.S. Attorney's Offices, the EPA's Criminal Investigation Division and Stratospheric Ozone Protection Program, the U.S. Customs Service, the FBI, and the IRS, launched a wholesale attack on the smuggling of CFCs. The initiative has resulted in fifty convictions, the incarceration of twenty individuals, total criminal fines of \$38,133,526, and restitution in the amount of \$20,177,856.

The CFC initiative's continued success is based on several key elements: quick response to a few early cases that indicated a

broader pattern of criminality; prompt sharing of data among various federal agencies; and regular and complete communication among all agencies and prosecutors involved in the initiative. These factors enabled those involved to build quickly upon the information and lessons learned from the first few major cases, which were brought in the Southern District of Florida. The result is a successful nationwide initiative that continues to grow.

For example, in the Southern District of Florida, on May 28, 1997, one week into trial, Refrigeration, U.S.A., Inc., its president, bookkeeper, and an import-export clerk entered guilty pleas relating to a conspiracy to import CFCs. The corporation pleaded to 129 felony counts and was fined more than \$37 million. The company president was sentenced to 37 months in prison and a \$375,000 fine. As a result of the plea agreement, the president must surrender \$4,470,000 in offshore accounts, other assets valued at over \$3,400,000, and 11,200 thirty-pound CFC cylinders valued at \$6,720,000. The defendants are also liable for unpaid excise taxes exceeding \$31 million.

C. Cracking Down on International Wildlife Smuggling

Operation Chameleon: Division attorneys spearheaded the prosecution of several international live reptile smuggling rings that are part of a \$5 billion yearly black market in live animals and animal products. One ring, in which six people were criminally charged in Orlando, specialized in exotic wildlife found in Madagascar, including Madagascan tree boas and rare radiated and

spider tortoises. Collected by local residents and smuggled by boat from Madagascar, then hidden in airline baggage for the final leg to the United States, these contraband reptiles resupply unscrupulous reptile dealers who sell the animals in the United States at up to a 10,000 percent markup on the original purchase price.

Three of the six charged already have pleaded guilty and two have been sentenced. Wolfgang Kloe is serving 46 months in jail. Simon Harris, a South African who cooperated with U.S. authorities, was confined in a community correctional facility for several months until he was deported. Enrico Truant was extradited from Canada recently, pleaded guilty to several felonies, and soon will be sentenced. This investigation, called Operation Chameleon, is continuing to expand internationally, and additional charges are expected against several dozen more individuals. The Division plays an active role in collecting evidence in the United States for official dissemination overseas, as well as coordinating our requests for both foreign investigative assistance and extradition of foreign nationals charged here. The operation entails an unprecedented level of foreign cooperation.

Reptiles from Australia: In a separate initiative, four individuals pleaded guilty to various felony offenses for their role in smuggling reptiles from Australia into the United States by parcel post and Federal Express. The defendants received significant jail time, probation, community service and fines. Several other cases were developed with

the cooperation of the U.S. Customs Service. Two smugglers, one from Japan and one from the Netherlands, were caught carrying illegally concealed reptiles in their luggage. They have pleaded guilty to felony smuggling charges in the Middle District of Florida and await sentencing. A third, also from Japan, pleaded guilty to felony smuggling charges and was sentenced to 36 months unsupervised probation, fined \$5,000, and deported.

Imprisonment of a Renowned Aviculture Expert: Last year, a federal appeals court upheld a trial court's sentencing of Tony Silva, an internationally prominent Chicago area writer and lecturer on the plight of endangered parrots in the wild. He was sentenced to 82 months of imprisonment for leading an international parrot smuggling conspiracy and for a related income tax violation. Silva's sentence constitutes the longest prison term ever handed out for bird smuggling, and one of the longest for any federal wildlife crime. Silva pleaded guilty to a far-reaching conspiracy involving his mother and persons located outside the United States. The conspirators smuggled into the country highly protected species of birds trapped in the wild in South America, most significantly a substantial number of very rare Hyacinth Macaws. At Silva's sentencing, the judge found that the value of the smuggled wildlife was over \$1.3 million.

D. Prosecuting Other Environmental Crimes

Record Sentences for Misuse of Methyl Parathion: Dock Eatman, Jr. and Paul F. Walls received the longest prison terms ever for violations of the federal pesticide laws for their illegal use of methyl parathion in homes and businesses in Mississippi. In direct defiance of a court order forbidding them from commercially applying pesticides, Eatman and Walls applied methyl parathion, a cotton-field pesticide limited to outside use, to scores of homes. More than 1500 people in predominately low-income neighborhoods were evacuated from their homes as a result. Cleanup costs, paid for by the federal Superfund, exceeded \$60 million. Walls was convicted on 48 counts of pesticide misuse and sentenced to a year on each count, six years and six months of which he must spend in actual confinement. Eatman was convicted on 21 counts and sentenced to a year on each count, five years and three months of which he must spend in actual confinement.

Illegal Discharges into the Big Sioux River. In 1991, John Morrell & Co., a large meat-packing plant in Sioux Falls, South Dakota, doubled the number of hogs that it slaughtered and processed at the plant. It subsequently engaged in illegal, harmful discharges of slaughterhouse wastewater into the Big Sioux River. Officials at the plant concealed these violations through selective sampling and false test reports. For their violations of the federal Clean Water Act, the plant's senior vice president was sentenced to 24 months in prison and a \$5,000 fine, and the

plant engineer was sentenced to six months in prison, a \$3,000 fine, and \$8,000 in restitution. In May 1997, an appeals court upheld every aspect of the convictions, affirming the Division's reading of the Clean Water Act on all issues. The Morrell company pleaded guilty to Clean Water Act violations and was sentenced on May 28, 1997 to a \$3 million fine, which included a \$1 million payment to an environmental trust fund to cleanup the Big Sioux River.

Indictment of a Cruise Line for Unlawful Discharges: On December 19, 1996, the Miami-based Royal Caribbean Cruises, Ltd., one of the world's largest cruise lines, was charged in a 10-count indictment with conspiracy to dump waste oil in the United States, presenting false statements in U.S. ports, and obstruction of justice by tampering with witnesses and destroying evidence. Two top employees also were indicted. The indictment charges that cruise ship engineers routinely dumped oily bilge waste overboard instead of discharging it to a reception facility in port. Additionally, employees allegedly falsified oil record books on various ships to conceal the discharge practices from the Coast Guard. The indictment also charges that engineers on at least five cruise ships maintained false documents to conceal the illegal discharges.

Illegal Storage and Disposal of Toxic Waste: Johnnie Williams, the owner and operator of W&R Drum, Inc., illegally stored and dumped toxic waste in a low-income African-American neighborhood in Memphis, Tennessee. When W&R Drum was closed and

designated a Superfund site, 1100 of the 30,000 drums at the site contained ignitable and corrosive hazardous waste. The waste saturated the soil for three feet with hydrocarbons and heavy metals. Williams was convicted of illegal storage and disposal of hazardous waste on January 13, 1997.

III. NATURAL RESOURCE PROTECTION

A. Protecting Endangered and Threatened Species

The Constitutionality of Species

Protections: In response to a challenge to the constitutionality of federal protections for endangered species, we obtained a federal appeals court ruling upholding these protections. The court ruled that Congress has the constitutional authority under the Interstate Commerce Clause to protect endangered species found only within a single state. The court found a sufficient connection between this protection and interstate commerce because, among other things, the loss of biodiversity has a substantial effect on interstate commerce, genetic diversity leads to new medicines and other valuable products marketable in interstate commerce, the genetic material of wild species may be inbred into domestic crops and animals to improve their commercial value and marketability, and tourists and scientists travel interstate to see and study endangered species.

Northern Spotted Owl: In the first case to go to trial on a claim by the government that a private party's land use activities would violate the Endangered Species Act, the Division sought to prevent the prohibited "taking" of a pair of northern spotted owls (known as the Chickahominy Creek owls). The taking would have resulted from the clearcut harvest of 94 acres of land that contain approximately 20 percent of the remaining suitable habitat available to the pair. After the landowner refused to apply for a permit that

would have authorized the taking subject to certain mitigation requirements, the Division worked closely with the U.S. Attorney's Office in Portland and the Department of the Interior to file suit to prevent the timber harvest. In July 1997, the district court issued a one-year injunction, during which time the Fish and Wildlife Service will monitor the movements of the owl and report back to the Court on the extent to which the pair is using the land.

Salmon: The Division has been involved in a number of cases that will benefit the long-term survival of various salmon species, some of which have had their numbers severely depleted over the last century. For example, the Division successfully defended a strategy proposed by the National Marine Fisheries Service (NMFS) to address severe threats posed by federal dams on the Columbia and Snake Rivers. The strategy involves a systemic research effort that allows NMFS and the other federal agencies to make an informed decision in 1999 about the proper pathway for salmon survival and recovery. The strategy also includes measures to insure that the salmon survive in the interim. This research-based strategy is appropriate because there is considerable scientific dispute as to the best way to preserve declining salmon stocks in the Pacific Northwest. Some parties believe that several major federal dams on the Snake River need to be removed as part of the solution. Others believe that the dams should be improved so that a sufficient number of fish are directed away from the turbines and into barges to be carried downstream.

Whales: The Northern right whale is the world's most endangered whale. Only about 300 of the large sea mammals remain. After a series of incidents in which three whales were killed in collisions with Coast Guard Cutters off the coast of New England, the Coast Guard implemented an extensive Living Marine Resources Program designed to protect whales and other marine resources. In May 1997, a district court upheld this program in the face of challenges under the Endangered Species Act and other environmental statutes. With the help of our Division, the Coast Guard has been able to maintain its operations, while working on ways to ensure compliance with environmental laws.

Condors: San Juan County, Utah requested a preliminary injunction against the government's reintroduction of an experimental population of the California Condor into northern Arizona and southern Utah, alleging violations of various federal statutes. On October 11, 1996, a district court denied the County's request for a preliminary injunction, dismissing the action for lack of standing and ordering that judgment be entered in favor of the government. Six condor chicks were subsequently released.

Caribou, Polar Bears, and Migratory Birds: On June 19, 1997 the Supreme Court ended 18 years of litigation with a decision in United States v. Alaska. In this most recent of 50 years of "tidelands" litigation, the parties contested the coastal boundaries of the Arctic National Wildlife Refuge and National Petroleum Reserve in Alaska. Finding for the federal government on

each of the major issues, the Supreme Court determined that the coastal lagoons in the areas of the refuge -- which are critical to the protection of caribou, polar bears, and migratory birds -- are part of the Refuge and subject to government protection. As explained below (page 15), this case also resulted in important monetary benefits for the United States.

B. Safeguarding Water Resources

Favorable Settlements: In Montana, with the approval of the State legislature, we entered into two settlements that ensure that the 149-mile long Upper Missouri Wild & Scenic River will be preserved for the enjoyment of future generations. In Colorado, we negotiated an agreement that provides the water needed for the recovery of four endangered species of fish in the Colorado River. In Idaho, we settled over 500 water rights disputes and secured a critical victory in state district court that recognizes the right of the United States to claim in-stream flows under state law.

Unauthorized Use: In Nevada, the Division filed a precedent-setting action for the recovery of over one million acre feet of water from people who had taken it without authority from the Truckee River from 1973 to 1987. In 1997, we succeeded in having a defendant class certified so that the action can proceed against all water users without the necessity of joining each user as a separate defendant.

Protecting Refuges: We succeeded in having three cases dismissed in which a City and County in Nevada sought to stop the U.S. Fish and Wildlife Service from purchasing fresh water for a National Wildlife Refuge in Nevada. All cases were dismissed for lack of standing because the plaintiffs could not prove any injury to themselves from this program.

C. Preserving Public Lands

"County Supremacy": In March 1997, following our judicial victory against Nye County that reaffirmed our right to manage the federal lands within the state, we settled the remaining counts of the lawsuit. Based on the settlement terms, Nye County officials have vowed cooperation with the Forest Service and have abandoned their public hostility to the agency and its regulations. Meanwhile, the Ninth Circuit affirmed an important court victory arising from a county grand jury investigation in Elko County, Nevada, that purports to examine wrongdoing in the management of federal lands within the county. The appellate court upheld the district court's decision to quash a subpoena issued by the grand jury that sought to require a Forest Service employee to testify. The decision should greatly assist the United States in protecting its employees from frivolous allegations of wrongdoing when they are performing their jobs.

IV. DEFENDING ENVIRONMENTAL PROTECTIONS

A. *Defending the Public's "Right to Know"*

We continued our successful defense of the public's "right to know" by defeating a challenge to a decision by EPA to add 286 chemicals to the "Toxic Release Inventory," the list of chemicals subject to federal public disclosure requirements. We obtained an appeals court ruling upholding EPA's decision to add these chemicals to the Inventory based on chronic health effects to the public. We also successfully defended the public's right to know about releases of nitrate compounds, exposure to which can lead to methemoglobinemia, a condition that impairs the blood's ability to carry oxygen. Including nitrate compounds on the Toxic Release Inventory provides important information for the public concerning potential chemical hazards in their community.

B. *Defending Clean Water Protections*

Great Lakes Water Quality Protections: We won a significant victory for EPA's Water Quality Guidance for the Great Lakes System. The Guidance establishes water quality criteria and other protections for human health, aquatic life, and wildlife affected by the Great Lakes System. The court upheld the Guidance against most of the challenges, allowing EPA and the Great Lakes states to move forward with implementation of critical water quality controls. The ruling will serve as

very useful precedent regarding judicial deference to EPA's determinations in complex technical areas, and to EPA's ability to make reasonable judgments in areas of scientific uncertainty.

C. *Defending Protections Against Toxic Waste*

The Constitutionality of Superfund: A federal appeals court in Atlanta upheld the constitutionality of the Superfund statute, overturning a trial court ruling that Congress lacked authority under the Commerce Clause to enact the statute. The appeals court also reversed the lower court's ruling that polluters could not be held retroactively liable for actions that occurred prior to the 1980 enactment of Superfund. Before the lower court decision, every court that considered similar arguments had rejected them. By reaffirming that the Superfund law is constitutional and that polluters can be held responsible for waste they dumped before the law's enactment, the ruling allows EPA and the Division to continue their commitment to faster, fairer, and more efficient cleanups across the country.

Timely Cleanup of Toxic Waste: We obtained a federal appeals court ruling that lawsuits may not be brought by private parties to delay or stop the government's cleanup of hazardous waste sites under the Superfund law. The decision underscores that citizens can participate in Superfund cleanup decisions

before they are implemented, but cannot delay them in court afterward. In a 12-0 decision, the Third Circuit appeals court dismissed an action against EPA brought by parties seeking to halt the agency's cleanup of the Drake Chemical site in Lock Haven, Pennsylvania. From the 1940s to 1982, a chemical manufacturing facility was operated on the site, leaving behind contaminated soils, chemical storage tanks, and wastewater lagoons contaminated with toxic substances. Consistent with every other federal appeals court to consider the issue, the Third Circuit agreed with the government that Congress, in enacting the Superfund law, intended that citizen-initiated judicial review of EPA's cleanup actions should occur only after cleanup is completed. This approach ensures that time-consuming litigation does not hinder the cleanup. The Superfund law does, however, permit citizens to participate extensively in the selection and implementation of any cleanup plan before it begins.

V. DEFENDING THE SOVEREIGN AND PROTECTING THE PUBLIC FISC

A. Defending Vital Federal Programs

The Cassini Space Mission: Two lawsuits seeking to enjoin NASA's launch and operation of the Cassini Mission to Saturn were filed in federal court in Hawaii. After briefing on emergency motions and various discovery and procedural motions, the temporary relief sought was denied, and the mission proceeded with a successful launch. This launch -- the result of an international team's efforts -- is scheduled to reach Saturn in July 2004.

Safe Disposal of Chemical Weapons: We continued our defense of the Army against a citizens' suit involving the Army's Chemical Agent Disposal Facility in Tooele County, Utah. This facility is a critical component of the Army's plan to safely dispose of chemical weapons. The plaintiffs sought to enjoin operations. We successfully opposed two motions for a preliminary injunction, and the first denial was subsequently upheld by the Tenth Circuit. A preliminary injunction would have stopped the Army's testing of a chemical incinerator plant in Utah. There was no appeal of the second order denying a preliminary injunction. Because the Army has been able to use the incinerator to dispose of chemical weapons, the incinerator reportedly has destroyed 1500 tons of sarin gas to date, which constitutes 25 percent of the stockpile at the facility.

Safe Disposal of Radioactive Wastes: We won a favorable decision after New Mexico, Texas, and others filed petitions for review of EPA's compliance criteria for the Department of Energy's Waste Isolation Pilot Plant ("WIPP"), a radioactive waste disposal facility near Carlsbad, New Mexico. The criteria will be used to determine the WIPP's compliance with environmental radiation protection standards for the disposal of radioactive wastes. In June 1997, the court upheld the compliance criteria in all respects. The victory is important because it allows EPA and DOE to continue the certification process and avoid additional delay in the opening of the WIPP facility.

Federal Facility Compliance: We continued our efforts to work with federal agencies to assure compliance with federal pollution control laws. For example, we are negotiating a settlement of litigation brought by Anacostia residents to address alleged unpermitted discharges from the Washington Navy Yard. As a result of our efforts, the citizens have been willing to focus the parties' efforts on settlement instead of litigation. We recently filed a motion for entry of a consent decree resolving all claims in the case.

We also have expanded our efforts to improve federal agency compliance with environmental laws by providing advice as issues arise and serving on inter-agency task forces. We assist federal agencies in educating

their attorneys and program managers through a host of seminars, both through the Attorney General's Legal Education Institute and through programs initiated by other agencies.

B. Protecting Taxpayers from Invalid Monetary Claims

Royalties: The Supreme Court's decision in United States v. Alaska regarding the boundaries of the Alaska National Wildlife Refuge will give the federal government more than \$1.5 billion in oil and gas reserve revenues which have accumulated in a Treasury account. As explained above (page 10), this decision also resulted in important environmental benefits.

The Iron Mountain Mine Superfund Site: We obtained a favorable result in a case concerning Superfund claims arising out of a century of mining activities that have led to major releases of acid mine drainage from the Iron Mountain Mine Superfund Site, north of Sacramento, California. Rhone-Poulenc, owner of the Site and a defendant in the cost recovery action, counterclaimed against the United States, alleging that the United States is liable for all of the cleanup costs, which are expected to total more than \$200 million. As a result of extensive work by the Division during fiscal year 1997, the district court recently ruled that the United States is not liable for the cleanup of acid mining drainage on Iron Mountain.

The Stringfellow Acid Pits: In a landmark case, property owners claimed that

the United States owed them compensation for "taking" their property under the Fifth Amendment due to EPA's installation of monitoring wells on their property to monitor the migration of water pollution from the Stringfellow Acid Pits Superfund site. Pollution from the site threatened groundwater and the health and safety of nearby property owners. Although the property owners benefitted from the cleanup, they sought more than \$40 million in just compensation. The court awarded no compensation, finding that the owners' benefits outweighed any damage from the limited property interest needed by the government to conduct the cleanup.

Flood Prevention: In a case with major ramifications in Texas and Louisiana, we brought to an end eight years of litigation on the issue of whether pipeline companies whose pipelines interfered with federal flood control projects could refuse to relocate their lines until guaranteed compensation for the costs of relocation. In 1993 we were successful in obtaining a favorable decision from a federal appeals court that such a refusal was without legal foundation. In the second of two cases in which a company refused to relocate its lines without a guarantee of payment for relocation costs, we obtained a settlement whereby the case was dismissed with prejudice and the companies paid the United States to compensate for delays to the project caused by that refusal. The resolution of these two cases effectively ended the threat of litigation by more than 100 pipeline companies affected by one flood control project in Texas.

VII. PARTNERSHIPS WITH NATIVE AMERICANS

Historic Water Rights

Settlement: The Division settled water rights issues related to the Metolius and Deschutes Rivers on the Warm Springs Indian Reservation in central Oregon. The agreement recognizes significant tribal water rights and the Tribes' sovereign right to govern water distribution within the Reservation.

Assistance to New York Tribes

on Land Claims: To help ensure the preservation of tribal land claims, we intervened in a case against the State of New York on behalf of the Seneca Nation. Without U.S. participation, the claims were subject to dismissal under a ruling by the U.S. Supreme Court in another case that Indian tribes may not bring land claims in federal court against state officials. The disputed land consists of 50 acres near Cuba Lake. We alleged that New York tried to buy or condemn land from the Nation in several transactions between 1858 and 1872 without the necessary consent of the U.S. Congress. We also participated in settlement discussions regarding other tribal land claims in New York.

Chippewa Hunting and Fishing

Rights: The Department successfully defended an appeal of a lower court decision upholding the treaty-based rights of Chippewa Bands to engage in off-reservation hunting, fishing, and gathering in Wisconsin.

Tribal Water Quality Protections:

We obtained a significant victory in the first

challenge to EPA's approval of tribally developed water quality standards under a Clean Water Act provision authorizing EPA to treat tribes in the same manner as states. A federal appeals court upheld EPA's approval of water quality standards developed by the Pueblo of Isleta, New Mexico, that were stricter than state standards.

Resolving Indian Claims Against

the United States: Through the Indian Claims Commission Act, Congress provided a special forum for resolving historic wrongs against Native Americans. One notable success story in resolving these claims involves the use of mediation by the United States and the Red Lake Band to resolve a timber and land sale claim that had eluded resolution for more than 50 years. With the cooperation of all, we were successful in ending the dispute over these claims. A claim regarding forest management practices remains pending.

Outreach and Partnership

Building: The Department engaged in substantial outreach through conferences and other public gatherings to increase environmental protection and enforcement in Indian Country.

VIII. LAND ACQUISITION FOR THE AMERICAN PEOPLE

Another important responsibility of the Environment Division is the acquisition of land by condemnation proceedings for use by the federal government. The ultimate issue in a condemnation case is the amount of just compensation due for the property taken.

Cleanup of an Army Facility in San Joaquin County: The most significant condemnation case tried in fiscal year 1997 involved 460 acres of land in San Joaquin County, California, taken on behalf of the Department of the Army in connection with an environmental cleanup of an adjacent Army facility. The government presented appraisal testimony that the value of the property was \$6,500,000. The landowner presented appraisal testimony by one appraiser that the value was \$11,300,000 and by another that the value was \$12,650,000. The court awarded compensation of \$8,630,812.

Lower Rio Grande Valley National Wildlife Refuge: A favorable appeals court decision paved the way for settlement of a case involving almost 12,000 acres of environmentally sensitive land in southern Texas. We filed suit on behalf of the U.S. Fish and Wildlife Service to acquire the land for inclusion in the Lower Rio Grande Valley National Wildlife Refuge in Texas. The land is located along the bank of the Rio Grande and the shore of the Gulf of Mexico. The addition of this land to the Refuge was necessary to protect the unique natural resources located in this part of the Refuge,

including endangered species habitat, coastal wetlands, and barrier islands, as well as the Refuge corridor connection with the Gulf of Mexico. The filing of the case was triggered by a title dispute between the record owner, with whom the United States had an agreement for the sale of the property for the government's appraised value, and a development corporation, which was making a significantly greater compensation claim. The lower court ruled for the government that the corporation had no compensable interest in the property, and the corporation appealed. The Fifth Circuit issued its decision affirming the judgment for the government, clearing the way for settlement in the amount of the government's appraisal, \$5,855,600.

Prince William Sound Restoration: The Division used the Attorney General's title regulations to assist the U.S. Forest Service and the State of Alaska in acquiring interests in approximately 60,000 acres of land on Prince William Sound from the Chenega Corporation with funds from the Exxon Valdez oil spill settlement. This achievement, requiring application of unique title law expertise and long hours of delicate negotiations and draftsmanship, produced a result that was specifically acknowledged at a formal signing ceremony memorializing the purchase agreement. The acquisition is part of a larger, long-term project to acquire land interests for the benefit of species injured by the oil spill.