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## CALIFORNIA FELLOW GREGORY EVANS BOLSTERS STELLAR REPUTATION IN ENVIRONMENTAL ENFORCEMENT CASES

When it comes to big companies, U.S. Attorneys and state prosecutors don't usually walk away from major environmental enforcement cases without scoring some sort of criminal fine, penalty, or other concession like a deferred prosecution agreement. After all, prosecutors carry the big stick, be it a threat of indictment, enormous fines, bad press or all three. But when the case includes a very charming and effective environmental litigator named Gregory Evans, that is exactly what happens - the government just seems to give up and fade away in his cases, despite their complexity and notwithstanding the wealth of his blue chip clients.



Gregory Evans

Most recently, the United States Attorney in Montana gave up on a three year grand jury investigation of Evans' client Americas Smelting and Refining Corporation (ASARCO). In that case, ASARCO was accused of violating the Resource Conservation and Recovery Act, or RCRA, by abandoning a refinery in East Helena Montana and leaving behind hazardous substances in for over eight years. Hazardous waste laws exposed ASARCO to fines of \$50,000 per day, per substance, and a felony conviction. While the U.S. Attorney proposed a deferred prosecution agreement which included the admission of a felony and a million dollar fine, Evans would not blink. He mastered the facts and exposed several major flaws in the prosecution's case. In the end, the U.S. Attorney's office declined to prosecute.



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In a letter to Lori Hanson, special agent in charge of the criminal investigation division of the U.S. Environmental Protection Agency in Denver, Assistant U.S. Attorney Mark Smith wrote that “it will be problematic to establish the elements of a crime beyond a reasonable doubt. As you know, the RCRA and its implementing regulations are quite complex. In this case, that complexity enhanced the difficulty of proving, based on the totality of the circumstances, that Asarco knew that the materials in question were wastes subject to RCRA.” This type of result has become a striking pattern in Evans’ litigation career.

In September of last year, Evans achieved a similar result in a case for The Sherwin-Williams Company. In that case, the Chief of the Environmental Crimes Unit of the U.S. Attorney’s office in Los Angeles declined prosecution following a three year Federal Grand Jury investigation. The FBI and the U.S. Attorney’s Office claimed that an explosion at a Home Depot store occurred because Sherwin-Williams violated hazardous waste laws by reselling drums that once contained hazardous materials. Home Depot was using the recycled waste drums for collection of store waste when the explosion occurred. Under RCRA, containers that once contained hazardous materials cannot be resold and reused unless they are emptied. Despite a nation-wide investigation of all of Sherwin-Williams’ facilities, the U.S. Attorney gave up the case without any concession or payment of any sort from Sherwin Williams.

Earlier in 2009, the California Attorney General and 12 California county prosecutors abandoned a state-wide investigation of Sherwin-Williams involving allegations of environmental crimes throughout the state. True to form, Evans handed over nothing from his client. Evans’ winning streak in environmental enforcement cases dates back to his first major environmental case involving a grand jury. In 1996, following one of the worst derailments in U.S. history, a San Bernardino County grand jury was convened to investigate suspected environmental and other crimes. The state prosecutor’s effort to indict the railroad was unsuccessful. Evans attributes this success to very careful preparation with an emphasis on “intimate familiarity with the facts and witnesses.” Whatever his litigation formula may be, it works consistently.

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