

LYC

New York State's

2001

Statewide High School Mock Trial Tournament Materials



**Committee on Citizenship Education
New York State Bar Association®**

***Materials prepared by the Law, Youth & Citizenship
Program of the New York State Bar Association
and the New York State Education Department.***



New York State Bar Association

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COMMITTEE ON CITIZENSHIP EDUCATION

A.S. BEN-MERRE

Chair

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Dear Participant:

Thank you for entering New York's Annual Statewide High School Mock Trial Tournament, co-sponsored by the New York State Bar Association's Committee on Citizenship Education, The New York Bar Foundation, the New York State Education Department, and county bar associations throughout our State.

The tournament finals will be held in Albany, with participation of school teams that prevail in the regional competitions. To reach the finals, a team will have to compete in one of six regional tournaments. These tournaments will be coordinated by the local sponsors in each region. The winning team for each region will qualify for the finals.

Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days they participate in the State Tournament. Regional teams consist of the nine students paid for by The New York Bar Foundation. Only those nine students can compete in Albany. The State Tournament is scheduled for May 9-11, 2001 in Albany.

The procedures and rules used in this year's contest remain largely unchanged; however, please review carefully all the information, and in particular, the section on Trial Procedures. We hope that the format of the Mock Trial Tournament is such that it discourages a "win-at-all costs" attitude, increases the number of students actually involved in the enactments, and stresses cooperative planning and teamwork among participants. We are also hopeful that the benefits of this year's Tournament will go far beyond the rewards associated with competing against one's peers and perhaps winning a round or two. It remains essential to the success of New York's Tournament that participants not lose sight of the goals our Committee has set for sponsoring this event. They remain as follows:

- To further understanding of the law, court procedures and our legal system;
- To help increase proficiency in basic life skills such as listening, speaking, reading and reasoning;
- To promote better communication and cooperation between the school community—teachers and students—and the legal profession; and

•To heighten appreciation for academic studies as well as career consciousness for law-related professions.

Best wishes for an intellectually stimulating and personally rewarding experience to all those students, teachers, attorneys and judges involved in this year's Statewide Mock Trial Tournament.

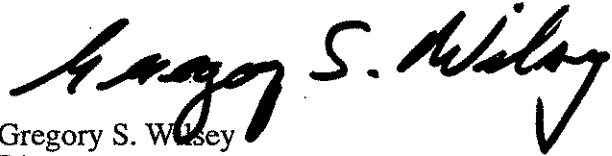
Sincerely,

A handwritten signature in black ink, appearing to read "A Ben Merre".

Aaron S. Ben-Merre, Esq.

Chair

Committee on Citizenship Education

A handwritten signature in black ink, appearing to read "Gregory S. Wilsey".

Gregory S. Wilsey

Director

Law, Youth and Citizenship Program

PART V

SUPREME COURT OF THE STATE OF NEW YORK

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF NEW YORK

v.

MONK AGRICULTURAL CHEMICAL COMPANY,

TAYLOR MONK, and

Case No. MT-01

JEFFERSON MONK, DEFENDANTS

STATEMENT OF STIPULATED FACTS*

During the evening of October 27, 2000, a group of ten-year olds, all members of the Environmental Science League (ESL), went camping at their group's wooded headquarters, which covered over 800 acres. While hiking through brush near sandy hills, Lindsey White fell down a shallow hole next to a log. Lindsey discovered a piece of metal sticking out of the hole. Thinking that it might be "buried treasure," Lindsey and friends began digging. What they found was not buried treasure. Instead, it was buried metal storage drums covered with some type of thick, oozing liquid. This substance consisted of various hazardous chemicals, including methyl ethyl solvent solution, which causes cancer in humans, even in small amounts. Several children came into contact with the sticky substance oozing from the drums.

At about this time, Morgan Mitchell, the president of ESL, came upon the children. Mitchell, an environmental activist, immediately recognized the danger posed to the children and ordered them away from the drums. Mitchell called 911 and had the children taken to the hospital. Mitchell also contacted the State hazardous waste emergency number. The State's emergency response team was at the site within two hours after receiving the call.

Sandy Carnes, from the State Environmental Crimes Unit, was one of the investigators. Upon arriving at the scene, Carnes observed various drums; some of which were still largely buried. Some of the drums were a faded blue. Others were black and/or rusted. A few of the drums were smaller than fifty-five gallons, but most were the fifty-five-gallon size. Surrounding the drums was various

debris, including what appeared to be automotive parts, clothes hangers, and old lottery tickets. The date of the lottery tickets was faded, but the State has had a lottery since 1992. Carnes noted that there was a hazardous waste decal on each drum, but no other designation. In particular, Carnes initially did not observe any print material, which would tie the waste to any particular company. Morgan Mitchell claimed to have found a decal, which had the name Monk Agricultural Chemical Company on it, in one drum. Mitchell passed all this information on to Carnes. Carnes found no evidence of the MACC sticker on or in a drum, but subsequently did find numerous MACC stickers in nearby brush during a daylight inspection.

The initial discovery of some 25 barrels buried in sandy soil led to a wider, careful inspection of the ESL property. In a more remote area of the property, ringed by bogs, was a large sandpit that apparently had been commercially excavated in the distant past. Buried in that pit were hundreds of additional blue, black, and grey barrels, all subsequently analyzed as containing various hazardous agricultural and petroleum-based waste products. Although buried in sand, many barrels were rusted through or had been dented and damaged either in transport or by the past use of heavy machinery to bury them. Although a definitive age could not be ascertained, a variety of other debris (such as tin cans and glass soda bottles from the 1950s, old tires and car parts from the 1920s, 1930s, 1940s, 50s, among other items) placed many of the barrels as 40 or more years old. Many of these barrels proved to be empty. Testing of residue from these barrels and testing of the subsoil and underlying aquifer determined the presence of high levels of agricultural pesticides and industrial waste oil. Some 100 bright blue 55-gallon barrels, rimming the outer edge of the site, were in such excellent shape that they appeared to be less than 10 years old. They all contained methyl ethyl solvent solution. The underlying aquifer was part of a vast system, which supplied water to single family rural homes and the nearby municipality of Crystal Springs, which tapped it through a series of high capacity wells. Over 80,000 people relied on water from this aquifer for their daily needs.

ESL is a national organization with a long and honored history. The organization, founded in 1937, was one of the first organizations in the country to actively advocate for state and federal pollution control laws. Started by John J. Mitchell, a professor at Cornell University and the grandfather of Morgan Mitchell, ESL first advocated for stricter waste handling controls in the work place so as to prevent occupational diseases. ESL also lobbied for environmentally-friendly waste disposal laws. For decades most legislative efforts were vigorously opposed by the business community, which saw the legislation as cost-prohibitive and unnecessary. Only in the late 1960s and 70s, following scientific evidence and popular best-sellers on the harm done by pesticides and other hazardous wastes, did states and the federal government move to control pollution. The outcry from an informed public forced the issue and leaders like John Mitchell spearheaded the fight.

The most vigorously fought issue was state hazardous waste disposal legislation, which was passed by the state in the late 1960s. This legislation imposed criminal liability upon land and factory owners for improper waste disposal. During the debates over this legislation, John J. Mitchell received a number of death threats. Jefferson Monk, who owned Monk Agricultural Chemical Company, was a major opponent of state legislative action, as it would impact his business. Monk argued that for companies competing in a national and international market, regulation by states, which significantly increased companies' costs of doing business, were disastrous. Such laws, he told the legislative committee "would only apply to in-state companies, not my out-of-state competitors. You'll put me out of business or force me to pick up and move my company to a sane state. You'd have to be a fool not to see that federal regulation is a fairer option. At least then all American companies would be in the same boat."

After the retirement of John J. Mitchell in 1990, Morgan Mitchell became the president of ESL. Since that time, Morgan Mitchell has focused on education rather than legislation. ESL started an educational program for students that sought to demonstrate the connection between environmental beauty in wilderness areas, responsible waste management practices, and basic economic decision-making. The program consists of school-based learning along with overnight camping trips to wilderness areas. All students who complete the program are provided internships with corporate sponsors who have pledged to help protect the environment. Morgan Mitchell calls these students "environmental soldiers" who help ESL spread its message.

All these educational and legislative efforts have been costly for ESL, a nonprofit organization, that relies on private donations and foundation grants. In early 1997 Jefferson Monk, the industrialist, deeded a large parcel of land, over 800 acres, to ESL.

Jefferson Monk was a self-made man who started a small chemical plant known as Monk Agricultural Chemical Company ("MACC"), buying up a bankrupt company and its land in 1933. It was this chemical plant that became the source of his fortune.

Hiring the best scientists in the area, he gradually increased his company's market share until it became one of the nation's largest manufacturers of agricultural chemicals. In the 1980s, the chemical company expanded its market to Asia and Europe. It is now considered a global leader in its field.

In 1985, Jefferson Monk decided to take the company public. He profited tremendously from this transaction. With a substantial portion of this money, Mr. Monk set up the Monk Foundation. Jefferson Monk was the Chair of the Foundation until he had a stroke in late 1997. As chair, he authorized substantial funds to be given to charitable organizations such as the Audubon Society and

the Sierra Club. Taylor Monk has been head of the Monk Foundation since Jefferson Monk's stroke in December 1997.

Throughout the years since environmental regulations began, MACC has been considered a good corporate citizen. MACC has rarely been cited by the state or the Environmental Protection Agency ("EPA") for violations at its local plant, and the citations issued have been for minor lapses (although there had been some problems in the Indonesian plant). Indeed, in an interview with *USA Today*, the head of the EPA, Patricia Matthew, commented that she wished all corporate citizens were as responsible as MACC is now.

In 1991, MACC began using Willie Waste Company ("WWC") to dispose of all of its hazardous waste. Pat Willie owns WWC. WWC obtained this contract for disposal by being the low bidder for the contract. MACC found WWC's bids to be fifteen percent lower than that of the other companies. MACC used WWC for its waste disposal until 1998, when WWC filed for Chapter 11-bankruptcy protection. In its bankruptcy pleadings, WWC indicated that it had filed for bankruptcy in part because it was losing money on the MACC contract.

WWC's President, Pat Willie, has agreed to assist in the prosecution of MACC by testifying on behalf of the state under a grant of transactional immunity. Pursuant to this agreement the State will not prosecute Pat Willie, WWC or any of its employees for any activities undertaken regarding the disposal of waste from the MACC site. The grant of immunity does not cover perjury.

In 1993, Taylor Monk became the President of MACC. Taylor Monk obtained this position in large part because the Monk family still owns a significant percentage of the voting stock of the company. Prior to that time, Taylor Monk had worked as the head of operations at the local plant. Taylor Monk held that position for the five years prior to 1993.

The property, which ESL now owns and which was gifted by Jefferson Monk, is an 800-acre parcel of land located next to MACC's North American production plant. Prior to his 85th birthday, Jefferson Monk had owned the property. He had lived on the site from 1933 until early 1997 when he donated the property to ESL. He then lived with his grandson until he was forced to move into a nursing care facility shortly after his stroke at the end of 1997. On the property, he built a 22-room house that many have described as the most beautiful house in the area. ESL's headquarters are now located in this building.

The property contains remarkably diverse geography. Although rural in nature (i.e. the property contains rolling hills, dense woods, a spring, two ponds, sand and gravel quarries, and bogs with quicksand), the property is zoned industrial. It received this designation in the county's most recent comprehensive rezoning plan in late 1997. This rezoning, which in theory will

allow the property to be developed as an industrial site, has substantially increased the value of the property.

Prior to accepting this property, ESL had undertaken a Phase I environmental study to make sure there were no environmental problems. The study found no history of obvious or open signs of environmental contamination on the property. Dr. Sidney Wickett, an independent environmental consultant, undertook the study.

Prior to the discovery of the contaminated waste, ESL was considering selling a 300-acre portion of the property to U.S. Microchip Company, a company that had expressed interest in purchasing the site. Once contaminated waste was discovered, U.S. Microchip dropped all interest in the site.

After the hazardous finds on the former Monk property, Taylor Monk was contacted and informed that MACC was being investigated for illegal disposal of hazardous waste. Monk offered to cooperate and has provided significant documents to the State. Monk has repeatedly complied with requests for interviews by the criminal investigators even though there was a possibility that the company could be subject to criminal charges. Monk had hoped that such cooperation would demonstrate that MACC had not dumped the waste. Monk insisted that no company employee could have been involved in illegally dumping.

Additionally, since the discovery 11 of 12 children who found the hazardous waste have health problems. The most serious is Lindsey White, who receives daily treatment for a skin condition that doctors believe is pre-cancerous. Lindsey has been diagnosed with severe seborrhea and psoriasis and doctors believe that a small amount of methyl ethyl solvent solution came into contact with Lindsey's left eye and is gradually eroding her vision.

The other ten children who are suffering as a result of their contact with methyl ethyl solvent solution are in school, but have missed a combined 150 days of school since October 30, 2000. Their illnesses have different forms, though all of them have some type of skin disease. At the request of the EPA, The National Institutes of Health is conducting a study on the effects of contact with methyl ethyl solvent solution and tracking the progression of all twelve children and Morgan Mitchell.

Based solely on the discovery of the 100 bright blue barrels and the original 25 found by the children, the State charges that the evidence demonstrates that MACC, Taylor Monk, and Jefferson Monk are guilty of violating the Environmental Conservation Laws of the State of New York by improperly disposing of waste on what is now ESL's property. Consequently, MACC, Jefferson Monk, and Taylor Monk, have been indicted under Section 71-2712 and 71-2713 of the Environmental Conservation Law. They waived their rights to a jury trial, so the case will be heard and decided by a judge.

The defendants maintain their innocence on three different points: 1) the barrels have not been positively identified as belonging to MACC; 2) If they are MACC barrels, then neither Taylor nor Jefferson Monk, nor anyone employed by MACC had any knowledge of improper disposal, and such illegal disposal was done by someone else; 3) All licenses, permits, and regulatory documents have been obtained and filed with the appropriate authorities, are available to the Prosecution with due diligence, and if subpoenaed would exculpate the defendants.

Law suits, too numerous to mention, between the parents on behalf of their affected children against ESL, ESL suing to recoup over \$7,000,000 in remediation costs and punitive damages against MACC, and other subordinate legal actions are being held in abeyance pending the disposition of this case. However, none of these suits affect the present case.

WITNESSES

FOR THE PROSECUTION

Morgan Mitchell
President, ESL

Sandy Carnes
Investigator, State Environmental
Crimes Unit

Pat Willie
Owner, WWC

FOR THE DEFENSE

Taylor Monk
President and CEO, MACC

Jamie Sanchez
Hazardous Waste Manager,
MACC

Lee Chang
Former Bookkeeper, WWC

*This case is hypothetical. Any resemblance between the fictitious persons, facts, and circumstances described in this mock trial and real persons, facts, and circumstances are coincidental.

STIPULATIONS

- 1) All names are gender non-specific and witnesses may be portrayed by either gender.
- 2) Witness statements are sworn and notarized.
- 3) All items of evidence are eligible for use at trial, following proper procedure for identification and submission. No other physical evidence, aside from those provided, can be introduced at trial.
- 4) All required New York State and Federal licenses, permits, or certificates which are subject to order of the Commissioner of Environmental Conservation or the Administrator of the Federal Environmental Protection Agency have been obtained by MACC and WWC, as per the requirements of SWDA and RCRA (42 U.S.C. sec. 6901 et seq. and article 27 of ECL).
- 5) The only scientific information regarding chemicals, chemical by-products, and hazardous wastes available for use is that which is supplied in this Mock Trial Packet. Other scientific data pertaining to hazardous wastes is not allowed.
- 6) For the purposes of this mock trial methyl ethyl solvent solution (M.E.S.S.) is amongst the acutely hazardous waste materials listed in relevant federal and state laws and regulations.
- 7) The contents of the 25 barrels found by the children and the 100 bright blue barrels found by state investigators were tested at the state's forensic environmental lab and found to contain methyl ethyl solvent solution (M.E.S.S.). No challenge to this finding can be made at trial.
- 8) For purposes of this trial, MACC, Jefferson Monk, and Taylor Monk, have been indicted under Section 71-2712 and 71-2713 of the Environmental Conservation Law. The statute's lesser and greater charges are included in the packet for educational purposes only.
- 9) All applicable motions have been made and decided. The constitutionality of all statements is not in question. All other evidentiary questions are preserved for the Court. The case is ready for trial before the Criminal Division of the Supreme Court of the State of New York.

AFFIDAVIT OF MORGAN MITCHELL
Witness for the Prosecution

My name is Morgan Mitchell. I am 45 years old. I am the President of Environmental Science League ("ESL").

ESL is an organization founded by my grandfather, John J. Mitchell. He was truly a great man. He told me that he started the organization because corporations had proven by their destructive practices that they could not police themselves and act responsibly when dealing with environmental issues.

I was dumbfounded by the gift from Jefferson Monk, which was so large that it seemed that it would permanently secure ESL's financial position. The Monk land is a huge, diverse parcel, containing a wide variety of interlocked ecosystems. In this part of the state, it is a storied property; hardly a child reaches the age of 10 without having been warned to never go near "the Monk bogs, where quicksand awaits the trespasser." Now I know that those stories were intended to keep people away from what lay at the center of those bogs – barrels of death from MACC. I am absolutely certain that Old Man Monk gave me the land in order to destroy ESL and get final revenge against my grandfather.

ESL's initial focus was on public advocacy in the environmental area. Since its' founding, ESL had advocated for legislation regarding waste handling controls in the work place and environmentally-friendly waste disposal laws. My grandfather struggled for decades, largely without success, until in the 1960s and 70s when he finally got politicians to do what was right and pass needed legislation.

ESL has made many enemies in its effort to cause environmental reform. When I became an adult, my grandfather showed me letters which he received during the late 1960's, when ESL was advocating for a new state law which would impose criminal liability upon land and factory owners for improper waste disposal.

On the day that my grandfather appeared before the legislative committee, Jefferson Monk attacked him on the steps of the State Capitol, in my presence. My grandfather, whom I think was interested in protecting me, used his walking stick to block the blow. The stick hit Jefferson Monk right below the left eye and resulted in a substantial gash. Several men then pulled them apart. As this was happening, I remember Mr. Monk yelling at my grandfather "If it takes my last dying breath, I will make you pay for this. You are going to bankrupt me!" I should have remembered this comment before accepting his Trojan horse. This legislation and other laws that followed forced companies to honestly pay all the costs of doing business, instead of transferring their waste products onto society and the environment, to bear the costs while they pocketed higher profits.

I have worked there ever since. In 1990, I became the president of ESL. All my efforts to focus more on educational environmental activities have been undermined by the Monk property. All the good work we have done – and ESL has received many public service awards for it's environmental efforts, including a Presidential Citation and the State's Good Citizen Award – have been overshadowed. Understand that for an environmental organization to get taken in like this.... Well, we look like idiots and I look like a fool.

Being a nonprofit public service organization, ESL has always had to rely on private donations and foundation money. Before we received Jefferson Monk's gift, ESL had trouble meeting its budget and I had to use some of my trust fund money to cover operating costs. That's why our civil suit is looking to make us whole again – we need the land cleaned up, we need a massive punitive award, and we deserve to be paid for the loss of value of the land. That would restore our reputation.

I had set up a camping area in one of the woods, which, prior to this incident, ESL used for its student programs. It was near these camping areas that the drums were found. More precisely, the drums were found 100 yards off a dirt road called Chemical Road, on a sandy knoll.

During the evening of October 27, 2000, while I was walking my dogs, I saw a group of children playing in the low sandy hills out past the wooded camping area. I saw the children digging in the sand around what appeared to be a hole in the ground. I was concerned that this hole might be dangerous. I walked my dogs right up to the group of children and saw a shallow hole in the ground, which contained some exposed hazardous waste drums. I saw a couple of the children put their hands on the drums and touch the gunk that was oozing from the drums. I yelled at them to stop and wiped off their hands with my sweatshirt. I then used my cell phone to call 911 so that the children could be taken to the hospital. I was worried that the substance in the drums could threaten their lives. Unfortunately, that may be the case.

After calling 911 and the State hazardous waste emergency number, and getting the children out of harm's way, I went back to the site where the children had been digging. I saw a number of drums at the site. It appeared that the drums had been buried under a small amount of dirt, a half-foot at most, and that logs had been placed over the dirt. I couldn't see everything because dirt was covering some of the drums, but I did see a decal floating just under the surface of the dark waste in one of the drums. Although I did not get close to the drum, the decal said Monk Agricultural Chemical Company in small print. I probably should have left the decal where it was but I decided to retrieve it before it sank to the bottom of the drum. I knew that the decal was important evidence. I got a stick and tried to remove the decal. Unfortunately, as I made contact, it dissolved. But I swear that the decal was one of the Monk Agricultural Chemical Company's decals. A few of the drums were black but most of them were a faded bright blue, which is the same color that Monk Agricultural Chemical

Company uses for its signs, stationery, and decals. There was some trash near the drums, but I did not notice what was in the trash.

While I was terribly upset about the children, and worried about my land, the later discovery by the environmental investigators of at least hundreds of additional barrels didn't surprise me. I was certain that Mr. Monk was out to get me and the later discovery just reinforced my conclusion. My grandfather always said that "that MACC is rotten to the core." I guess I'm just still numb over the depth of Monk's evil.

Around November 10, 2000, after I had spoken to ESL's lawyers, I decided to confront Taylor Monk about the drums. I called Taylor who informed me that State investigators had already been in contact with MACC about the drums. Taylor Monk called the investigators "Keystone cops" but said, "No one but my Grandfather ever knew the true story and he's not talking." Taylor laughed and said, "I always thought that I would get my Grandfather's land. I was shocked when he gave it to you, but now I sure am glad it's your headache, not mine." I screamed at Taylor that this could destroy ESL. The angrier I got, the more Taylor laughed. Well, we will see who gets the last laugh now.

Knowing the proximity to the MACC plant I had an environmental consultant, Dr. Sidney Wickett, do an environmental report, called a Phase I Report, on the property. Dr. Wickett's report was negative concerning hazardous waste. I was stupid not to insist on a Phase II Report, which would have been more thorough, but it was cost prohibitive. I should have checked every square foot of the property, given how Monk hated my Grandfather. But when someone gives you over 30 million square feet, it is hard to check it all.

I believe that Jefferson Monk was finally getting his revenge. I remember his words about getting even and I am certain that he used his own land as a dump and then gave it to ESL.

A handwritten signature in black ink that reads "Morgan Mitchell". The signature is fluid and cursive, with the first name "Morgan" and last name "Mitchell" clearly distinguishable.

Morgan Mitchell, November 22, 2000

AFFIDAVIT OF SANDY CARNES
Witness for the Prosecution

My name is Sandy Carnes. I am 37 years old. I have been in law enforcement since I was 18 years old.

My law enforcement career is as follows. I began my career by enlisting in the Army, where I was assigned to a military police unit. After serving for eight years, I decided not to reenlist. I had worked on security at various nuclear weapons manufacturing and storage sites and had extensive experience in inventory and handling procedures for atomic wastes in short and long-term storage. I applied for a police position with the county and I served on the police force until 1995, when I was injured in the line of duty. I retired at the rank of Sergeant with numerous honors. I should also note that for a three year period I worked security part-time at the MACC plant. I did that for two shifts most months except in the summer when I helped fill in for vacations; I probably averaged ten shifts a month during June, July and August. One of my duties was signing for deliveries and shipments, everything from truckloads of raw materials, to International Colas United and Springwater trucks for the water coolers, to our products being shipped out and hazardous wastes being picked up. I know how careful security was from 1990-92 to count the number of barrels and check to see that they were labeled – the ones you could see, that is. I sometimes would find an occasional barrel without a MACC sticker and would put one on, which was SOP. At the time I thought I annoyed the drivers by being so picky; now I wonder if I wasn't let go because I put too many stickers on unmarked barrels.

Although I could no longer be a street police officer, I wanted to stay in law enforcement. I learned of a law enforcement position with the State Environmental Crimes Unit. I was advised that the position would involve investigating environmental crimes. My only experience in such matters dealt with spills of hazardous materials on the roadways (usually the result of traffic accidents), but my record and MP experience proved impressive. I applied for and received the job in August 1995.

I received on-the-job and formal training about chemicals, hazardous materials, and environmental crimes investigation. Since the Fall of 1995, I have been working full-time in the investigation of environmental crimes. The unit now considers me one of their two leading experts in hazardous materials issues, the other being my mentor. I learned quickly and I learned well. I think my years as a street police officer and MP also contributes to my skills as an investigator.

On October 27, 2000, I overheard some of the investigators discussing a possible environmental crime at the Monk mansion. I was familiar with the Monk property, as I used to go up there hunting and swimming with friends. It was certainly a beautiful and diverse piece of land. This is my second connection to the Monks. When I was a teenager, I asked Old Man Monk for permission to hike, fish and hunt on his land. He was a fascinating, independent gentleman and

seemed impressed that I wasn't afraid to ask him. He said that I could have "the run of the place," provided I never went near the bogs and swamps – and looking dead serious said that "if the quicksand doesn't get you, I will."

When I arrived at the scene, I observed 25 drums of varying description. Some of the drums were faded blue. Others were black. Some were almost completely rusted through. Others had no rust at all. The drums were in a four-foot man-made hole. There was a HAZ MAT decal on each drum, but otherwise no source designation. After the materials in the drums were analyzed, it was determined that all the drums contained methyl ethyl solvent solution.

Surrounding the drums was various debris, including numerous automotive parts, 52 clothes hangers, and old lottery tickets. I saw broken glass nearby, apparently from beer bottles. I did not observe any material that would tie the waste to any particular company except for the blue color of the barrels. In my view, it was possible due to the varying age of the drums (i.e., some were rusted and others were not), that the drums may have been placed at the site at different times.

While I was at the site, Morgan Mitchell approached me. I was advised that Mitchell had used a stick to try to remove a floating decal from the liquid in one of the drums. Mitchell reported that the decal had the name Monk Agricultural Chemical Company on it. Mitchell further advised that the decal had dissolved as it was being removed. I attempted to locate the decal and could find no evidence of such a decal.

My initial on site investigation was conducted at nighttime. During the investigation, Mitchell made numerous adverse comments about the Monk family. Mitchell indicated that the waste had been dumped so as to ruin ESL. Mitchell insisted that I talk with Taylor Monk. My subsequent investigation with a team from my office discovered the other, larger site, which had 100 bright blue drums on the outer ring of a larger but older collection of barrels. When I saw the bright blue drums, I immediately recognized them as MACC barrels. They had adhesive spots where stickers had been. Few companies use colored barrels, the land was owned by the Monks, and the lab report certified M.E.S.S. as the content. With my knowledge of MACC procedures, and my personal experience with Jefferson Monk and his threat about never going near the area where the barrels were found, I am certain that MACC is the source of the illegally dumped hazardous waste. I do not believe that it is possible for this much waste to end up on private property, owned by the Monk family, without the direct knowledge of the two Monks. For anyone else to take such an action without approval would be to put their own jobs in jeopardy.

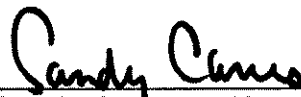
Following receipt of the lab report, I decided to contact Taylor Monk. I arrived at the MACC plant on November 7, which is only a short drive from the waste sites, at 09:00. I told Monk that MACC was being investigated for the illegal disposal of hazardous waste. When I made this statement, Monk turned

red, got up and retrieved a bottle of water, and offered me one. Monk advised me that MACC would be cooperative.

Taylor Monk did make various comments about ESL and the Mitchell family. Monk indicated that ESL had tried to ruin Jefferson Monk's reputation. Monk, however, adamantly stated that no one at MACC was involved in the disposal of waste at the Monk property. Taylor asked me if I thought the Monks were "just plain stupid. Do you think my Grandfather would dump waste on his own property, continue to drink the water, and then give the land to someone else so they could find the waste?!"

Following this, I drove my car around the former Monk property and determined that there were four entrances. These entrances are described on an attached map. Entrance A is at the front of the property. It is well lit at night (this was the entrance that was used during the first night of the investigation.) Entrance A is located farthest east from the waste dumpsite. Entrance B is the north entrance located where the ESL property meets the MACC industrial site. A fence surrounds this entrance to the MACC property. The lock on the fence and the hinges to the fence at this location are significantly rusted. The roadway by the fence is overgrown and appears not to have been used for many years. Entrance C comes off a little used paved county road. There is no fence that blocks this entrance. A person using this entrance would not be seen by someone in either the mansion or the MACC plant. Entrance D goes from a paved road into the heavily wooded area of the property.

While the Monk's deny knowing, the fact remains that the barrels came from the MACC facility. Any conclusion other than they were aware of these barrels defies logic. Although I found MACC's waste disposal records to be in good order, I'm not overly impressed with the difficulty of making oneself look good on paper.



Sandy Carnes, November 27, 2000

AFFIDAVIT OF PAT WILLIE

Witness for the Prosecution

My name is Pat Willie. I am 47 years old. I am the president of Willie Waste Company.

Willie Waste Company ("WWC") is a state licensed hauler of hazardous and other wastes. WWC, for a fee, will take hazardous substances to a state certified waste disposal facility – often an incinerator – or to a dump, depending on the type of waste. The company was founded in 1986. This is a tough business, which is unforgiving of mistakes. Hazardous waste removal can cost a fortune, but most of the expense goes for transportation and to the site which finally takes the waste. The hauler's profit is based on volume and weight.

WWC has had some problems in recent years. A couple of key employees quit. In addition, I bid too low on some contracts for hazardous waste hauling. One such contract was the contract that we had for Monk Agricultural Chemical Company ("MACC"), which accounted for 60% of our hazardous waste business. Our 1991 bid on a contract to carry away all their hazardous waste was way too low. I later found out from Taylor Monk that we were over 15 percent lower than the next lowest bidder. I should have been charging \$300 a barrel, but had bid \$250 a barrel, and was getting killed financially.

For seven years we lost money or made a bare profit on the MACC contract. I talked to old man Jefferson Monk, who knew my father, about the problem each and every year. He would authorize just enough increase, paid out as a semi-annual premium on the number of barrels we had hauled, so that I thought I could make a little money. But the bonus was never enough. Some new state requirement would come out and our costs would go up more than what Monk gave me.

I remember trying to get a 12 percent increase in 1993. I had charts and figures showing how competitive we were with other waste hauling companies. Jefferson Monk listened but said that, "with the prices WWC was talking about charging, he might as well bury the trash out in his own back yard or just close MACC down." When you got Monk going on the costs of environmental regulation – well, watch out; he turned into a fanatic. He railed against "meddling do-gooders" who were out to "save the planet by ruining business." Once he got started on that theme, there was no chance of getting a cent more out of him. But if – and it was a big if – you could show him your numbers and ask him personally for help, he would always see you as a businessperson in trouble and try to help. But it was always like trying to navigate through quicksand – one wrong step and you were gone. Even after the younger Monk took over, it was the old man who was the go-to guy on hazardous wastes. He told me on several occasions – "if you want help, that's still my name on the company, so talk to me." In November 1993 I decided to try to play hardball and refused to pick up

waste for two weeks. Mr. Monk had his lawyer send me a letter saying that if I did not fulfill my contract that I would be sued. I realized that Mr. Monk had gotten the better of me and I was angry.

I went to see Jefferson Monk the day after receiving the lawyer's letter. I told Mr. Monk that I would come back but that I would have to receive a ten percent increase at a minimum. Mr. Monk told me that, "I don't want my company turning my backyard into a trash dump" so he would pay the additional ten percent. I wasn't sure whether or not Mr. Monk was joking about the trash in the back yard comment so I asked him whether the company wanted me get rid of the waste that had accumulated during the last two weeks. Mr. Monk told me that the waste "had been taken care of." I asked him whether he had used another waste company during this time period. He told me again that he had taken care of the matter. I told him that I thought that I should document what had happened to the waste as I didn't want someone claiming that I hadn't done my job or that I had disposed of the waste improperly. Mr. Monk grew impatient with me and said that if I wanted to document the waste that I would have to go find it. As he was saying, "go find it", he was pointing out his office window to the road towards his house. He noted that I was only responsible for that waste which I took possession of. He said, "last time I checked, you were trying to make money, and weren't employed by the state watchdogs."

I suspected that Mr. Monk had done something improper with the waste so I reminded him that it was illegal to dispose of toxic chemicals anywhere but in a state certified waste disposal facility. He told me that I sounded like "that madman John Mitchell" and that he could do anything he wanted with his own property. I didn't push the matter further.

I blame Mr. Monk and MACC for many of my current financial problems. Because I could never make money on the contract, I was forced to put the company into Chapter 11 reorganization. But I hate being known as a bankrupt. Because of the company's financial problems, I may lose my house. My marriage is on the rocks. I have had to work a night job just to try to stay afloat.

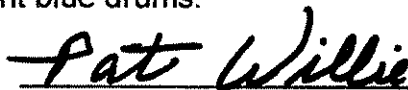
I have agreed to testify in this proceeding under a grant of immunity from the State. The State has promised that it will not prosecute me, my company, or my employees for any activities, including improper record keeping, relating to the disposal of waste from the MACC site. In November 2000, the state reviewed my records for this contract and found that my records for 1992 to 1994 were missing. I was advised that I faced criminal charges due to the fact that I could not account for these records. The last thing I needed was more problems so I told the State investigators about my conversation with Mr. Monk and told them I would be willing to help their case if they left me alone. The State agreed to give me a grant of immunity provided I tell the truth. I know that the State could prosecute me and even send me to jail if I lie.

I think that my ex-employee, Lee Chang, took the missing records when Lee was fired in 1997. Lee Chang was my office manager and bookkeeper. Lee and I also used to get together for drinks a couple of nights a week after work. Unfortunately, it began to appear to me as if Lee was unable to drink more than one beer. Lee's behavior and demeanor would change, even with two beers. What's worse is that it became harder and harder for Lee to stop at two. Eventually, Lee's behavior became so erratic – especially during work hours – that I fired Lee. I told Lee at the time that I thought it might be beneficial to check out Alcoholics Anonymous.

I also know that Lee Chang is telling all sorts of lies about me. Let me say emphatically that I never disposed of hazardous or non-hazardous waste on the Monk property. In fact, I've never been on the Monk property. Lee doesn't even know what it would take to bury waste. It would take 2-3 strong men to carry a filled, metal 55 gallon drum. I believe that Lee is making up stories because of being fired. Lee's claim that my receipts stayed consistent, while my payments to the dumpsites fluctuated wildly is just plain wrong. At times the waste sites' paper work would get fouled up, or I would have a higher ratio of "special" barrels, which are cheaper, and fewer more expensive "hazardous" barrels, so that I got charged less than normal. Lee's claim that this was a sign I was illegally dumping is just plain wrong. I may not be a great businessperson, but I would never do anything dishonest that would send me to jail. Lee is seeking revenge. Lee was furious and trashed my office after being fired. Chronic lateness, sluggishness, sullenness and poor performance was what got Lee fired. I called the police and filled out a complaint for destruction of property and trespassing after Lee trashed my office.

I wish the records could be found because they would show that for a two-week period of time in 1993, WWC was not disposing of MACC's waste.

During the entire time that WWC had the MACC contract, MACC always stored its toxic waste in bright blue 55-gallon drums labeled with the company's name and hazardous waste designation on separate decals. I am unfamiliar with any other company near MACC that uses bright blue drums.



Pat Willie, November 30, 2000

AFFIDAVIT OF TAYLOR MONK
Witness for the Defense

My name is Taylor Monk. I am 46 years of age. I am the President and CEO of Monk Agricultural Chemical Company ("MACC"). I have held this position since mid-May of 1993. In that position, I am ultimately responsible for all the activities of MACC. While I am not aware of everything that goes on with the company, I believe I have a good feel for all operations. Every morning at 7:30 a.m. I have a meeting or conference call with all my plant managers to discuss any problems that are going on at the plant. Because I am a hands-on manager, I believe that I would have known about any problems relating to the disposal of hazardous waste after I became president.

Prior to becoming President of MACC, I was the head of Operations at the domestic plant for five years. Operations includes the manufacturing, processing, packaging and distribution of our agricultural chemicals. I also instituted corporate record keeping procedures that would demonstrate the company's compliance with state and federal environmental laws and regulations.

I am adamant that neither myself, my company, nor my grandfather placed any hazardous waste drums on our family property. Anyone with a bit of common sense would realize that for the Monks to place illegal waste on Monk property, then to give it away to an environmental group that spent most of the past half-century publically attacking us – well that would make us, as Gramps would say, "crazy stupid." While Jeff Monk is many things, he is neither crazy nor stupid. I will make three somewhat contrary, but equally true, statements. First, even though the barrels are supposedly bright blue and appear to come from my company, that is a far cry from saying that I, grandfather, or my company were responsible for placing them there. Second, if – and it's a big if – someone would come forward with absolute proof that some of those barrels came from our plant, then the most likely source is Pat Willi. Pat took the barrels and constantly griped about needing more money. WWC took up to \$30,000 every month from us; why would we pay that money and then dump illegally? Third, I do not believe that Gramps knew about the large number of barrels buried behind the bogs on his property. We lived there, drank the water out of the well, played outside and raised our families there, and also dumped hazardous wastes? It just doesn't add up.

Finally, my grandfather's constant warnings about the quicksand over the years was no ruse. He chased off trespassers and posted warning signs near the bogs because he had already lost one family member to that quicksand. That person was his son, Jefferson Monk, Jr., who died in 1960 while trying to rescue the family dog. That man was my father.

In the late 1980s, I undertook a program for updating the company's waste handling procedures. All workers assigned to areas where hazardous waste might be produced or located were required to undergo training regarding the dangers of hazardous waste and the importance of compliance with waste handling procedures and the multitude of forms that must be maintained for compliance with government regulations. Yearly follow-up training was also provided.

In order to ensure compliance with the Company's procedures, I would do surprise spot checks every week. If an employee was found to be violating the waste handling rules, he or she was reprimanded and a copy of the reprimand was placed in the employee's file. The employee was then required to receive additional, mandatory waste handling training. If, after the additional training, the employee committed the same offense a second time, employment was terminated. In nearly twenty years, only four employees have been terminated for improper waste handling activities.

Because I am the CEO, have spent my career at MACC, and "grew up" in the business, I can provide a history of MACC's hazardous waste disposal. From 1970 to 1990, MACC used its own trucks and employees to dispose of hazardous waste to state approved waste disposal facilities. MACC can document the disposal of all its hazardous waste for all years except for 1989 and 1990, for which records cannot be located, but which the prosecution could have subpoenaed from any of our contractors. MACC stored chemical waste in bright blue 55-gallon drums labeled with the company's name and a hazardous waste designation noted on separate decals. Bright blue is the color which the company uses on its stationery, advertising materials, and product labeling.

Now its true that MACC, like almost all companies in all fields of manufacturing, opposed the early efforts to micromanage our business by environmentalists. We weren't any different than the major meat companies during the Progressive Era – for companies competing in national or international markets, local or state regulations that apply to you, but not your competitors, are dangerous and potentially ruinous. If regulations had to be created, Gramps wanted it to be federal, not state, laws. And like everyone else, prior to the advent of environmental concerns, we removed our wastes in the cheapest way possible. But my grandfather always followed the law, even if he sometimes fumed over the high costs involved.

In 1991, MACC began using Willie Waste Company ("WWC") to dispose of all of its waste, including hazardous waste. WWC was the low bidder on the contract. As a matter of fact, WWC's bid was over fifteen percent lower than that of the other companies. MACC used WWC as the waste disposal company until 1998.

I know that WWC has blamed MACC for its financial problems. However, MACC gave WWC periodic increases in the contract amount. The average

increase per year was 4 percent over the prior years' unit fee (instead of charging just a flat rate, the contract called for a waste disposal charge of \$250 per unit (barrel) of waste disposed. I believe that this was a fair rate. As a matter of fact, MACC's current waste hauler charges unit rates which are one percent lower than the rates charged by WWC in 1998.

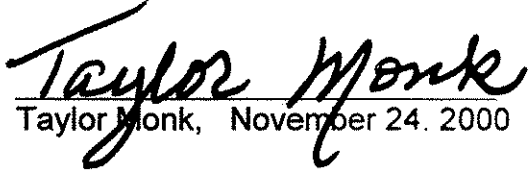
I know that WWC's owner Pat Willie lied about my grandfather. My grandfather was a good man. My grandfather knew how to run a business responsibly. He always hired the best and brightest scientists in the area. He also paid his workers a good wage. We had very few of our employees leave over the years, as the company treated everyone fairly and with respect.

In the 1980s, after I joined the company, MACC became the largest domestic manufacturer of agricultural chemicals. MACC is now considered a global leader in its field. From its founding in 1933 until 1993, my grandfather was the head of the company. Even after I became President, he was actively involved in the decisions for the company. He was given the honorary title "President Emeritus."

I know there was a lot of acrimony between my grandfather and some environmental activists. When I became president, I decided that the taint of that acrimony was not good for the company and I took steps to make MACC a known environmentally-friendly corporation. I believe my grandfather also had this in mind when he gave such a generous gift to the Environmental Science League. Prior to that gift my grandfather's Foundation gave substantial charitable gifts to environmental organizations, including the Audubon Society and the Sierra Club. Gramps lost some of his sharpness and had increasing memory problems after 1992, which was one reason he turned the reins over to me. It frustrated him and he told me, "If you can't be sharp, it's best to be gone." When I first learned about his major gift to ESL I thought that Gramps had lost it, only because I always assumed that his house would eventually come to me. As I thought about it though, I decided that he was cleaning up his life's loose ends, and burying the hatchet of his feud with John Mitchell. And he told me that the land "contained too many family ghosts, too close to both of us" for it to bring me happiness. My grandfather had a stroke in December 1997, after which time he was taken care of in a nursing home. It has been difficult and very sad to see such a powerful man wither away. Since that time, he has not had the ability to speak. The doctor says he has expressive aphasia.

I believe my grandfather tried very hard to comply with environmental laws because he did not want to be known as an enemy to the environment. My grandfather insisted that MACC comply with all laws, particularly environmental laws. MACC has hardly ever been cited by the state or the Environmental Protection Agency ("EPA") for any violations at its local plant.

In my view, Pat Willie is a liar trying to cut a deal with the government to avoid jail. My grandfather would never have had waste buried on his own property. Morgan Mitchell is also a liar. I never had a conversation with Morgan after the waste was discovered. The last time I spoke to Morgan was in June of 1998 at the wedding of a mutual friend. Morgan said that ESL was so grateful for the gift that it was thinking about establishing a scholarship in my grandfather's name.


Taylor Monk, November 24, 2000

Affidavit of Jamie Sanchez
Witness for the Defense

My name is Jamie Sanchez and I am the head of hazardous waste management at MACC. I have a B.S. and an M.S. in environmental science, with a specialty in hazardous materials. I have attended and presented at state and national hazardous waste conferences cosponsored by industry groups and the EPA. I attend a yearly update on the law sponsored by NYSBA.

Prior to coming to work for MACC in July 1993, I had held a similar position with one of MACC's local competitors, Farm Chemicals, Inc. I left them because they too often gave lip service to following the law and wanted me to play fast and loose with regulations and paperwork. My boss, Jack Belcher, was always on my back for being "too picky" and I developed an ulcer over the stress. When I resigned and told Jack where I was going, he laughed loudly and sarcastically said "oh, yeah, Old Man Monk is a model environmental citizen! Out of the pan and into the fire! That guy has buried more barrels than most oil companies have refined!" I replied, somewhat defensively that "I was hired by Taylor Monk – he runs the place now and plays by the rules." Belcher laughed again and said "as long as the Old Man is alive you'll have your hands full. Good luck – everybody has to make their own mistakes."

Unfortunately, Jack was partly right, but not in the way he meant. My first four months at MACC were difficult, as I found that I was working for Taylor, but also having to deal constantly with Jefferson Monk, who had "retired" the previous spring. Let me be perfectly clear – Taylor Monk insisted on complete compliance, from start to finish, with all regulations. But at the same time Ty's grandfather was constantly after me about how many barrels we were shipping and how much it was costing. He pointedly, and repeatedly, told me to "keep those numbers under control" and "if you can't, I will." To say the least, I was initially worried.

When I discussed my misgivings with Taylor, in October, I was given a different perspective. Taylor told me that I had complete freedom "to do what was right" and that "Gramps likes to pressure people so that they stay on their toes. He's trying to make you think, not trying to get you to break any laws." That was certainly a relief, because with the incredible paper trail that gets created, you have to be reckless or a fool to think that you can outsmart the regulatory system. The forms include purchase orders, a separate manifest for each shipment of waste, accompanying material characterization sheets, pick up records with time logs, invoices for everything you buy; its an incredible task to keep on top of it all.

Armed with that reassurance I started to look at how we were scheduling production, so as to see if we could cut down on our creation of waste. I found that we were often running more than one manufacturing cycle of a certain

product in a given two week period. I went back through three months of records and found that that was pretty normal. Our major hazardous waste is methyl ethyl solvent solution, which is used as a cleaning and collecting agent to flush our lines between runs of different chemicals. M.E.S.S. is able to pick up and capture the molecular remains of the last batch, and thus gets the lines ready for the next run. It really works like a liquid plumber. We then throw away the first barrel or so of the new run, to make sure that the final end product is exactly what we think it is and doesn't contain any stray molecules of the previous product. Thus every barrel of M.E.S.S. varies somewhat from others, depending on what chemicals it draws as it is flushed through the system.

I approached Taylor with my data and suggested ways to cut down on the number of barrels of waste we produced. Taylor said that "the Old Man is going to love you now – this will allow us to produce more product without producing more waste. Great job!" When I next saw Old Man Monk, in mid-November, he greeted me as if I was his best friend, saying, "I knew I liked you" and stuffed two one thousand dollar bills in my shirt pocket. He slapped me on the back and said, "there's more where that came from if you remember that 'less is more'." I thanked him, and beamed with pride, even if I must say so myself.

Prior to implementing the new system, I had had several conversations with Pat Willie in which Pat brought up the "Old Man." I knew Pat from my previous job and was not certain that WWC was adequately committed to environmental safety. Pat often spoke critically of the Old Man. In return, I had told Pat about some of my run-ins with old Mr. Monk, once saying that, "he was all over me like flypaper at a cheap hotel." When I brought up the Old Man's obsession with costs, Pat took me aside and said, "Me and the Old Man know about ways of cutting costs around here. Maybe you should ask him." I was shocked by the implication and assured Willie that I played by the book. I thought that Pat might be trying to set me up, so I never told anyone about the comment.

I can tell you for certain that every barrel of waste we produced was put directly in the hands of Pat Willie. I know that Willie claims to have not picked up over two weeks worth of barrels in early November 1993, implying that they had been dumped illegally. What Willie didn't know was that we had a huge order for one of our chemicals that we processed that week, cutting our use of M.E.S.S. by almost 90 percent. The barrels filled the other week – about 20 – were just kept and fed into our numbers over the next few weeks. Pat didn't notice any overall change because we didn't explain our new production schedule and its impact on our hazardous waste production. The Old Man told me not to explain it to Willie, who thought that Mr. Monk was really going to be paying WWC 10% more. Mr. Monk told me that thanks to my suggestions, we'd be shipping fewer barrels, even though paying a higher per barrel rate, and that the total cost would not change much. Old Man Monk said that, "I do business on my terms, not Willie's" and, winking, that he liked to "leave them confused." So I'm sure that no barrels from MACC went anywhere but to WWC in that time period.

Finally, I should comment about the barrels found on the former Monk property and the question of what stickers were or weren't found with them. First, I've been told that many of those barrels show evidence of adhesive marks were stickers had been. Obviously, that shows that our company did not place them there; no one would be foolish enough to put stickers on a barrel if they intended to illegally dump it. And we always put stickers on our barrels. Second, and I'm embarrassed to admit this, but on one occasion in the winter of '93-'94 I came into work after a day off and discovered that dozens and dozens of our stickers that we put on barrels were blowing all over our property and beyond. My assistant laughed and said, "it happens every winter. Somebody leaves an open stack of labels on the loading dock and they get blown around here like confetti." Much to his surprise, I told him that this would not happen again and I instructed his crew to pick up every one they could find. Later I explained that those stickers could be used to implicate MACC by anyone who wanted to cause us trouble. I can't say if Mr. Mitchell saw a MACC label or not, but I can say that it doesn't mean much. Given the response of my employees to the wind blown labels, I'm surprised that the Monk property isn't knee deep in MACC labels.

I know Taylor Monk and I know Jefferson Monk. In over seven years they have been completely supportive of my efforts to follow the law and have rewarded my diligence in cutting down on waste products. If any of those barrels have MACC wastes in them, then Pat Willie is the person to see, not MACC and not the Monks.


Jamie Sanchez, November 29, 2000

AFFIDAVIT OF LEE CHANG
Witness for the Defense

My name is Lee Chang. I am 29 years old. I began working for Willie Waste Company in 1990, when I graduated from high school. I started out as a receptionist, but within a few months I was made Pat Willie's secretary. Pat knew that I had a good way of dealing with clients and Pat needed help with record keeping and knew I was a neat freak. Ultimately, after taking accounting courses, I also became WWC's bookkeeper.

Pat Willie was not concerned about order and was always losing things. I can't tell you how many times I would give a client file to Pat only to have to find it again. I would sometimes have to call the client and tell them that I had lost the file so as to obtain new copies of contracts and invoices.

I enjoyed working at WWC and had many friends there. Two or three times a week, a few of us would go out for a drink after work. There was a real camaraderie among us. It was during this time that I became convinced that Pat Willie had a drinking problem. When Pat was drunk, Pat would begin ranting and raving about how the business was in trouble. Pat would blame everyone for the company's financial problems, from the government to the postman, whom Pat was convinced was not delivering checks. Pat was particularly angry with Jefferson Monk and the Monk Agricultural Chemical Company ("MACC"). Pat told me time and time again that if MACC had paid the company what it deserved to be paid that Pat would be wealthy. Pat told me that "the Monks are rich because they got away with dumping for years; now the old man expects me to clean up after him and live on the crumbs off his table." When drinking Pat was always talking about how things would change when "Willie wins the lottery."

I have offered to testify because I'm afraid that Pat Willie is about to victimize MACC and the Monks with the very same missing files that led to my arrest. As WWC's bookkeeper, I naturally paid close attention to the flow of revenue into the office and the bills that we had to pay to run the business. On the hazardous waste portion of the business, MACC was our biggest customer and paid us about \$24,000 to \$30,000 a month to pick up about 100 barrels of hazardous waste. Now that sounds like a lot of money, but about 60-70% of that would go directly from us to pay the receiving hazardous waste site, often an incinerator. The rest of the money would go toward truck diesel, repairs, wages, etc. – it didn't leave much in the way of profit, if any. This tight squeeze is what Pat was always complaining about.

On a number of occasions our receipts stayed high, but our subsequent bills from the incinerator were surprisingly low. Instead of being the normal \$25,000 - \$30,000 a month, they were 10-25% lower. The first time this happened—that I caught—was in November 1993, when our bill from "Burn It" was lower by some \$15,000 from the month before. I double-checked our revenue and everything was normal. I was sure I was just missing something obvious, so I

nonchalantly asked Pat to help me catch my mistake. Instead, Pat joked that the people handling the charges at the incinerator "must be as disorganized as your boss. We got lucky this month, so maybe we can pay our other bills."

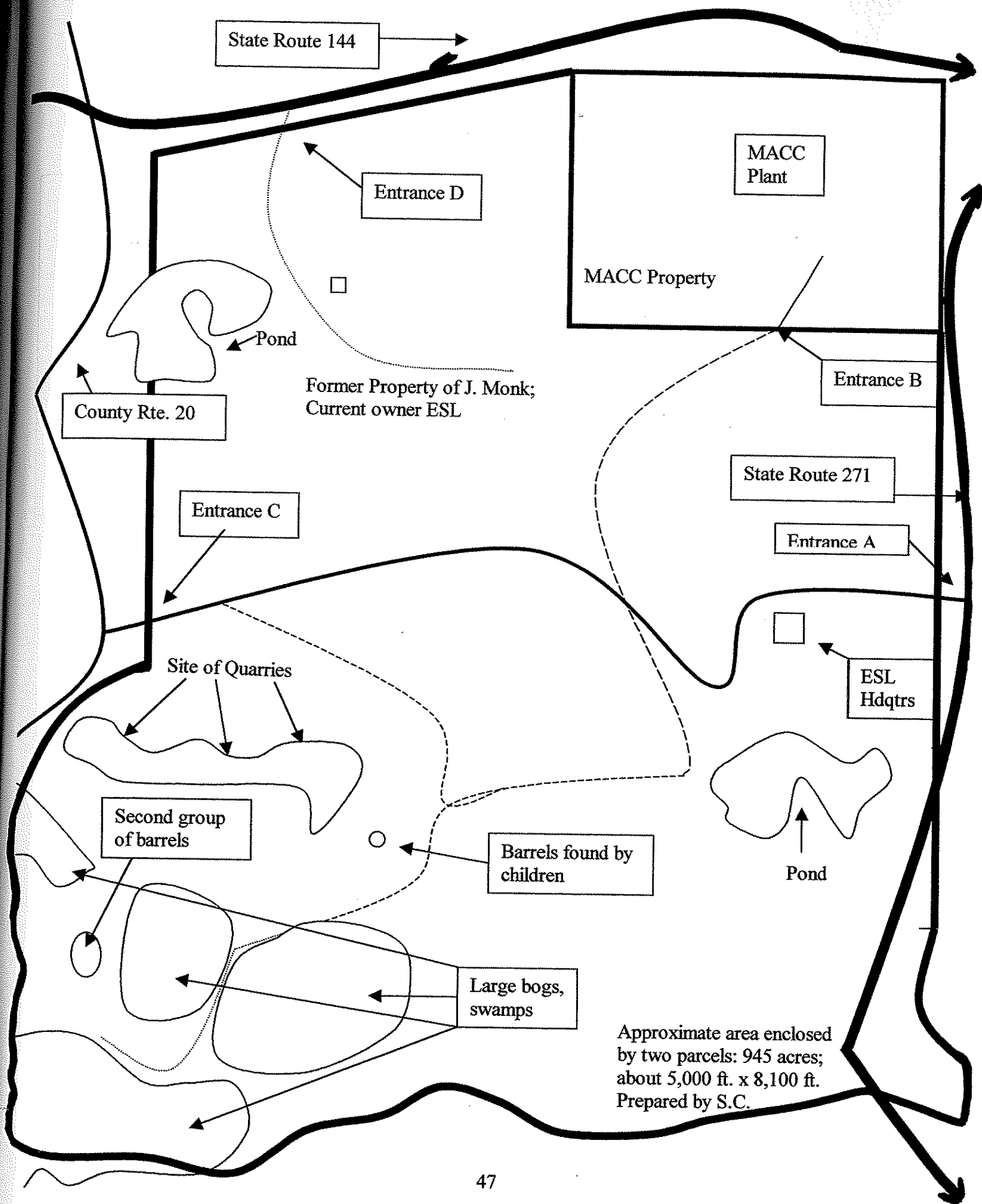
When I asked Pat if I should call to straighten it out, Pat gave me this look of "don't be stupid" and said "don't go kickin' over no bees' hive – you never know who's goin' to get stung. Just leave well enough alone." At the time I was surprised and disappointed at Pat's lack of ethics, but naively didn't suspect anything illegal. I should have suspected something when at the end of 1993 I took the initiative and created a chart showing our monthly income and cost regarding hazardous wastes, which I thought would be a big help to Pat. Instead, Pat yelled at me that "I'm already buried in paperwork and don't need you spending time creating more." Luckily, I was so proud of my little chart that I had taken a copy home with me and could give it to the prosecution when I heard about this case. Over the next four years, this fluctuation in revenue and costs happened several more times. Each time Pat would try to give some flip explanation – "They had a 2 for 1 special" or "I had a coupon" – but I became increasingly uneasy. When it happened again in February 1997, Pat became furious when I brought it up. Pat told me to "cash the checks and pay the bills" and "keep your ethical qualms to yourself." I didn't know it at the time, but a month later I would be fired. I am sure that the financial inconsistencies amounted to over \$25,000 from 1993-97. I now believe that Pat was dumping barrels while taking full payment from Monk and other companies. I feel stupid for not realizing that I was helping WWC commit environmental crimes. I was an unwilling co-conspirator.

Later that night, I came back to the office after everyone had left to get my stuff. I couldn't resist leaving Pat a good-bye gift, so I misfiled a bunch of current work folders. It was childish, but given Pat's penchant for losing things, not much worse than putting them all on Pat's desk.

The next morning, Pat Willie called the police and I was arrested for criminal trespass and malicious destruction of property. Pat claimed that I had destroyed files and taken records relating to WWC's biggest clients, including MACC. When I saw the police pictures of WWC offices I was shocked. Someone, but not me, had really done a job on my filing system. Unfortunately, I was found guilty of something that I had never done. My punishment included 250 hours of community service and a \$7,000 fine. I had to sell my sports car to pay the fine. I now believe that Pat Willie set me up and used my firing as a cover to destroy and "lose" WWC records that indicated that Pat had been illegally dumping hazardous wastes while taking full payment from MACC and other customers. I'm sure that the paper trail for the 1992-95 period isn't the only thing which Pat has wrongfully buried. The irony is thick – by "losing" WWC records Pat Willie gave me a record that I can never get rid of. Knowing what I do about Pat Willie, and the inner financial inconsistencies at WWC, I could not stand by and watch MACC be accused of dumping wastes. I handled their checks every month. The fact that they paid Pat and that WWC took the barrels should speak for itself.

Since leaving WWC, I have worked for International Colas United. After reading in the paper about the indictment against MACC, I knew I had to come forward and tell the truth about what I knew. I talked to my boss, Phil Anders, and he recommended that I go to the authorities.

Lee Chang
Lee Chang, November 28, 2000



Sticker found by Sandy Carnes, October 28, 2000.

Monk Agricultural Chemical Corporation
"Come Grow with Us"

Hazardous Wastes
Contents: Methyl Ethyl Solvent Solution and
Chemical Waste Residues

Barrel Filled on: _____ Lot No. _____ Residue: _____

If you find this sticker return for a \$100 reward to MACC at 300 SR 271, Crystal City, NY

WWC Annual Receipts (\$)/ Hazardous Waste Customers: 1993

Prepared by: LC 12/31/93

Client	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Yearly Totals
MACC	24,000	30,000	27,000	30,000	30,000	24,000	27,000	30,000	27,000	30,000	18,000	24,000	321,000
Farm C.	13,000	12,000	15,000	14,000	11,000	15,000	13,600	11,300	14,600	15,000	15,000	11,000	160,500
CC	4,000	5,000	4,400	5,600	3,000	6,000	4,500	5,000	4,000	3,500	3,500	5,000	53,500
Month Income	41,000	47,000	46,400	49,600	44,000	45,000	45,100	46,300	45,600	48,500	36,500	40,000	535,000
Disposal costs, BI	25,000	28,000	27,000	25,000	28,000	27,000	24,000	28,000	29,000	34,000	19,000	26,000	320,000
Net	16,000	19,000	19,400	24,600	16,000	18,000	21,100	18,300	16,600	14,500	17,500	14,000	215,000

Monk Agricultural Chemical Corporation

MEMO: All Employees
FROM: Taylor Monk
DATE: November 20, 2000
SUBJECT: State Investigation

I want to take this opportunity to thank each and every one of you who have offered your support in the face of what now appears to be a decision to pursue charges that allege that MACC committed environmental crimes. Your outpouring of support in e-mails, cards, phone calls, and offers to support our case with your own personal knowledge mean a great deal to me, the board of directors, and would gladden grandfather's heart, if he were in a position to understand.

I have been personally impressed and gratified over the years by your outstanding dedication to safety, creating quality products, and doing things in an environmentally safe and responsible way. You all know of our long and constant efforts to meet and exceed the state and federal laws regarding the handling of all chemicals and hazardous waste, in particular. While we have embraced and implemented the regulatory standards, and filled out seemingly mountains of paperwork, the State is apparently determined to make these charges without being able to point to any failings in our paperwork or any direct evidence which supports their allegations. I am saddened that this mistaken course of action is being implemented.

I can assure you that we will vigorously fight these charges and will be shown to be completely innocent. Your support and continued dedication to "doing the job right" will be instrumental to our victory in court. Thank you all.

taylor

Monk Agricultural Chemical Corporation

Hazardous Waste Management Unit
 Manager's Copy
 MACC Inventory Control

Barrels purchased, on hand, 1993

	J	F	M	A	M	J	J	A	S	O	N	D	Total
Purchased	100	100	100	120	100	130	100	100	150	100	130	100	1,330
Used	98	110	108	110	120	96	118	125	108	122	99	96	1,310
On-hand	50	40	32	42	22	56	36	11	53	31	62	66	

MACC Inventory Control

Barrels purchased, on hand, 1994

	J	F	M	A	M	J	J	A	S	O	N	D	Total
Purchased	100	100	100	120	100	90	80	80	100	100	100	100	1,170
Used	88	90	84	95	100	80	100	92	105	110	110	96	1,150
On-hand	58	68	84	109	109	119	99	87	82	72	62	66	

PART VI

PERTINENT LAW AND INFORMATION

ENVIRONMENTAL LAW COMMENTARY & CASES

Most environmental laws including the SOLID WASTE DISPOSAL ACT (SWDA), the RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), and the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) prohibit what is referred to as "knowing" violations. What is of interest is that the term "knowing" does not require premeditation or intent to be proven. The notion, therefore, of *mens rea* or "guilty knowledge" is often interpreted on a case-by-case basis. As a result, you are being provided with the following federal RCRA definition and related cases.

SOLID WASTE DISPOSAL ACT & RCRA

42 § 69238
SWDA § 3008

(f) Special rules

For the purposes of subsection (e) of this section—

- (1) A person's state of mind is knowing with respect to—
 - (A) his conduct, if he is aware of the nature of his conduct;
 - (B) an existing circumstance, if he is aware or believes that the circumstance exists; or
 - (C) a result of this conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—
 - (A) the person is responsible only for actual awareness or actual belief that he possessed; and
 - (B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

CRIMINAL CASES

United States v. Goldsmith, 978 F.2d 643, 23 ELR 20281 (11th Cir. 1992)

In *United States v. Goldsmith*, the court upheld the defendant's convictions under RCRA § 3008(d)(1) and (d)(2)(A) for transporting hazardous waste to an unpermitted facility and illegally storing waste without a permit, even though the government did not prove that the defendant actually knew that EPA defined the chemical as hazardous waste. The court held that an instruction requiring knowledge that the material in question had the potential to be harmful to humans or the environment was "sufficient to inform the jury that it must find that a defendant knew the substance he disposed of was hazardous."

United States v. White, 766 F. Supp. 873 (1991)

In *United States v. White*, a company and several employees were indicted under RCRA and the Federal Insecticide, Fungicide, and Rodenticide Act for loading a truck with pesticide-contaminated water and then spraying the material on a field. One defendant was indicted under the responsible corporate officer doctrine on the ground that he "had direct responsibility to supervise the handling of hazardous waste by [corporate] employees. He is liable for the acts of all other agents and employees of [the company]; handling the hazardous waste at [its] facilities which he knew of or should have known of."

The defendant moved to strike this charge, claiming that it would improperly permit the government to obtain conviction based solely on a theory of respondeat superior. The court agreed and dismissed it.

United States v. MacDonald & Watson Waste Oil Co.,
933 F.2d 35 (1991)

In *United States v. MacDonald & Watson Waste Oil Co.*, a corporation and its president were convicted on two counts each of knowingly transporting hazardous waste to a facility that did not have a permit, in violation of RCRA §3008(d)(1). The evidence showed that hazardous waste had been illegally transported to an unpermitted site operated by the company, under the supervision of a corporate employee. The evidence further showed that the company president had participated in the day-to-day management of that site and had been warned on other occasions that his company had illegally disposed of hazardous waste. However, there was no direct evidence that the president knew of the particular unlawful shipment charged in the indictment.

The First Circuit overturned the president's conviction, holding that the district court had improperly applied the responsible corporate officer

doctrine "as a substitute means of proving the explicit knowledge element as this RCRA felony." The court held that the charge was defective because it instructed the jury "that proof that [the president] was a responsible corporate officer would conclusively prove the element of his knowledge."

Thus, absent proof that the president had actual knowledge of the specific shipments charged in the indictment, the conviction had to be overturned.

REPRINTED WITH PERMISSION BY WEST GROUP FROM, "Criminal Enforcement
of Environmental Laws: Part II-The Knowledge Element in Environmental Crimes",
Cooney et al., 25 ELR 10525

CIVIL CASES

United States v. Bestfoods, 524 U.S. 51 (1998)

In *United States v. Bestfoods*, increased predictability by enunciating a standard of operator liability of parent corporations under CERCLA that looks to whether the parent has directly participated in hazardous waste handling and matters involving environmental compliance. The Court held that, for purposes of operator liability under CERCLA, "an operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations."

United States v. Carolawn Co., 14 Env'tl. L. Rep 20699 (1984)

In *United States v. Carolawn Co.*, the federal court in South Carolina ruled that a corporate official with control and authority over the activities of a facility or who participated in the management of a facility may be individually liable under CERCLA § 107 despite the corporate character of the business. In denying the individual defendants' motions to dismiss the government's complaint for failure to state a claim against them, the court stated that CERCLA imposes personal liability against corporate officials who are responsible for daily operations. The court further noted that CERCLA broadly defines "persons" who are subject to liability as including individuals, and that an "owner" or "operator" may be an individual or a corporation. Hence "to the extent that an individual has control or authority over the activities of a facility from which hazardous substances are released or participates in the management of such a facility, he may be held liable for response costs...notwithstanding the corporate character of the business."

United States v. Northeastern Pharmaceutical & Chemical CO. (NEPACCO), 810 F. 2d 726 (8th Circuit 1986)

In *United States v. Northeastern Pharmaceutical & Chemical CO. (NEPACCO)*, it held both senior officers and lower level employees in a closely held corporation individually liable under CERCLA.

The court reasoned that it is the "authority to control the handling and disposal of hazardous substances that is critical under the statutory scheme." Furthermore, his liability did not rest on his status as a corporate officer or shareholder, rather, it rested on the fact that he was in charge of the transportation and disposal of hazardous waste. The court also held that he was liable independent of a "piercing the corporate veil" theory because he personally participated in wrongful conduct by personally arranging for the disposal of hazardous substances in violation of CERCLA § 107(a)(3). In this regard NEPACCO can also be included among those cases employing the "actual participation" standard discussed below.

The court merely interpreted CERCLA and found that its broad definition of "person" invited imposing liability without the necessity of

piercing the corporate veil. In addition, the court used RCRA's personal liability provisions to impose liability on a corporate officer who as shareholder was not directly involved in the final decision that led to the harm. Thus senior officers and shareholders in a closely held corporation could be held responsible for the acts of lower level employees based on their ultimate authority to exercise control over the corporation's activities. Active participation was not necessary for liability.

REPRINTED WITH PERMISSION FROM "Courts May Find Individuals Liable for Environmental Offenses Without Piercing Corporate Shield", Benedict J. Monachino, New York State Bar Association *Journal*, May 2000, vol. 72, no. 4

NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

Federal Environmental laws do not prevent states from creating their own environmental program and guidelines so long as the requirements imposed are not less stringent than the Federal guidelines.

This case involves an alleged violation of New York's Environmental Conservation Law the relevant statutes and definitions of which follow.

New York State Penal Law § 15.10

For purposes of Environmental Conservation Law of New York §71-2713 and §71-2712, the term *recklessly* shall be defined as "A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

For purposes of this trial, the following New York State Penal Law applies:

§20.20 Criminal liability of corporations

1. As used in this section:
 - (a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.
 - (b) "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
2. A corporation is guilty of an offense when:
 - (a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
 - (b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or
 - (c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a

legislative intent to impose such criminal liability on a corporation, or
(iii) any offense set forth in title twenty-seven of article seventy-one of
the environmental conservation law.

§20.25 Criminal liability of an individual for corporate conduct.

A person is criminally liable for conduct constituting an offense which
he performs or causes to be performed in the name of or in behalf of a
corporation to the same extent as if such conduct were performed in his own
name or behalf.

§71-2702. Definitions.

As used in section 27-0914 of this chapter, and this title, the following terms shall have the following meanings:

1. "Hazardous wastes" means:
 - (a) Those wastes identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto;
 - (b) Acute hazardous wastes and;
 - (c) Waste oils, including but not limited to, used engine lubricating oil, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which have been contaminated by physical or chemical impurities, through use or accident, and have not been subsequently re-refined, and which fail one or more of the characteristic tests listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto or which contain any waste identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.
2. "Acute hazardous wastes" means those wastes identified or listed as "acute hazardous wastes" in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.
3. "Authorization" means the possession, where required, of a valid license, permit or certificate issued by an agency of the state of New York or the federal government or an order issued by the commissioner or the administrator of the federal environmental protection agency under applicable statutes, rules or regulations regarding the possession or release of hazardous or acutely hazardous wastes or substances hazardous or acutely hazardous to public health, safety or the environment or otherwise engaging in conduct which is exempt under applicable statutes, rules or regulations from the requirements of possessing such a license, permit, certificate or order.
4. "Site of generation" means premises where hazardous wastes are produced, used, or stored pursuant to authorization or registration under the federal solid waste disposal act or under article twenty-seven of this chapter, and all contiguous property owned or leased by the owner or lessor of said premises, including contiguous property which may be otherwise divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way, and non-contiguous property owned or leased by the owner or lessor of said premises, but connected by a right-of-way which he controls and to which the public does not have access.
5. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment, or the abandonment of any substance. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.
6. "Primary water supply" means a body of surface water, fresh or saline or water in a saturated zone or stratum beneath the surface of land or water, best usage of which includes being used for drinking, culinary or food processing, including potable mineral waters, and so classified in regulations promulgated pursuant to section 15-0313 or 17-0301 of this chapter, as amended.
7. "Water" includes lakes, bays, ponds, rivers, streams, and other waters as further defined in subdivision two of section 17-0105 of this chapter.
8. "Pound" means an avoirdupois pound.
9. "Gallon" means a unit of liquid capacity equal to two hundred thirty-one cubic inches or four quarts.
10. "Substance hazardous to public health, safety or the environment" means any substance which:
 - (a) is identified or listed as a hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or
 - (b) appears on the list in regulations promulgated pursuant to paragraph (a) of subdivision one of section 37-0103 of this chapter and all amendments thereto.
11. "Substance acutely hazardous to public health, safety or the environment" means any substance which:
 - (a) is listed as an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or
 - (b) appears on the list in regulations promulgated pursuant to paragraph (b) of subdivision one of section 37-0103 of this chapter and all amendments thereto.
12. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota, and all other natural resources.
13. "Release" means any pumping, pouring, emitting, emptying, or leaching, directly or indirectly, of a substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment, or the disposal of any substance.
14. "Abandonment" means the intentional relinquishing or forsaking of all possession or control of any substance. In any prosecution under this title, it is an affirmative defense to an allegation of abandonment that the defendant surrendered possession or control of such substance to another party who knowingly and voluntarily consented to assume such possession or control.

§71-2707. Unlawful possession of hazardous wastes in the second degree.
No person shall:

1. Knowingly possess more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation; or
2. Recklessly possess more than two hundred gallons or two thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation.

Unlawful possession of hazardous wastes in the second degree is a class E felony.

§71-2709. Unlawful possession of hazardous wastes in the first degree.
No person shall:

1. Knowingly possess acute hazardous wastes at a place other than the site of generation; or
2. Knowingly possess more than fifteen hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation; or
3. Recklessly possess more than twenty-five hundred gallons or twenty-five thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation.

Unlawful possession of hazardous waste in the first degree is a class D felony.

§71-2710. Endangering public health, safety or the environment in the fifth degree.

A person is guilty of endangering public health, safety or the environment in the fifth degree when with criminal negligence he engages in conduct which causes the release to the environment of more than five gallons or fifty pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment.

Endangering public health, safety or the environment in the fifth degree is a class B misdemeanor.

§71-2711. Endangering public health, safety or the environment in the fourth degree.
A person is guilty of endangering public health, safety or the environment in the fourth degree when:

1. With criminal negligence, he engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment; or
2. With criminal negligence, he engages in conduct which causes the release to the environment of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or
3. He knowingly or recklessly engages in conduct which causes the release to the environment of a substance hazardous to public health, safety or the environment.

Endangering public health, safety or the environment in the fourth degree is a class A misdemeanor.

§71-2712. Endangering public health, safety or the environment in the third degree.
A person is guilty of endangering public health, safety or the environment in the third degree when:

1. He recklessly engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment; or
2. He recklessly engages in conduct which causes the release to the environment of more than two hundred gallons or two thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

3. He recklessly engages in conduct which causes the release to the environment of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment and such release creates a substantial risk of physical injury to any person who is not a participant in the crime; or

4. He knowingly engages in conduct which causes the release to the environment of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment.

Endangering public health, safety or the environment in the third degree is a class E felony.

§71-2713. Endangering public health, safety or the environment in the second degree.

A person is guilty of endangering public health, safety or the environment in the second degree when:

1. He knowingly engages in conduct which causes the release to the environment of a substance hazardous to public health, safety or the environment and such release causes physical injury to any person who is not a participant in the crime; or

2. He knowingly engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter; or

3. He knowingly engages in conduct which causes the release to the environment of more than one thousand five hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

4. He recklessly engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment and such release causes physical injury to any person who is not a participant in the crime; or

5. He knowingly engages in conduct which causes the release to the environment of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment and such substance enters water; or

6. He knowingly or recklessly engages in conduct which causes the release to the environment of a substance hazardous to public health, safety or the environment and such substance enters a primary water supply.

Endangering public health, safety or the environment in the second degree is a class D felony.

§71-2714. Endangering public health, safety or the environment in the first degree.

A person is guilty of endangering public health, safety or the environment in the first degree when:

1. He intentionally engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter when he is aware that such conduct creates a substantial risk of serious physical injury to any person who is not a participant in the crime; or

2. He knowingly engages in conduct which causes the release to the environment of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103

of this chapter and such release causes physical injury to any person who is not a participant in the crime.

Endangering public health, safety or the environment in the first degree is a class C felony.

§71-2715. Unlawful dealing in hazardous wastes in the second degree.

No person shall:

1. With intent that another person possess or dispose of hazardous wastes without authorization, solicit, request, command, importune or otherwise attempt to cause such other person to engage in such conduct; or
2. Believing it probable that he is rendering aid to a person who intends to possess or dispose of hazardous wastes without authorization, engage in conduct which provides such person with the means or opportunity for the commission thereof and which in fact aids such person to commit such act.

Unlawful dealing in hazardous waste in the second degree is a class A misdemeanor.

§71-2717. Unlawful dealing in hazardous wastes in the first degree.

No person shall:

1. Remove, assist in the removal, or make available for removal, more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes intending that such wastes are to be possessed or disposed of by a person who does not have authorization; or
2. Solicit, agree to receive or receive a benefit for possession or disposal of hazardous wastes intending that the possession or disposal is to be done without authorization; or
3. Offer, agree to confer, confer upon another or authorize or direct anyone to offer, agree to confer or confer upon another a benefit for possession or disposal of hazardous wastes intending that the person who is to perform such possession or disposal does not have authorization.

Unlawful dealing in hazardous waste in the first degree is a class E felony.

§71-2719. Presumptions.

1. Possession of fifteen hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes or substances hazardous to public health, safety or the environment, shall be presumptive evidence of knowledge on the part of the person in possession that the material is a hazardous waste or a substance hazardous to public health, safety or the environment; and
2. Possession of five gallons or fifty pounds, whichever is less, of an aggregate weight or volume of acute hazardous wastes or substances acutely hazardous to public health, safety or the environment shall be presumptive evidence of knowledge on the part of the person in possession that the material is an acute hazardous waste or a substance acutely hazardous to public health, safety or the environment.