Description of document:	Department of Justice (DOJ) Environment and Natural Resources Division (ENRD) Environmental Crimes Monthly Bulletin, 2006, 2008-2012
Request date:	02-October-2012
Released date:	11-February-2013
Posted date:	07-July-2014
Source of document:	FOIA Coordinator Department of Justice Environment and Natural Resources Division Law and Policy Section 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 Fax: (202) 514-4231 E-mail:FOIARouting.enrd@usdoj.gov

U.S. Department of Justice

Environment and Natural Resources Division

236380-4-1-13-03462

Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Telephone (202) 514-1442
Facsimile (202) 514-4231

FEB 11 2013

FOIA No.: 2013-03462

This letter responds to your Freedom of Information Act (FOIA) request for electronic copies of the Environmental Crimes Monthly Bulletin published during: 2006, 2008, 2009, 2010 (through and including October 2010), 2011 (from April 2011 through December 2011), and 2012. The Environment and Natural Resources Division (ENRD) received your request on October 2, 2012. On October 10, 2012, we wrote to inform you that, due to "unusual circumstances" as defined in 5 U.S.C. § 552(a)(6)(B)(iii), we would be unable to process your request within the 20 business-day time limit specified in 5 U.S.C. 552(a)(6)(A).

Please find enclosed the Environmental Crimes Bulletins published during 2006, 2008, 2009, 2010 (through and including October 2010), 2011 (from April 2011 through December 2011), and 2012, with redactions removing discussions of cases against individuals that are not already freely available in the public domain. This redacted privacy material is subject to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which relates to information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy," and Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), which relates to law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

There are no fees associated with the processing of this request.

This determination may be appealed by writing to the Co-Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, DC 20530-0001. You should clearly mark your envelope and letter: "Freedom of Information Appeal." See 28 C.F.R. § 16.9(a) and 5 U.S.C. § 552(a)(6)(A). Your appeal must be received by OIP within sixty days from the date of this letter in order to be considered timely.

Please contact Judy Harvey at (202) 514-3932 if you have any questions.

Sincerely,

Karen M. Wardzinski
Chief, Law & Policy Section

Enclosure

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

February 2006

AT A GLANCE

A FEW WORDS FROM ECS CHIEF DAVID UHLMANN - -

This is the first edition of the Environmental Crimes Monthly Bulletin, which will replace the Environmental Crimes Bulletin that we previously circulated two to three times a year. By moving to a monthly format, we hope to provide more up-to-date information about case developments throughout the country.

The new monthly format will allow readers to more easily navigate through the Bulletin using electronic links. The cases will be grouped chronologically within the following sections: Significant Decisions, Trials, Indictments, Pleas/Sentencings and Training. While you may print out the document, you also will be able to read it on your computer as each case listed in the Litigation/Active Cases section is electronically linked to a description of the case.

The first edition of the Environmental Crimes Monthly Bulletin covers cases from December 2005 and January 2006, but in the future the Bulletin will primarily cover case activity for just the previous month. Subsequent editions may contain other features as we continue to "fine tune" the publication, and we welcome any comments our suggestions that you have in that regard. As always, please submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, please provide us with a copy. Please email your submissions to Elizabeth Janes at [redacted] or you may fax material to Elizabeth at [redacted] If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

SIGNIFICANT OPINIONS

◊ **US v. Kraft, 8th Circuit, January 13, 2006: Conviction affirmed in case involving animal park and Lacey Act and ESA violations**

LITIGATION

Districts	Active Cases	*Case Type*/ Statutes
S.D. Ala.	**US v. McWane**	***Pipe Manufacturer*/ CWA, Conspiracy, False Statement, Obstruction**
C.D. Calif.	**US v. Andrew Nguyen** **US v. Kahoolyzadeh**	***Primitive Endangered Plant*/ ESA, Smuggling, Conspiracy** ***Dry Cleaner*/ RCRA**
S.D. Calif.	**US v San Diego Gas and Electric**	***Utility*/ CAA, Conspiracy, False Statement**
M.D. Fla.	**US v. Joseph Ulrich** **US v. City of Venice**	***Nest Destroyed*/ Bald & Golden Eagle Protection Act** ***Municipality*/ CWA**
S.D. Fla.	**US v. Kevin McMaster**	***Endangered Species Skins*/ Lacey Act, ESA**
D. Mass.	**US v. MSC** **US v. Jose Silva**	***Vessel*/ APPS, Conspiracy, Obstruction, False Statement** ***Lobster Fishing*/ Lacey Act, Conspiracy, False Statement**
W.D. Mich.	**US v. James Vaandering**	***Electroplater*/ RCRA**
[redacted]	[redacted]	[redacted]
E.D. Mo.	**US v. Royal Canin USA**	***Pet Food Processor*/ CWA**
D. Mont.	**US v. John McDonald**	***Big Game Hunting*/Lacey Act**
D.N.J.	**US v. Atlantic States Cast Iron Pipe Co.** **US v. Noel Abrogar**	***Pipe Manufacturer*/ CWA, CAA, CERCLA, Conspiracy, False Statement, Obstruction** ***Vessel*/ APPS**
[redacted]	[redacted]	[redacted]

Districts	Active Cases	*Case Type*/ Statutes
E.D.N.C.	**US v. Billy Moore** **US v. Daniel Davis** [redacted]	***Dredge and Fill*/ CWA, Rivers and Harbors Act** ***Commercial Fishing*/ Lacey Act** [redacted]
N.D. Ohio	**US v. David Geisen**	***Nuclear Plant*/ Conspiracy, False Statement**
E.D. Pa.	**US v. Wasserson**	***Dry Cleaning Products*/ RCRA**
W.D. Pa.	**US v. James Bell**	***Laundry Company*/ CWA, Conspiracy**
D.S.C.	**US v. Michael Hayhurst**	***Dredging Operation*/ CWA, RHA, False Statements**
D. Utah	**US v. Alan Young**	***Road Construction Company*/ CAA**
E.D. Va.	[redacted] **US v. Lotuaco**	[redacted] ***Asbestos and Hazardous Material Removal*/ Conspiracy to Defraud OSHA, EPA and SBA**

TRAINING

◊ Environmental Crimes Training **- May 8 – 12, 2006 at the National Advocacy Center, Columbia, South Carolina.**

Quick Links

Significant Opinions

United States v. Nancy Kraft, No. 03-CR-315 (D. Minn.), ECS Trial Attorney Cathy Pisaturo [redacted] and AUSA Bill Koch ([redacted]

The Eighth Circuit Court of Appeals affirmed the conviction and sentence of Nancy Kraft on January 13, 2006. Kraft and her husband, Kenneth Kraft, owned and operated two businesses in Minnesota, Kraft Animal Escapades and Bearcat Hollow. Using those businesses, they illegally sold endangered and threatened animals, including tigers, leopards and grizzly bears.

The case against Kraft was tried before a jury earlier this year, which found her guilty on seven of the eleven counts against her, including conspiracy and six Lacey Act false labeling charges. The district court sentenced Nancy Kraft to serve a fifteen-month term of incarceration, followed by two years' supervised release. Six other defendants pleaded guilty to Lacey Act or Endangered Species Act violations in connection with this case.

This case was investigated by the United States Fish and Wildlife Service and the United States Department of Agriculture.

Back to Top

Trials

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS Assistant Chief Andrew Goldsmith [redacted], ECS Trial Attorneys Deborah Harris [redacted] and Noreen McCarthy [redacted], First AUSA Ralph Marra [redacted] and AUSA Norv McAndrew [redacted]

In September 2005, trial began against iron foundry Atlantic States Cast Iron Pipe Company ("Atlantic States") and current and former managers John Prisque, Scott Faubert, Jeffrey Maury, Daniel Yadzinski and Craig Davidson. Atlantic States is a division of McWane, Inc., which manufactures iron pipes. The process involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit.

During the investigation, agents and prosecutors uncovered a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. The evidence indicates that the defendants routinely violated Clean Water Act permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River. There also is evidence that they repeatedly violated Clean Air Act permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola. Additionally, they systematically altered accident scenes; and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

The defendants were charged in September 2004 with conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. The defendants also were charged with substantive CWA, CAA, CERCLA, false statement, and obstruction violations.

The trial, which is continuing in Trenton, New Jersey, is expected to go to the jury in March 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; United States Department of Labor Occupational Safety and Health Administration, the New Jersey Department of Environmental Protection, the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the Phillipsburg Police Department.

Back to Top

Indictments

United States v. David Geison et al. (N.D. Ohio), ECS Senior Trial Attorney Richard Poole [redacted] ECS Trial Attorney Tom Ballantine [redacted] and AUSA Christian Stickan [redacted]

On January 19, 2006, a five-count indictment was returned charging engineering manager David Geison and systems' engineer Andrew Seimaszko, former employees at the Davis-Besse Nuclear Power Plant, and consultant Rodney Cook, with a scheme to conceal information from the Nuclear Regulatory Commission ("NRC") and with making false statements to the NRC.

FirstEnergy Nuclear Operating Company ("FENOC") owns and operates the Davis-Besse Nuclear Power Plant("Davis-Besse") near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant's safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.

Boric acid flowing from weepholes at Davis-Besse. The indictment alleges that boric acid was an impediment to inspections that Davis-Besse engineers concealed from the Nuclear Regulatory Commission.

An investigation of the events that let up to the corrosion hole at Davis-Besse showed that, in September 2001, the NRC had sought plant-specific information regarding the potential for nozzle cracking from all susceptible reactors. Defendants, together with other employees, submitted five relevant responses regarding Davis-Besse on behalf of FENOC. The indictment alleges that the defendants withheld information specifically sought by the NRC about their ability to inspect the area where leaks from nozzle cracks would be evident.

The indictment further alleges that the defendants lied about the extent of inspections performed in 1996, 1998, and 2000. Specifically, it alleges that the defendants lied by writing that Davis-Besse engineers were able to inspect areas of the reactor vessel head that could not, in fact, be inspected and that Davis-Besse engineers had completed boric acid corrosion control procedures that they had not, in fact, completed. Two of the defendants also are charged with providing the NRC with photographs bearing captions that falsely indicate generally good conditions for visual inspections.

FENOC has agreed to a deferred prosecution in this case. Under that agreement, FENOC agrees that the United States can prove that knowing false statements were made on its behalf. FENOC is to pay a $28 million monetary penalty and will cooperate in the investigation and prosecution of the individual defendants. As a result of this agreement, the company will pay more than $23 million in fines and will spend an additional $4.3 million on community service projects. These projects include a wetlands restoration project at the Ottawa National Wildlife Refuge valued at $800,000 and $550,000 in improvements to the Visitors Center; a $500,000 communications systems' upgrade for the Ottawa County Emergency Management Association; a $500,000 project aimed at developing energy efficient technologies at the University of Toledo, College of Engineering; a $1,000,000 project to extend the Towpath Trail at the Cuyahoga Valley National Park; and a $1,000,000 project for the Northern Ohio Chapter of Habitat for Humanity for the construction of EPA Energy Star certified homes.

The case was investigated by the NRC Office of Investigations.

Back to Top

United States v. San Diego Gas and Electric et al., No. 3:06-CR-00065 (S. D. Cal.), AUSA Melanie Pierson [redacted]

San Diego Gas and Electric ("SDG&E"), two of its employees, and a contractor were charged in January 2006, with conspiracy to unlawfully remove asbestos, unlawful removal of asbestos and making false statements.

The charges relate to the alleged illegal removal of asbestos at SDG&E's gas holding facility. According to indictment, a sample of suspected asbestos was taken from the facility, prior to work being done there. Analysis of the sample, which came from the coating of the facility's underground piping, indicated that the coating was regulated asbestos containing material ("RACM").

SDG&E subsequently entered into a tentative agreement to sell the facility and was required to remove the underground piping. The indictment alleges that the two employees and the contractor agreed that they would lie to government inspectors and the residents in the surrounding area. The defendants made statements that the coating removed from the underground piping was not RACM, in order to avoid the additional cost and time required to properly remove the asbestos.

This case was investigated by the United States Environmental Protection Agency Criminal Division and the FBI.

Back to Top

United States. v. Joseph Ulrich et al., No. 2:05-CR-00130 (M.D. Fla.), AUSA Yolande Viacava [redacted] with assistance from ECS Trial Attorney Lana Pettus [redacted].

The United States Attorney for the Middle District of Florida filed an information in December 2005, charging Joseph Ulrich with the destruction of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act, which was enacted to protect eagles and their nests.

During the summer of 2003, a bald eagle was discovered in a tree located within an area designated for residential development by Stock Development, LLC ("Stock Development"). Ulrich was employed as the construction supervisor for Stock Development, which pleaded guilty to the same violation.

The principal officer and manager for Stock Development discussed in Ulrich's presence the presence of a bald eagle nest in the tree, and the delay or cessation of construction that could result. On November 15, 2003, Ulrich directed another employee to cut down the tree with the nest, and Stock proceeded with the construction of houses on the lot where the tree once stood.

The company was sentenced last September to serve a one-year term of probation, and pay a $175,000 fine, plus an additional $181,000 in restitution to the following organizations:

the Wildlife Foundation of Florida for "Bald Eagle Research"; the Peace River Wildlife Center of Punta Gorda, Florida, for "Wildlife Rehabilitation, Research, and Public Education"; the Audubon Center for Birds of Prey in Maitland, Florida, for the "Florida Bald Eagle Rehabilitation and Eagle Watch Program"; and the Florida Fish and Wildlife Conservation Commission Division of Law Enforcement. This is the largest combination of a fine and restitution ever paid for the destruction of an eagle nest tree.

The trial of Ulrich is scheduled to commence February 6, 2006.

This case was investigated by United States Fish and Wildlife Service and Florida Fish and Game.

Back to Top

United States v. Andrew Nguyen, No. 2:05-CR-1208 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] and AUSA Joseph Johns [redacted]

On December 14, 2005, an indictment was returned charging Andrew Nguyen with conspiring to import specimens of cycads protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Nguyen also was charged with eight counts of smuggling and importing cycads by means of false declarations and statements, and one count of violating the Endangered Species Act.

Cycads, which resemble palms or tree ferns, are a small group of primitive-looking plants whose ancestors date back more than 200 million years. Certain cycad species face threats in the wild from habitat loss and over-collection. Nguyen also attempted to illegally import and sell approximately 800 cycad seeds.

The indictment alleges that in April 2001 Nguyen agreed to purchase approximately 50 protected plants from a co-conspirator for approximately $26,000. The plants were shipped to Nguyen from Zimbabwe by a second co-conspirator. Rather than bearing labels with accurate descriptions or names of the plants, the specimens were labeled with numbers. Nguyen was provided a key showing which numbers corresponded to which species. The permit accompanying the shipment did not authorize the shipment of any of the species in the actual shipment.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Michael Hayhurst, No. 2:05-CR-01336 (D. S. C.), ECS Trial Attorney David Kehoe [redacted] and AUSA Emery Clark [redacted]

Michael Hayhurst was indicted on December 14, 1005, for violating the Clean Water Act and the Rivers and Harbors Act and with making false statements in connection with an illegal dredging operation he supervised in Calibogue Sound in Hilton Head Island, South Carolina.

According to the indictment, Hayhurst was the project manager for a dredging operation by South Island Dredging Association ("SIDA"). SIDA was formed by a number of homeowner associations and others for the purpose of funding and obtaining approval from the United States Army Corps of Engineers ("the Corps") to conduct this dredging operation.

The Corps issued a permit to SIDA to dredge certain areas in and around Calibogue Sound, but required that fine-grained dredged material from the operation be placed in an ocean-going barge. The barge, then, was to dispose of the dredged material at a designated site in the Atlantic Ocean, off the coast of South Carolina. The permit required that the barge be equipped with electronic positioning equipment to ensure that it was in fact making trips to the ocean disposal site.

Instead of complying with the terms of the permit by dumping the dredged material in the ocean, the indictment alleges that Hayhurst illegally dumped dredged materials and other pollutants into Calibogue Sound in violation of the CWA and altered and modified the course and condition of the sound in violation of the Rivers and Harbors Act. The indictment further states that the Hayhurst placed seawater into the ocean-going barge rather than the dredged material and transported the seawater to the ocean disposal site to conceal from the Corps that he was illegally discharging the dredged material into the Sound.

This case was investigated by the United States Army Criminal Investigation Command and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Pleas / Sentencings

United States v. McWane, Inc., et al., No. 2:04-CR-00199 (N. D. Ala.), ECS Senior Trial Attorney Chris Costantini [redacted] and ECS Trial Attorney Kevin Cassidy [redacted], ECS Paralegal Debbie Campbell [redacted] and AUSA Robert Posey [redacted]

On January 26, 2006, Donald Harbin, a plant manager at the McWane, Inc., Birmingham facility, was sentenced for his role in a conspiracy to violate the Clean Water Act and to defraud the government. The court ordered Harbin, who pleaded guilty in August 2004, to pay a $500 fine and serve a one-year term of probation. On December 5, 2005, McWane, Inc., was sentenced to pay a $5 million fine and serve a five-year term of probation.

McWane operates iron foundries that manufacture cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas. McWane, through a division known as McWane Cast Iron Pipe Company, manufactures ductile cast iron pipe for the water and sewer industry at its facility in Birmingham. The manufacturing process involves melting ferrous scrap metal in a water-cooled cupola furnace. Molten metal is centrifugally cast into pipe in water-cooled machines. The cast iron pipe is then annealed, cleaned, tested, cement lined, painted, and bundled for shipment. A variety of waste streams are generated during this process.

In June of last year, defendants McWane, James Delk, Michael Devine, and Charles "Barry" Robison were convicted at trial for conspiring to conceal illegal wastewater discharges into Avondale Creek, substantive Clean Water Act counts, making false statements and obstruction of justice. The defendants continually violated their NPDES permits and concealed the illegal discharges from authorities.

The company must also perform a community service project valued at $2.7 million. Delk, the former general manager and vice president of the Birmingham plant, was sentenced to serve six months' home confinement as a condition of three years' probation. Delk also must pay a $90,000 fine. Former plant manager Devine was sentenced to serve three months' home confinement as a

condition of two years' probation and must also pay a $35,000 fine. Robison, vice president of environmental affairs, was sentenced to serve two years' probation, pay a $2,500 fine and complete 150 hours' community service.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI.

Back to Top

United States v. Kevin McMaster, No. 2:05-CR-14102 (S.D. Fla.), ECS Trial Attorney Georgiann Cerese [redacted] and AUSA Tom Watts-FitzGerald [redacted]

Kevin McMaster pleaded guilty on January 26, 2006, to a four-count information charging him with two felony Lacey Act violations and two misdemeanor Endangered Species Act violations.

Beginning in November 2003, the Fish and Wildlife Service initiated a covert internet investigation involving McMaster. An undercover agent had received an unsolicited email message from McMaster, sent to the agent's covert email address. In that email message, McMaster inquired whether the agent was interested in "cat skins." McMaster operated a website known as *deadzoo.com* and a business known as Exotic & Unique Gifts located in Port St. Lucie, Florida. Posing as a potential buyer, the agent communicated with McMaster over the course of the next year via email, phone and a visit to the defendant's business in his undercover capacity.

During the course of the investigation, McMaster sold to the agent numerous endangered species skins, including tiger, snow leopard and jaguar skins. Search warrants were executed at McMaster's home and business in December 2004. Based upon an examination of the items seized and a statement given by the McMaster, numerous other offers to sell and sales of endangered species -- predominantly cat skins such as tigers, leopards, and jaguars as well as a gorilla skull and baby tiger mounts -- were identified.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Nicanor Lotuaco et al., No. 05-CR-00074 (E.D. Va.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Michael Smythers [redacted]

Nicanor Lotuaco, President of Air Power Enterprises, Inc., was sentenced on January 25, 2006, for his role in a conspiracy to defraud OSHA, EPA and the Small Business Administration ("SBA"). The court ordered him to serve five months' incarceration, five months' home confinement, followed by three years' supervised release, and to pay a $1 million fine.

ACS Environmental, Inc., ACS President James Schaubach, Air Power Enterprises, Inc., and Air Power president Lotuaco pleaded guilty in June 2005 to a one-count information charging them with conspiracy. The defendants fraudulently obtained approximately $37 million in SBA 8(a) set-aside contracts. The contracts involved construction work to be performed at federal facilities throughout Virginia, Maryland, and Washington, D.C., including a large number of jobs involving asbestos and lead abatement and hazardous waste operations. From 1997 through 2001, the defendants purchased approximately 250 false training certificates from F&M Environmental Technologies for employees of ACS and Air Power. The employees were then directed to conduct work involving

asbestos, lead and hazardous waste removal at federal facilities under the SBA contracts, as well as at numerous schools.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the Naval Criminal Investigative Service, and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. John McDonald et al., Nos. 1:05-CR-104, 1:06-CR-01 and 02 (D. Mont.), ECS Senior Trial Attorney Bob Anderson

On January 25, 2006, John McDonald was sentenced to serve a one-year term of incarceration on two felony counts of the Lacey Act trafficking violations. McDonald, who pleaded guilty last October, also was ordered to serve two years' supervised release, and to pay a $25,000 fine and $25,000 in restitution. McDonald also lost his hunting privileges in Montana and the Wildlife Violator Compact states for the remainder of his life.

McDonald owns 1,100 acres near Yellowstone Park on which he frequently allowed paying non-resident hunters to kill trophy-class bull elk after the close of the hunting season. This is when the elk bulls typically moved onto his property. During the past two years, nine of McDonald's poaching clients pleaded guilty to state charges, paid fines, abandoned illegal wildlife mounts and lost hunting privileges. Two of these clients, Jeffrey Young and Frank Shulze, however, refused to accept the state charges and initially lied to investigating agents about their involvement in the illegal hunts. They went so far as to write a letter to the state game agency complaining that they were being unfairly harassed by the investigators.

Three hours after McDonald was sentenced, these two hunters, Young and Shulze, entered their guilty pleas to, and were sentenced for, violating the Lacey Act. In accordance with their plea agreements, both lost their hunting privileges for five years, will serve two-year terms of probation and will each pay a $2,500 fine. Schulze also will pay $8,000 in restitution for the bull elk he killed, and Young will pay $16,500 in restitution for the two bull elk and one mule deer he poached. The plea agreements also require the men to write a letter retracting and apologizing for the false claims made in their initial letter, the language of which will be approved by the government and sent to all recipients of the original letter. At the hearing, the judge excoriated the defendants for the false claims they made in their initial letter.

This case was investigated by the Montana Department of Fish, Wildlife and Parks and the United States Fish and Wildlife Service.

Back to Top

United States v. Bezhad Kahoolyzadeh, No. 2:02-CR-01089 (C.D. Calif.), ECS Trial Attorney David Kehoe [redacted] and AUSA William Carter [redacted]

On January 24, 2006, Bezhad Kahoolyzadeh, aka "David Cohen," was sentenced to serve 37 months in prison for illegally transporting and storing perchloroethylene or "PERC," a dry cleaning agent. The defendant also is jointly and severally liable with others for $1.29 million in restitution for cleanup costs. During the three year term of supervised release, Cohen will be prohibited from working in the hazardous waste business. Cohen pleaded guilty in March 2004 to conspiracy, two counts of illegal transportation of hazardous waste and two counts of illegal storage of hazardous waste.

AAD Distribution and Dry Cleaning Services, Inc. ("AAD"), was one of California's largest handlers of PERC, until the business was shut down in January 2001. Right Choice, which was located directly next door to AAD, was in the business of picking up and arranging for the disposal of hazardous, flammable solvents from automotive repair shops.

Cohen and co-defendants, who operated Right Choice, admitted that they stored drums of PERC waste at AAD, after their facility had exceeded its storage permit limit. They then loaded these drums onto trucks and, using falsified manifests, shipped them to unpermitted facilities off-site to evade state and city inspectors. Cleanup costs for the AAD facility and the other facilities where AAD PERC wastes were illegally stored, totaled approximately $1 million.

Co-defendant Hormoz Pourat, pleaded guilty in August 2003 to two RCRA conspiracy violations. He was sentenced in December 2003 to serve 37 months' incarceration to run concurrently with a term of imprisonment he is currently serving in Colorado for state violations at the AAD facility there. Pourat also is liable for the $1.29 million in clean up costs and will serve a three-year term of supervised release. A third co-defendant, Harry Pourat, fled to Scotland after he was indicted, and thereafter committed suicide.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the United States Department of Transportation; the California Environmental Protection Agency, Department of Toxic Substances Control; the City of Vernon; and the Colorado State Attorney General's Office.

Back to Top

United States v. Gary Wasserson, No. 2:03-CR-00110 (E.D. Pa.), SAUSA Martin Harrell [redacted] and AUSA Anita Eve [redacted]

Gary Wasserson, the president and CEO of a company that supplied products to dry cleaners, was sentenced on January 20, 2006, for illegally transporting and disposing of hazardous waste. The court ordered him to serve four years' probation, pay a $5,000 fine plus $85,353 in restitution, and complete 60 hours of community service.

The Third Circuit Court of Appeals reinstated a jury's guilty verdict against Wasserson in late July 2005, and remanded the case to the district court for sentencing. Wasserson was convicted in 2004 of aiding and abetting and causing the disposal of hazardous waste. He transported and disposed of hazardous waste in 1999 from his warehouse in Philadelphia to an unpermitted garbage landfill. Evidence at trial established that Wasserson knew of the RCRA requirements, and that he had approved the hiring of a trash hauler to remove scrap metal and chemicals from the warehouse. The trash hauler, however, had been picked from the phone book by an employee who lacked Wasserson's knowledge of the hazardous nature of the waste.

Under the Sentencing Guidelines calculations, Wasserson faced a prison term of 33-41 months. At sentencing, the judge departed downward on three enhancements which left Wasserson with a range of 10-16 months. The court then relied on other sentencing factors in 18 U.S.C. § 3553 to sentence Wasserson to a term of probation.

The restitution will be paid to the owner of the landfill who had to excavate contaminated trash when some of the drums ruptured and spilled during disposal. The community service is to be performed at an environmental education center in the Philadelphia suburbs.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division with assistance from the FBI and the Pennsylvania Department of Environmental Protection.

Back to Top

United States v. Hoang Nguyen et al., No. 3:05-CR-00015 (S.D. Texas), Trial Attorney Georgiann Cerese [redacted].

On January 19, 2006, Hoang Nguyen pleaded guilty to smuggling red snapper caught in violation of the Magnuson Stevens Fisheries Act ("MSFA").

Nguyen is the captain of a commercial fishing vessel. He was charged by indictment in November 2005 with four counts of violating 18 U.S.C. § 545 for importing thousands of pounds of red snapper which had been caught in the Exclusive Economic Zone ("EEZ") after the fishing season had closed. The red snapper were concealed within a hidden compartment in Nguyen's boat and were brought into Texas for eventual sale in Houston.

Crewmember Tam Le was charged in the same indictment with two illegal importation counts. Le's trial has been scheduled to begin on February 13, 2006.

This case was investigated by the United States Department of Commerce National Oceanic and Atmospheric Association ("NOAA") Fisheries Service Office for Law Enforcement with assistance provided by the Texas Parks and Wildlife Department.

Back to Top

United States v. ConAgra Foods, Inc., No. 05-CR-00257 (D. Minn.), Senior Trial Attorney Jennifer Whitfield [redacted]

ConAgra Foods, Inc. ("ConAgra") was sentenced on January 18, 2006, for violating the Clean Water Act. The company was directed to pay a $138,513 fine, $1,487 in restitution to the Minnesota Pollution Control Agency, and was further ordered to make two community service payments in the amount of $55,000 each to the National Park Foundation and to the Friends of the Mississippi River.

ConAgra operated a food ingredient and flour mill facility. The discharges were related to non-contact cooling water that exceeded the maximum permitted temperature allowed under the facility's NPDES permit.

ConAgra pleaded guilty in September 2005 to an information charging the company with a negligent CWA violation for failing to include information from sampling results on daily monitoring reports from June 2000 through April 2003.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division.

Back to Top

United States v. Noel Abrogar, No. CR (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Thomas Calcagni [redacted].

On January 5, 2006, Noel Abrogar, the chief engineer for the *M/V Magellan Phoenix*, was sentenced to serve one year and a day incarceration for violating the Act to Prevent Pollution from Ships ("AAPS"). Abrogar pleaded guilty on September 7, 2005 to an APPS violation for making false entries in the ship's oil record book ("ORB"). Despite knowing that the ship had bypassed its oily water separator and discharged oil-contaminated bilge waste overboard in the ocean, Abrogar presented the ORB to Coast Guard inspectors, which contained false entries regarding the use of the separator.

Back to Top

[redacted]

Back to Top

United States v. Alan Young, No. 2:05-CR-00124 (D. Utah), ECS Trial Attorney Aunnie Steward [redacted] AUSA Leisha Lee-Dixon [redacted] with assistance from ECS Senior Counsel Jim Morgulec [redacted]

The trial of Alan Young, which began on January 3, 2006, ended on January 12, 2006, with the jury acquitting the defendant on all three counts of violating the Clean Air Act. The charges against Young related to an alleged false statement/scheme to conceal violations of mishandling of asbestos on a work site.

In January 2001, Young was the on-site supervisor for Merrick Young, Inc., a Utah road construction corporation. The company accidentally ruptured a water pipe that contained more than 260 linear feet of regulated asbestos-containing material during the Black Ridge Road Project. Over the course of several weeks, Young allegedly directed employees to excavate, crush, and bury the asbestos pipe on site, using it as fill and causing asbestos-laden dust to become airborne. Young purportedly knew of the asbestos, but failed to adhere to regulatory standards in the removal and disposal of this material.

After the activity was discovered and he was forced to clean it up, Young directed employees to bury the pipe and told them not to tell anyone where it was located. When an individual came

forward and informed the Environmental Protection Agency about the site, Young, upon questioning, continued to deny its existence. A subsequent search revealed the location of the crushed pipe.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Daniel Davis, No. 2:05-CR-00008 (E.D.N.C.), ECS Trial Attorney Wayne Hettenbach [redacted] and AUSA Banumathi Rangarajan [redacted]

On December 20, 2005, Daniel Davis was sentenced to serve two months' home detention for violating the Lacey Act when he illegally caught red drum fish and striped bass. Davis pleaded guilty in May of last year to two Lacey Act violations for illegally catching, transporting and selling in interstate commerce red drum fish weighing 616 pounds and striped bass weighing 560 pounds. Davis also forfeited more than $12,000 to the National Marine Fisheries Service as substitute assets for the vehicle used in the transaction and in proceeds from the unlawful activity.

This case was investigated by the National Marine Fisheries Service and the United States Fish and Wildlife Service.

Back to Top

United States v. Jose Silva, No. 1:05-CR-10011 (D. Mass.), AUSA Jonathan Mitchell [redacted]

On December 20, 2005, Jose Silva, a commercial fisherman, pleaded guilty to charges stemming from his illegally harvesting lobster over a four-year period. Silva pleaded guilty to conspiracy to violate the Atlantic Coastal Fisheries Cooperative Management Act ("ACFCMA") and the Lacey Act, two substantive Lacey Act violations and a false statement violation. The ACFCMA was promulgated to help sustain the lobster industry by protecting female lobsters and capping the number of lobsters that may be caught during a single fishing trip.

From February 2000 to March 2004, Silva and others illegally took lobsters, including female egg-bearing lobsters, "v-notched" female lobsters, and lobsters in excess of the 500-per-trip limit. Silva additionally removed, and directed others to remove, the eggs of caught female lobsters on board his fishing vessels. He also sold the lobsters to seafood brokers and wholesalers, and covered up his practices by hiding the lobsters from the Coast Guard in secret compartments on his fishing vessels and by instructing crew members to withhold information from law enforcement.

On March 7, 2004, during a routine Coast Guard inspection, Silva presented documentation indicating significantly fewer lobster on board then he actually had. He verbally told inspectors that there was not any lobster in the fish hold when he in fact knew there were hundreds. Silva further instructed the crew to tell investigators that they had removed eggs from female lobsters without his knowledge, when Silva, in fact, had instructed them to do so.

Sentencing is scheduled for March 22, 2006.

This case was investigated by the U.S. Coast Guard.

Back to Top

United States v. Aman Mahana, United States v. Mani Singh, United States v. MSC Ship Management (Hong Kong) Ltd., Nos. 1:05-CR-10269, 10274 and 10351 (D. Mass.) ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Malinda Lawrence [redacted] ECS Paralegal Stephen Foster [redacted] AUSA Jon Mitchell [redacted] and SAUSA LCMDR Luke Reid [redacted]

On December 19, 2005, MSC Ship Management (Hong Kong) Limited ("MSC"), a Hong Kong-based container ship company, pleaded guilty to conspiracy, obstruction of justice, destruction of evidence, false statements and violations of the Act to Prevent Pollution from Ships ("APPS"). Under the plea agreement, MSC will pay $10.5 million in penalties, which is the largest involving deliberate pollution by a single vessel and the largest criminal fine paid by a defendant in an environmental case in the district of Massachussetts. $500,000 of the fine will be used to support community service projects. The projects will be administered by the National Fish and Wildlife Foundation to fund non-profit organizations that provide environmental education to seafarers visiting or sailing from Massachusetts' ports, including how to report environmental crimes to the U.S. Coast Guard.

The information charges that a specially fitted steel pipe, referred to as the "magic pipe," was used on the *MSC Elena*, a 30,971 ton container ship, to bypass required ship pollution prevention equipment and discharge oil sludge and oil contaminated waste directly overboard. Upon the discovery of this bypass equipment during a Coast Guard inspection in Boston Harbor on May 16, 2005, senior company officials in Hong Kong directed crew members to lie to the Coast Guard, and senior ship engineers ordered the concealment and destruction of documents.

MSC pleaded guilty to charges that, in response to the Coast Guard inspection, senior ship engineers directed that an "alarm" printout from the ship's computer and a log containing actual tank volumes be concealed in an effort to cover up the falsification of records. Coast Guard inspectors subsequently were presented with fictitious logs containing false entries claiming the use of the oil water separator and omitting any reference to dumping overboard using the equipment that bypassed the oil water separator.

On December 20, 2005, Mani Singh, the chief engineer for the *Elena*, pleaded guilty to an indictment returned in November 2005 charging him with conspiracy, obstruction, destruction of evidence, false statements and an APPS violation in connection with the use of the bypass pipe. Singh was one of the engineers who concealed the alarm printout, presented fictitious logs to investigators, and was involved in the use of the bypass. The crew took various measures to conceal the illegal conduct and avoid discovery including discharging only at night and hiding the bypass equipment during port visits.

On December 1, 2005, Aman Mahana, the ship's second engineer, pleaded guilty to an information filed in September 2005, charging him with violating APPS for failing to maintain an oil record book.

These cases were investigated by the U.S. Coast Guard Investigative Service with assistance from the U.S. Coast Guard Sector Boston, U.S. Coast Guard First District Legal Office, U.S. Coast

Guard Office of International and Maritime Law, U.S. Coast Guard Headquarters Office of Investigations and Analysis, and U.S. Coast Guard Office of Compliance.

Back to Top

[redacted]

Back to Top

United States v. James Vaandering, No. 1:05-CR-00134 (W. D. Mich.), AUSA Richard Murray [redacted]

On December 19, 2005, James Vaandering was sentenced to serve 13 months' incarceration for illegally storing and disposing of hazardous waste. He must also pay a $1,000 fine, pay $151,490 in restitution to EPA for the Superfund cleanup, and perform 300 hours of community service.

Vaandering is the former supervisor of the Sealmore Corporation ("Sealmore"). He pleaded guilty in September of last year to violating the Resource Conservation and Recovery Act by illegally storing and disposing of hazardous waste. The Sealmore facility was condemned in late 2000 and declared a Superfund site. Abandoned at the site were a number of containers and vats of chemicals and liquids used in the plating process, including acid solutions containing hexavalent chromium and hydroflouric acid, both of which are hazardous.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Environmental Quality's Office of Criminal Investigations. Investigative assistance was provided by the EPA Region 5 Superfund Division.

Back to Top

[redacted]

Back to Top

United States v. James Bell, No. 2:05-CR-00226 (W.D. Pa.), AUSA Margaret Picking [redacted] and SAUSA Martin Harrell [redacted]

On December 16, 2005, James Bell, a former plant manager for the Iron City Uniform Rental Company ("Iron City"), was sentenced to serve two years' probation for conspiring to violate the Clean Water Act. He will spend six months under home confinement, and also must pay a $2,500 fine. Bell pleaded guilty in September of last year to conspiring to violate the CWA.

In the process of cleaning used uniforms and other soiled items, the Iron City laundry discharged approximately one million gallons of wastewater containing benzene, toluene and oil each month into sewers operated by the Allegheny County Sanitary District. From approximately October 1995 to July 2000, Bell directed employees to alter wastewater samples from the Iron City's laundry to yield false results. He also had employees take the samples from locations not authorized by the company's discharge permit. Bell additionally ordered employees to add oil and grease to some samples so that the results would not appear "too clean" and trigger suspicion. Employees were further told to delay inspectors while clean water was added to wastewater prior to sampling.

Soon after Bell retired, the company president committed suicide. The new president was alerted to Bell's activities and, following an internal investigation, the company disclosed the violations to the U.S. Attorney's Office in Pittsburgh. The government decided not to prosecute the company due to this voluntary disclosure, the company's post-disclosure compliance efforts, which included sending more heavily polluted items off site for laundering while it installed new treatment equipment, and the facility's status as the last family-run laundry in Pittsburgh.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Billy Moore et al., Nos. 2:05-CR-00035 and 2:05-MJ-00094 (E.D.N.C.), AUSA Banu Rangarajan [redacted].

On December 15 and 16, 2005, two North Carolina Department of Transportation ("NCDOT") employees pleaded guilty to charges stemming from their involvement in illegal dredging. Billy Moore pleaded guilty to a felony violation of the CWA and a misdemeanor violation of the Rivers and

Harbors Act. Stephen Smith pleaded guilty to misdemeanor violations of the CWA and the Rivers and Harbors Act. On November 2005, two additional NCDOT employees, Herbert O'Neal and Douglas Bateman, pleaded guilty to single misdemeanor violations of the CWA and the Rivers and Harbors Act.

Moore was managing a project to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks. O'Neal, Bateman, and Smith were employees of the NCDOT's Ferry Division Dredge and Maintenance Crews. In 2004, Moore directed other NCDOT employees to use state-owned vessels to employ prop wash to dredge a channel so that a ferry could land at Corolla. Federal agencies previously had denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. When confronted about the dredging activity, Moore falsely stated that the channel was the accidental result of their efforts to free a boat that had become stuck.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the United States Coast Guard Investigative Service with investigative assistance from the United States Army Corps of Engineers.

Back to Top

[redacted]

Back to Top

United States v. City of Venice, No. 8:05-CR-00190 (M.D. Fla.), AUSA Dennis Moore [redacted]

On December 14, 2005, the City of Venice, Florida, a municipality, was ordered to pay a $110,000 fine for violating the Clean Water Act. The city failed to fulfill its obligation to properly monitor wastewater discharges that went into Curry Creek during 2001 due to the flow monitor being inoperable during this period. Additionally, in August 2002, an irrigation pipe was deliberately opened allowing an unauthorized discharge of wastewater into Salt Creek, a navigable water. This illegal discharge damaged a park, disturbed wildlife and negatively impacted adjacent wetlands.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Royal Canin USA, No. 4:05-CR-00652 (E.D. Mo.), AUSA Anne Rauch [redacted]

On December 13, 2005, Royal Canin USA, Inc. ("Royal Canin"), a pet food processing plant, pleaded guilty and was sentenced to pay a $125,000 fine for violating the Clean Water Act by releasing tons of animal fat into a nearby waterway. The company also must pay a $35,000 civil penalty to the State of Missouri. The court also directed Royal Canin to pay an additional $35,000 in natural resource damages and $6,272 in restitution to the State.

Between March 31 and April 4, 2005, Royal Canin released approximately 8.2 tons of liquid animal fat from a storage tank at its Rolla facility. Employees and managers at the plant failed to immediately investigate the leak when it was discovered, and then failed to notify the National Response Center. On April 4, a local farmer discovered that liquid animal fat had migrated to ponds on his property and into Beaver Creek, a tributary of the Little Piney River. In response to the spill, Royal Canin employees removed several thousand gallons of chicken fat from around the creek bed.

This case was investigated by the Missouri Department of Natural Resources and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Training

During the week of May 8 – 12, 2006, the Environmental Crimes Section will be presenting the next Environmental Crimes Seminar at the National Advocacy Center in Columbia, South Carolina. The announcement for nominations is anticipated to be circulated in mid-February 2006.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

March 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, *Training*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Kapp, 419 F.3d 666 (7th Cir. 2005): Endangered Species Act/Species and Subspecies Hybrids/Sufficiency of Evidence**
- **United States v. W.R. Grace, 201 F. Supp.2d 1087 (D. Mont. 2005): Asbestos/Discovery**
- **United States v. W.R. Grace, 401 F. Supp.2d 1069 (D. Mont. 2005): Asbestos/Discovery**
- **United States v. Kraft, 2005 WL 578313 (D.Minn. 2005): Wildlife Trafficking/Lacey Act Two-Step Analysis**

Districts	Active Cases	*Case Type*/ Statutes
C.D. Calif.	**US v. David Bachtel**	***Boat Scuttling*/CWA, Obstruction, False Statement**
N.D. Calif.	**US v. Kevin Thompson**	***Undersized Shark Sales*/Conspiracy, Lacey Act**
M.D. Fla.	**US v. Joseph Ulrich**	***Nest Destroyed*/ Bald and Golden Eagle Protection Act**
S.D. Fla.	**US v. Jorge Hernandez** **US v. Harold DeGregory** **US v. Antonio Martinez-Malo** **US v. Pablo Garcia**	***Migratory Bird Sales*/MBTA** ***Transport of Radioactive Material*/ HMTL, False Statement** ***Undersized Lobster Sales*/Lacey Act, Smuggling** ***Migratory Bird Sales*/MBTA**
D. Idaho	**US v. Shackleford**	***Wastewater Treatment Package Systems*/ Mail Fraud**
D. Mass.	**US v. MSC**	***Vessel*/ APPS, Conspiracy, Obstruction, False Statement**
N.D. Miss.	**US v. Gordon Tollison**	***Chronic Sewage Discharge History*/ CWA**
D.N.J.	**US v. Atlantic States Cast Iron Pipe Co.**	***Pipe Manufacturer*/ CWA, CAA, CERCLA, Conspiracy, False Statement, Obstruction**
S.D.N.Y.	**US v. NYCDEP**	***State Agency Probation Violation*/ CWA, TSCA**
E.D.N.C.	**US v. Jerry Gaskill**	***Dredge and Fill*/ CWA, Rivers and Harbors Act**
D.N.D.	**US v. Warren Anderson**	***Hunting Operation*/Bald and Golden Eagle Protection Act, MBTA, Lacey Act**
E.D. Pa.	**US v. Wallace Heidelmark** **US v. Joel Udell**	***Asbestos Removal*/ CAA, NESHAP, Mail Fraud** ***Hazardous Waste Abandoned Overseas*/ RCRA**

Districts	Active Cases	*Case Type*/ Statutes
W.D. Pa.	**US v. Jon Pen Tokosh**	***Protected Tortoise Sales*/Lacey Act**
S.D. Tex.	**US v. Corpus Christi Day Cruise, Ltd.** **US v. Tam Le**	***Vessel*/ Obstruction, False Statement** ***Red Snapper*/ Smuggling**
D. Utah	**US v. McWane**	***Cast Iron Manufacturer*/ CAA, False Statement**

TRAINING

- Environmental Crimes Training **May 8 – 12, 2006 at the National Advocacy Center, Columbia, South Carolina.**

Quick Links

Significant Opinions

7th Circuit

United States v. Kapp, 419 F.3d 666 (7th Cir. 2005)

On August 19, 2005, the U.S. Court of Appeals for the Seventh Circuit affirmed the conviction of William Kapp under the Endangered Species Act ("ESA") and the Lacy Act for the killing of tigers and leopards and the sale of their meat, hides and other parts. Kapp was a taxidermist who purchased live exotic cats from various exotic animal dealers. He and the dealers filled out paperwork submitted to the United States Department of Agriculture indicating that the cats had been "donated," in an effort to make their transactions appear legal. Kapp then killed the animals and sold the various parts. In

addition to tigers and leopards, Kapp also bought, killed, and sold the parts of a "liger" (a lion-tiger hybrid).

On appeal, Kapp argued that his conviction should be reversed because "the government failed to prove beyond a reasonable doubt that the animals at issue were endangered and protected under the ESA, because it was theoretically possible that the animals were actually unprotected hybrids at the species level." He also argued that it was possible that the animals were actually unprotected hybrids at the subspecies level. Kapp further argued that it was error for the trial court to allow leopards and tigers he had purchased, killed, and mounted to be entered into evidence. He asserted that the probative value of the mounts was substantially outweighed by undue prejudice.

In upholding Kapp's conviction, the Seventh Circuit rejected Kapp's interspecies hybrid argument. The court noted the testimony of a morphologist and a geneticist that indicated that the hides Kapp was charged for procuring had come from endangered animals and not hybrids. More "damning" in the eyes of the Court was evidence that illustrated that Kapp himself "was well aware of the distinction between the protected animals and unprotected hybrids like ligers" and had specifically identified certain hides as liger hides and others as tiger and leopard hides on transmittal and other records.

The Court of Appeals also rejected Kapp's subspecies hybrid argument. The court pointed to 50 C.F.R. § 17.11(g) which states that "[t]he listing of a particular taxon includes all lower taxonomic units." In this case, the relevant taxon was the tiger at the species level. The court then reasoned that since all subspecies of tiger were protected according to 50 C.F.R. §17.11, crosses of various subspecies of tiger were also protected.

Finally, the Seventh Circuit upheld the district court's decision to admit the mounted leopards and tigers. Noting that, "if evidence is probative of an issue relevant to an element of the offense, it must be admitted in all but the most extreme cases," the Kapp court found that the mounted animals were both relevant and probative of the identity of the animals and assisted the jury in understanding and evaluating the testimony of the witnesses, and particularly the morphologist.

Back to Top

District Courts

United States v. W.R. Grace, 401 F. Supp.2d 1087 (D. Mont. 2005)

In the prosecution of the W.R. Grace Corporation ("Grace") for violations of the Clean Air Act, conspiracy, wire fraud, and obstruction of justice relating to the release and distribution throughout Libby, Montana, of asbestos-contaminated vermiculite, the defendant moved to compel the government to produce the "rough notes" taken by agents of interviews with Grace employees under Rule 16 of the Federal Rules of Criminal Procedure.

Pointing to the Advisory Committee's Note to the 1991 Amendments to Rule 15, and the Ninth Circuit Court of Appeals' opinion in *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976), the district court held that rough notes are properly discoverable under Rule 16(a)(1)(B)(ii). The court rejected, however, the company's contention that all past and present Grace employees should be considered agents of the company for purposes of Rule 16(a)(1)(C). The court opined, "Whether a statement must be produced under that rule depends on the government's position regarding the person making the statement. Grace's speculative broad sweep about the scope of the government's contentions is

insufficient to pull every past and present Grace employee within the purview of Rule 16(a)(1)(C)." The court cautioned, however, that if the government attempted to use an employee's statement or conduct to bind the company, but had not produced the rough notes of any interview with that employee, the government's evidence could be excluded as a sanction. Finally, the court denied the defendant's motion for an order directing the government to inspect all rough interview notes not discoverable under Rule 16 for *Brady* material because "[t]he provisions of *Brady* are self-executing" and the government appeared to understand its requirements.

Back to Top

United States v. W.R. Grace, 401 F. Supp.2d 1069 (D. Mont. 2005)

In the prosecution of the W.R. Grace Corporation ("Grace"), the defendant corporation and individual defendants filed two broad discovery motions. The corporate defendant, Grace, filed a motion seeking information in the possession of government agencies that were not members of the "prosecution team." The individual defendants filed a motion to compel production of specific items of evidence or categories of evidence favorable to them under *Brady v. Maryland*. In both motions, the defendants objected to the government's disclosure of its entire evidentiary database without differentiating evidence favorable to the accused. The defendants' motions were granted in part and denied in part.

The trial court held that the duty to produce documents was not limited to "the prosecution team." Applying what it called the "knowledge and access test" to both Rule 16(a)(1)(E) and *Brady*, the court held that "[t]he prosecution may not simply ask for information it wants while leaving behind other, potentially exculpatory information within agency files." Instead, the prosecution must review the files of any federal agency from which the prosecution seeks information to determine whether there is evidence favorable to the defendant in that agency's files, whether or not that agency is a member of the "prosecution team." The court explicitly stated in a footnote that this same logic does not apply when federal prosecutors seek and receive files from state agencies. The court appeared to be motivated by its belief that "the prosecution is in a unique position to obtain information known to other agents of the [federal] government." Despite this reasoning, the court did not order the production of *Brady* material because "[t]he prosecution's constitutional duty under *Brady* is self-executing, and cannot be enlarged or curtailed by court order." The court, instead, set a production deadline.

The court then considered the defendants' objections to the government's manner of disclosing *Brady* material. The government produced its discovery in a searchable database containing more than three million pages of documents. The defendants maintained that the government was required to search for and identify for the defense each document that was favorable to the defense. The court rejected the defendants' argument because more than two million of the documents were actually documents belonging to the corporation, and all defendants are working together to prepare their defense. Therefore, there was no reason to believe that the government was in a better position to locate exculpatory materials than the defendants.

Finally, as to a number of the individual defendants' specific requests for particular documents, the court found that the defendants' requests were based on speculation that the documents existed. The court declined to "impose an additional burden by compelling production of documents that may or may not exist based on the speculative inferences of the defense." Such speculation was not sufficient to prove "'facts which would tend to show that the Government is in possession of information helpful to the defense,' as is required by Rule 16."

Back to Top

United States v. Kraft, 2005 WL 578313 (D.Minn) (2005))

The District Court of Minnesota adopted recommendations of the magistrate judge regarding the sufficiency of charges and certain evidentiary issues. Two primary issues are discussed below.

The court dismissed certain wildlife trafficking counts charged under the Lacey Act, on the grounds that their required underlying and overlying acts were merged. Under the Lacey Act, among other things, it is illegal to do one of several enumerated acts (the overlying act) with wildlife that has been taken, possessed, transported or sold in violation of a federal law (the underlying act). Thus, the Lacey Act requires a two-step analysis.

In this case, the defendants sold wildlife in interstate commerce in violation of the Endangered Species Act (the "underlying" act). Knowing the wildlife was illegal, the defendants then transported it (the "overlying" act). Where the wildlife value is more than $350, and where the overlying offense involves commercial conduct, the crime is a felony. In this opaque decision, the court held that, because the language of the felony provisions of the Lacey Act criminalize "conduct involving the sale or purchase, offer of sale or purchase, or intent to sell or purchase," only the sale or purchase of, offer to sell or purchase, or intent to sell or purchase wildlife constitutes an appropriate "overlying" offense. Thus, the "transport" of wildlife, even if it occurs during the course of a commercial transaction, cannot constitute "conduct involving the sale or purchase" of wildlife. In addition, the court held that the government did not establish the two distinct steps necessary for a Lacey Act claim, finding that the transportation of the wildlife after the sale was, itself, part of the sale.

Defendant Nancy Kraft ultimately was convicted of most of the remaining counts, including Lacey Act false labeling charges, and sentenced to 15 months' imprisonment. Kenneth Kraft entered guilty pleas to seven felony counts and was sentenced to 18 months' imprisonment. Most of the remaining defendants also entered guilty pleas.

The district court adopted the magistrate judge's recommendation not to suppress a recorded telephone conversation. Defendant Kenneth Kraft argued that the conversation violated the Sixth Amendment right to counsel. The conversation, arranged by law enforcement officers and conducted by a cooperating witness, concerned a prior illegal sale of a bear. At the time of the conversation, the defendant was under indictment for the illegal sale of a tiger. The court found that the conversation regarding the illegal bear transaction was unrelated to the pending charges and that the right to counsel had only attached to the tiger-sale indictment.

Back to Top

Trials

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS Assistant Chief Andrew Goldsmith [redacted], ECS Trial Attorneys Deborah Harris [redacted] and Noreen McCarthy [redacted], First AUSA Ralph Marra [redacted] and AUSA Norv McAndrew [redacted]

On February 6, 2006, after approximately 24 weeks of trial, the government rested its case after presenting 50 witnesses. The defense continues to present its case. The trial against iron foundry Atlantic States Cast Iron Pipe Company ("Atlantic States") and current and former managers John Prisque, Scott Faubert, Jeffrey Maury, Daniel Yadzinski and Craig Davidson began in September 2005. Atlantic States is a division of McWane, Inc., which manufactures iron pipes. The process involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit.

The investigation uncovered a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. The evidence indicates that the defendants routinely violated Clean Water Act permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River. There also is evidence that they repeatedly violated Clean Air Act permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola. Additionally, they systematically altered accident scenes, and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

The defendants were charged in September 2004 with conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. The defendants also were charged with substantive CWA, CAA, CERCLA, false statement, and obstruction violations.

The trial, which is continuing in Trenton, New Jersey, is expected to go to the jury in the next few weeks.

Back to Top

United States. v. Joseph Ulrich et al., No. 2:05-CR-00130 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Yolande Viacava [redacted]

On February 23, 2006, after a two and one half day trial and approximately three hours of jury deliberation, the jury returned a not guilty verdict.

Joseph Ulrich, the on-site construction supervisor for Stock Development, LLC, ("Stock Development), was charged in December 2005 with the destruction of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act, which was enacted to protect eagles and their nests.

During the summer of 2003, a bald eagle was discovered in a tree located within an area designated for residential development by Stock Development, LLC ("Stock Development"). The principal officer and manager for the company discussed in Ulrich's presence the existence of a bald eagle nest in the tree and the delay or cessation of construction that could result. On November 15,

2003, Ulrich directed James Messina to cut down the tree with the nest, and the company proceeded with the construction of houses on the lot where the tree once stood.

Messina pleaded guilty January 31, 2006, to a similar violation and is scheduled to be sentenced on April 25, 2006. Stock Development pleaded guilty and was sentenced last September to serve a one-year term of probation and pay a $175,000 fine, plus an additional $181,000 in restitution to the following organizations: the Wildlife Foundation of Florida for "Bald Eagle Research"; the Peace River Wildlife Center of Punta Gorda, Florida, for "Wildlife Rehabilitation, Research, and Public Education"; the Audubon Center for Birds of Prey in Maitland, Florida, for the "Florida Bald Eagle Rehabilitation and Eagle Watch Program"; and the Florida Fish and Wildlife Conservation Commission Division of Law Enforcement. This is the largest combination of a fine and restitution ever paid for the destruction of an eagle nest tree.

This case was investigated by United States Fish and Wildlife Service and Florida Fish and Game.

Back to Top

United States v. David Bachtel, No. 2:05-CR-00872 (C.D. Calif.), AUSA William Carter [redacted]

On February 10, 2006, David Bachtel was convicted at trial on six of the seven violations charged in this case stemming from the defendant's intentionally sinking or scuttling his 37-foot Chris Craft pleasure boat on March 5, 2005, causing oil to be released into the waters of the Port of Los Angeles. Bachtel was convicted of one two water pollution violations; one for the discharge of oil in a quantity that may be harmful and one for an unpermitted pollutant discharge; one count of attempting to obstruct the Coast Guard's investigation of the sinking by preparing false California DMV paperwork; two counts of making false statements to Coast Guard investigators; and one misdemeanor count of sinking a boat in a navigation channel.

Instead of completely sinking, the partially-submerged boat ran aground and was discovered by the Coast Guard on the next day to be leaking oil. Coast Guard divers concluded that the boat had been intentionally submerged because holes were made in the hull by someone striking it from the inside, and all registration numbers had been removed. When questioned about the boat, the defendant denied having any knowledge of it. Eleven days after scuttling the vessel, Bachtel filed a release of liability form with the California Division of Motor Vehicles, claiming to have sold the boat 14 days earlier to a man named "Jose Lopez" for $100.

Bachtel is scheduled to be sentenced on May 8, 2006.

This case was investigated by the United States Coast Guard Criminal Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division and the Los Angeles Port Police.

Back to Top

United States v. Jorge Hernandez, No. 05-CR-20675 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On February 2, 2006, Jorge Hernandez was convicted by a jury on four of the five counts charged for his illegally dealing in protected species of migratory birds. Hernandez and five co-defendants were previously charged in a 21-count indictment with Migratory Bird Treaty Act violations for the unlawful sale and offering for sale of indigo and painted buntings and blue grosbeaks from October 24, 2004, through March 6, 2005. Giraldo Wong, Rafael Padrino, Francisco Corrales, Pablo Olivera Garcia, and Madeleisy Molerio previously pleaded guilty, two of whom were recently sentenced. [U.S. v. Pablo Garcia, et et al., p. 13].

Mail Painted Bunting

The case arose out of an investigation, dubbed Operation Bunting, which was initiated after field biologists with the U.S. Geological Survey conducting research in South Florida noticed many protected migratory birds being sold illegally in pet stores and informal flea markets around Miami. Illegal trapping activities uncovered by a Park Service Ranger on the edge of Everglades National Park resulted in the development of intelligence that led to a large outdoor market in Hialeah, Florida. Research conducted over a 30-year period has indicated that populations of at least one of the protected species involved in these cases, the painted bunting, have declined by more than half.

The investigation also led to the convictions of three pet store operators for possessing the same protected species in their stores.

This case was investigated by the United States Fish and Wildlife Service, the United States Environmental Protection Agency Criminal Investigation Division and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Harold DeGregory, Jr., No. 05-CR-60201 (S.D. Fla.), AUSAs Tom Watts-FitzGerald [redacted] and Lynn Rosenthal [redacted]

Iridium Container

On January 18, 2006, Harold DeGregory, Jr., was convicted at trial on five of seven counts charged for the unlawful transportation of hazardous and radioactive material. DeGregory transported a container, commonly referred to as a "pig," which contained Iridium-192. He also was convicted of making a materially false statement to the government.

DeGregory is the president and registered agent for H&G Import Export of Fort Lauderdale ("H&G"). DeGregory sub-contracted to Amelia Airways, a commercial air carrier, which transported hazardous and radioactive material from Fort Lauderdale to Freeport, Bahamas, without

the pilot's knowledge. DeGregory never submitted the required hazardous material manifests, and the documents he provided to Customs agents reflecting transportation of cargo failed to mention the Iridium-192. DeGregory also flew his own aircraft from Freeport, Bahamas, to Fort Lauderdale Executive Airport. The customs declaration form he provided to Customs officials failed to disclose the hazardous radioactive cargo hidden in the wing compartment of his aircraft, which was discovered upon inspection.

DeGregory is scheduled to be sentenced on April 14, 2006.

This case was investigated by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement and the Federal Aviation Authority.

Back to Top

Indictments

United States v. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux [redacted]

On February 8, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, and Gojko Petovic, the ship's chief engineer, were charged for violations related to their attempt to obstruct a United States Coast Guard investigation.

Coast Guard inspectors boarded the *M/V Texas Treasure* in Port Aransas, Texas, as part of a routine Port State Control examination. The inspectors discovered evidence that the ship's crew was bypassing its pollution prevention equipment and deliberately discharging oil-contaminated waste overboard. During the inspection, Petovic denied the existence of certain sounding records, which had been requested by the inspectors, and then attempted to erase the records from his computer in an effort to hide them. The inspectors, however, were able to recover the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

Petovic was charged with one count of making a false statement to the Coast Guard and the company was charged with one count of obstructing a Coast Guard proceeding.

Trial is currently scheduled to commence on April 3, 2006.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Kevin Thompson et al., No. 4:06-CR-00051 (N.D. Calif.), AUSAs Stacey Geis [redacted] and Maureen Bessette [redacted] with assistance from AUSA Ana Guerra [redacted]

On February 8, 2006, an indictment was unsealed charging six defendants with violations stemming from the unlawful catching and selling of thousands of undersized juvenile leopard sharks. The indictment alleges that the pastor of a San Leandro church, four individuals employed in the aquarium industry, and a fisherman, violated the Lacey Act, incorporating California state law, which

Leopard Shark

places a minimum size limit of 36 inches for any commercial harvest of California leopard sharks. The reason for this restriction is that the leopard shark is a slow-growing species which does not reach sexual maturity until it is between seven and 13 years of age. The species may live as long as 30 years.

Five of the six defendants are charged with conspiracy to harvest thousands of undersized California leopard sharks from the San Francisco Bay, and then sell and ship the juvenile sharks to pet trade distributors throughout the U.S. and overseas. The conspiracy defendants are: Pastor Kevin Thompson who co-owned with his church at least one vessel used for the illegal harvesting; John Newberry worked at Pan Ocean Aquarium and previously was a commercial fisherman; Ira Gass is a marine aquaria dealer in Azusa, California, and operated Indorica Fish Import, an aquaria business; Hiroshi Ishikawa was a fisherman; Vincent Ng owned Amazon Aquarium, Inc., in Alameda, California. Sion Lim owned Bayside Aquatics, located in Oakland, California, and was charged with one violation of the Lacey Act for the illegal sale of juvenile leopard sharks on May 6, 2004.

Juvenile Leopard Shark

Both the John G. Shedd Aquarium in Chicago, Illinois, and the Monterey Bay Aquarium in Monterey, California, assisted federal wildlife agents and Illinois Conservation officers in the transportation and care of 19 baby leopard sharks confiscated during the course of the investigation. The baby sharks, which ranged in size from 8 ½ to 17 ½ inches, were shipped to California in July 2004 by Shedd Aquarium staff and received further care at the Monterey Bay Aquarium. Nine were ultimately returned to the wild in Monterey Bay in the summer of 2004. Three remain on exhibit at Monterey Bay Aquarium and seven died either at the Shedd Aquarium or Monterey Bay Aquarium because of their poor condition at the time they were confiscated.

This case is the result of a nearly two-year long investigation conducted by National Oceanic and Atmospheric Administration's Fisheries Office for Law Enforcement in conjunction with the United States Fish and Wildlife Service, California Department of Fish and Game, the United Kingdom's Department for Environment Food and Rural Affairs Fish Health Inspectorate, and the Netherlands General Inspection Service.

Back to Top

United States v. Antonio Martinez-Malo et al., No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick [redacted]

On January 24, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc., were charged in a two-count indictment with conspiracy to violate the Lacey Act and a smuggling violation for illegal shipments of undersized spiny lobster.

Anchor Seafood is a business operated by Antonio Martinez-Malo, the president and sole shareholder, and his wife, Liliana Martinez-Malo. The defendants were charged with making 40 illegal shipments of undersized spiny lobster tails from January, 2000, through January, 2001. The indictment alleges that, during this time, the defendants conspired to import from Jamaica, and then sold and transported, over 16,000 pounds of undersized spiny lobster tails valued at $229,000. This is a violation of both Jamaican and Florida law, both of which have strict size and weight limits for spiny lobster.

According to the indictment, the defendants violated the false labeling, records, and identification provisions of the Lacey Act by concealing the actual size of the lobster tails through the coding system they used on the exterior of boxes and on their invoices.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office for Law Enforcement.

Back to Top

United States v. Jerry Gaskill, No. 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan

On January 18, 2006, Jerry Gaskill, Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, was charged in a four-count indictment with conspiracy to violate the Clean Water Act, and false statement, CWA, and Rivers and Harbor Act violations for his involvement in an illegal dredging project. The purpose of the project was to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks.

Gaskill is alleged to have agreed to "push" NCDOT vessels into the Corolla basin, which ultimately altered the sound bottom because of the hull of the vessels and propellers. He did so knowing that permits had not been issued, and then lied to the United States Army Corps of Engineers about those operations. Federal agencies had previously denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. Gaskill and his co-conspirators allegedly used the propellers of the NCDOT vessels to "prop wash" a channel in the Currituck Sound adjacent to Heritage Park in Corolla. Gaskill also is charged with subsequently signing a written false statement claiming that the creation of the channel was unintentional. Four other NCDOT employees, Billy Moore, Herbert O'Neal, Douglas Bateman, and Stephen Smith, pleaded guilty last December.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the United States Coast Guard Investigative Service, with investigative assistance from the United States Army Corps of Engineers.

Back to Top

Pleas / Sentencings

United States v. Jon Pen Tokosh, No. 05-CR-258 (W.D. Pa.), AUSA Luke Dembosky with assistance from ECS Senior Trial Attorney Bob Anderson

On February 21, 2006, Jon Pen Tokosh pleaded guilty to one Lacey Act violation in connection with the sale of two smuggled Indian Star Tortoises to a U.S. Fish and Wildlife Service undercover agent in 2002. The tortoises and other animals were smuggled into the U.S. by a wildlife dealer in Florida from Singapore dealer Leon Tian Kum. Tokosh then resold the animals in the United States.

Kum was apprehended in 2003 during a visit to this country and now is serving a 37-month prison sentence.

Indian Star Tortoises are protected by the CITES treaty and are one of several reptile species frequently smuggled in overnight mail packages from Asia into the U.S., where the buyers can resell the animals in this country to collectors for approximately $800-$1,000 each.

Tokosh is scheduled to be sentenced on June 2, 2006.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Pablo Garcia et al., No. 05-CR-20675 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On February 15 and 16, 2006, Pablo Garcia and Francisco Corrales were sentenced after having previously pled guilty to Migratory Bird Treaty Act violations. The charges stem from the unlawful sale and offering for sale of indigo and painted buntings and blue grosbeaks from October 24, 2004, through March 6, 2005, in Miami, Florida. Each defendant was sentenced to pay a $2,000 fine and serve three-year terms of probation with the special condition that they are prohibited from being in any locale in which birds are bartered, traded, displayed, or offered for sale unless it is a licensed pet store. Corrales also was ordered to pay $1,165 in restitution. [U.S. v. Jorge Hernandez, p. 9].

Painted and Indigo Buntings

Back to Top

United States v. Joel Udell, et al. (E. D. Pa.), No. 2:05-00402 (E.D. Pa.), SAUSA Martin Harrell [redacted]

On February 14, 2006, Joel D. Udell, and two affiliated businesses, Pyramid Chemical Sales Co. and Nittany Warehouse LP, were sentenced for mishandling hazardous wastes. As the result of a seven-year investigation by local, state, federal and international regulators and law enforcement agencies, the defendants will pay more than $2 million in restitution and fines for mishandling hazardous wastes in Pottstown, Pennsylvania, and in Rotterdam, the Netherlands, between 1998 and 2000. In addition, Udell, who now resides in Boca Raton, Florida, must move back to Pennsylvania to spend six months in home confinement under electronic monitoring and perform 500 hours of community service in Pottstown. The defendants previously pleaded guilty to storing hazardous waste without a permit at the former Nittany Warehouse in Pottstown, from May 1998 to early 2001, exporting hazardous waste outside the United States without consent of the receiving country on various dates in 2000, and transporting hazardous waste without manifests and to unpermitted facilities in 2000.

The court also required the defendants to jointly and severally pay restitution in the amounts of $1,243.072.65 to the Dutch government, $409,639.97 to Europe Container Terminals BV, and $150,000 to the United States Environmental Protection Agency. Udell must also pay a $100,000 fine and the two companies, which are defunct, each must pay a $50,000 fine. Payments are to be made over a five-year period of probation imposed on all the defendants.

Storage Condition of Drums

The charges grew out of the defendants' operation of a surplus chemical brokerage business in Ambler and Pottstown. Beginning in May, 1998, Pottstown authorities attempted to persuade Udell to repair the Nittany Warehouse and to improve the storage condition of thousands of containers of chemicals, including flammable, corrosive and toxic material kept in deteriorated or broken containers and bags. In 1999, Pottstown ultimately sued Udell and Nittany Warehouse in state court and obtained a state court order in April, 2000, but the U.S. EPA ultimately forced the defendants to perform a Superfund cleanup from July, 2000 to early 2001.

During this period, the defendants shipped 29 forty-foot containers of aging chemicals to Rotterdam, allegedly as part of a sale of chemicals to a company in Nigeria. The containers remained at the port for three years when the Dutch refused to permit them to be reshipped because of their poor condition, and the defendants refused to have them repackaged to be returned to the United States. Udell also ignored an EPA RCRA administrative order issued in 2003 directing him to return the chemicals to the U.S., and he fought a civil Superfund cost recovery case. The restitution ordered in the case will reimburse the port operator's costs for storing the chemicals for three years, the Dutch government's costs to incinerate almost 300 tons of chemicals at the end of 2003, and EPA's costs in overseeing the warehouse clean up in Pottstown.

Containers Abandoned at Terminal

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, with assistance from EPA's National Enforcement Investigations Center, the Netherlands Ministry of the Environment, and the Borough of Pottstown. Assistance was also provided by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement.

Back to Top

United States v. Tam Le et al., No. 3:05-CR-00015 (S.D. Tex.), ECS Trial Attorney Georgiann Cerese [redacted].

On February 10, 2006, Tam Le pleaded guilty to smuggling for concealing red snapper that had been illegally imported into the United States. Le, the crewmember of a commercial fishing vessel, was previously charged with two counts of smuggling for his role in concealing and selling commercial quantities of red snapper that had been illegally imported into the United States. During a vessel boarding in March 2005, federal agents discovered thousands of pounds of red snapper, caught in violation of the Magnuson-Stevens Fishery Conservation and Management Act, concealed within a hidden compartment on the fishing vessel. The captain of the vessel, Hoang Nguyen, pleaded guilty to a similar charge in January and is scheduled to be sentenced on April 21, 2006. Le is scheduled to be sentenced on May 19, 2006.

This case was investigated by the United States Department of Commerce National Oceanic and Atmospheric Association Fisheries Service Office for Law Enforcement with assistance provided by the Texas Parks and Wildlife Department.

Back to Top

United States v. Gordon Tollison, No. 3:04-CR-00158 (N.D. Miss.), ECS Senior Trial Attorney Jeremy Korzenik [redacted] and AUSA John Alexander [redacted].

On February 9, 2006, Gordon Tollison was sentenced to serve one year and a day of incarceration for four Clean Water Act violations. The defendant previously was charged in a 39-count indictment for chronic CWA violations from a group of sewage treatment systems.

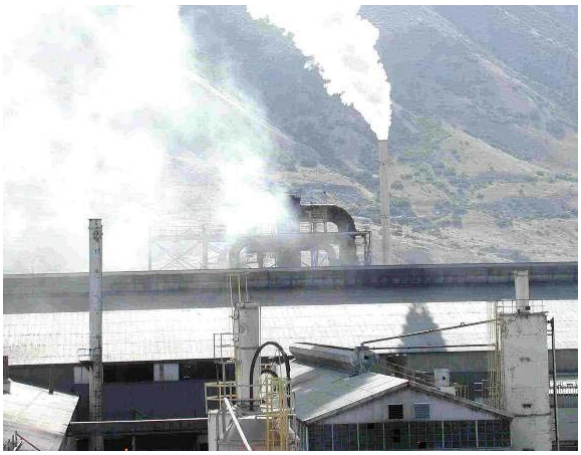
Between 1976 and 2003, Tollison was the owner and chief executive of Environmental Utilities Services, Inc. ("EUS"), a small Mississippi corporation that owned and operated eight wastewater treatment plants servicing housing developments containing approximately 900 homes near Oxford, Mississippi. The defendant's plants had been in perpetual violation of their state NPDES permits, discharging untreated or under-treated sewage into state waterways for more than 25 years. In spite of decades of effort by the Mississippi Department of Environmental Quality ("MDEQ") to bring him into compliance, Tollison ignored numerous administrative orders and repeated admonitions and continued to discharge waste in substantial violation of his permits.

This case was investigated by the Mississippi Department of Environmental Quality and the United States Environmental Protection Agency with assistance from the FBI.

Back to Top

United States v. McWane et al., No. 2:05-CR-00811 (D. Utah), ECS Trial Attorney Aunnie Steward [redacted], ECS Senior Trial Attorney Richard Poole [redacted] ECS Senior Counsel Claire Whitney [redacted] and AUSA Leshia Lee-Dixon([redacted]

On February 8, 2006, Pacific States Cast Iron Pipe Company ("Pacific States"), a division of McWane, Inc., pleaded guilty to two false statement violations and was sentenced to pay a $3 million fine plus complete a three-year term of probation. Company vice president and general manager Charles Matlock pleaded guilty to a Clean Air Act violation for rendering inaccurate a monitoring device.



Pacific States' Facility

Pacific States and two of its employees were previously charged with a variety of violations stemming from falsified emissions tests required in the production of cast iron pipes. McWane, Matlock and Charles "Barry" Robison, vice president of environmental affairs, were charged with conspiracy to violate the CAA by rendering inaccurate a state-required emissions testing method, for making false statements in documents required by the CAA, and for defrauding the United States. McWane and Matlock also were charged with additional CAA violations for rendering inaccurate the testing method. McWane was charged with additional false statement charges for misrepresentations made in documents submitted to the State of Utah. Charges against Robinson were dropped in exchange for his agreeing not to appeal his sentence from a previous prosecution of him in Alabama, where he was sentenced to pay a $2,500 fine, serve two years' probation, and complete 150 hours' community service.

As part of the production of cast iron, McWane melts scrap metal, primarily shredded steel from scrap automobiles, in a furnace known as a "cupola." The ferrous scrap metal melted in the cupola contains significant quantities of shredded scrap metal, which includes scrap automobiles. The autos often contain rust, chrome-plated parts, plastic, tires and car seats. McWane was exceeding its emission limits for a parameter known as PM10. During a compliance test in September 2000, McWane employees, at the direction of Matlock, melted pig iron, a pure iron product, in the cupola in order to lower the PM10 emissions and thus pass the stack test. Robison was aware of this and facilitated the filing of false emissions reports based on this stack test. Pacific States admitted that documents submitted to the State of Utah included data from this test, which was not representative of its emissions.

Matlock is scheduled to be sentenced on May 2, 2006.

McWane previously was indicted in New Jersey (December 2003) and Alabama (May 2004 with guilty verdicts returned in June 2005). The company pleaded guilty in Texas (May 2005) and pleaded guilty to crimes occurring at Union Foundry in Anniston, Alabama, on September 6, 2005. The New Jersey case began trial on September 12, 2005, and the case is anticipated to go to the jury before the end of March 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. New York City Department of Environmental Protection, No. 01-CR-836 (S.D.N.Y.), AUSA Anne Ryan [redacted]

On February 7, 2006, the New York City Department of Environmental Protection ("NYDEP"), admitted to violating its sentence of probation from a 2001 conviction on Clean Water Act and Toxic Substances Control Act violations. The probation was revoked and DEP was resentenced to serve a minimum of three years additional probation and will be required to implement a more stringent and comprehensive compliance program with greater oversight obligations. The

probation violation was imposed for the City's felony violation of the CWA for its knowing failure to properly maintain the emergency electrical system in a sewage treatment plant, in violation of the permit. The emergency system failed to operate during a power blackout in August 2003, causing 30 million gallons of untreated sewage to be released into the East River.

In August 2001, the NYDEP pleaded guilty to CWA violations for illegally discharging mercury-contaminated water into a reservoir which supplied drinking water to the City of New York. During the period between July 1998 and November 2000, DEP admitted to several instances of discharging mercury-contaminated wastewater from a pipe connected to sump pumps in the basement of one of the physical plant buildings where it eventually emptied into the Rondout Reservoir. The agency further admitted to TSCA violations at the Kensico Reservoir for continuing to use machinery that was known to be contaminated with PCBs since 1988. This equipment had multiple openings directly above the water which flowed beneath it, and workers who came in contact with the equipment also were exposed to PCBs. After thousands of test samples taken around the City, the water was determined to be safe for consumption.

DEP previously was sentenced to serve a three to five year term of probation with a federal monitor assigned to oversee the agency's implementation of a broad range of environmental, health and safety compliance programs. A $50,000 fine was also imposed. The investigation revealed a decades-long history of federal environmental violations by DEP in its operation and maintenance of the New York City water supply system.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the New York City Department of Investigation and the United States Attorney's Office for the Southern District of New York.

Back to Top

United States v. Aman Mahana, United States v. Mani Singh, United States v. MSC Ship Management (Hong Kong) Ltd., Nos. 1:05-CR-10269, 10274 and 10351 (D. Mass.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Malinda Lawrence [redacted] ECS Paralegal Stephen Foster [redacted] AUSA Jon Mitchell [redacted], and SAUSA LCMDR Luke Reid [redacted]

On February 1, 2006, MSC Ship Management (Hong Kong) Ltd. ("MSC"), the management company for the *M/V MSC Elena*, entered its guilty plea to conspiracy, obstruction of justice, destruction of evidence, false statements and violations of the Act to Prevent Pollution from Ships ("APPS"). The company was sentenced to pay $10.5 million in penalties, which is the largest penalty involving deliberate pollution by a single vessel and the largest criminal fine paid by a defendant in an environmental case in the district of Massachusetts.

$500,000 of the fine will be used to support community service projects. The projects will be administered by the National Fish and Wildlife Foundation to fund non-profit organizations that provide environmental education to seafarers visiting or sailing from Massachusetts' ports, including how to report environmental crimes to the U.S. Coast Guard.

Aman Mahana, the ship's second engineer, was sentenced on February 2 to serve a one-year term of probation in accordance with the government's recommendation for a reduced sentence. Mahana pleaded guilty in December 2005 to an information charging him with violating APPS for failing to maintain an oil record book.

A specially fitted steel pipe, referred to as "the magic pipe," was used on the *MSC Elena*, a 30,971 ton container ship, to bypass required ship pollution prevention equipment and discharge oil

sludge and oil-contaminated waste directly overboard. Upon the discovery of this bypass equipment during a Coast Guard inspection in Boston Harbor in May 2005, senior company officials in Hong Kong directed crew members to lie to the Coast Guard, and senior ship engineers further ordered the concealment and destruction of documents.

Specifically, MSC pleaded guilty to charges that, in response to the Coast Guard inspection, senior ship engineers directed that an "alarm" printout from the ship's computer and a log containing actual tank volumes be concealed in an effort to cover up the falsification of records. Coast Guard inspectors subsequently were presented with fictitious logs containing false entries claiming the use of the oil water separator and omitting any reference to dumping overboard using the equipment that bypassed the separator.

On December 20, 2005, Mani Singh, the chief engineer for the *Elena*, pleaded guilty to an indictment returned in November 2005 charging him with conspiracy, obstruction, destruction of evidence, false statements and an APPS violation in connection with the use of the bypass pipe. Singh was one of the engineers who concealed the alarm printout, presented fictitious logs to investigators, and was involved in the use of the bypass. The crew took various measures to conceal the illegal conduct and avoid discovery including discharging only at night and hiding the bypass equipment during port visits.

These cases were investigated by the United States Coast Guard Investigative Service with assistance from the United States Coast Guard Sector Boston, United States Coast Guard First District Legal Office, United States Coast Guard Office of International and Maritime Law, United States Coast Guard Headquarters Office of Investigations and Analysis, and United States Coast Guard Office of Compliance.

Back to Top

United States v. Raymond Shackleford, No. 05-CR-00084 (D. Idaho), AUSA George Breitsameter [redacted]

On January 31, 2006, Raymond Shackleford pleaded guilty to two counts of mail fraud. He was previously charged with multiple counts of mail fraud in connection with false representations he made to the Idaho Department of Environmental Quality to support applications made for permits to construct wastewater treatment systems.

Shackleford is a former owner of Quality Water Systems ("QWS"), a Montana wastewater design and management company. QWS designs, sells and operates a Montana wastewater design and management company for developers and property owners who cannot use publicly-owned plants or private septic systems. One of these systems was built on Eagle Island, which is located in the middle of the Boise River. Shackleford used falsified data from this system to request applications for 12 additional systems to be built in Idaho. Approval for these facilities was conditioned upon Shackleford's submitting quarterly reports showing that the amount of total nitrogen contamination in the plant's effluent was within acceptable levels. Some areas of Idaho have been identified as having concentrated nitrates in ground water.

Shackleford is scheduled to be sentenced on April 17, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI.

Back to Top

United States v. Warren Anderson, No. 1:06-CR-00012 (D.N.D.), AUSA Cameron Hayden [redacted]

On January 31, 2006, Warren Anderson, a licensed outfitter, pleaded guilty to killing a golden eagle, possessing and transporting a bald eagle, killing five hawks, and violating the Lacey Act for his role in helping hunters transport an "overlimit" of pheasants out-of-state.

Agents posing as nonresident hunters booked a three-day hunt with Anderson. The agents observed Anderson shoot and kill a golden eagle, shoot and cripple a second golden eagle, and attempt to take two other golden eagles. Anderson also poached a whitetail deer, instructed and aided the agents in exceeding their daily limits and possession limits of pheasants, instructed and aided in trespassing on private land while hunting, and instructed the agents to shoot and participated in shooting shotguns from a moving vehicle. The defendant took the agents to an empty grain bin where he had placed a dead bald eagle and a golden eagle, which he admitted to possessing and transporting. The agents subsequently recovered five dead hawks which Anderson had shot.

Bald and Golden Eagles

Anderson was sentenced to serve two years' probation with six months' home detention, and was ordered to pay a $5,000 fine and $55,000 in restitution to the following organizations: $10,325 to the Clerk of Court, $1,300 to the North Dakota Game and Fish Department, $10,000 to the Dakota Zoo, $25,000 to the National Fish and Wildlife Forensic Laboratory, and $8,375 to the Lacey Act Reward Fund. Anderson's world-wide hunting privileges were suspended during the term of probation and he is barred for life from working as a guide or outfitter. He was further ordered to forfeit several firearms and is prohibited for life from possessing any firearms.

This case was investigated by the North Dakota Game and Fish Department and the United States Fish and Wildlife Service.

Back to Top

United States v. Wallace Heidelmark et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Albert Glenn [redacted].

On January 27, 2006, Indoor Air Quality, Inc. ("IAQ"), an asbestos removal company, and the company's president, Wallace Heidelmark, pleaded guilty to two counts of mail fraud and one count of violating the Clean Air Act National Emissions Standard for Hazardous Air Pollutants asbestos work practice standards. Heidelmark, IAQ and company supervisor Jason Scardecchio, were charged with violations stemming from illegal asbestos removal projects performed in residences, commercial buildings and a school in 2002. The mail fraud counts arose from a scheme to defraud homeowners concerning the removal of asbestos-containing material in their homes.

Loose Asbestos

As part of its guilty plea, the company and Heidelmark have agreed to pay for independent testing for asbestos at properties where IAQ was responsible for post-abatement air testing for jobs completed between January 1, 2001 and August 16, 2004. They also have agreed to pay for the proper removal of asbestos fibers from properties at which testing reveals unsafe levels of asbestos fibers or where bulk or visible asbestos debris is found. Finally, the defendants will pay for a medical examination for each person who was employed by IAQ during the time period of January 1, 2001, and August 16, 2004.

Scardecchio remains set for trial to begin during the spring of 2006. Heidelmark and IAQ are scheduled to be sentenced on May 2, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Training

During the week of May 8 – 12, 2006, an Environmental Crimes Seminar will be presented at the National Advocacy Center in Columbia, South Carolina.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

April 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted] Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Johnson, 437 F.3d 157 (1st Cir. 2006)**
- **United States v. Hubenka, 438 4.3d 1026 (10th Cir. 2006)**
- **United States v. W.R. Grace et al., No. 05-CR-07 (D. Mont.)**

Districts	Active Cases	*Case Type* / Statutes
D. Ariz.	[redacted] **US v. Jeffrey Springer**	[redacted] ***Asbestos Abatement*/CAA, HMTA**
C.D. Calif.	**US v. Andrew Wall** [redacted] [redacted] **US v. Robertson's Ready Mix, Ltd.** **US v. MCP Urethanes** [redacted]	***Boat Yard*/ RCRA, CWA** [redacted] [redacted] ***Cement Company*/ CWA** ***Hazardous Waste Storage*/ CERCLA** [redacted]
S.D. Calif.	**US v. Amar Alghazouli** **US v. Robert Roberts**	***ODS Smuggling*/ Conspiracy, Smuggling, CAA** ***Fluorescent Light Disposal*/ RCRA, Obstruction, False Statement**
S.D. Fla.	**US v. Antonio Martinez-Malo** **US v. Burtram Johnson**	***Undersized Lobster Sales*/ Lacey Act, Smuggling** ***Illegal Excavation*/ Perjury, Obstruction, False Statement**
N.D. Ga.	**US v. Daniel Schaffer**	***Chemical Company*/CWA**
D. Hawaii	**US v. KS, Inc.**	***Illegal Ammonia Venting*/CAA Negligent Endangerment**
C.D. Ill.	**US v. David Inskeep**	***CAFO*/ CWA**
[redacted]	[redacted]	[redacted]
D.N.J.	**US v. Atlantic States Cast Iron Pipe Co.** **US v. Wallenius Ship Management, Pte., Ltd.** [redacted]	***Pipe Manufacturer*/ CWA, CAA, CERCLA, Conspiracy, False Statement, Obstruction** ***Vessel*/ APPS, Conspiracy, Obstruction, False Statement** [redacted]
E. D. N. Y.	**US v. Dov Shellef**	***ODS Smuggling*/Conspiracy, Money Laundering, Tax, Wire Fraud, CAA**

Districts	Active Cases	*Case Type*/ Statutes
E.D. Pa.	**US v. Steven McClain**	***Wastewater Treatment*/CWA**
S.D. Tex.	**US v. Corpus Christi Day Cruise, Ltd.**	***Vessel*/ Obstruction, False Statement**
D. Utah	**US v. Johnson Matthey, Inc.**	***Gold and Silver Refinery*/Conspiracy, CWA Pretreatment**
E.D. Va.	**US v. ACS Environmental, Inc.**	***Asbestos Abatement*/Conspiracy**
W.D. Wash.	**US v. Sawyer**	***Reptile Trafficking*/Lacey Act, False Statement**

Quick Links

Significant Opinions

1st Circuit

United States v. Johnson, 437 F.3d 157 (1st Cir. 2006).

On February 13, 2006, the U.S. Court of Appeals for the First Circuit concluded that the federal government could exercise Clean Water Act jurisdiction over three wetlands on private property because the wetlands were hydrologically connected to a navigable waterway. In a 2-1 decision, the Court affirmed a ruling by the U.S. District Court for the District of Massachusetts that granted summary judgment in favor of the government, holding that there was sufficient basis for jurisdiction "because the undisputed evidence shows that the three wetlands are hydrologically connected" to a navigable river.

The wetlands are privately owned by a group of cranberry farmers in Carver, Massachusetts. The government initially alleged that Charles and Genelda Johnson, Francis Vaner Johnson, and

Johnson Cranberries Ltd. Partnership, violated the Clean Water Act by discharging dredge and fill material into wetlands at the three sites without a permit in November 1999. The farmers were constructing and expanding cranberry bogs at the sites, altering wetlands in the process. The sites drain into either a ditch or a stream that leads to the Weweantic River, a navigable waterway.

The district court found the cranberry growers liable for multiple violations under Section 404 of the CWA and ordered them, in January 2005 to pay a $75,000 civil fine and undertake a wetlands restoration project estimated to cost $ 1.1 million.

On appeal, the farmers asserted that the U.S. Army Corps' exercise of jurisdiction over the three parcels of land exceeded congressional authority under the Commerce Clause of the U.S. Constitution. At issue is whether a hydrological connection between a wetland and a navigable waterway, as opposed to a situation in which a wetland directly abuts a navigable waterway, is sufficient to establish federal jurisdiction. If it is, that would make Corps jurisdiction lawful under the Commerce Clause.

The Court stated that the extension of jurisdiction to the wetlands "fell safely within the Congress's power under the Commerce Clause." It further noted that the Environmental Protection Agency's ("EPA") interpretation of "tributaries" as part of a "tributary system" was entitled to deference. The wetlands fell under this interpretation of tributaries, which includes bodies of water that have a significant nexus with a navigable-in-fact water. In this case, the wetlands do have a significant nexus with the Weweantic River through a tributary system and its adjacent wetlands that link them together.

The Court concluded that the EPA's interpretation of the Clean Water Act to extend jurisdiction to the target sites "reflects a permissible, reasonable interpretation" of the Act.

Back to Top

10th Circuit

United States v. Hubenka, 438 F.3d 1026 (10th Cir. 2006)

On February 21, 2006, the U.S. Court of Appeals for the Tenth Circuit upheld the conviction of a Wyoming man for illegally building three dikes on the Wind River without a Clean Water Act permit.

In March of 2000, John Hubenka, manager of LeClair Irrigation District, hired Curtis Neal to construct three earthen dikes on the north channel of the Wind River. Neal used a bulldozer to push river cobbles from the north channel to form the three dikes.

According to the government, the dikes altered the flow of the river, causing it to go more deeply into the Wind River Indian Reservation and carving out an area exceeding 300 acres of tribal property. The 300-acre parcel had been located south of the river but is now north of the river because of the dikes.

In 2004, Hubenka was charged with discharging dredge-and-fill material for the construction of the dams without a permit in violation of Section 404 of the Clean Water Act. He was convicted in September 2004 of knowingly discharging materials into a navigable water of the United States without a permit.

On appeal, Hubenka asserted that the waters of the Wind River fell outside the Clean Water Act's jurisdiction. The Tenth Circuit determined that the Wind River is a tributary of the Yellowstone

River, a navigable river. Therefore, the court determined a significant nexus exists between the rivers and that a pollutant upstream from the Wind River could migrate to navigable waters downstream.

Hubenka also contended that the use of a bulldozer to construct dikes did not amount to addition of pollutants, because the construction did not add materials from outside the river's banks. Relying on the Clean Water Act's definition of pollutant, the Tenth Circuit stated that river cobbles and sand constituted discharge within the plain meaning of the Act. Because Hubenka discharged a pollutant from a point source without a permit, the Court concluded that the Clean Water Act was properly applied.

Hubenka also disputed the admission of evidence in district court that showed he had tried previously to divert the Wind River. In 1994, Hubenka constructed a dike with river cobbles, cottonwood trees, scrap metal, car bodies, and a washing machine. The U.S. Army Corps of Engineers issued a notice of violation. After a site visit, the Corps required Hubenka to remove all unclean concrete debris from the river. The Tenth Circuit concluded that the district court did not abuse its discretion in admitting this evidence. The government had to prove that Hubenka violated the Clean Water Act knowingly, and the admission of past wrongs was probative in determining Hubenka's knowledge and intent to discharge material into the river.

Back to Top

District Courts

United States v. W.R. Grace et al., No. 05-CR-07 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On March 3, 2006, the court issued an 85-page order denying most of the defendants' motions to dismiss based on facial insufficiency of the indictment. Specifically, the court denied defendants' motion to dismiss the conspiracy count as duplicitous; denied defendants' motion to dismiss the CAA knowing endangerment and conspiracy counts for failure to allege knowledge of unlawful conduct; denied defendants' motion to dismiss CAA knowing endangerment and conspiracy counts for failure to allege an underlying violation of an emission standard; and denied defendants' motion to dismiss CAA knowing endangerment and conspiracy counts for failure to sufficiently allege a release of a hazardous air pollutant. The court granted in part the defendants' motion to dismiss on statute of limitations grounds certain CAA knowing endangerment offenses charged that were completed as of November 1999. The court also granted the government's motion to dismiss without prejudice two wire fraud counts from the indictment.

The grand jury returned a ten-count indictment in February 2005 charging W.R. Grace ("Grace") and seven of its corporate officials with conspiracy to violate the CAA and to defraud government agencies, including the EPA, knowing endangerment under the CAA, wire fraud, and obstruction of justice.

Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. The indictment alleges that, in the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to EPA. It is further alleged that, despite knowledge of the

hazardous asbestos contamination, Grace continued to mine, manufacture, process and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

The indictment states that, after the mine shut down in 1990, the company sold its contaminated mine properties to local buyers without informing them of the asbestos contamination. In 1999, Grace and company officials allegedly continued to mislead and obstruct the government when it failed to disclose the nature and extent of Libby's asbestos contamination to EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Trial remains scheduled to begin on September 11, 2006.

Back to Top

Trials

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS Assistant Chief Andrew Goldsmith [redacted] ECS Trial Attorney Deborah Harris [redacted] First AUSA Ralph Marra [redacted] and AUSA Norv McAndrew [redacted]

Closing arguments are scheduled to begin the week of April 3, 2006, in this trial which has run for more than 28 weeks and in which the government presented approximately 50 witnesses. Atlantic States Cast Iron Pipe Company ("Atlantic States") is a division of McWane, Inc., which manufactures iron pipes. The process involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit. The company and current and former managers John Prisque, Scott Faubert, Jeffrey Maury, Daniel Yadzinski and Craig Davidson were charged in September 2004 with conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. The defendants also were charged with substantive CWA, CAA, CERCLA, false statement, and obstruction violations.

The charges stem from a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. The evidence indicates that the defendants routinely violated Clean Water Act permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River. There also is evidence that they repeatedly violated Clean Air Act permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola. Additionally, the defendants are alleged to have systematically altered accident scenes, and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

Back to Top

United States v. Amar Alghazouli et al., No. 05-CR-1148 (S.D. Calif.), AUSA Melanie Pierson [redacted]

Defendant Amar Alghazouli (facing camera)

On March 23, 2006, Amar Alghazouli was found guilty of five of the six counts charged for his role in a conspiracy to smuggle ozone depleting substances and to launder money. Specifically, Amar was convicted of conspiracy to violate the CAA and conspiracy to launder money, two smuggling violations and one CAA violation for the unlawful sale of Freon. He will also be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the United States.

A 15-count indictment was filed in July 2005 charging Ahed Alghazouli, Omran Alghazouli and Amar Alghazouli with a variety of offenses related to their operation of a Freon smuggling scheme from approximately June 1997 through October 2004. The defendants operated an automotive supply store known as United Auto Supply. They purchased cylinders of R-12 from Mexico, altered the writing on the cylinders to disguise their origin, and then sold them to customers in parking lots in the San Diego area.

Ahed remains scheduled for trial to begin on July 17, 2006 and Omran is a fugitive. Amar is scheduled to be sentenced on July 7, 2006.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation Division; Federal Bureau of Investigation; and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement, Office of Inspector General.

Back to Top

United States v. Burtram Johnson, Nos. 04-CR-10013 and 05-CR-10015 (S.D. Fla.), AUSA José Bonau [redacted]

On February 3, 2006, Burtram Johnson was convicted at trial of two counts of obstruction of justice, two counts of perjury, and one count of making false statements to federal agents. Johnson twice testified falsely concerning when he first became aware of the illegal landfill activities undertaken by co-defendant Jeffrey Balch. Johnson told investigators and the grand jury that he was unaware of any illegal fill activities on Balch's bay-front property prior to being contacted by the United States Army Corp of Engineers. Evidence revealed, however, that Johnson was aware of the filling activities prior to being notified.

Balch was sentenced in January 2005 to serve five months' incarceration followed by one year's supervised release. He was further ordered to pay a $15,000 fine and $66,122 in restitution to the Florida Keys Environmental Restoration Trust Fund for damage to the Florida Bay. Balch pleaded guilty to a CWA violation for illegally discharging fill material into Florida Bay, which is located within the Florida Keys. He illegally excavated fill from his property in Marathon from February to March 2002 and dumped it in the water without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Army Defense Criminal Investigative Service.

Back to Top

Indictments

United States v. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS Trial Attorney Aunnie Steward [redacted] ECS Senior Trial Attorney Richard Poole [redacted], and AUSA Barbara Bearnson [redacted].

On March 22, 2006, a 29-count indictment was returned charging Johnson Matthey, Inc., a silver and gold refinery, its general manager and vice president John McKelvie, and production manager Paul Greaves with violations caused by excessive levels of selenium discharged into wastewater generated during the refinery process. The defendants were charged with conspiracy to violate the CWA and several pretreatment and concealment violations for both screening samples and diluting the wastewater with a hose over an approximately seven-year period. They also are charged with tampering with a monitoring device for shutting off the wastewater when the regulators pulled samples.

The defendants are further charged with exceeding the permitted monthly limit for selenium discharges during at least 12 months between January 2000 and May 2002. The defendants are also charged with concealing the illegal discharges by, among other things, deliberately choosing wastewater samples with lower selenium levels and submitting these for analysis.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Utah Attorney General's Office.

Back to Top

United States v. Robert Roberts, No. 2:06-CR-00160 (C. D. Calif.), AUSA Dorothy C. Kim [redacted] and SAUSA Vincent B. Sato [redacted]

On March 3, 2006, Robert Roberts was charged in a five-count indictment with violations stemming from his dumping significant numbers of fluorescent light tubes and lamps containing hazardous levels of lead and mercury in storage lockers across Southern California after soliciting business in which he claimed to be a certified waste recycler. Roberts is charged with one count of storing hazardous wastes without a permit, three false statement counts, and one count of obstructing justice.

Roberts owned a company known as Recyclights West ("Recyclights"), which was primarily involved in the business of transporting and disposing of fluorescent light tubes and high-intensity discharge lamps. Recyclights advertised itself as a company that recycled "hazardous waste lamps" in compliance with federal environmental regulations, and also promised customers that it would issue a certificate of recycling.

The indictment alleges that, when agents executed search warrants at approximately 30 storage units, they found tens of thousands of lights that contained hazardous levels of lead and mercury. Investigators also learned that Roberts had stopped paying rent for the units.

Roberts is currently in state custody on unrelated charges.

This case was investigated by the Office of Inspector General for the Department of Defense, the California Department of Toxic Substances Control and the United States Postal Inspection Service.

Back to Top

Pleas / Sentencings

United States v. ACS Environmental, Inc., et al., No. 05-CR-00074 (E.D. Va.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Michael Smythers [redacted].

On March 30, 2006, ACS Environmental, Inc., ACS president James Schaubach, and Air Power Enterprises, Inc., were sentenced for their involvement in a conspiracy to defraud OSHA, EPA, and the Small Business Administration ("SBA). Schaubach was ordered to pay a $1.5 million fine and serve 21 months' incarceration followed by three years' supervised release. Air Power will pay a $500,000 fine and both companies will complete a five-year term of probation.

The defendants previously pleaded guilty to conspiracy to defraud OSHA, EPA and the Small Business Administration ("SBA") for fraudulently obtaining approximately $37 million in SBA 8(a) set-aside contracts. The contracts involved construction work to be performed at federal facilities throughout Virginia, Maryland, and Washington, D.C., including a large number of jobs involving asbestos and lead abatement and hazardous waste operations.

From 1997 through 2001, the defendants purchased approximately 250 false training certificates from F&M Environmental Technologies for ACS and Air Power employees. The employees were then directed to conduct work involving asbestos, lead and hazardous waste removal at federal facilities under the SBA contracts, as well as at numerous schools.

Air Power president, Nicanor Lotuaco, was sentenced in January of this year, to serve five months' incarceration and five months' home confinement, followed by three years' supervised release. He was further ordered to pay a $1 million fine. The sentencing of the remaining three defendants was postponed until the court resolved issues related to the fine. There also were allegations that Schaubach continued to engage in illegal conduct after entering his guilty plea.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the Naval Criminal Investigative Service, and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. Andrew Wall, Jr., et al., No. 2:04-CR-00170 (C.D. Calif.), AUSA William Carter [redacted]

On March 27, 2006, Andrew Wall, Jr., was sentenced to serve a one-year term of incarceration and was ordered to pay a $5,000 fine plus $490,000 in restitution. Wall, Jr., the owner of the bankrupt San Pedro Boat Works ("SPBW"), pleaded guilty in August 2004 to one felony count of unlawfully storing drums of hazardous wastes in the San Pedro area of the Los Angeles Harbor. Wall's son and the yard superintendent, John Wall, pleaded guilty to one misdemeanor count of unlawfully

discharging untreated and partially-treated sewage into the Harbor. He was sentenced to pay a $2,500 fine and serve three years' probation, to include six months in a community corrections' center.

In late 2002, SPBW was engaged in the repair and servicing of commercial, military and private vessels and water craft. These services required the use of chemicals such as paint thinners, cleaning solvents, petroleum naphtha, hydraulic oil, and kerosene, which generated hazardous wastes. Inspectors from the Port of Los Angeles and the Los Angeles County Fire Department inspected the business in 2003 and found numerous drums of hazardous wastes on the premises. Inspectors also discovered a discharge pipe under the wharf that was connected to an on-site septic tank that collected wastewaters from the company's restrooms. John Wall used the pipe to unlawfully discharge sewage into the harbor.

SPBW filed for bankruptcy in December 2002, soon after ceasing operations at the site. The Port of Los Angeles, which leased the berths to SPBW, spent approximately $490,000 to clean up the site. Andrew Wall was ordered to pay the restitution to the City of Los Angeles Harbor Department for reimbursement of clean up and waste removal costs.

This case was investigated by the Los Angeles Federal Environmental Task Force, which includes the Federal Bureau of Investigation; the Los Angeles County Fire Department, Hazardous Materials Unit; the Port of Los Angeles and the California Department of Toxic Substances Control.

Back to Top

United States v. David Inskeep, No. 1:06-CR-10026 (C.D. Ill.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Tate Chambers [redacted].

On March 24, 2006, David Inskeep pleaded guilty to one count of negligently discharging animal waste into waters of the United States in violation of 33 U.S.C. § 1319(c)(1)(A). Inskeep was the operator of Inswood Dairy, Inc., a dairy with more than 1,200 cows, that operated a waste management system consisting of a lagoon designed to hold up to approximately 40 million gallons of animal waste. The system used water to flush cattle manure and wastewater from the barns to a central collection point. The waste then was pumped to the lagoon for storage until it could be lawfully removed. Inskeep continued to flush manure and wastewater into the lagoon after state officials repeatedly warned him that the lagoon was too full.

A judge issued an order on February 16, 2001, for the dairy to immediately cease discharging into the lagoon. On February 16 and 17, 2001, however, Inskeep lowered the level in the lagoon by pumping waste from the lagoon through a hose to a tributary that flowed downhill from the dairy, discharging more than one million gallons of waste and manure. The waste pumped from the lagoon flowed into a tributary of the West Fork of Kickapoo Creek, which eventually flows to the Illinois River.

Inskeep is scheduled to be sentenced on July 13, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources.

Back to Top

United States v. KS, Inc., No. CR-06-113-HG (D. Hawaii), ECS Senior Trial Attorney Jennifer Whitfield [redacted].

On March 23, 2006, KS, Inc., pleaded guilty to a one-count information filed March 1 charging negligent endangerment under the CAA for release of anhydrous ammonia, an extremely hazardous substance. The company also was sentenced to pay a $40,000 fine, serve three months' probation and make a community service payment in the amount of $12,000 to purchase respiratory equipment to be given to the LBJ Tropical Medical Center, in Pago Pago. The company also will post a letter of apology in the *Samoa News*, acknowledging the violation.

KS operated an ammonia supply business in American Samoa. In January 2003, the company was advised by the local American Samoa Environmental Protection Agency ("ASEPA") to properly dispose of approximately 180 ammonia cylinders. KS was further directed to develop a product management and leak response plan prior to disposal and to complete removal and disposal of the ammonia cylinders under the supervision and oversight of the relevant emergency response agencies.

In May 2003, a KS employee began venting residual ammonia from the cylinders without any notification to the relevant emergency response agencies, nor did the company develop the required waste management plan. A family living adjacent to where the gas was vented was taken to the hospital for emergency care, and approximately forty people had be evacuated from the area. This is the first criminal environmental case brought against a company in American Samoa.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States. v. Dov Shellef dba Poly Systems, Inc., et al., No. 2:03-CR-00723(E.D.N.Y), ECS Trial Attorney Lary Larson and ECS Paralegal Lois Tuttle, AUSA Thomas Fallati with assistance from Tax Division Attorney Genevieve Collins

On March 22, 2006, Dov Shellef, doing business as Poly Systems, Inc. and Polytuff, USA, Inc., and William Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., were sentenced after being convicted at trial of 87 counts in July 2005 for conspiring to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud and a variety of tax violations. Shellef was ordered to serve 70 months' incarceration and Rubenstein will serve 18 months' imprisonment. Both will be held jointly and severally liable for $1.9 million in restitution for the taxes due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. This was the first criminal case involving CFC-113.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, inducing the manufacturers to sell it to them tax-free. The defendants then sold the product tax-free in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Dov Shellef also was convicted of personal income tax evasion, subscribing to false corporate tax returns, wire fraud and money laundering. William Rubenstein was further convicted of aiding and abetting the wire fraud.

Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes.

This case was investigated by the Internal Revenue Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Wallenius Ship Management, Pte., Ltd., et al., No. 2:06-CR-00213 (D.N.J.), ECS Trial Attorney Malinda Lawrence and AUSA Thomas Calcagni.

On March 22, 2006, Wallenius Ship Management, Pte., Ltd. ("WSM"), a Singapore shipping company, and Nyi Nyi, the former chief engineer of the *M/V Atlantic Breeze*, pleaded guilty to violations associated with the illegal dumping of oily wastes over a period of approximately three years and the overboard dumping of plastics in 2005. The company pleaded guilty to conspiracy to violate APPS for failure to maintain an oil record book, making false statements and writings, and obstructing a government proceeding; three substantive APPS violations for failing to maintain the ORB; and three substantive violations of making materially false statements and using materially false writings. Nyi pleaded guilty to one false statement violation for presenting a false oil record book to investigators.

According to the plea agreement, the U.S. Coast Guard began an investigation in November 2005 after crew members on the *Atlantic Breeze*, a Singapore-registered car carrier vessel managed by WSM, sent a fax to an international seafarers' union alleging that they were being ordered to engage in deliberate acts of pollution, including the discharge of oil-contaminated bilge waste and sludge as well as garbage and plastics. As a result of this tip, the Coast Guard conducted an inspection of the ship and discovered a multi-piece bypass system, referred to on board as "the Magic Pipe", hidden in various locations of the ship.

The company has agreed to pay a $5 million fine with an additional $1.5 million payment devoted to community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects in New Jersey. The company also will serve a three-year term of probation and implement an environmental compliance plan.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Back to Top

Back to Top

United States v. Jeffery Springer, No. 2:05-CR-01065 (D. Ariz.), ECS Trial Attorney Ruth McQuade [redacted] and AUSA Paul Rood [redacted]

On March 20, 2006, Jeffrey Springer was sentenced to pay a $2,000 fine, serve three years' probation and pay $75,000 in restitution for violating the CAA and the HMTA.

Springer pleaded guilty in October 2005 to an information charging two felony counts for violations related to an illegal asbestos abatement. Specifically, he pleaded guilty to a CAA NESHAP violation and to a HMTA violation for failing to comply with the hazardous materials packaging requirements prior to transporting the asbestos. Springer, doing business as Oljato Industries, owned an industrial facility in Phoenix that consisted of several buildings. Between July and September of 2000, Springer hired workers to demolish the buildings at the site. Since the defendant failed to perform the required site survey prior to the demolition, local environmental inspectors performed their own tests and determined that there were approximately 2,550 square feet of asbestos. Inspectors conducted subsequent inspections during the demolition and noted that Springer was not following several requirements for asbestos removal, including wetting the material and providing workers with appropriate protective equipment. None of the workers were trained in the handling of asbestos. The restitution will be paid to eight victims, including some of the workers' wives and children.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Transportation, Office of the Inspector General.

Back to Top

United States v. Antonio Martinez-Malo et al., No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick [redacted]

On March 16, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc., pleaded guilty to charges in connection with a conspiracy to violate the Lacey Act for smuggling 16,500 pounds of undersized spiny lobster from Jamaica into the United States. The company pleaded guilty to a smuggling and conspiracy violation, and the individuals pleaded guilty to conspiracy.

Anchor Seafood is a business operated by Antonio Martinez-Malo, the president and sole shareholder, and his wife, Liliana Martinez-Malo. The defendants were charged with making 40 illegal shipments of undersized spiny lobster tails from January, 2000, through January, 2001. During this period, the defendants conspired to import from Jamaica, and then sold and transported, over 16,000 pounds of undersized spiny lobster tails valued at $229,000. This is a violation of both Jamaican and Florida law, both of which have strict size and weight limits for spiny lobster. The defendants concealed the actual size of the lobster tails through the coding system they used on the exterior of boxes and on their invoices.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office for Law Enforcement.

Back to Top

United States v. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux

On March 15, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, pleaded guilty to obstructing a U.S. Coast Guard investigation into whether the ship had illegally discharged waste oil and deliberately bypassed its pollution prevention equipment. The ship's chief engineer, Gojko Petovic, pleaded guilty to lying to Coast Guard inspectors about the existence of tank sounding records and to then attempting to destroy them.

Coast Guard inspectors boarded the *M/V Texas Treasure* in Port Aransas, Texas, as part of a routine Port State Control examination. The inspectors discovered evidence that the ship's crew was bypassing its pollution prevention equipment and deliberately discharging oil-contaminated waste overboard. During the inspection, Petovic claimed to not know about the sounding records and attempt to delete them from his computer. The inspectors recovered the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

Back to Top

United States v. Steven McClain et al., No. 2:06-CR-00102 (E. D. Pa.), AUSA Seth Weber [redacted] and SAUSA Joseph Lisa [redacted]

On March 9, 2006, a two-count information was filed charging wastewater treatment plant superintendent Steven McClain, and operator Ronald Meinzer, with felony CWA violations for allegedly dumping thousands of gallons of untreated sewage into the Delaware River.

McClain and Meinzer are alleged to have ordered workers, in August and September 2004, to wash thousands of gallons of raw sewage and sludge, which had spilled from a digester, into a storm water sewer that led to the Delaware River. Additionally, from approximately 1997 through June 2005, the defendants are charged with bleaching samples prior to their being sent to an offsite lab for analysis in order to mask fecal coliform levels. The defendants further are alleged to have tampered with plant monitoring equipment by disconnecting devices including alarms on chlorine tanks and digesters at the Bristol Plant.

Dark staining on the walls and on the ground is raw sewage that has spilled over the sides of the tank. Bristol Plant employees then used a fire hose to wash this into a storm water grate that went directly into the Delaware River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jonathan Cory Sawyer, No. 3:05-CR-05344 (W. D. Wash.), ECS Trial Attorney Wayne Hettenbach [redacted] and AUSA Micki Brunner [redacted]

On March 10, 2006, Jonathan Corey Sawyer was sentenced to serve 15 months' incarceration followed by two years' supervised release for illegally importing and exporting more than 230 reptiles during an eight-month period.

Sawyer was charged in April 2005, following an investigation into illegal trafficking in rare reptiles. On June 19, 2003, undercover agents of the U.S. Fish and Wildlife Service delivered a package to Sawyer's home. The package had been inspected by customs' agents in Alaska who found it contained four Burmese Star Tortoises and two Green Tree Monitor Lizards. Both are species whose trade is restricted by international and U.S. law, and importers must obtain special permission to bring them into the United States. Sawyer did not obtain these permits and the live animals were shipped from Thailand in a box labeled "Stuffed Toys." Sawyer, a licensed animal importer and exporter, was aware of the regulations and knew how to disguise the shipments.

Sawyer pleaded guilty in August 2005 to shipping 20 Corn Snakes, 100 Leopard Geckos, one Albino Leopard Gecko, 14 Rhino Iguanas, and 98 Emperor Scorpions in mislabeled boxes. Sawyer admitted that he had shipped reptiles from the U.S. to his supplier, "Lawrence" Wee Soon Chye, a Thai citizen, on seven different occasions between 2002 and 2003. The animals were worth approximately $30,000.

Chye was sentenced in 2003 to serve 37 months' incarceration in Florida for his role in the smuggling scheme.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Robertson's Ready Mix, Ltd., No. 2:05-CR-00952 (C.D. Calif.), AUSA William Carter [redacted].

On March 6, 2006, Robertson's Ready Mix, Ltd. ("Robertson's), a large regional cement company, was sentenced for illegally discharging concrete slurry in 2002. The company was ordered to pay a $200,000 fine plus $16,300 in restitution to the Los Angeles County Department of Public Works ("LACDPW").

Robertson's pleaded guilty in December of last year to one CWA misdemeanor violation for negligently discharging concrete slurry into the Los Angeles River in November 2002. The violations were discovered when LACDPW inspectors found an unpermitted PVC pipe on the defendant's premises that was unlawfully discharging slurry into a storm drain vault, which flowed into the river.

The company was further sentenced to complete a two-year term of probation and must implement an environmental compliance plan to prevent additional illegal discharges.

This case was investigated by the Federal Bureau of Investigation and the LACDPW.

Back to Top

United States v. MCP Urethanes, No. 2:06-CR-00093 (C.D. Calif.), AUSAs Christine Adams [redacted] and William Carter [redacted]

On February 28, 2006, MCP Urethanes ("MCP"), pleaded guilty to one CERCLA misdemeanor violation relating to the unlawful storage of hazardous materials, and was sentenced to pay a $200,000 fine plus $5,000 in restitution to the Los Angeles County Fire Department, Health Hazardous Materials Division ("LACFD").

In September 1999, LACFD investigators found numerous five-gallon containers of hazardous xylene wastes and substances unlawfully stored on the premises of Mt. San Antonio College. The company had been hired to remove, replace, and repair defective portions of a polyurethane running track located at the college. Temporary employees hired by MCP used solvents containing xylene during the repair activities and unlawfully stored them in unpermitted locations.

The company was further sentenced to complete a one-year term of probation and implement an environmental compliance plan to prevent the future unlawful handling, storage, and disposal of hazardous wastes and materials.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the LACFD.

Back to Top

United States v. Daniel Schaffer, No. 1:06-CR-00085 (N. D. Ga.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Paul Jones [redacted]

On February 27, 2006, Daniel Schaffer, the former environmental manager of Acuity Specialty Products, Inc. ("Acuity"), pleaded guilty to a one-count information charging him with conspiracy to violate the CWA for illegal wastewater discharges from the plant.

Acuity operates a chemical blending facility and makes a variety of domestic and industrial chemicals and cleaning products. Wastewater from Acuity's chemical blending processes contains a significant concentration of phosphorus. In November 2002, inspectors from the City of Atlanta Watershed Department ("CAWD") discovered that Acuity personnel were diluting the facility's wastewater. This rendered inaccurate the methods that were required by the CAWD for sampling wastewater discharge, thereby hiding the actual concentration of phosphorus that was being discharged to the POTW.

The investigation showed that from 1998 until 2002, Acuity submitted to the CAWD false information regarding the level of phosphorus in its wastewater, on forms that were signed by Schaffer. Schaffer was the company's environmental manager from October 1998 until October 2003. Subsequent investigation also has indicated that Acuity failed to report discharges of phosphorus that were in excess of the level allowed under its pretreatment permit that had been issued to the company by the CAWD.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]

Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

May 2006

A FEW WORDS FROM ECS CHIEF DAVID UHLMANN:

On April 26, 2006, after the longest federal environmental crimes trial in the United States, a jury in Trenton, New Jersey, returned guilty verdicts against Atlantic States Cast Iron Pipe Company and four managers at the Atlantic States facility for their roles in a wide-ranging conspiracy to violate environmental protection and worker safety laws. The jury convicted Atlantic States on 32 felony counts, including substantive Clean Water Act and Clean Air Act violations, obstruction of justice, and false statements. Each of the four managers also was convicted on multiple felony charges.

The nearly eight-month trial of Atlantic States culminates a more than three-year multi-district prosecution effort of McWane, Inc., which began when McWane was profiled in a series of front-page New York Times' articles and a Frontline expose revealing years of environmental and worker safety violations at McWane facilities nationwide. McWane was indicted for the crimes at the Atlantic States facility in December 2003 and for egregious violations at its flagship McWane Cast Iron Pipe facility in Birmingham, Alabama, in May 2004. The Alabama case went to trial first, in May 2005, resulting in guilty verdicts against McWane and three of its corporate officials in June 2005. In addition, McWane entered guilty pleas during 2005 and 2006 in Texas, Alabama, and Utah for Clean Air Act, RCRA, and worker safety violations at its Tyler Pipe, Union Foundry, and Pacific States facilities.

To date, McWane has paid nearly $20 million in criminal fines, and the national prosecution effort against McWane has been a centerpiece of the Justice Department's worker endangerment initiative. The investigations of McWane have included EPA, the FBI, and a host of state and local law enforcement and regulatory officials, and involved significant assistance from OSHA officials. Each of the cases has been a joint prosecution by the Environmental Crimes Section and the United States Attorney's Offices involved (New Jersey, Alabama, Eastern Texas, and Utah).

Congratulations to the Atlantic States prosecution team led by ECS Assistant Chief Andrew Goldsmith, Senior Trial Attorney Deborah Harris, First Assistant United States Attorney Ralph Marra, and Assistant United States Attorney Norv McAndrew -- and to everyone involved in the McWane prosecutions nationwide!

AT A GLANCE

SIGNIFICANT OPINIONS

♦ [redacted]

♦ **Baccarat Fremont Developers v. U.S. Army Corps of Engineers, 425 F.3d 1150 (9th Cir. 2005): Clean Water Act, "Waters of the United States" defined.**

♦ **Fairhurst v. Hagener, 422 F.3d 1146 (9th Cir. 2005) (per curiam): Clean Water Act, Discharge of a Pollutant.**

♦ **United States v. Shaw, 150 Fed. Appx. 863 (10th Cir. Oct. 13, 2005) (unpublished table decision), petition for cert. filed, 74 U.S.L.W. 3545 (U.S. Mar. 21, 2006) (No. 05-1220): Clean Air Act, Asbestos.**

♦ **United States v. Ortiz, 427 F.3d 1278 (10th Cir. 2005): Mental State, Negligence.**

♦ **United States v. W. R. Grace, 401 F. Supp. 2d 1065 (D. Mont. 2005): Rules of Ethics, Communications with Represented Parties.**

♦ **United States v. Hajduk, 396 F. Supp. 2d 1216 (D. Colo. 2005): Search and Seizure, Warrantless Inspections, Pervasively/Closely Regulated Businesses.**

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	**US v. Bao Huynh** **US v. Rodolfo Esplana Rey**	***Tropical Fish Smuggling*/ ESA** ***Vessel*/ False Statement, APPS**
M.D. Fla.	**US v. James Messina**	***Nest Destroyed*/ Bald and Golden Eagle Protection Act**
N.D. Fla.	**US v. Christopher Weaver**	***Dolphin Harassment*/ Marine Mammal Protection Act**
S.D. Fla.	**US v. Parkland Town Center, LLC.** **US v. Kevin McMaster**	***Hotel Renovation*/ CAA NESHAP** ***Endangered Species Skins*/ Lacey Act, ESA**
D. Idaho	**US v. Tim Brown**	***Bear Killing*/ Malicious Destruction of Public Property, ESA**
E. D. La.	**US v. Chalmette Refining, LLC.**	***Negligent Benzene Discharge*/ CWA**
D. Mass.	**US v. Jose Silva** **US v. Mani Singh**	***Lobster Fishing*/ Lacey Act, Conspiracy, False Statement** ***Vessel*/ APPS, Conspiracy, Obstruction, False Statement**
D.N.J.	**US v. Atlantic States Cast Iron Pipe Co.** **US v. MK Shipmanagement**	***Pipe Manufacturer*/ CWA, CAA, OSHA, CERCLA, Conspiracy, False Statement, Obstruction** ***Vessel*/ APPS**
E.D. Pa.	**US v. Steven McClain**	***Wastewater Treatment*/ CWA**

Quick Links

Significant Opinions

5th Circuit

Back to Top

9th Circuit

Baccarat Fremont Developers v. U.S. Army Corps of Engineers, 425 F.3d 1150 (9th Cir. 2005).

Plaintiff was the developer of a site containing almost eight acres of seasonal wetlands. Man-made berms located on adjacent property owned by the county flood control district separated the wetlands from a flood control channel operated by the district. Plaintiff sought a permit from the U.S.

Army Corps of Engineers to discharge fill material in 2.36 acres of the wetlands as part of plans to construct commercial buildings on the site. As part of the issuance of the permit, the Corps imposed certain conditions, including that the plaintiff create on-site at least 2.36 acres of seasonal freshwater wetlands and enhance existing brackish wetlands on the site

Plaintiff brought an action (removed from state to federal court) seeking declaratory judgment and injunctive relief against the Corps and its District Engineer contesting the Corps assertion of jurisdiction and seeking to enjoin enforcement of the mitigation conditions. The district court granted the defendants' motion for summary judgment, holding that the Corps had jurisdiction over the wetlands.

Held: The Ninth Circuit affirmed the judgment of the district court. It held that the Corps' had jurisdiction under the adjacency clause of 33 C.F.R. § 328.3(a)(7), rejecting the plaintiff's argument under SWANCC that there must be a significant hydrological or ecological connection to waters of the United States. SWANCC had invalidated only the Migratory Bird Rule and had not addressed the Corps' adjacency jurisdiction. In Riverside Bayview Homes, the Supreme Court rejected the argument that a significant hydrological or ecological connection was required. The court reviewed in detail the relevant caselaw, finding that the Headwaters decision regarding tributaries is not to the contrary and found strong support in Carabell. In any event, the Corps here had found more than adequate evidence of a significant nexus between the wetlands in question and the flood control channels located in the adjacent property that clearly were waters of the United States.

Back to Top

Fairhurst v. Hagener, 422 F3d 1146 (9th Cir. 2005) (per curiam).

Defendant Hagener, Director of the Montana Department of Fish, Wildlife and Parks, initiated a program in which the Department sought to re-introduce the Westslope cutthroat trout, a threatened fish species. His program included a plan to eliminate competition with other non-native trout species by removing those non-native species. The Department would apply the pesticide Antimycin into the water for short periods of time over several years before reintroducing the threatened species.

After the Department had performed at least one application of Antimycin to Cherry Creek (which constituted navigable waters), the plaintiff sued Hagener under the citizen suit provision of the Clean Water Act, claiming that, in order to legally disperse pesticide into waters of the United States, Hagener first was required to obtain an NPDES permit, which he had not done. Plaintiff also sought an injunction against all future unpermitted application of the Antimycin. The district court granted Hagener's motion for summary judgment.

Held: On appeal, the Ninth Circuit affirmed the judgment of the district court. The parties had agreed that the Department had applied the Antimycin in accordance with the requirements of its label approved by USEPA pursuant to FIFRA and that the program had gone "according to the plan which included application of Antimycin directly" to waters of the United States, resulting in the intended killing of non-native species of fish. They also did not dispute that the discharge of Antimycin had been an "addition" from a "point source"

The court found that, unlike the situation in Headwaters, where a herbicide was applied to irrigation canals for the beneficial purpose of clearing weeds, but had left chemical residue in the water, the pesticide here (again applied intentionally directly into water in accordance with all applicable requirements of FIFRA) left no residual chemical in the water, since the Antimycin dissipated rapidly after it had performed its intended purpose. Because the pesticide functioned as intended, it was not "damaged' or "defective' nor did it consist of "superfluous material" or "refuse or

excess material." Therefore, under the definition contained in the CWA, no "chemical waste," thereby constituting a "pollutant," had been added to the creek. Further, USEPA guidance provided that "pesticides applied consistently with FIFRA do not fall within the CWA definition of 'chemical wastes.'" The court did note, however, that as explicitly held in Headwaters, this analysis applies and an NPDES permit is not required when a pesticide is intentionally applied in accordance with a FIFRA label, and it leaves no residue or unintended effects.

[NOTE: The court did not consider the decision in No Spray Coalition, Inc. v. City of New York, ___ F. Supp. 2d ___, 2005 WL 1354041 (S.D.N.Y. June 8, 2005).]

Back to Top

10th Circuit

United States v. Shaw, 150 Fed. Appx. 863 (10th Cir. Oct. 13, 2005) (unpublished table decision), petition for cert. filed, 74 U.S.L.W. 3545 (U.S. Mar. 21, 2006) (No. 05-1220).

Defendant professional engineer owned and operated ESCM & Associates, Inc. ("ECSM"), an engineering and environmental consulting firm. One of ECSM's clients' contacted the defendant seeking his assistance in demolishing an abandoned oil refinery located in Kansas. After an inspection of demolition work at the refinery by a representative of the state Department of Health and Environment, followed by an investigation by a criminal investigator from USEPA, the defendant was charged in a superseding indictment on four counts for violating the NESHAP for asbestos promulgated under the Clean Air Act; engaging in a scheme to falsify, conceal or cover up the presence of asbestos in violation of 18 U.S.C. § 1001(a)(1); making a false statement in violation in violation of 18 U.S.C. § 1001(a)(2); and illegally disposing of asbestos in violation of CERCLA. The principals of a small wrecking company performing work at the site were charged in the same indictment with removing asbestos without accreditation in violation of TSCA. In exchange for their cooperation in the prosecution of the defendant, they subsequently were allowed to plead guilty to a misdemeanor charge of failing to notify USEPA regarding the storage and disposal of asbestos at the site.

Defendant was convicted by a jury on one Clean Air Act violation for engaging in a scheme to falsify, conceal or cover up the presence of asbestos. He appealed both his conviction and his sentence.

Held: On appeal, the Tenth Circuit affirmed defendant's conviction, but remanded to the district court with instructions to re-sentence him in accordance with this opinion and with Booker. The court rejected the defendant's contention that the district had lacked subject matter jurisdiction over his prosecution under 18 U.S.C. § 1001 because the false statement provision of the Clean Air Act (42 U.S.C. § 7413(c)(2)(A)) was the sole and exclusive means for prosecuting the making of a false statement to USEPA in violation of the Act. When an action violates more than one criminal statute, absent statutory language or legislative history to the contrary, the government generally may prosecute under either, even when one of the statutes provides a harsher penalty. The court also rejected the defendant's argument that his prosecution under section 1001 was time-barred by the statute of limitations because the false statements in question had been made more than five years before the filing of the original indictment. In this case, the superseding indictment charged the defendant with a *scheme* to conceal the presence of asbestos, and the statute of limitations did not

begin to run until that scheme had been completed (which occurred within the five-years prior to the filing of the original indictment).

Finally, the court rejected the defendant's argument that only an "owner or operator" had a duty under the Act to disclose the presence of asbestos to USEPA by filing a Notification of Demolition and Renovation, and that, as a consultant, he did not fit that definition. Defendant in fact was convicted of violating subparagraph (a)(1) of 18 U.S.C. § 1001 (concealment of a material fact), not subparagraph (a)(2) (making of a false statement). Conviction under the former provision requires proof that a defendant had a legal duty to disclose the fact concealed, while under the latter provision it does not. But in any event, the court found that the government had met that burden. Whether or not defendant had been a person required to file a Notification of Demolition and Renovation, he had in fact done so. That form itself contained disclosure requirements regarding asbestos at the site, thereby imposing upon the person submitting that form a legal duty to disclose the presence of asbestos and, if present, the method of abatement. An agent clearly may complete and submit a notification form on behalf of a principal.

At sentencing, the district court calculated the defendant's base offense level at six (under Section 2F1.1, the applicable guideline for a violation of 18 U.S.C. § 1001(a)(1)). Based upon USEPA's estimate that it would cost almost $250,000 to clean up the asbestos improperly buried at the refinery, it enhanced the base level by five, finding that the cost of remediation "clearly" would exceed the "$40,000 loss" threshold for application of section 2F1.1(b)(1)(F). It denied a two-level enhancement based upon the offense having been committed by someone with special skill, and also denied a motion for downward departure based upon aberrant behavior.

At the initial sentencing hearing, the district court had imposed an additional two-level enhancement under section 2F1.1(b)(2), based upon "more than minimal planning," noting defendant's numerous significant contacts over several years with state officials and with the other persons involved in the violations. At the final sentencing hearing, however, the court reconsidered and denied that enhancement.

On appeal, the Tenth Circuit reviewed in detail defendant's dissembling and fraudulent acts over a considerable period of time, demonstrating a "greater amount of planning than [was] required to engage in a scheme to conceal the presence of asbestos from the EPA in its simple form." The court therefore, held that the district court clearly had erred in reversing its initial determination and denying the enhancement for more than minimal planning. Since the case was being remanded for re-sentencing on other grounds, the court concluded that it need not address the imposition of the enhancement based upon the cleanup cost. However, it noted that the re-sentencing would have to be conducted "in light of Booker."

Back to Top

United States v. Ortiz, 427 F.3d 1278 (10th Cir. 2005).

Chemical Specialties, Inc., was the operator of a propylene glycol distillation facility for the production of airplane de-icing fluid in Grand Junction, Colorado, where the defendant was the operations manager and sole employee. The distillation process produced significant amounts of wastewater, which Chemical Specialties declined to discharge to a municipal waste treatment plant under permit, representing to City officials that it instead would ship all such wastewater to a nearby business.

The City operated a bifurcated sewage system that consisted of a wastewater treatment system fed by numerous sanitary sewer lines, plus a separate stormwater drainage system that collected rain

water that it discharged to the Colorado River. When these previously combined systems had been segregated in the early 1990s, the city had overlooked sewer line connections in the area near the Chemical Specialties facility, with the result that all sanitary discharges from Chemical Specialties and other businesses in the area flowed into a storm drain that discharged into the river.

In response to an odor complaint in 2002, the city found a pungent black substance pouring from a storm drain and seeping into the river. Samples indicated the presence of propylene glycol. Representatives of the City and the state Department of Public Health and Environment met with the defendant, who insisted that he sent all of the company's wastewater to a nearby business. Six days later, after additional discharges were discovered downstream (but none upstream) of the Chemical Specialties facility, government officials informed the defendant that the material appeared to be originating from Chemical Specialties, and again he denied discharging any wastewater. Upon receiving consent to inspect the facility, the officials detected the odor characteristic of the discovered discharges and observed a large bag of a granular black substance.

During a follow-up investigation, a City employee collected samples from the storm drain downstream from Chemical Specialties, which revealed the presence of propylene glycol. Earlier investigations had ruled out surrounding businesses as a likely source of the discharges, and a subsequent test by the City conclusively demonstrated a connection between the toilet in Chemical Specialties and the storm sewer. The City shut off the water in the bathroom and instructed the defendant not to discharge anything down the toilet or sink and arranged for portable toilet and hand washing units at the facility.

A couple of weeks later, USEPA criminal investigators discovered a tanker truck at the facilitiy spewing a liquid with the same characteristic odor onto the ground and observed the same type of substance pouring nearby from a storm drain outfall into the river. The same odor was detected downstream, but not upstream, from Chemical Specialties. Defendant told the investigators that the leaking tanker truck contained propylene glycol that he intended to process, but refused to state whether he ever had discharged pollutants through the toilet. City investigators noted water and a hose on the bathroom floor, and the toilet had been turned back on.

Defendant was charged with two violations of the Clean Water Act, for negligently discharging chemical pollutants without a permit on one occasion and for knowingly discharging chemical pollutants without a permit on a second occasion. After defendant was convicted by a jury on both counts, he filed a motion for judgment of acquittal. The district court denied the motion as to the second count but granted it as to the first, finding that the government had not proved that defendant had been aware that the toilet had not been connected to a sanitary sewer and that as a matter of law he could not be found guilty of the negligent discharge "in the absence of his knowledge that using the toilet would result in the discharge [to the river]." The court also at sentencing declined to apply an enhancement for an "ongoing, continuous or repetitive discharge" or for a "discharge without a permit." The government appealed both the judgment of acquittal and the denial of the sentencing enhancements.

Held: The Tenth Circuit reversed the district court's judgment of acquittal and reinstated the jury's verdict convicting defendant on count one. It remanded the matter to the district court with instructions also to vacate defendant's sentence and to re-sentence him in accordance with its opinion. The court first determined, citing Hanousek, that the standard for conviction under the negligent conduct provisions of the Act is ordinary, rather than heightened, negligence. A defendant violates those provisions "by failing to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstances, and, in so doing, discharges any pollutant into United States waters without a NPDES permit." The evidence here amply supported the jury's verdict.

The court also found that the district court erred in declining to apply the two sentencing enhancements. The jury had found specifically that the defendant had discharged a pollutant, and the district court's conclusion that the "discharge without a permit" enhancement could be applied only where a permit was available for the activity in question was erroneous. The factual impossibility of obtaining a permit is not a defense to that enhancement, since a permit, with a few non-relevant exceptions, is always required before discharging a pollutant into navigable waters. As for the enhancement for repetitive discharges, since the court had reversed the judgment of acquittal on the first of the two counts of which the jury had convicted the defendant, he now stood convicted of two counts that suffice for application of that enhancement. The court rejected the defendant's argument that the enhancement applies only to convictions for repetitive knowing charges.

Back to Top

District Courts

United States v. W. R. Grace, 401 F. Supp. 2d 1065 (D. Mont. 2005).

Defendant corporation and certain current and former employees were charged with conspiracy to violate the Clean Air Act and to defraud the United States, violation of the Clean Air Act, wire fraud, and obstruction of justice. Government investigators in the case contacted a current corporate employee, apparently in the mistaken belief that he no longer worked for the company. After unsuccessful negotiations with defendants, the government moved for an order authorizing it to initiate *ex parte* communications with all of the corporation's former employees.

Held: The court granted the government's motion, holding that, under an explicit provision of the local rules of the district that incorporated Rule 4.2 of the Rules of Professional Conduct (and of the Montana Rules of Professional Conduct), the government was not required to obtain the consent of the corporation's attorney before contacting former employees (whether or not they had held managerial positions).

Back to Top

United States v. Hajduk, 396 F. Supp. 2d 1216 (D. Colo. 2005).

Defendant Hajduk was operations manager for defendant Luxury Wheels O.E. Plating ("LW"), a privately-owned chrome plating business that discharged chemicals through its wastewater that were regulated under city, state and federal law.

The Persigo POTW ("Persigo") was owned and operated by the City of Grand Junction ("The City"). It regulated water discharges from industrial facilities into its facilities in order to ensure that its own subsequent discharges complied with state and federal law. Persigo operated under a NPDES permit and was charged under federal, state and municipal law with regulating industrial dischargers to its facility to ensure compliance with these laws. Persigo developed a regulatory program prescribing limits for entering effluent and for individual industrial users. It also established a permit system, including a monitoring system, that allowed users to self-monitor and gave Persigo the ability to inspect and sample. The City additionally required a permit under its City Code and set requirements

for industrial users discharging into Persigo, including a requirement that such users install a sewer with a manhole to allow sampling of wastes.

LW discharged its wastewater into the Persigo system through its own sewer line, carrying both process and domestic waste, that ran from its facility (under property that it owned, but which ran outside its fence line adjacent to the street) to the public sewer line. A manhole owned by the City, provided access for City inspectors at a point 45 feet from the LW property line and two feet from where LW's line connected to the City's main sewer line, where LW's effluent intermingled with other wastewater, in an unfenced and unused area of LW's property adjacent to a public street. Once the wastewater had reached the manhole (which was not a sampling point for LW compliance), LW no longer had any means to prevent it from reaching the main sewer line, which was not accessible to the public. A special tool was required to enter the line by opening the manhole.

LW's City permit stated that LW had to allow Persigo staff, upon presentation of credentials, to "enter the premises," have access to records required under the permit, inspect facilities, equipment and operations, sample or monitor for compliance purposes, and inspect any area where pollutants could originate.

Samples from the wastewater tank inside the LW plant could be obtained by means of a sampling box located on an outer wall of the building. The box could be accessed without entering into that building, which did not have any gates or other security barriers, but which required crossing LW property. The padlocked box could be opened only by Persigo officials. The external sampling box had been installed at Persigo's instigation in order to allow the drawing of samples (even covertly) without notice to LW, but the City permit had not been amended to reflect that the sampling box had been moved from its former location inside the building. When making unannounced sampling visits, Persigo officials used a clearly marked City vehicle and carried credentials which they would show if asked.

In October 2001, Persigo staff entered LW premises without a warrant and drew a sample from a sampling box on the property. The Persigo sample indicated a violation of the terms of LW's City permit and subsequently formed the basis for the defendants to be charged with one negligent Clean Water Act violation.

In January 2002, USEPA, using the results of the Persigo sample, obtained and executed a search warrant authorizing the agency to cut an opening into the LW service line and to conduct surreptitious sampling at the manhole. In February 2002, Persigo also took samples at the manhole, at the same location where USEPA cut into the line. Results from those samples indicated permit violations that formed the basis for defendants to be charged with three additional Clean Water Act violations.

A few days later, USEPA obtained another search warrant authorizing the agency to search the LW facilities for samples, technical data, diagrams, photographs and records, and to conduct interviews with employees.

Finally, after a Persigo official suffered a debilitating exposure to allegedly toxic gas while obtaining a sample in a shed assembled by LW, the Grand Junction Fire Department and Persigo staff in September 2003 conducted another search at the manhole during which they installed a sampler in the sewer line. They returned to retrieve their samples and to collect a grab sample of water in the sewer. These samples revealed an additional permit violation that formed the basis for another count of negligent violation of the Act.

Defendants moved to suppress evidence from the various searches, arguing that the searches had not been justified under LW's permits or federal law, that the exception to the warrant requirement for searches of "closely regulated industries" did not apply, that defendants had not consented to the searches, that the City easement for access to the manhole had not justified the searches, that a theory

of abandonment of the wastewater was inapplicable, and that the City's search of its sewer line constituted an invalid use of City administrative procedures to implement federal prosecution. Defendants further argued that the USEPA search warrants had been tainted by reliance upon the results and information derived from the allegedly unlawful initial sampling by Persigo. The government rebutted those arguments, and further argued the searches of the sampling box and the manhole were justified under the "open fields" doctrine.

Held: The court denied the defendants' motions to suppress and their motions for a Franks hearing. Relying upon Riverdale Mills, it found that defendants had no reasonable expectation of privacy in their wastewater, which flowed irrevocably into the City's public sewer line. The analogy to trash left on sidewalks as in Greenwood was persuasive, and the Persigo search was conducted at a sampling location specified in its own regulations as necessary for monitoring effluent discharges. However, the court found that defendants retained an expectation of privacy in the water still in the wastewater treatment tank located within the building on defendants' facility and, therefore, the sampling of that water constituted a search under the Fourth Amendment. Nevertheless, defendants, although required to submit to independent sampling, had consented to the installation of a sampling box outside of the confines of their facility. Furthermore, the terms of LW's permits and the provisions of the City code incorporated into those permits provided Persigo the authority to require and to conduct the type of independent sampling employed. Those terms were an agreed-to condition in exchange for the privilege of discharging into the City system. There had been implied consent to the sampling despite the lack of an opportunity or need for display of credentials and the lack of a limit upon the "reasonableness" of the time of day, or night, for such sampling. The City's easement for "maintenance" of its sewer line, supported by provisions of the City code, provided further support for its entry into the manhole for sampling purposes. Those activities fell within the purpose of the easement in that enforcing discharge limits helped maintain the system and helped protect maintenance workers, while not interfering with LW's use of its land.

The court, after reviewing Burger and the related caselaw, nevertheless concluded that LW was not a "closely regulated industry" justifying application of that exception to the warrant requirement. The statute here was a "general purpose environmental law" applied to industrial companies generally, rather than to a specific industry, and a particular activity (e.g. wastewater disposal) was being broadly regulated among all business operating in interstate commerce. The court rejected the government's argument that because LW, as an electroplater/metal finisher, was a "Significant Industrial User" subject to a more severe regulatory regime of specific "categorical limits" due to the hazardous chemicals and heavy metals it discharged, it was a closely regulated industry.

The court also found that defendants had not had a diminished expectation of privacy in the manhole and the sampling box because those devices had been located in "open fields" within LW's industrial facility. That doctrine might have justified mere visual inspection within LW's fence line, but here the searches went beyond such observations to physical contact with and removal of objects not immediately visible (samples of wastewater).

The court additionally rejected the defendants' claim that the City's administrative procedures had been used unlawfully as an agent and surrogate for USEPA's investigation, since the City used the same access point to the manhole as EPA, borrowed EPA's equipment, and passed its data on for EPA's use in its criminal investigation. While "an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity," "the discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal." Here, Persigo had a long-standing regulatory relationship with LW, and Persigo and USEPA had overlapping regulatory responsibility regarding LW's effluents.

Finally, the court declined to conclude that defendant Hajduk lacked standing to challenge the searches in question and further found that the defendants had failed to make the required showing of intentional or reckless false statements or material omissions in supporting affidavits to justify a Franks hearing.

Back to Top

Trials

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS Assistant Chief Andrew Goldsmith [redacted], ECS Senior Trial Attorney Deborah Harris [redacted], First AUSA Ralph Marra [redacted] and AUSA Norv McAndrew [redacted]

On April 26, 2006, after six days of deliberation, the jury returned guilty verdicts against Atlantic States and four of the five individual defendants on multiple felony counts in this nearly seven-month long trial.

Iron foundry Atlantic States Cast Iron Pipe Company ("Atlantic States") and current and former managers John Prisque, Scott Faubert, Craig Davidson, and Jeffrey Maury were found guilty of conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. These five defendants also were variously found guilty of substantive CWA, CAA, CERCLA, false statement, and obstruction violations charged in a 34-count superseding indictment. Daniel Yadzinski was acquitted on the three counts for which he was charged.

Atlantic States, a division of McWane, Inc., manufactures iron pipes, which involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit. Evidence at trial proved a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. Evidence further showed that the defendants routinely violated the CWA permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River; repeatedly violated the CAA permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola; systematically altering accident scenes; and routinely lying to federal, state, and local officials who were investigating environmental and worker safety violations. This is the fifth successful prosecution brought against McWane-controlled entities.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, United States Department of Labor Occupational Safety and Health Administration; the New Jersey Department of Environmental Protection, the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the Phillipsburg Police Department.

Sentencing is scheduled for September 6, 2006.

Back to Top

United States v. Parkland Town Center et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Jose Bonau [redacted].

On the eve of trial, Parkland Town Center, LLC ("Parkland") pleaded guilty to one violation of the CAA for failure to file notice of a demolition or renovation. Neil Kozokoff pleaded guilty to being an accessory after the fact of a CAA violation for failure to file notice of demolition or renovation. Trial began on April 24, 2006, against co-defendant Terry Dykes.

Parkland,, a Palm Beach real estate development firm, Parkland owner and developer Kozokoff, and Dykes, a contractor, were charged in September 2005 with violating the CAA NESHAP requirements during the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000. Parkland and Kozokoff were the owner and operator, respectively, of the former Northwood Hotel Building. Dyke was the demolition and renovation subcontractor supervising the project. While installing a sprinkler system in the building, another contractor filed a complaint with the local building inspector after he discovered what he believed to be asbestos. Upon investigation, it was discovered that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Palm Beach County Sheriff's Department.

Back to Top

Indictments

United States v. Rodolfo Esplana Rey, No. 06-CR-00315 (C.D. Calif.), AUSAs William Carter [redacted] Dorothy Kim [redacted] and RCEC Erica Martin [redacted]

On April 27, 2006, Rudolfo Esplana Rey, the Chief Engineer on the *M/T Cabo Hellas* was charged in a three count indictment with a false statement and an APPS violation for presenting a false oil record book to Coast Guard inspectors on March 24, 2006, at the Port of Los Angeles. He was further charged with obstruction of agency proceedings for instructing the crew to lie to officials about a valve that was used to discharge oily waste directly into the ocean.

The ship is a petroleum transport tanker registered in the Marshall Islands, and is operated by the Overseas Shipholding Group, Ltd.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Christopher Weaver, No. 5:06-mj-00031 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On April 7, 2006, an information was filed charging Christopher Weaver with a misdemeanor violation of the Marine Mammal Protection Act for knowingly and unlawfully taking a marine mammal, in this case a dolphin. The information states that on October 13, 2005, while captaining a chartered fishing vessel off the coast of Florida, Weaver fired several shots from a handgun at or near dolphins in an attempt to scare them away from his vessel.

This case was investigated by the National Oceanographic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Bao Huynh, No. 06-CR-00247 (C.D. Calif.), AUSA William Carter [redacted]

"Lucky Fish"

On March 29, 2006, Bao Huynh was charged with smuggling, false statement and ESA violations for attempting to smuggle Asian Arowana, which commonly are called "Lucky" fish, into the United States. Arowana are indigenous to Southeast Asia and can live for many years in an aquarium. The fish can grow to an adult length of two to three feet, and they sell for as much as $5,000 a piece in this country.

According to the indictment, Huynh attempted to bring a shipment of tropical fish into the United States from Vietnam in January of this year. During an inspection, five Arowanas were found hidden in unmarked bags among other tropical fish. The smuggled fish were not listed on the customs declaration or other attached invoices and shipping papers.

Huynh is scheduled for trial to begin on May 16, 2006.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas / Sentencings

United States v. Steven McClain et al., No. 2:06-CR-00102 (E. D. Pa.), AUSA Seth Weber [redacted] and SAUSA Joseph Lisa [redacted]

On April 27, 2006, wastewater treatment plant superintendent Steven McClain, and operator Ronald Meinzer pleaded guilty to a two-count information filed last month charging them with felony CWA violations for dumping thousands of gallons of untreated sewage into the Delaware River.

McClain and Meinzer ordered workers, in August and September 2004, to wash thousands of gallons of raw sewage and sludge, which had spilled from a digester, into a storm water sewer that led to the Delaware River. Additionally, from approximately 1997 through June 2005, the defendants bleached samples prior to their being sent to an offsite lab for analysis in order to mask fecal coliform levels. The defendants also tampered with plant monitoring equipment by disconnecting devices including alarms on chlorine tanks and digesters at the Bristol Plant.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jose Silva, No. 1:05-CR-10011 (D. Mass.), AUSA Jonathan Mitchell [redacted]

On April 24, 2006, Jose Silva, a commercial fisherman, was sentenced to serve 18 months' incarceration followed by three years' supervised release. Silva pleaded guilty in December of 2005 to charges stemming from his illegally harvesting lobster over a four-year period. Silva pleaded guilty to conspiracy to violate the Atlantic Coastal Fisheries Cooperative Management Act ("ACFCMA") and the Lacey Act, two substantive Lacey Act violations and a false statement violation. The ACFCMA was promulgated to help sustain the lobster industry by protecting female lobsters and capping the number of lobsters that may be caught during a single fishing trip.

From February 2000 to March 2004, Silva and others illegally took lobsters, including female egg-bearing lobsters, "v-notched" female lobsters, and lobsters in excess of the 500-per-trip limit. Silva additionally removed, and directed others to remove, the eggs of caught female lobsters on board his fishing vessels. He also sold the lobsters to seafood brokers and wholesalers, and covered up his practices by hiding the lobsters from the Coast Guard in secret compartments on his fishing vessels and by instructing crew members to withhold information from law enforcement.

During a routine Coast Guard inspection, Silva presented documentation indicating significantly fewer lobster on board then he actually had. He verbally told inspectors that there were no lobster in the fish hold when he in fact knew there were hundreds. Silva further instructed the crew to tell investigators that they had removed eggs from female lobsters without his knowledge, when, in fact, Silva had instructed them to do so.

This case was investigated by the United States Coast Guard.

Back to Top

United States. James Messina et al., No. 2:05-CR-00130 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Yolande Viacava [redacted]

On April 24, 2006, James Messina was sentenced to serve three years' probation and was ordered to pay a $5,000 fine. He pleaded guilty in January 2006 to destruction of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act. Co-defendant Joseph Ulrich was acquitted by a jury of a similar charge in February of this year.

Ulrich was the on-site construction supervisor for Stock Development, LLC ("Stock Development). During the summer of 2003, a bald eagle's nest was discovered in a tree located within "an area designated for residential development by Stock Development. Acting on Ulrich's instructions, Messina cut down the tree with the nest, and the company proceeded with the construction of houses on the lot where the tree once stood. Earlier, the principal officer and manager for the company had discussed in Ulrich's presence the existence of the nest in the tree and the delay or cessation of construction that could result.

Stock Development pleaded guilty and was sentenced in September 2005 to serve a one-year term of probation and pay a $175,000 fine, plus an additional $181,000 in restitution to the following organizations: the Wildlife Foundation of Florida for "Bald Eagle Research"; the Peace River Wildlife Center of Punta Gorda, Florida, for "Wildlife Rehabilitation, Research, and Public Education"; the Audubon Center for Birds of Prey in Maitland, Florida, for the "Florida Bald Eagle Rehabilitation and Eagle Watch Program"; and the Florida Fish and Wildlife Conservation Commission Division of Law

Enforcement. This is the largest combination of a fine and restitution ever paid for the destruction of an eagle nest tree.

This case was investigated by the United States Fish and Wildlife Service and Florida Fish and Game.

Back to Top

United States v. Kevin McMaster, No. 2:05-CR-14102 (S.D. Fla.), ECS Trial Attorney Georgiann Cerese [redacted] and AUSA Tom Watts-FitzGerald [redacted]

On April 20, 2006, Kevin McMaster was sentenced to serve 25 months' incarceration, to be followed by three years' supervised release. He pleaded guilty in January of this year to a four-count information charging him with two felony Lacey Act violations and two misdemeanor Endangered Species Act violations. Twelve months are to be served concurrently for the misdemeanor violations.

Beginning in November 2003, the Fish and Wildlife Service initiated a covert internet investigation after an undercover agent received an unsolicited email message from McMaster, sent to the agent's covert email address. In that email message, the defendant inquired as to whether the agent was interested in "cat skins." McMaster operated a website known as *deadzoo.com* and a business known as Exotic & Unique Gifts located in Port St. Lucie, Florida. Posing as a potential buyer, the agent communicated with McMaster over the course of the next year via email, phone and a visit to the defendant's business in his undercover capacity.

During the course of the investigation, McMaster sold the agent numerous endangered species' skins, including tiger, snow leopard and jaguar skins. Search warrants were executed at his home and business in December 2004. Based upon an examination of the items seized and a statement given by McMaster, numerous other offers to sell and sales of endangered species were identified, involving predominantly cat skins such as tigers, leopards, and jaguars as well as a gorilla skull and baby tiger mounts.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Chalmette Refining, LLC, No. 2:05-CR-00327 (E.D. La.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Dee Taylor [redacted]

On April 18, 2006, Chalmette Refining, LLC, was sentenced as a result of pleading guilty to a misdemeanor CWA violation that occurred in February 2000. The company pleaded guilty in January of this year to negligently discharging benzene into the Mississippi River. Chalmette paid the maximum fine of $200,000 and will also pay $50,000 to the Louisiana State police and $50,000 to the Southern Environmental Enforcement Network.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. MK Shipmanagement Company, Ltd., No. 2:06-CR-00307 (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Thomas Calcagni [redacted]

Illegal Oily Discharge

M/V Magellan Phoenix

On April 12, 2006, MK Shipmanagement Company, Ltd., operator of the *M/V Magellan Phoenix*, pleaded guilty to one count of violating APPS. Under the terms of the plea agreement, the company has agreed to pay a $350,000 fine, $150,000 of which will go to the National Fish and Wildlife Service to be applied toward the Delaware Estuary Foundation. The company also may be required to complete a term of probation and implement an environmental compliance program. Noel Abrogar, the ship's chief engineer, previously pleaded guilty to violating APPS and was sentenced in January of this year to serve a year and a day of incarceration. In March 2005, during a U.S. Coast Guard inspection in New Jersey, Abrogar presented inspectors with the oil record book containing false entries.

The company is scheduled to be sentenced on July 18, 2006.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Tim Brown et al., No. 4:05-CR-00204 (D. Idaho), AUSA George Breitsameter [redacted]

On April 12, 2006, Tim Brown and Bard Hoopes were sentenced in connection with the killing of a grizzly bear cub and the destruction of the radio collar worn by the cub's mother. The sow was previously killed by a third man. Brown will serve three months' incarceration for killing the cub and pay a $1,000 fine plus $19,300 in restitution. Hoopes will serve two months' incarceration and pay a $500 fine and $500 in restitution for destroying the collar. Both men also lost their hunting privileges for two years. In sentencing the men, the judge found that the yearling grizzly was not shot in self-defense. In January of this year, Brown pleaded guilty to one Endangered Species Act violation and Hoopes pleaded guilty to a Malicious Destruction of Public Property violation.

The incident occurred in the Sawtelle Peak area in Idaho on September 23, 2002. Kentucky bow hunter Dan Walters pleaded guilty in January 2005 to killing the cub's mother. He was ordered to pay $15,000 in restitution and also lost his hunting privileges for two years. The seven-year-old sow shot by Walters was radio collared in the fall of 1999 and was known as bear F364. She gave birth to the female cub in the spring of 2001, her first successful attempt to raise offspring. The two bears routinely traveled between Yellowstone National Park and the Sawtelle Peak area. Neither had been involved in any human encounters.

The restitution will go to the Yellowstone Association, a private organization that collects and disburses funds to the Interagency Grizzly Bear Team. The team is made up of state and federal wildlife agencies in Idaho, Wyoming, and Montana.

This case was investigated by the United States Fish and Wildlife Service and the Idaho Department of Fish and Game, with assistance from the United States Forest Service.

Back to Top

United States v. United States v. Mani Singh, MSC Ship Management (Hong Kong) Ltd. et al., and United States v. Aman Mahana, Nos. 1:05-CR-10269, 10274 and [redacted] (D. Mass.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Malinda Lawrence [redacted] ECS Paralegal Stephen Foster [redacted] AUSA Jon Mitchell [redacted] and SAUSA LCMDR Luke Reid [redacted].

On April 5, 2006, Mani Singh, was sentenced to serve two months' incarceration and ordered to pay a $3,000 fine. Singh, the chief engineer for the *M/V MSC Elena*, pleaded guilty in December 2005 to an indictment charging him with conspiracy, obstruction, destruction of evidence, false statements, and an APPS violation in connection with the use of the a secret pipe used to bypass pollution control equipment. In response to a Coast Guard inspection that uncovered the bypass equipment, Singh directed that a printout from the ship's computer and a rough log of actual tank volumes be concealed in an effort to cover up the falsification of ship records. Inspectors were presented with logs containing false entries claiming the use of the oil water separator and omitting any reference to dumping overboard using the bypass equipment. The crew took various measures to conceal the illegal conduct and avoid discovery, including discharging only at night, hiding the bypass equipment during port visits, and creating a false sounding log and oil record book.

On February 1, 2006, MSC Ship Management (Hong Kong) Ltd. ("MSC"), the management company for the *Elena*, entered its guilty plea and was sentenced to pay a $10 million fine. MSC will pay an additional $500,000 for a community service project administered by the National Fish and Wildlife Foundation, which will provide environmental education to mariners visiting to or sailing from Massachusetts' ports and inform them of how to report environmental crimes to the U.S. Coast Guard. Aman Mahana, the ship's second engineer, was sentenced in February of this year to serve a one-year term of probation in accordance with the government's recommendation for a reduced sentence, after pleading guilty in December 2005 to violating APPS for failing to maintain the oil record book.

The company also pleaded guilty to conspiracy, obstruction, destruction of evidence, false statements, and an APPS violation in connection with the use of the bypass to discharge sludge and oil-contaminated waste overboard. MSC discharged approximately 40 tons or approximately 10,640 gallons of sludge during a five-month period in 2004 through a three-piece bypass pipe manufactured on the ship. An even larger volume of oil-contaminated bilge waste also was discharged with a rubber hose and portable pump. The company also made false statements to the Coast Guard, denying knowledge about the existence and use of the bypass equipment; obstructed justice by directing subordinates to lie to inspectors; concealed evidence; and concealed oil pollution in a falsified oil record book.

This case was investigated by the United States Coast Guard.

Back to Top

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

June 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted] Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

PHOTOS FROM ENVIRONMENTAL CRIMES COURSE MAY 2006
COLUMBIA, SOUTH CAROLINA:

Martha Grekos

Herb Johnson

AT A GLANCE

SIGNIFICANT OPINIONS

♦ **S.D. Warren Co. v. Maine Board of Environmental Protection, ___ S. Ct. ___, 2006 WL 1310684 (May 15, 2006) (No. 04-1527). Clean Water Act, Discharge of a Pollutant, Release from Hydropower Dams.**

♦**United States v. Thorn, 317 F.3d 107 (2d Cir. 2003), on remand, ___ F.3d ___, 2006 WL 1130902 (2d Cir. Apr. 27, 2006). Clean Air Act, Sentencing, Injury and Abuse of Trust Enhancements.**

♦ **United States v. Wabash Valley Service Co., 62 Env't Rep. Cas. (BNA) 1050 (S.D. Ill. Mar. 16, 2006). FIFRA, Void for Vagueness Doctrine.**

♦ **United States v. Singleton, ___ F. Supp. 2d ___, 2006 WL 539554 (E.D. Mich. Mar. 6, 2005). RCRA, Sentencing, Continuing Release Enhancement.**

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	**US v. Ahmet Artuner**	***Ship Scuttling*/ CWA, False Statements**
N. D. Calif.	**US v. Sierra Meat Company**	***Exotic Meat Sales*/ Lacey Act**
S. D. Calif.	**US v. Victor's Premier Plating, Inc.**	***Electroplater*/CWA Pretreatment**
N.D. Fla.	**US v. Panhandle Trading Inc.**	***Seafood Importers Mislabeled Catfish*/Lacey Act**
S.D. Fla.	**US v. Parkland Town Center, LLC.** **US v. Winn-Dixie Stores, Inc.** **US v. Alberto Roman**	***Hotel Renovation*/ CAA NESHAP** ***Supermarket Chain Undersized Lobsters*/Lacey Act** ***Commercial Fisherman Illegal Import*/ Lacey Act**
D. Minn.	**US v. Ted Gibbons** **US v. Prime Plating, Inc.**	***Electroplater*/ CWA Pretreatment, Tampering** ***Metal Plater*/ CWA, Conspiracy**
D. N. J.	**US v. Ashok Kumar**	***Vessel*/ Conspiracy, False Statement, Obstruction**
D. Nev.	**US v. Greg Street Plating, Inc.**	***Electroplater*/ CWA**
E.D. Tex.	**US v. Kun Yun Jho**	***Vessel*/ Conspiracy, False Statement, APPS**
S. D. Tex.	**US v. Corpus Christi Day Cruise, Ltd.**	***Vessel*/ False Statement, Obstruction**

Quick Links

Significant Opinions

U.S. Supreme Court

S.D. Warren Co. v. Maine Board of Environmental Protection, ___ S. Ct. ___, 2006 WL 1310684 (May 15, 2006) (No. 04-1527).

Plaintiff company operated five hydropower dams on a river that produced electricity for its paper mill. Each dam created a pond from which water was funneled into a "power canal," through turbines, and back to the riverbed downstream from the dam. A license to operate the dams was required from the Federal Energy Regulatory Commission ("FERC"). Under section 401 of the Clean Water Act, if such activities could cause a discharge into navigable waters, a FERC license must be conditioned upon a certification from the state in which the discharge may originate that it will not violate water quality standards (including those set under state law). The certification may set forth effluent limitations and other requirements assuring compliance with the Clean Water Act and applicable state law.

Seeking to renew its federal licenses in 1999, plaintiff, under protest, applied for certification from the Maine Department of Environmental Protection ("MDEP"), claiming that its dams did not result in a "discharge into" the river. The MDEP issued certifications containing environmental conditions, and FERC subsequently licensed the dams subject to the state conditions. Continuing to claim that it did not need state certification, the plaintiff appealed to the Maine Board of Environmental Protection ("BEP"), which denied its appeal. It then filed suit in County Superior Court, which affirmed the decision of the BEP. Defendant, in turn, appealed to the Maine Supreme Judicial Court (its highest court), which affirmed the judgment of the Superior Court. The U.S. Supreme Court subsequently granted *certiorari*.

Held: The Court affirmed the decision of the Maine Supreme Judicial Court. It first noted that the term "discharge" (unlike the narrower "discharge of a pollutant") is not defined in the CWA and thus should be construed according to its "ordinary meaning," that is a "flowing out." It then found, under prior precedent, that releases from hydropower dams are "discharges" of water. The Court rejected plaintiff's argument that the term "discharge" necessarily implied the addition of something foreign into the water, distinguishing Miccosukee Tribe as interpreting the narrower term "discharge of a pollutant" under a different section of the CWA (section 402).

The Court also disagreed that the removal of the term "thermal discharge", during the enactment of the Water Pollution Control Act Amendments of 1972, from the descriptive scope of the term "discharge" in Section 502(16) of the CWA, was intended to narrow the reach of the statute. [NOTE: Justice Scalia declined to join in this portion of the Court's opinion.]

Finally, the Court rejected plaintiff's argument that the inclusion of the term "discharge of a pollutant" in section 511(c)(2) of the CWA (barring review by agencies such as FERC of effluent limitations and other requirements or conditions contained in section 401 certifications) meant that discharges that add no pollutant were not covered under section 401. The CWA protects the integrity of the nation's waters broadly, including "pollution" resulting from man-made alterations such as

changes in movement, flow and circulation due to the presence of dams, and section 401 certifications are essential to preserve the authority of states to address such concerns.

[NOTE: The Maine Supreme Court had held that plaintiff's dams, in removing substances from a navigable water body and then redepositing them into that same body of water, had "added" to the river, finding that "[a]n 'addition' is the fundamental characteristic of any discharge." S.D. Warren Co. v. State Board of Environmental Protection, 868 A.2d 210 (Me. 2005). In a footnote, the U.S. Supreme Court pointed out that, although it was affirming the judgment of the Maine Supreme Court, it was doing so upon different grounds, since it disagreed that an addition was fundamental to any discharge.]

Back to Top

2nd Circuit

United States v. Thorn, 317 F.3d 107 (2d Cir. 2003), after remand, ___ F.3d ___, 2006 WL 1130902 (2d Cir. Apr. 27, 2006).

Defendant owner of an asbestos abatement company employed a total of approximately 700 persons on abatement projects at more than one thousand buildings over several years. Although he assured customers that all abatement jobs would be completed in compliance with the law, defendant (with the assistance of independent laboratories and air monitoring companies) actually engaged in an extensive scheme to defraud customers and to violate a number of applicable regulations through "rip and run" procedures without proper containment, causing significant quantities of asbestos fibers to be released into the air within each of the buildings. His workers (many of whom did not wear respirators) were extensively exposed to the fibers, and defendant falsified medical reports regarding their exposure. Thorn was convicted by a jury on nine Clean Air Act violations with respect to the removal of asbestos at twenty-two specific projects over a five-year period and of one count of conspiracy to promote money laundering. He was sentenced to serve 65 months' incarceration, forfeit almost $1 million in value of twenty-two abatement contracts, and pay approximately $300,000 in restitution. No fine was imposed because the district court found the defendant was unable to pay. The government appealed the sentence, arguing *inter alia* that the district court had erred (1) in finding that the CAA violations had not resulted in a substantial likelihood of death or serious bodily injury and (2) in refusing to impose an enhancement for abuse of a position of trust. The defendant cross-appealed his money laundering conviction.

Held: The Second Circuit affirmed the defendant's conviction on the money laundering charge. It vacated his sentencing on a number of grounds, including both of the CAA issues appealed by the government, and it remanded for resentencing.

The court first found that "substantial likelihood" in section 2Q1.2(b)(2) of the Sentencing Guidelines means "considerably more likely [than not]," and the application of that enhancement does not require that the offense actually cause serious bodily injury or death. Also, this guideline does not restrict the class of individuals put at risk, so it is not limited to situations in which the offense created a risk to persons other than participants in the offense. It then found that the district court clearly had erred in finding that the evidence had been too uncertain to support application of this enhancement. The fact that asbestos abatement inherently imposes risks on workers and that workers knowingly participated in the conduct that endangered them did not preclude a finding that the defendant's illegal

behavior resulted in a "substantial likelihood" of death or serious bodily injury to those workers, and undisputed medical evidence established that likelihood. Thus, the district court should have imposed a nine-level increase in offense level as provided under section 2Q1.2(b)(2).

The court also found that, due to the nature of his work and despite the substantial regulation of his industry, the defendant enjoyed broad discretion that enabled him to perform illegal abatements and to conceal and carry out his scheme undetected for ten years. To the extent that his clients deferred to him, they did so because of his special skill and expertise as an asbestos contractor. The district court however, correctly determined that it could not apply the enhancement in section 3B1.3 of the Sentencing Guidelines for use of a special skill because it already had applied an enhancement for defendant's aggravating role in the offense. Nevertheless, customers may have entrusted defendant with discretion to complete the asbestos projects without supervision and without relying upon independent laboratory test results to confirm compliance with regulations, thereby providing him with the freedom to commit difficult-to-detect crimes. If such were the case, and if such position of trust had been used to significantly facilitate the commission or concealment of the offenses, then application of the abuse of trust enhancement would be appropriate. Thus, the court remanded for such a determination.

Upon remand, the district court resentenced defendant to serve 168 months' incarceration and again to pay approximately $300,000 in restitution. Once again, the parties cross-appealed the sentence.

The Second Circuit affirmed in part the amended judgment of the district court, vacated it in part, and once more remanded for a second resentencing. The circuit court, noting that the district court upon remand had imposed the nine-level increase mandated for offenses resulting in substantial likelihood of death or serious bodily injury, declined to revisit that issue as urged by the defendant, even though the district judge had stated that he had found the testimony of the government's medical expert to have been insufficient to support the enhancement and "to some extent incredible." It also rejected the defendant's argument that the district court mistakenly had concluded that it had no authority under the Second Circuit's remand to consider a three-level downward departure based upon the nature of the risk created and the number of persons placed at risk. The court found that the defendant had waived the issue by not raising it at the initial sentencing, but, in any event, the facts here involving extensive exposure of a substantial number of people to visible emissions foreclosed such a downward departure. Finally, defendant similarly waived his objection to the restitution order by failing to challenge it at the initial sentencing or at the resentencing.

The Second Circuit further found that on remand the district judge had erred in failing to impose a two-level enhancement for abuse of trust, and it remanded for imposition of that enhancement. The enhancement was required because, as testimony by a victim had demonstrated, the defendant had "misuse[d] substantial discretionary judgment that is ordinarily given considerable deference to achieve or conceal criminal conduct." The district court found only that the defendant had not used his position of trust to *conceal* the offense, but had failed to determine whether the defendant had used that position to significantly facilitate the *commission* of the crime. Since the district court found that the defendant had used his special skills to get hired and secure "absolute discretion" in doing the job, the enhancement should have been imposed because it was established as a matter of law that the defendant used his special skill to facilitate the crime and to conceal it. The Second Circuit also found that the district court on remand had erred in departing downward by finding that the defendant's money laundering offense had been atypically "outside of the heartland" of such offenses, and it remanded with instructions to apply the Sentencing Guideline for such offenses without a downward departure. Finally, the Second Circuit found that on remand the district court erroneously had granted defendant's motion to depart downward with respect to his Criminal History

Category from II to I, since its determination was unsupportable on several grounds. The Second Circuit, thereby, vacated that determination and remanded with instructions to use category II.

Back to Top

District Courts

United States v. Wabash Valley Service Co., 62 Env't Rep. Cas. (BNA) 1050 (S.D. Ill. Mar. 16, 2006).

An employee of defendant company applied two restricted-use pesticides (both containing Atrazine and subject to FIFRA) to a farm using an "air flow application rig." A neighbor observed and videotaped both the application process and also the pesticides drifting onto her nearby land (due to 20 mph winds in that direction). The defendants subsequently were criminally charged under FIFRA, 7 U.S.C. § 136j(a)(2)(G), with unlawfully using a registered pesticide in a manner inconsistent with its labeling. Specifically, the labels for both pesticides provided as follows: (1) "Do not apply . . . in a way that will contact workers or other persons, either directly or through drift", (2) "To avoid spray drift, do not apply under windy conditions", and (3) "Do not apply when weather conditions favor drift from treated areas".

Defendants moved to dismiss the charges against them and to declare the FIFRA criminal enforcement provision unconstitutional.

Held: The court granted defendants' motion to dismiss the charges and declared that the statute is unconstitutionally vague as applied insofar as it incorporates provisions of the labels of the two pesticides. Under the "void for vagueness doctrine," a statute must be sufficiently clear to provide individuals with fair notice that their conduct is prohibited, and it must define the prohibited conduct in a manner that does not encourage arbitrary and discriminatory enforcement. After analyzing in detail the Supreme Court's jurisprudence under the vagueness doctrine (regarding both facial and "as applied" challenges to statutory provisions), the court examined the specific language of the labels in question. Labels on pesticide products contain a number of safety indications as well as suggestions for efficient and proper product use. Where, as here, defendants must speculate as to which provisions they must strictly adhere, the statute may become unconstitutionally vague. The court did not address the government's argument that "common sense and experience," together with use of words such as "must" and "shall," would allow applicators to determine which portions of the labels were advisory and which mandatory. The court found that, however, since in the instant case the statute did not implicate First Amendment rights, and simply regulated business activity without implicating other constitutional rights, it was not subject to facial challenge.

As for the challenge to the statute as applied, the court found that the statute should be read from the perspective of those subject to its application. Here those were persons in the pesticide application industry, taking into account their specialized knowledge of the field. The court found that whether the terms used in the label provisions had precise meanings different from how a reasonable layperson would understand them was an issue of fact. However, it stated that resolution of that issue would not be outcome-determinative in this case.

The court rejected defendants' argument that the first provision in the labels prohibited only improper forms of application, and they did not address conditions such as the presence of wind. However, as conceded by the government, some "drift" will occur under nearly all conditions, so the applicator must evaluate numerous environmental and other factors in determining whether s/he will be applying the pesticides "in a way" that they will come into contact with people. Even proposed jury

instructions would be difficult to craft in this case, meaningful determination of enforcement decisions (in particular, the exercise of prosecutorial discretion) will be similarly difficult, and every applicator will be subject to prosecution due to "drift" under unguided discretion of the authorities. Thus, the court held, the first label provision was unconstitutionally vague as applied to defendants' conduct.

Similarly, the court found the second label provision unconstitutionally vague. The government's proposed interpretation of the term "spray drift" (in contrast with defendants' claim that they were "spreading" pesticides in the form of dry bulk impregnated fertilizer) suggested an understanding in the professional applicator community that differed from the government's asserted meaning. The subjective specialized understanding of terminology within an industry is relevant in a vagueness determination, and the dictionary meaning of "spray" suggests a liquid, not dry bulk, application. Further, "windy" is a subjective term that did not put applicators on notice of whether their conduct would violate the law, and the court rejected the government's argument that the training and license requirements for commercial applicators, together with their professional experience, provided adequate guidance to obey the statute. For similar reasons, the court found the third label provision, in particular the use of the terms "weather conditions" and "favor," also unconstitutionally vague. It is not just in marginal, but rather in all but the most egregious, situations that these terms are unclear and, again, an applicator's training and experience would not sufficiently guide him or her as to what an authority would consider reasonable conduct.

Back to Top

United States v. Singleton, ___ F. Supp. 2d ___, 2006 WL 539554 (E.D. Mich. Mar. 6, 2005).

Defendant was convicted by a jury of conspiracy to violate RCRA, knowing transportation of hazardous waste to an unpermitted facility, storage and disposal of hazardous waste without a permit, and transportation of hazardous waste without a manifest. The court sentenced him to serve three concurrent terms of 37 months' imprisonment and a concurrent term of 24 months' imprisonment, to be followed by three years of supervised release. Defendant was further ordered to pay approximately $85,000 in restitution. Defendant appealed and the Sixth Circuit affirmed his conviction, but vacated his sentence and remanded for re-sentencing in light of Booker.

Held: The district court, after review, re-imposed the original sentence. District courts, after Booker, still may consider the same evidence and make appropriate findings under the Sentencing Guidelines, but once the applicable range has been determined, the court must determine in its discretion, as it did here, whether that range is appropriate under all the other factors set forth in 18 U.S.C. § 3553(a), taking the relevant guidelines into account. The court in this case found that the original sentence imposed had been reasonable and fair, rejecting once again defendant's objection to a six-level enhancement due to a continuing release of a hazardous substance. It noted that, when at the original sentencing, it had expressed doubt regarding the "fairness" of applying the six-level enhancement in the instant case, the court had been concerned about the structure of the guidelines in general and not about particularized unfairness to defendant. It had declined either to impose a sentence at the bottom of the available range or to explore possible grounds for a downward departure. The court also, once again, declined defendant's request for a downward departure due to his "severe medical condition."

Back to Top

Trials

United States v. Victor's Premier Plating, Inc., et al., No. 05-CR-143 (S.D. Calif.), AUSA Melanie Pierson [redacted].

On May 10, 2006, after deliberating for approximately an hour, a jury convicted both defendants on all counts after a week-long trial.

Victor's Premier Plating, Inc., an electroplating firm, and owner Victor Zuniga, were charged in January 2005 in a 25-count indictment with CWA violations. Evidence at trial proved that the defendants exceeded the legal limits on discharging wastewater contaminated with zinc on 19 occasions, wastewater contaminated with chromium on one occasion, and wastewater with a low (acidic) pH on four occasions, all between December 2001 and January 2003.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the City of San Diego Metropolitan Wastewater Department, Industrial Wastewater Control Program; and the FBI.

Back to Top

United States v. Parkland Town Center, LLC, et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Jose Bonau [redacted].

On May 8, 2006, after a two week trial, a jury returned guilty verdicts on all counts against contractor Terry Dykes. Co-defendants Parkland Town Center, LLC ("Parkland") and Neil Kozokoff, pleaded guilty just prior to trial. The company pleaded guilty to one violation of the CAA for failure to file notice of a demolition or renovation, and Kozokoff pleaded guilty to being an accessory after the fact of a CAA violation for failure to file notice of demolition or renovation. General Contractor Mark Schwartz pleaded guilty prior to indictment to one CAA violation and was sentenced in November 2005 to serve a five-year term of probation.

Exposed Asbestos

Parkland, a Palm Beach real estate development firm, company owner and developer Kozokoff, and Dykes, a subcontractor, were charged in September 2005 with violating the CAA NESHAP requirements during the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000. Parkland and Kozokoff were the owner and operator, respectively, of the former Northwood Hotel Building and Dykes was the subcontractor supervising the demolition project. While installing a sprinkler system in the building, another contractor filed a complaint with the local building inspector after he discovered what he believed to be asbestos. Upon investigation, it was discovered that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

Back to Top

Indictments

United States v. Kun Yun Jho, No. 1:06-CR-00065 (E. D. Tex.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Lana Pettus [redacted] and AUSA Joe Batte [redacted]

On May 17, 2006, Kun Yun Jho, chief engineer of the *M/T Pacific Ruby*, was charged in a five-count indictment with conspiracy, false statement and three APPS violations. The defendant allegedly falsified the oil record book by omitting discharges which occurred during a time when Jho and crew members at his instruction deliberately "tricked" the oil water separator ("OWS").

In about May 2005, in response to knowledge of deliberate acts of pollution using bypass equipment and the circumvention of pollution control equipment, as well as knowledge that documents on other ships in the fleet had been falsified, the owners and operators of the *Pacific Ruby* installed anti-tricking devices on the ship including a device on the fresh water system to prevent it from being used to trick the OWS.

Between approximately May 2005 and July 2005, Jho directed a subordinate to use a screwdriver to repeatedly jam open a pneumatic valve allowing fresh water to trick the oil content meter, causing alarms to be recorded in the ship's records, and creating the appearance that proper discharges were being made. Trial is scheduled to begin on July 17, 2006.

This case was investigated by the United States Coast Guard Investigative Service with assistance from the Coast Guard Marine Safety Office.

Back to Top

United States v. Greg Street Plating, Inc., No. 3:06-CR-00081 (D. Nev.), ECS Trial Attorney [redacted]

On May 17, 2006, Greg Street Plating, Inc. ("Greg Street"), an electroplating, metal plating and finishing company, was charged in a one-count indictment with a CWA violation for discharging highly acidic waste into the sewer system that leads to the Truckee Meadows Sewage treatment facility.

The indictment alleges that, late Saturday night, April 12, 2003, or early on Sunday morning, April 13, 2003, an unknown Greg Street employee dumped this acid waste into the sewer system. The acid discharge reached the sewage treatment plant, setting off warning alarms. The operators of the treatment plant acted quickly and efficiently to isolate and neutralize the acid waste, thereby avoiding the possibility of substantial damage to the facility. The source of the discharge was quickly identified as Greg Street Plating by investigators from the Truckee Meadows Water Reclamation Facility and the Nevada Department of Environmental Protection.

As part of its metal plating process, Greg Street allegedly generated hundreds of gallons of rinse wastewater each week that exhibited a pH of less than 5.0 and was contaminated with heavy metals. The wastewater from the facility was supposed to be treated in a closed loop evaporation system and none of the wastewater from the plating process was permitted to be discharged into the sewer system.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Panhandle Trading Inc.. et al., No. 5:05-CR-00044 (N.D. Fla.), ECS Trial Attorney [redacted] and AUSA [redacted]

On May 9, 2006, a 42-count superseding indictment was returned charging two seafood importers, the manager of those businesses, and a number of Vietnamese catfish suppliers, with importing falsely labeled catfish into the United States from Vietnam and subsequently marketing those fish as grouper in the commercial seafood markets in the United States and Canada.

Defendants charged are Danny Nguyen, Panhandle Trading, Inc. ("PTI") and Panhandle Seafood, Inc. Nguyen was vice president for each company. The remaining five defendants are located in Vietnam: An Giang Agricultural and Food Import Export Company, a/k/a Afiex Seafood Industry, a/k/a A. Seafood Industry; Buu Huy, a/k/a Huy Buu; Mekongfish Company, a/k/a Mekongfish, a/k/a Mekonimex; Canto Animal Fishery Products Processing Export Enterprise; and Duyen Hai Foodstuffs Processing Factory.

The indictment alleges that between May 2002 and April 2005, the defendants engaged in a scheme to intentionally mislabel certain frozen farm-raised catfish fillets, which were imported into the U.S. from Vietnam, in order to evade duties which had been imposed by the U.S. Department of Commerce on those imports. According to the indictment, Nguyen, PTI and PSI subsequently engaged in a scheme to sell the frozen catfish fillets as wild-caught grouper in the American and Canadian commercial seafood markets. The scheme involved imports totaling over a million pounds of catfish labeled as grouper, channa, snakehead or bass. Over 250,000 pounds of the fish have been seized in this investigation. The case is scheduled for trial to begin on August 21, 2006.

This case was investigated by the National Oceanic and Atmospheric Administration ("NOAA") Fisheries Office of Law Enforcement and the United States Department of Homeland Security, Immigration, Customs and Border Protection.

Back to Top

Pleas / Sentencings

United States v. Winn-Dixie Stores, Inc., No. 1:06-CR-20254 (S.D. Fla.), AUSA Tom Watts-Fitzgerald [redacted]

Undersized Lobster Tails

On May 22, 2006, Winn-Dixie Stores, Inc., pleaded guilty to a one-count information charging one Lacey Act violation for its illegal possession, transportation, and sale of undersized spiny lobster. On or about October 29, 2002, Winn-Dixie received a shipment at its Miami warehouse of approximately 6,000 pounds of Brazilian-origin spiny lobster, which it had purchased through a broker in Illinois. Based on inspections of similar shipments from the same source to other Winn-Dixie warehouses, it was determined that approximately 4,600 pounds of the lobster failed to meet the legal size standards set by Florida and Brazil.

The company was sentenced to pay a $200,000 fine and complete a two-year term of probation with $100,000 to be paid to the NOAA Fisheries Enforcement Fund established under the Magnuson-Stevens Act. The remaining $100,000 will be suspended and paid as alternative community service to the Wildlife Foundation of Florida, to be disbursed to the Florida Fish and Wildlife Conservation Commission ("FWCC") Fish and Wildlife Research Institute for in-depth habitat and sustainability research of the spiny lobster in Florida and throughout its Caribbean range. Winn-Dixie also has agreed to forfeit approximately 6,000 pounds of lobster with a retail value of $160,000.

This case was investigated by the NOAA Fisheries Office of Law Enforcement and the FWCC.

Back to Top

United States v. Ashok Kumar et al., No. 2:02-CR-00406 and 407, 2:04-CR-00060 (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Tom Calcagni [redacted]

On May 17, 2006, Ashok Kumar, captain of the *M/T Guadalupe*, was sentenced to pay a $3,000 fine and ordered to serve three years' probation. Chief engineer Mani Elangovan was sentenced on May 19 to serve two years' probation and pay a $3,000 fine. The two pleaded guilty in May 2002 to violations related to the illegal discharge of oil during a five-month period in 2001. Kumar pleaded guilty to conspiracy to make false statements for encouraging crew members to lie to the U.S. Coast Guard and for asking engineers to conceal illegal oil discharge bypass pipes. Elangovan pleaded guilty to a false statement violation for making false entries in the ship's oil record

book to conceal the illegal discharges. Investigation further revealed that Elangovan ordered other employees to use a bypass hose to discharge oil.

Guadalupe Shipping, LLC, owned the *Guadalupe*, a tanker that carried various types of petroleum products, including diesel and jet fuel. OMI Marine Services, LLC, was the ship's operator. Both Guadalupe Shipping and OMI Marine Services were wholly-owned subsidiaries of the OMI Corporation.

OMI Corporation ("OMI") was sentenced in August 2004 to pay a $4.2 million fine, half of which was paid to a crew member whistleblower. The company also was placed on three years' probation. OMI pleaded guilty in January 2004 to preparing false documents in an effort to cover up the illegal dumping of thousands of gallons of waste oil at sea in violation of APPS.

This case was investigated by the U.S. Coast Guard Investigative Service, United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Transportation's Office of Inspector General.

Back to Top

United States v. Ahmet Artuner, No. 2:05-CR-00937 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On May 15, 2006, Ahmet Artuner pleaded guilty to causing an unnecessary search and rescue and to making a false statement to the United States Coast Guard regarding his intentional sinking of his vessel the *F/V Junior*.

Artuner was charged in September 2005 with CWA violations and making false statements for sinking his 73-foot fishing boat off the coast of Central California and for then attempting to cover up the crime. The scuttled ship discharged a harmful quantity of oil and Artuner further caused the United States Coast Guard to launch a rescue mission when no help was needed.

The plea agreement states that Artuner willfully caused the destruction of the *Junior* on March 29, 2003, approximately three miles southwest of Channel Islands Harbor in Oxnard. After the vessel was sunk, the Coast Guard detected an emergency radio beacon coming from the vessel. When the Coast Guard responded to the location, it found only floating debris; however, investigators were able to determine the name of the ship. When the Coast Guard contacted the defendant as the owner of the vessel, he denied any knowledge of the scuttling and said that a man had been living on the *Junior* as a caretaker. With the information that someone may have been on board, the Coast Guard launched an unnecessary search and rescue mission. As part of the plea, Artuner has agreed to pay $132,000 in restitution to reimburse the Coast Guard. Sentencing is scheduled for October 4, 2006.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ted Gibbons, No. 06-CR-00035 (D. Minn.), AUSA William Koch [redacted].

On May 8, 2006, Ted Gibbons, a former chemist for the Eco Finishing Company, an electroplating facility, was sentenced to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty in February of this year to one felony CWA pretreatment violation and two felony CWA tampering violations.

Gibbons was responsible for analyzing the company's wastewater and for reporting analytical results to the local sewer authority, Metropolitan Council Environmental Services ("MCES"). Gibbons failed to submit laboratory reports to the MCES for all wastewater monitoring conducted during each monitoring period, as required by the facility's sewer permit, from at least January 2001 through about April 15, 2005. On two occasions in 2004 and 2005, Gibbons also tampered with sampling equipment during times when the sewer authority was testing the facility's effluent. The defendant wrote memos to wastewater staff with tips on how they were to stay in compliance during the period that MCES was taking samples. This included the instruction that they were to "…leave all water running during all shifts."

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the FBI, the Minnesota Pollution Control Agency, and the MCES.

Back to Top

United States v. Corpus Christi Day Cruise, Ltd., et al., No. 2:06-CR-00078 (S.D. Tex.), ECS Trial Attorney Joe Poux [redacted]

On May 4, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, was sentenced to serve a four-year term of probation, to pay a $150,000 fine, and to pay an additional $150,000 towards a community service program to restore waters off the coast of Corpus Christi. The ship's chief engineer, Gojko Petovic, was sentenced to serve a three-year term of probation.

On March 15, 2006, Corpus Christi Day Cruise, Ltd., operator of the *M/V Texas Treasure*, pleaded guilty to obstructing a U.S. Coast Guard investigation into whether the ship had illegally discharged waste oil and deliberately bypassed its pollution prevention equipment. The ship's chief engineer, Gojko Petovic, pleaded guilty to lying to Coast Guard inspectors about the existence of tank sounding records and then attempting to destroy them.

Coast Guard inspectors boarded the *M/V Texas Treasure* in Port Aransas, Texas, as part of a routine Port State Control examination. The inspectors discovered evidence that the ship's crew was bypassing its pollution prevention equipment and deliberately discharging oil-contaminated waste overboard. During the inspection, Petovic claimed to not know about the sounding records and attempted to delete them from his computer. The inspectors recovered the deleted records, which revealed numerous inconsistencies with the ship's oil record book.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Alberto Roman, No. 4:06-CR-10007(S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On May 4, 2006, Alberto Roman pleaded guilty to a Lacey Act violation for attempting to import approximately 875 pounds of Bahamian-origin fin fish of various species into the United States.

Roman caught the fish in May 2005. Upon returning to Marathon, Florida, his boat was inspected by local Fish and Wildlife officers who determined that Roman did not possess a Bahamian cruising permit authorizing him to fish in Bahamian waters. A GPS receiver found aboard Roman's vessel established that it had been operating in the Bahamian fisheries zone. It also was revealed that

the defendant was a former commercial fisherman and had been personally placed on notice by Bahamian enforcement authorities of the requirement for a cruising permit.

Illegal Catch

The Commonwealth of the Bahamas regulates and manages its domestic fisheries through the Fishery Resource Jurisdiction and Conservation Act, which addresses both commercial and recreational fishing activity. As a conservation measure, the federal Lacey Act gives reciprocal support and enforcement authority to U.S. agencies to implement such measures established by treaty, foreign, state, municipal, and tribal law.

The court sentenced Roman to time served and a one-year term of supervised release. In addition, as part of an agreed recommendation in lieu of seeking forfeiture of his vessel under the Lacey Act, Roman was ordered to pay a $10,000 fine to the NOAA National Marine Fisheries Service, Fisheries Enforcement Fund, and agreed to forfeit the value of the fish that were seized at the time of the offense.

This case was investigated by the NOAA Fisheries Office of Law Enforcement and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Sierra Meat Company, No. 3:06-CR-00308 (N.D. Calif.), AUSA [redacted]

On May 3, 2006, Sierra Meat Company ("Sierra"), formerly known as Durham Meat Company, pleaded guilty to and was sentenced for selling exotic meat in violation of the Lacey Act. The company must pay a $75,000 fine, complete a one-year term of probation and implement a compliance plan.

The charges stem from the illegal sale of kangaroo, bear, and snake meat. A federal investigation uncovered numerous violations of wildlife statutes based on the illegal sale and import of bear meat, alligator meat, kangaroo meat, and certain kinds of snake meat in California.

Sierra illegally imported 1,521 pounds of kangaroo meat from Australia to California by mislabeling it and sold 150 pounds of bear meat. The company also was found to be falsely labeling snake meat, including selling Burmese Eel and labeling it as "rattlesnake" meat. A portion of the fine, $25,000, will be stayed during the term of probation. The compliance plan applies to all facilities owned and operated by the company.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Prime Plating, Inc., et al., No. 04-CR-00208 (D. Minn.), AUSA Bill Koch ([redacted])

On April 28, 2006, four metal platers were sentenced after being convicted of discharging untreated hazardous waste into the sewer system. Scott Hanson, the owner and president of Prime Plating, Inc., was sentenced to serve 30 months' incarceration. Sam Opare-Addo, the company's environmental manager, was sentenced to serve 26 months' confinement. James Meissner, Hanson's cousin and a government witness who pleaded guilty prior to trial, was sentenced to serve 12 months and one day in prison. Arlyn Hanson, Scott Hanson's father, was sentenced to pay a $4,000 fine, complete a three-year term of probation with a special condition to serve 10 months' home detention, and complete 100 hours of community service. In addition to the prison terms, the defendants were jointly ordered to pay $1,020 in restitution to the City of Maple Grove to repair damage done to the sewer. The now-defunct metal finishing company also was ordered to pay $4,800 to the Crime Victims Fund. Scott Hanson's 30-month sentence is the second longest prison term handed down in Minnesota for an environmental crime.

The defendants were convicted in December 2004 on conspiracy and CWA violations for failing to use an operating waste treatment system. In June and July of 2003, the defendants conspired to discharge industrial wastewater from the facility to maintain operations despite not having a functioning pre-treatment system for the waste. The untreated wastewater was discharged directly into sewers using a series of pumps and garden hoses described during sentencing as "a spaghetti junction of hoses into the drain." According to evidence presented at trial, the company discharged zinc in amounts up to 160 times greater than allowed under the permit. The chromium discharges were up to 50 times greater than allowed.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Hennepin County Department of Environmental Services, with assistance from the United States Environmental Protection Agency NEIC.

Back to Top

MORE PHOTOS FROM COLUMBIA, SOUTH CAROLINA:

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

July 2006

NOTICE:

IF YOU ARE A MEMBER OF AN ACTIVE ENVIRONMENTAL TASK FORCE, PLEASE EMAIL ELIZABETH JANES [redacted] WITH YOUR CONTACT INFORMATION. WE ARE COLLECTING TASK FORCE INFORMATION TO BE USED FOR INTERNAL ECS PURPOSES ONLY.

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

United States v. W.R. Grace et al., 429 F3d. 1224 (9th Cir. 2005). Agency "interpretive deference" as to statutory interpretations.

United States v. Ed Winddancer, 2006 WL 1722432 (M.D. Tenn.). Eagle feathers and demonstration of "sincere religious belief".

United States v. W.R. Grace et al., 2006 WL 1581751 (D. Mont.). CAA Conspiracy and knowing endangerment object.

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	US v. Rodolfo Rey [redacted]	*Vessel*/ False Statement, APPS, Obstruction [redacted]
S.D. Fla.	US v. Tarragon Management, Inc. US v. Burtram Johnson US v. Antonio Martinez-Malo	*Apartment Complex Demo*/ CAA NESHAP *Illegal Excavation*/ Perjury, Obstruction, False Statement *Undersized Lobster Sales*/ Lacey Act Smuggling
D. Idaho	US v. C. Lynn Moses	*Developer Stream Bed Altered*/ CWA
D. Mass.	US v. Estremar S.A.	*Chilean Seabass Import*/ Lacey Act
E.D. Mich.	US v. Wayne County Airport Authority	*Airport Operator Fish Kill*/ CWA
D. Minn.	US v. Eco Finishing Company	*Electroplater*/ CWA Pretreatment, Tampering
S. D. N. Y.	US v. Peter Ward	*Asbestos Investigator*/ CAA
E. D. N. C.	US v. Jerry Gaskill	*Unauthorized Dredging*/ False Statement
W.D. Pa.	US v. Jon Pen Tokosh	*Internet Reptile Smuggling Sales*/ Lacey Act
D. P. R.	US v. Puerto Rico Aqueduct and Sewer Authority	*Water Authority*/ CWA NPDES
D. S. C.	US v. Michael Hayhurst	*Dredging*/ RHA, CWA

D. Utah	**US v. McWane**	***Cast Iron Manufacturer*/ CAA, False Statement**
E. D. Va.	**US v. Robert Brooks**	***Elk Hunt*/ Lacey Act**
W.D. Wash.	**US v. John Coon**	***Bird Baiting*/ MBTA**

Quick Links

Significant Opinions

9th Circuit

United States v. W.R. Grace et al., 429 F3d. 1224 (9th Cir. 2005).

The Ninth Circuit provides clarification of the "interpretive deference" standard courts apply to agencies implementing federal environmental statutes. In sum, this holding reinforces the position that courts should continue to provide a "modified level of respect" to agency statutory interpretations. The authority of regulatory agencies to "fill statutory gaps" in a reasonable fashion may lessen a defendant's opportunity to score appellate victories based upon technical arguments of statutory interpretation.

The United States District Court for the District of Montana had partially granted the United States' motion for summary judgment against defendant W.R. Grace, holding that (1) a decision by the Environmental Protection Agency ("EPA") to approve a CERCLA removal action in the town of Libby, Montana, was not arbitrary and capricious; and (2) EPA's decision to implement a "removal", rather than a "remedial", action under CERCLA withstood scrutiny under the "modified level of interpretive deference afforded by *Mead*. *See United States v. Mead*, 533 U.S. 218, 226-27 (2001). The amount of judicial deference accorded to agencies, which presumably hold such authority as delegated by Congress, recently has been unsettled. The high degree of deference applied by the Supreme Court in *Chevron* was questioned in a limited fashion by the *Mead* court, which focused the scope of judicial deference more narrowly on issues of formal rulemaking. *See Chevron*, 467 U.S. at 842-45 (1984). In so doing, *Mead* opened for question the proper amount of judicial deference applied in other situations, such as non-formal rulemaking and agency statutory interpretations. EPA's decision in the *Grace* matter to define its activity as a CERCLA "removal", which involves a less stringent rulemaking and formal approach compared to a CERCLA "remedial" action, gave rise to the defendant's claim that EPA was overreaching its authority. Grace's stake in the question was not

trivial. A "removal" action is statutorily limited in duration and expense to $2 million and 12 months from the date of first environmental-response activity. EPA used a statutory exemption to exceed both limits, which resulted in a liability to Grace of $54.53 million in clean-up reimbursements, indirect costs, and a declaratory judgment of future cleanup cost liability. Grace claimed that because EPA's "removal" action had "remedial" action characteristics, to include the bottom-line cost and permanence of the applied remedy, EPA should have been required to follow more formal and deliberative administrative law procedures.

The court found that Congress "did not draw a clear line between 'removal' and 'remedial' actions", and EPA's determination of the Libby cleanup as a removal action was "correct as a matter of law." Because EPA's interpretation of CERCLA was an informal agency interpretation, the court used a "rationally construed" standard to determine EPA acted appropriately. Interestingly, the court relied on an extensive record of internal EPA memoranda and guidance to determine that "cogent administrative interpretations . . . not the products of formal rulemaking. . . nevertheless warrant respect."

Back to Top

District Courts

United States v. Ed Winddancer, 2006 WL 1722432 (M.D. Tenn.)

On June 19, 2006, the court issued an order and accompanying memorandum opinion, denying defendant's motion to dismiss the indictment. The defendant is charged with violations of the Migratory Bird Treaty Act ("MBTA") and Bald and Golden Eagle Protection Act ("BGEPA"), stemming from his possession of eagle and other migratory bird feathers and barter transactions of the same with an undercover FWS agent. Winddancer moved to dismiss the indictment on the grounds that the enforcement of the statute against him violated the Religious Freedom Restoration Act because he was using the feathers in connection with his alleged sincere exercise of a Native American religion. Winddancer is not an enrolled member of a federally recognized tribe.

The court held that the defendant lacked standing to bring his, as applied, challenge under the MBTA because he had failed to first apply for a permit under that Act. The court further held that any facial challenge would fail because the MBTA provision could be applied in circumstances that did not present defendant's issues. As to the BGEPA claims (for which application for a permit would have been futile and thus not a prerequisite to standing), the court found that he did not meet his burden of establishing a sincere exercise of religion. The government had not challenged his sincere religious belief, but rather whether the possession of feathers that he bartered to someone of another tribe was an exercise of that religion. The court found, however, that Winddancer had failed to show a sincere religious belief essentially because he did not identify a specific belief, but alleged some general "Native American religion." Finally, the court found that, even had he met this burden of proof, his defense still failed because the government permitting scheme is the least restrictive means of furthering the government's compelling interests in protecting eagles and protecting tribal religion and culture and the government's trust relationship with the tribe. This issue is also currently pending in the District of Utah and the District of Wyoming.

The court further held that the exchange of feathers of the same species constitutes a barter under the Act and that the defendant's actions, specifically including the barters, were in fact harmful

to birds and properly charged under the MBTA. The court further denied the defendant's claim of outrageous government conduct which had been based on the undercover agent's posing as a tribal member acquiring feathers for ceremonial/dancing use.

Back to Top

United States v. W.R. Grace et al., 2006 WL 1581751 (D. Mont.)

On June 8, 2006, the court granted the defendants' motion to dismiss with prejudice the CAA knowing endangerment object of the conspiracy count. The court ruled that the indictment did not allege any overt acts within the statutory period in furtherance of a knowing endangerment objective and, therefore, the object was time-barred. In two separate orders, the court denied the defendants' motion to dismiss the indictment for pre-indictment delay and substantially denied the defendants' motion for Rule 17(c) subpoenas.

In February 2005, a ten-count indictment was returned charging W.R. Grace ("Grace") and seven of its corporate officials with conspiracy to violate the CAA and to defraud government agencies, including the EPA, knowing endangerment under the CAA, wire fraud, and obstruction of justice.

Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. The indictment alleges that, in the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to EPA. It is further alleged that, despite knowledge of the hazardous asbestos contamination, Grace continued to mine, manufacture, process, and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

The indictment states that, after the mine shut down in 1990, the company sold its contaminated mine properties to local buyers without informing them of the asbestos contamination. In 1999, Grace and company officials allegedly continued to mislead and obstruct the government when it failed to disclose the nature and extent of Libby's asbestos contamination to EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Trial remains scheduled to begin on September 11, 2006.

Back to Top

Trials

United States v. Jerry Gaskill, No. 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan [redacted]

On June 15, 2006, a jury convicted Jerry Gaskill, the Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, of a false statement violation, and acquitted him on the remaining charge of conspiracy to violate the Clean Water Act. The court granted the defendant's Rule 29 motion, dismissing the CWA and Rivers and Harbor Act violations.

The charges stem from an illegal dredging project, the purpose of which was to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks. The indictment filed in January of this year alleged that Gaskill participated in "prop washing," or the unauthorized dredging of a channel, by using the propellers of NC DOT vessels in the Corolla basin, ultimately altering the bottom of the Currituck Sound. The defendant knew that permits had not been issued, and he subsequently lied to the United States Army Corps of Engineers about these activities. Federal agencies had previously denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. Evidence at trial established that Gaskill signed a written false statement claiming that the creation of the channel was unintentional. Four other NCDOT employees, Billy Moore, Herbert O'Neal, Douglas Bateman, and Stephen Smith, pleaded guilty last December.

The unauthorized dredging created a 730-foot long by 30-foot wide by five-foot deep channel which resulted in the destruction of an essential fish habitat that supports commercially important fish and wildlife species found in the area.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the United States Coast Guard Investigative Service, with investigative assistance from the United States Army Corps of Engineers.

Back to Top

United States v. Michael Hayhurst, No. 2:05-CR-01336 (D. S. C.), ECS Trial Attorney David Kehoe [redacted] and AUSA Emery Clark [redacted]

On June 22, 2006, a jury acquitted Michael Hayhurst on all charges after a four-day trial. Hayhurst was charged in December 2005 with violating the Clean Water Act, the Rivers and Harbors Act, and with making false statements in connection with an illegal dredging operation he supervised in Calibogue Sound in Hilton Head Island, South Carolina.

According to the indictment, Hayhurst was the project manager for a dredging operation by South Island Dredging Association ("SIDA"). SIDA was formed by a number of homeowner associations and others for the purpose of funding and obtaining approval from the United States Army Corps of Engineers ("the Corps") to conduct this dredging operation. The Corps issued a permit to SIDA to dredge certain areas in and around Calibogue Sound, but required that fine-grained dredged material from the operation be placed in an ocean-going barge. The barge was then to dispose of the

dredged material at a designated site in the Atlantic Ocean off the coast of South Carolina. The permit required that the barge be equipped with electronic positioning equipment to ensure that it was in fact making trips to the ocean disposal site.

Instead of complying with the terms of the permit by dumping the dredged material in the ocean, the indictment alleges that Hayhurst illegally dumped dredged materials and other pollutants into Calibogue Sound in violation of the CWA and that he altered and modified the course and condition of the sound in violation of the RHA. The indictment further states that Hayhurst placed seawater into the ocean-going barge, rather than the dredged material, and transported the seawater to the ocean disposal site to conceal from the Corps that he was illegally discharging the dredged material into the Sound.

This case was investigated by the United States Army Criminal Investigation Command and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Pleas / Sentencings

United States v. Eco Finishing Company et al., No. 06-CR-00152 (D. Minn.), AUSA Bill Koch [redacted]

On May 30, 2006, Eco Finishing Company ("ECF"), an electroplating company, and David Rosenblum, the company's chief executive officer and 49% owner, agreed to plead guilty to an information charging them with the knowing violation of a pretreatment program in violation of the Clean Water Act. From May 2001 through approximately April 2005, the defendants are alleged to have discharged wastewater which exceeded permitted limits.

Investigation revealed a company practice (through internal memos and e-mails) of discussions among management and employees of upcoming inspections by the Metropolitan Council Environmental Services ("MCES"), the local sewer authority. Documents provide by disgruntled employees indicated that production practices were changed during the inspections. Investigators subsequently obtained a search warrant and installed a covert sampling device in the sewer line. Samples taken provided proof that the facility was generally in compliance with its permit during the announced inspections, but quickly fell out of compliance when sewer authorities left the premises. Using this data, a second search warrant was obtained and additional incriminating documents were seized showing that management personnel had directed employees to alter the effluent, change the production process, and take other steps to ensure compliance during MCES inspections.

On May 8, 2006, co-defendant Ted Gibbons, a former chemist for ECF, was sentenced to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty in February of this year to one felony CWA pretreatment violation and two felony CWA tampering violations.

Gibbons was responsible for analyzing the company's wastewater and for reporting analytical results to the MCES. Gibbons failed to submit laboratory reports to the sewer authority for all wastewater monitoring conducted during each monitoring period, as required by the facility's sewer permit, from at least January 2001 through about April 15, 2005. On two occasions in 2004 and 2005, Gibbons also tampered with sampling equipment during times when the sewer authority was testing the facility's effluent. Gibbons wrote memos to wastewater staff with tips on how they were to stay in

compliance during the period that MCES was taking samples. This included the instruction that they were to "leave all water running during all shifts."

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the FBI, the Minnesota Pollution Control Agency, and the MCES.

Back to Top

United States v. Puerto Rico Aqueduct and Sewer Authority, No. 3:06-CR-00202 (D. P. R.), ECS Senior Litigation Counsel Howard Stewart [redacted] and SAUSA Silvia Carreno [redacted]

On June 22, 2006, Puerto Rico Aqueduct and Sewer Authority ("PRASA") was charged in, and agreed to plead guilty to, a 15-count indictment for CWA violations based upon a 25-year history of inadequately maintaining and operating the island's wastewater and water treatment systems. PRASA was charged with nine counts of discharges in violation of its NPDES permit at the nine largest POTWs on the island; five counts of illegal discharges from the five water treatment plants that supply drinking water to the largest portion of the local population; and one count charging a direct discharge from the PRASA system to the Martin Pena Creek.

PRASA is a public corporation of the Commonwealth of Puerto Rico created to provide adequate water and sanitary sewer service. PRASA operates the island's entire sewage collection and treatment system of 68 POTWs, 508 pump stations, and related infrastructure. PRASA also operates the island's 133 water treatment plants ("WTP"), which provide drinking water for the local population. The POTWs each discharge treated water under the authority of an NPDES permit issued by the EPA. The WTPs also discharge what is referred to as "backwash" under the terms of an NPDES permit. PRASA is the named permittee for each NPDES permit. The illegal discharges from PRASA's POTWs and WTPs are a direct result of the corporation's poor maintenance and operational practices.

The plea agreement states that the Authority will complete a five-year term of probation, pay a $9 million fine, make $109 million in repairs and upgrades at the nine POTWs named in the indictment, complete $10 million in repairs and upgrades to the Martin Pena sewer system, and fund a study of the five water treatment plants identified in the indictment. The study will be conducted by CH2M Hill, an independent environmental engineering firm, and will be presented to the district court to determine the appropriate remedy to impose with respect to the water treatment facilities.

There was an additional comprehensive civil settlement reached, as well, requiring PRASA to spend an estimated $1.7 billion implementing capital improvement projects and other remedial measures at all of its 61 wastewater treatment plants and related collection systems over the next 15 years.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Peter Ward, No. 1:05-CR-00499 (S.D.N.Y.), AUSA Anne Ryan [redacted].

On June 20, 2006, Peter Ward, a licensed asbestos investigator, was sentenced to serve 27 months' incarceration for improperly removing asbestos from a police precinct building in Queens and an apartment building in Brooklyn. In June 2005, Ward pleaded guilty to one CAA charge, admitting that in 2001 he improperly removed the asbestos from the apartment building, further stating that he attempted to conceal his actions by not notifying the EPA.

Ward has an extensive record of environmental violations going back more than a decade. During this period, the defendant and companies he controlled were issued Notices of Violation for work performed at 29 separate locations, including the current two, in New York City. Ward has previously fined $115,000 by the City and continued to break the law even after pleading guilty in the current case. In January 2006, he pleaded guilty to a second CAA violation for the improper abatement at the precinct building. Ward was remanded into custody on March 9, 2006.

Dry Asbestos

This case was investigated by the FBI and the United States Environmental Protection Agency Criminal Investigation Division, with assistance provided by the New York City Department of Environmental Protection's Asbestos Control Program.

Back to Top

United States v. Rodolfo Esplana Rey, No. 06-CR-00315 (C.D. Calif.), AUSAs William Carter [redacted] Dorothy Kim [redacted] and RCEC Erica Martin [redacted]

On June 19, 2006, Rodolfo Esplana Rey, the Chief Engineer for the *M/T Cabo Hellas*, a petroleum transport tanker operated by the Overseas Shipholding Group, Ltd., pleaded guilty to a false statement and APPS violation. Rey was charged in April of this year in a three-count indictment with presenting a false record book to Coast Guard inspectors during an inspection at the Port of Los Angeles. He was further charged with obstruction of agency proceedings for allegedly instructing the crew to lie to officials about a valve that was used to discharge oily waste directly into the ocean.

Rey is scheduled to be sentenced on August 28, 2006.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Tarragon Management, Inc., No. 0:06-CR-60116-60119 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On June 19, 2006, Tarragon Management, Inc. ("TMI"), pleaded guilty to, and was sentenced for, one CAA NESHAP violation for improper asbestos removal during a demolition and renovation project in 2003 at the Pine Crest Village Apartment Complex ("Pine Crest") in Fort Lauderdale, Florida. The company was ordered to serve a five-year term of probation, pay a $500,000 fine and pay an additional $500,000 in community service to the Florida Environmental Task Force Trust Fund. TMI also must implement a comprehensive compliance plan.

From about April 18, 2003, through April 28, 2003, TMI and its employees, Richard Schaffer and Robert Violino, and contractor Benco Development, Inc. ("Benco"), engaged in demolition and renovation activities that disturbed approximately 6,000 square feet of regulated asbestos-containing materials at Pine Crest without complying with the mandated work standards, in spite of four environmental assessments, an asbestos operations and maintenance program plan identifying the presence of asbestos at the facility, and numerous warnings by the Broward County Department of Planning and Environmental Protection Asbestos Abatement Coordinator.

Benco, the construction manager for the project, pleaded guilty to one CAA NESHAP violation on May 25, 2006, and was sentenced to complete a two-year term of probation, pay a $25,000 fine, and pay $25,000 in community service to the Florida Environmental Task Force Trust Fund. In addition, Benco's president must complete a 40-hour training course on the identification and handling of hazardous substances and wastes, including asbestos. Also on May 25th, Richard Schaffer, TMI's managing director, pleaded guilty to a CAA violation for his involvement in the illegal abatement. Schaffer is scheduled to be sentenced on August 17, 2006.

Asbestos investigation

On June 16, 2006, TMI's project manager, Robert Violino, pleaded guilty to a CAA violation and was sentenced to serve two years' probation with a special condition of six months' home detention. Violino was further ordered to pay a $25,000 fine and must also complete the 40-hour training course covering the identification and handling of hazardous substances and wastes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Broward County Sheriff's Office.

Back to Top

United States v. C. Lynn Moses, No. 4:05-CR-00061 (D. Idaho), AUSAs Jim Oesterle [redacted] and George Breitsameter [redacted]

On June 19, 2006, developer C. Lynn Moses was sentenced to serve 18 months' incarceration followed by one year of supervised release, pay a $9,000 fine, and publish a public apology to the community acknowledging his conduct and accepting responsibility for damaging Teton Creek.

Moses was convicted by a jury in September of last year on three counts of violating the CWA. The violations occurred from 2002 through 2004 during the development of property adjacent to Teton

Creek. While developing the land, Moses supervised a continuing effort to use heavy equipment to manipulate the stream bed of the creek, which is a tributary of the Snake River.

Bulldozer in stream channel

Moses refused to submit a permit application prior to undertaking the stream bed manipulation work in 2002, 2003, and 2004 and failed to comply with previous administrative notices directing him to cease all work in the creek. As recently as April 2004, Moses violated an administrative order issued by the United States EPA ordering him to stop all discharges of dredge and fill material into Teton Creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with the assistance of the United States Army Corps of Engineers and the FBI.

Back to Top

United States v. Estremar S.A. (a.k.a. ASC South America S.A.), No. 1:06-CR-10097 (D. Mass.), ECS Trial Attorney Lary Larson [redacted] ECS Senior Trial Attorney Elinor Colbourn [redacted] AUSA Nadine Pellegrini [redacted].

On June 15, 2006, Estremar S.A., an Argentine company, plead guilty to, and was sentenced for, a misdemeanor Lacey Act violation. Specifically, Estremar admitted that in March 2002, it knowingly imported into the United States, and attempted to sell, over 30,000 pounds of Patagonian toothfish, aka Chilean seabass, when it reasonably should have known that the toothfish had been harvested and transported in violation of federal law. This imported amount was in excess of the weight authorized for import by the required documentation.

The company was sentenced to pay a $75,000 fine and must also make a $10,000 community service donation. The donation will be paid to the National Environmental Trust which studies and works with this species. In addition, Estremar agreed to forfeit all assets subject to forfeiture as a result of its guilty plea, including $158,145.53 in proceeds from the sale of the toothfish seized by agents in and near Boston during the investigation of this case.

This case was investigated by National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement.

Back to Top

United States v. Burtram Johnson, Nos. 04-CR-10013 and 05-CR-10015 (S.D. Fla.), AUSA José Bonau [redacted]

On June 12, 2006, Burtram Johnson was sentenced to serve two years' incarceration, followed by two years' supervised release, and was further ordered to pay a $50,000 fine. Johnson filed a notice of appeal on June 15, 2006.

The defendant was convicted at trial in February of this year of two counts of obstruction of justice, two counts of perjury, and one count of making false statements to federal agents. Facts presented at trial proved that the defendant twice testified falsely concerning when he first became aware of the illegal landfill activities undertaken by co-defendant Jeffrey Balch. Johnson told investigators and the grand jury that he was unaware of any illegal fill activities on Balch's bay-front property prior to being contacted by the United States Army Corp of Engineers. Evidence revealed, however, that Johnson was aware of the filling activities prior to being notified.

Balch was sentenced in January 2005 to serve five months' incarceration followed by one year's supervised release. He was further ordered to pay a $15,000 fine and $66,122 in restitution to the Florida Keys Environmental Restoration Trust Fund for damage to the Florida Bay. Balch pleaded guilty to a CWA violation for illegally discharging fill material into Florida Bay, which is located within the Florida Keys. He illegally excavated fill from his property in Marathon from February to March 2002 and dumped it in the water without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Army Defense Criminal Investigative Service.

Back to Top

United States v. McWane et al., No. 2:05-CR-00811 (D. Utah), ECS Trial Attorney Aunnie Steward, ECS Senior Trial Attorney Richard Poole [redacted] ECS Senior Counsel Claire Whitney [redacted] and AUSA Leshia Lee-Dixon [redacted]

On June 12, 2006, Charles Matlock, vice president and general manager of Pacific States Cast Iron Pipe Company ("Pacific States"), a division of McWane, Inc., was sentenced to serve 12 months and one day of incarceration and must pay a $20,000 fine. Matlock tried to argue that his motive was not to conceal excess air pollution emissions but instead to meet some technical requirement. The judge found, however, that there was no evidence to support his argument, and in fact, the evidence clearly indicated the contrary. The court further stated that if the defendant had admitted the truth he would not have been sentenced to jail time.

On February 8, 2006, Pacific States pleaded guilty to two false statement violations and was sentenced to pay a $3 million fine plus complete a three-year term of probation. Matlock pleaded guilty to a Clean Air Act violation for rendering inaccurate a monitoring device.

Pacific States and two of its employees were charged with a variety of violations stemming from falsified emissions tests required in the production of cast iron pipes. McWane, Matlock and Charles "Barry" Robison, vice president of environmental affairs, were charged with conspiracy to violate the CAA by rendering inaccurate a state-required emissions testing method, for making false statements in documents required by the CAA, and for defrauding the United States. McWane and Matlock also were charged with additional CAA violations for rendering inaccurate the testing method. McWane was charged with additional false statement violations for misrepresentations made in documents submitted to the State of Utah. Charges against Robinson were dropped in exchange for his agreeing not to appeal his sentence from a previous prosecution of him in Alabama, where he was sentenced to pay a $2,500 fine, serve two years' probation, and complete 150 hours' community service.

As part of the production of cast iron, McWane melts scrap metal, primarily shredded steel from scrap automobiles, in a furnace known as a "cupola." The ferrous scrap metal melted in the cupola contains significant quantities of shredded scrap metal, which includes scrap automobiles. The autos often contain rust, chrome-plated parts, plastic, tires and car seats. McWane was exceeding its

emission limits for a parameter known as PM10. During a compliance test in September 2000, McWane employees at the direction of Matlock melted pig iron, a pure iron product, in the cupola in order to lower the PM10 emissions and thus pass the stack emissions test. Robison was aware of this and facilitated the filing of false emissions reports based on this stack test. Pacific States admitted that documents submitted to the State of Utah included data from this test, which was not representative of its emissions.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Back to Top

United States v. Wayne County Airport Authority, No. 2:06-CR-20300 (E.D. Mich.), ECS Assistant Chief Kris Dighe [redacted] ECS Senior Counsel Jim Morgulec [redacted], SAUSA Kris Vezner [redacted], and assisted by Tom Piotrowski with the Michigan Attorney General's Office.

Airport Retention Pond

On June 8, 2006, Wayne County Airport Authority ("Airport Authority"), which operates the Detroit Wayne County Metropolitan Airport, pleaded guilty to a misdemeanor violation of the Clean Water Act, 33 U.S.C. § 1319(c)(1)(A). The Airport Authority pleaded guilty to a negligent failure to report a May 16, 2001, discharge of turbid water into the Frank and Poet Drain, a waterway that leads to the Detroit River, in violation of the Airport's discharge permit. Two days after the event, the discharge was discovered during the course of an investigation of a fish-kill, which was observed near the mouth of the waterway, as it enters the Detroit River.

The Airport maintains a number of large ponds on-site that collect storm water runoff. During winters, significant quantities of aircraft de-icing fluids, primarily propylene glycol, are used on aircraft. Run-off from the de-icing is collected in a separate pond identified as Pond 3W. Ordinarily, Pond 3W discharges to a sanitary sewer system that conveys the glycol-contaminated stormwater to the Wyandotte Wastewater Treatment Plant. During the second week in April, 2001, the valve connecting Pond 3W to the sanitary sewer became clogged. The chemicals collected in this pond were in the process of breaking down into their various constituents and gradually turned the water turbid and odorous. Attempts to clear the pipe failed, as did efforts to pump water from Pond 3W to the sanitary sewer.

On May 16, 2001, Airport personnel opened a gate connecting Pond 3W to other ponds, identified as Ponds 3E and 4. They then opened an outfall valve that allowed these ponds to discharge directly to the Frank and Poet Drain. On May 17th, Airport employees, noting that the water being discharged was turbid and odorous, closed the connection gate and the outfall valve. The discharge of approximately 25 million gallons of water from the Airport from Ponds 3E, 3W, and 4 was not reported to the Michigan Department of Environmental Quality.

The Airport Authority has agreed to pay a $75,000 fine and will complete a four-year term of probation. As a special condition of probation, the Airport will undertake and finish a "Force Main" project, which involves the construction and use of a force main to connect Pond 3W at the Airport to sanitary sewer lines leading to the Detroit Water and Sewerage Department's treatment plant. Planning for this project has been underway for a number of months and currently is estimated to cost $8.5 million. An additional $25,000 will be paid as community service to Friends of the Detroit River, a non-profit organization dedicated to conserving, preserving, and restoring the watershed of the Detroit River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI, with assistance from the Michigan Department of Environmental Quality Office of Criminal Investigation.

Back to Top

United States v. Jon Pen Tokosh, No. 05-CR-258 (W.D. Pa.), AUSA Luke Dembosky [redacted] with assistance from ECS Senior Trial Attorney Bob Anderson [redacted]

On June 2, 2006, Jon Pen Tokosh was sentenced to serve one year of incarceration, followed by two years' supervised release and must pay $25,000 in restitution to the Pennsylvania State Game Agency.

Tokosh pleaded guilty in February of this year to one Lacey Act violation in connection with the sale of two smuggled Indian Star Tortoises to a U.S. Fish and Wildlife Service undercover agent in 2002. The tortoises and other animals were smuggled into the U.S. by a wildlife dealer in Florida from Singapore dealer Leon Tian Kum. Tokosh then resold the animals in the United States. Kum was apprehended in 2003 during a visit to this country and now is serving a 37-month prison sentence.

Indian Star Tortoises are protected by the CITES treaty and are one of several reptile species frequently smuggled in overnight mail packages from Asia into this country, where the buyers can resell the animals to collectors for approximately $800 - $1,000 each.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. John Coon et al., No. 3:06-CR-05345 and 05346 (W.D. Wash.), AUSA Jim Oesterle [redacted].

On May 31, 2006, John Coon and his son Jonathan, were each sentenced to serve two years' probation and pay a $2,500 fine. The two pleaded guilty to one count of unlawfully taking migratory birds with the aid of baiting. Jonathon spread barley grain on the ground adjacent to a pond on the Coon family property. The grain was placed on the ground to attract migratory birds to the area where hunters would be attempting to shoot the birds. Two days later, the defendants participated in a hunt on the property, shooting and killing many migratory birds including mallard ducks and American wigeons. "Bird baiting" by hunters can lead to a slaughter and changes in the birds' migration patterns. Migratory birds become aware of feeding areas and will revisit the area looking for food for several days after the bait has been consumed.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Robert Brooks et al., No. 1:06-mj-00394 and 395 (E.D. Va.), ECS Trial Attorney Wayne Hettenbach ([redacted] and ECS Trial Attorney/SAUSA David Joyce [redacted]

On May 30, 2006, Robert Brooks and Michael Johnson each pleaded guilty to a one-count information charging a misdemeanor Lacey Act violation. Each defendant received wildlife in the Eastern District of Virginia that was taken in violation of New Mexico state law. Specifically, Brooks

received an elk, which he killed in September 2001, and Johnson received an elk, which he killed in September 2003.

The defendants are scheduled to be sentenced on July 18, 2006.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Antonio Martinez-Malo et al., No. 1:06-CR-20047 (S. D. Fla.), AUSA Diane Patrick [redacted]

On May 30, 2006, Antonio Martinez-Malo, Liliana Martinez-Malo, and Anchor Seafood, Inc. ("Anchor), were sentenced for their involvement in smuggling undersized spiny lobster. Anchor will pay a $50,000 fine and complete a five-year term of probation. Antonio Martinez-Malo was sentenced to pay a $5,000 fine and serve 21 months' imprisonment followed by a three-year term of supervised release. Liliana Martinez-Malo was sentenced to serve one year and a day of incarceration to be followed by a three-year term of supervised release. She also must pay a $3,000 fine.

The defendants pleaded guilty in March of this year to charges stemming from a conspiracy to violate the Lacey Act for smuggling 16,500 pounds of undersized spiny lobster from Jamaica into the United States. The company pleaded guilty to a smuggling and conspiracy violation, and the individuals pleaded guilty to conspiracy.

Anchor Seafood is a business operated by Antonio Martinez-Malo, the president and sole shareholder, and his wife, Liliana. The defendants were charged with making 40 illegal shipments of undersized spiny lobster tails from January, 2000, through January, 2001. During this period, the defendants conspired to import from Jamaica, and then sold and transported, over 16,000 pounds of undersized spiny lobster tails valued at $229,000. This is a violation of Jamaican and Florida law, both of which have strict size and weight limits for spiny lobster. The defendants concealed the actual size of the lobster tails through a coding system they used on the exterior of boxes and on their invoices.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office for Law Enforcement.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

August 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted] If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

United States v. Babauta, 2006 WL 1627289 (9th Circuit June 6, 2006).

United States v. Stickle, ___F.3d___, 2006 WL 1843365 (11th Cir. 2006).

United States v. Norris, ___ F.3d ___, 2006 WL 1716912 (11th Cir. 2006).

United States v. Chevron Pipe Line Company, ___F.Supp.2d___, 2006 WL 1867376 (N.D. Tex. June 28, 2006).

Districts	Active Cases	*Case Type* / Statutes

D. Alaska	**US v. Alan Veys**	***Black Bear Hunts*/ Lacey Act, Forfeiture**
[redacted]	[redacted]	[redacted]
S.D. Calif.	**US v. Amar Alghazouli**	***ODS Smuggling*/ Conspiracy, Smuggling, CAA**
D. Colo.	**US v. Luxury Wheels, Inc.** [redacted]	***Electroplating Waste Discharges*/ Conspiracy, Negligent CWA, False Statement** [redacted]
D. Del.	**US v. Chian Spirit Maritime Enterprises, Inc.**	***Vessel*/ APPS, Conspiracy, Witness Tampering**
S.D. Fla.	**US v. Parkland Town Center, LLC**	***Hotel Renovation*/ CAA NESHAP**
C. D. Ill.	**US v David Inskeep**	***CAFO*/ CWA**
E.D. Ky.	**US v. Charles Hungler, Jr.**	***Sewage Treatment Plant Operator*/ CWA False Statement**
E. D. Pa.	**US v. Wallace Heidelmark**	***Numerous Asbestos Abatements*/ CAA NESHAP, Mail Fraud**
W.D. Pa.	**US v. Charles Victoria**	***Hospital Abatement*/ CAA conspiracy, Obstruction**
D. P. R.	**US v. Puerto Rico Aqueduct and Sewer Authority**	***Water Authority*/ CWA NPDES**
E.D. Tex.	**US v. Overseas Shipholding Group**	***Vessel*/ Conspiracy, APPS, False Statement**
S. D. Tex.	**US v. Hoang Nguyen**	***Red Snapper Smuggling*/ Magnuson Stevens Fisheries Act**

Quick Links

Significant Opinions

9th Circuit

United States v. Pedro Babauta, 2006 WL 1627289, (9th Cir. June 6, 2006), 05-10645.

On June 7, 2006, the 9th Circuit reversed the convictions in this false statements' case, and remanded for judgment of acquittal on both counts. Pedro Babauta, a former laboratory manager for the Commonwealth Utilities Corporation ("CUC") in Saipan, Commonwealth of Northern Mariana Islands ("CNMI"), was sentenced for falsifying documents concerning the microbiological content of CUC drinking water which were submitted to the CNMI Department of Environmental Quality ("DEQ") in September 2005. He was convicted by a jury in June 2005 of two false statement violations and acquitted on two false statement charges. Babauta was ordered to serve one year in prison followed by three years' supervised release.

In his appeal, the defendant argued that the government failed to submit one of the elements of the offense to the jury, specifically, proof of the government's federal jurisdiction. The government was required to prove that reports submitted to the local DEQ, an agency of the CNMI, were matters within the jurisdiction of the United States Environmental Protection Agency ("USEPA"). However, since the district court instructed the jury, as a *matter of law*, that the reports were within the USEPA's jurisdiction, it erred by not allowing the jury to decide this as a *factual matter*.

The Court went on to note that the government failed to provide adequate proof that the USEPA had properly granted this state agency "primary enforcement responsibility" under 42 USC § 300(g)(2). A notice was issued in 1982 in the Federal Register by EPA that the DEQ had satisfied the criteria to be granted federal enforcement authority. This authority, however, was contingent upon EPA's then following through with a final notice confirming that no requests for a hearing to discuss this appointment had been made within the requisite 30 days. As a result, the Court noted, there was insufficient evidence to show that the DEQ was actually authorized to receive the monthly reports from which the false statements were charged. Double jeopardy precludes another trial if an appellate court fails to find the evidence to be legally sufficient, hence the judgment of acquittal.

Back to Top

11th Circuit

United States v. Rick Stickle, ___F3d.___, 2006 WL 1843365 (11th Cir. 2006).

On July 6, 2006, the 11th Circuit affirmed the convictions of Rick Stickle, Chairman of Sabine Transportation Company, for participation in a multi-object conspiracy and for a substantive APPS violation based upon the unlawful dumping of 442 tons of diesel-contaminated wheat from the *S/S Juneau* into the ocean. In a published opinion, the Court rejected Stickle's challenge to the APPS regulations and several additional arguments regarding the high-seas venue statute and the sufficiency of the government's proof of venue. Specifically, the Court said the government properly charged the defendant with violating 33 CFR § 151.10(a). The ship was certified as a freight vessel, not an oil tanker, and was therefore not certified to discharge oil, let alone 440 metric tons of grain contaminated with 9,000 gallons of diesel fuel. Regarding the venue arguments, the government need only meet the preponderance of the evidence standard for a non-essential element of the crime.

The Court found venue was appropriate in the Southern District of Florida because a false statement made by a co-conspirator in the district had hindered the criminal investigation. The government further established venue in that district since the criminal activities occurred on the high seas, and the last known residence of a co-conspirator was in West Palm Beach, Florida. The court concluded by stating, "There is simply no merit in the contentions made in this appeal."

Stickle was sentenced in April 2005 to serve 33 months' incarceration, followed by two years' supervised release, and was further ordered to pay a $60,000 fine as a result of being convicted in November 2004. Four additional defendants, including the former Sabine president, a former marine superintendent, the former master of the Juneau, and the vessel's former chief officer, pleaded guilty to related offenses and were sentenced to various terms of home confinement, community service, and probation.

Back to Top

United States v. Norris, ___ F.3d ___, 2006 WL 1716912 (11th Cir. 2006).

In *Norris*, the Eleventh Circuit clarified the calculation of "market value" which, under U.S.S.G. § 2Q2.1, increases the base offense level for offenses involving fish, wildlife, and plants transported in violation of CITES and the Endangered Species Act. The Court held that the "market value" of such shipments should include the value of all fish, wildlife, or plants transported using invalid CITES permits or false labeling because such falsification renders the entire shipment illegal.

Norris and a Peruvian accomplice were charged in the Southern District of Florida with conspiracy, smuggling, facilitating the sale of smuggled merchandise, and false statements. The indictment alleged that Norris' accomplice collected wild orchids in Peru for transport to Norris in the United States. Since the wild orchids were protected by CITES Article II, Norris' accomplice obtained CITES permits to transport artificially-propagated orchids and sent Norris a "key" so that he could decipher the false labels and identify which shipments contained non-artificially-propagated orchids. Norris then sold the CITES-protected orchids in the United States.

Norris pleaded guilty to the indictment and the pre-sentence investigation report ("PSR") assessed a base sentencing level of six under U.S.S.G § 2Q2.1(a). The PSR recommended an eight-

level enhancement under §§ 2Q2.1(b)(3)(A)(ii) and 2B1.1(b)(1)(E) based on its determination that the "market value" of the shipments exceeded $70,000. Norris objected to the PSR and claimed that the appropriate market value of the shipments was $44,703 (which would have resulted in a six-level enhancement). The government agreed with the PSR and contended that the appropriate market value was $86,947. The government argued that this value was correct because the presence of false labeling rendered the entire shipment illegal. The district court agreed and sentenced Norris to serve17 months' imprisonment followed by two years' supervised release. The lower court noted that it would have imposed the same sentence whether the Sentencing Guidelines were mandatory or advisory. Norris appealed, claiming that (1) the district court had improperly interpreted the "market value" enhancement, and (2) that his sentence was unconstitutional under *Booker v. Washington*.

In reviewing the district court's interpretation of § 2Q2.1, the Eleventh Circuit noted that neither the Guideline nor the comments thereto addressed the appropriate market value determination where only part of the shipment contained protected plants. The Court noted, however, that § B1.3(a)(1)(A) instructs that the sentencing court should consider all relevant conduct, including "all acts and omissions committed, aided, abetted, [or] counseled . . ." either "during the commission of the offense" or "in the course of attempting to avoid detection." The Court held that the inclusion of non-protected orchids in the shipments was "an integral part of the conspiracy" to import CITES-protected orchids into the country without detection. Thus, the Court held that the district court had properly calculated the market value enhancement.

The Court rejected Norris' *Booker* argument because the district court made no findings of fact regarding the market value; it merely determined the proper method of calculation. The Court further held that any error in the sentence was harmless, because the lower court specifically noted that it would have imposed the same sentence under advisory Guidelines.

Back to Top

District Court

United States v. Chevron Pipe Line Company, ___F.Supp.2d___, 2006 WL 1867376 (N.D. Tex. June 28, 2006).

On June 28, 2006, nine days after the *Rapanos* decision, the District Court for the Northern District of Texas issued an 18-page order granting Chevron Pipe Line Company's ("Chevron") motion for summary judgment, finding that there was not a "significant nexus" established between the site of an oil spill, which was an intermittent or ephemeral stream, and navigable-in-fact waters. Nor did the government provide evidence that the oil from this spill actually reached "navigable waters" or adjoining shorelines within the meaning of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq*., as amended by the Oil Pollution Act of 1990 ("OPA"), 33 U.S .C. §§ 2701 *et seq. United States v. Chevron Pipe Line Co.*, ___F.Supp.2d___, 2006 WL 1867376 at *4 (N.D. Tex. 2006). Thus, the district court held that the government lacked jurisdiction to impose a fine under the CWA or OPA without the existence of navigable-in-fact waters.

Sometime on or about August 24, 2000, a pipeline owned by Chevron allegedly corroded to the point that 126,000 gallons of crude oil were discharged, spilling into an unnamed tributary where it pooled and stained about 500 feet of soil downhill and 100 feet uphill. Oil also migrated into nearby Ennis Creek, an intermittent stream. Chevron began immediate remediation and by October 2000 had

removed much of the saturated soil. Chevron contended that, since there was no water flowing in the Creek at the time of the spill nor through October during which much of the remediation had been completed,[1] oil did not enter navigable water.

The *Chevron* court relied heavily on *In Re Needham*, 354 F.3d 340 (5th Cir. 2003), which specifically discussed the relevance of a waterway being navigable-in-fact, and bristled at the governments' contention that the regulatory definition of "navigable" be used to "impose regulations over puddles, sewers, roadside ditches and the like." *Id*. at 345-346. The Fifth Circuit further states "(in) the end, there must be 'a close, direct and proximate link between ... [the] ... discharges of oil and any resulting actual, identifiable oil contamination of natural surface water that satisfies the jurisdictional requirements of the OPA.' " *In Re Needham*, 354 F.3d at 346 n. 9 (quoting *Rice v Harken Exploration Co*., 250 F.3d at 272) (second brackets in original).

The district court also pointed to *Rapanos v. United States*, 547 U.S. ___, 126 S.Ct. 2208, (2006), which, despite the lack of consensus, the Supreme Court plurality opinion questioned CWA jurisdiction over intermittent and ephemeral streams. 126 S.Ct at 5 (plurality opinion)(J. Scalia.). Justice Scalia went on to write that "[t]he separate classification of 'ditch[es], channel[s], and conduit[s]'-which are terms ordinarily used to describe the watercourses through which intermittent waters typically flow-shows that these are, by and large, not "waters of the United States." *Id*. at *12 (emphasis and brackets in original). The district court concluded that the only "plausible" interpretation for "waters of the United States" must be limited to "relatively permanent, standing or continuously flowing bodies of water…" (*Chevron* at *6).

Because the Supreme Court failed to reach a consensus on the matter of CWA jurisdiction in the *Rapanos* matter, Chief Justice Roberts advised that the lower courts will have to do their own analysis "on a case-by-case basis" (*Rapanos* at *24)(Roberts, C.J. concurring). Using Justice Kennedy's "significant nexus" test *Id*. at *24 (J. Kennedy concurring in judgment and writing separately on what falls within jurisdiction of the CWA), the *Chevron* court determined that "…as a matter of law in this circuit, the connection of generally dry channels and creek beds will not suffice to create a "significant nexus" to a navigable water simply because one feeds into the next during the rare times of actual flow." (*Chevron* at *7)

Further, according to dicta in *Needham*, the court must determine, as a material fact, whether "... the site of the farthest traverse of the spill, is navigable-in-fact or adjacent to an open body of navigable water." *Needham*, 354 F.3d at 346 (citing *Rice*, 250 F.3d 264, 269 (5th Cir.2001) (emphasis added)). The only evidence the government provided of whether the oil from the spill reached a "navigable" body of water (which is ultimately the Brazos River) was merely speculative. The government only provided the court with an affidavit from an expert who said it may have been possible *during times of flow* in Ennis Creek that oil could have reached the Brazos. But since the unnamed tributary and the Creek do not fit the (Fifth Circuit's) definition of "navigable waters of the United States," the government must prove the oil *actually* reached navigable waters or adjoining shorelines, which it did not. Absent this evidence, the court granted Chevron's motion for summary judgment.

Back to Top

[1] The date of the first rainfall was October 12, 2000. Inspection reports filed by the Texas Railroad Commission ("TRC") indicate that oil was still present at the site of the spill in December 2000 and that the company was not in compliance with its clean-up efforts. Chevron did not request final certification from the TRC that additional cleanup was required until May 17, 2005.

Indictments

United States v. Charles Victoria, No. 2:06-CR-00230 (W.D. Pa.), AUSA Brendan Conway [redacted]

On June 21, 2006, Charles Victoria was charged with conspiracy to violate the Clean Air Act and with obstruction of an administrative proceeding. Victoria had been hired to supervise removal of asbestos-containing material from a portion of the decommissioned Woodville State Hospital. The indictment alleges that Victoria conspired to remove the material in violation of CAA workplace standards for asbestos and other standards and that he made misrepresentations to government officials in connection with the clean-up investigation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA National Enforcement Investigations Center.

Back to Top

United States v. Chian Spirit Maritime Enterprises, Inc., et al., No. 1:06-CR-00076 (D. Del.), ECS Senior Trial Attorney Mark Kotila [redacted] and ECS Trial Attorney Jeff Phillips [redacted]

On July 14, 2006, a five-count indictment was returned by a grand jury charging two corporations and four individuals with violations stemming from the illegal discharge of oily waste from the tanker *Irene E/M*, including conspiracy, falsifying oil record book entries, and tampering with witnesses.

Defendants charged are Chian Spirit Maritime Enterprises, Inc., ("Chian Spirit"), a Greek-based shipping management company; Venetico Marine S/A, corporate owner of the *Irene*; Evangelos Madias, Venetico Marine owner; Christos Pagones, Venetico Marine technical supervisor for the *Irene* Adrien Dragomir, ship's chief engineer; and Grigore Manolache, ship's master. Manolache pleaded guilty to an information charging him with representing false information to the U.S. Coast Guard.

During a routine Coast Guard inspection in December 2005, inspectors uncovered evidence that the oil record book ("ORB") had been falsified. Investigation further revealed that the vessel's oil water separator had been inoperable for the previous year and that overboard discharges of untreated oily water and bilge waste had taken place approximately four times per week while in the open ocean. Most of these discharges took place at night or far from shore during trips to various African ports, from Africa to Brazil, and from Brazil to the United States. These illegal discharges were either recorded in the ship's ORB inaccurately as "discharges through the OWS" or not recorded at all. The ship's engineers also constructed a bypass pipe, which was hidden during Coast Guard boardings. All defendants are alleged to have encouraged crew members to lie to investigators.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Overseas Shipholding Group, No. 1:06-CR-65 (E. D. Tex.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Lana Pettus [redacted] and AUSA Joe Batte [redacted]

On July 19, 2006, a superseding indictment was returned by a grand jury charging Overseas Shipholding Group ("OSG") with conspiracy, false statement, and Act to Prevent Pollution from Ships ("APPS") violations. On May 17, 2006, Kun Yun Jho, chief engineer of the *M/T Pacific Ruby*, was similarly charged for allegedly falsifying the vessel's oil record book by omitting discharges which occurred during a time when Jho, and crew members at his instruction, deliberately "tricked" the oil water separator ("OWS"). The *Pacific Ruby* is flagged in the Marshall Islands and is owned and controlled by OSG.

In or about May 2005, in response to knowledge of deliberate acts of pollution using bypass equipment and the circumvention of pollution control equipment, as well as knowledge that documents on other ships in its fleet had been falsified, OSG installed anti-tricking devices on the ship, including a device on the fresh water system to prevent it from being used to trick the OWS.

Between approximately May 2005 and July 2005, Jho directed a subordinate to use a screwdriver to repeatedly jam open a pneumatic valve, part of the ship's pollution control equipment, allowing fresh water to trick the oil content meter. He then made entries in the oil record book designed to mislead Coast Guard officials to believe that the ship's oil pollution control equipment was being properly used.

Defendants are scheduled to go to trial in October 2006. This case was investigated by the United States Coast Guard.

Back to Top

United States v. Alan Veys et al., No. 1:06-CR-0003 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] and AUSA Steven Skrocki [redacted]

On July 19, 2006, a grand jury returned an indictment charging Alan Veys, operator of the Pybus Point Lodge on Admiralty Island, and James Jairell, a Wyoming native, with conspiracy and Lacey Act violations in connection with a scheme where clients at the Lodge were allegedly taken on black bear hunts illegally guided by Jairell in 2001.

According to the indictment Veys, acting alone or with Jairell, recruited clients at sports shows to fish and hunt bears at the Lodge in the spring and fall, for approximately $4,000 per trip. The clients would pay Veys, who later split the fees with Jairell. Jairell guided the clients on black bear hunts, without involving a registered guide as required by Alaska state law. Jairell and Veys would then falsify "sealing certificates" submitted to the state, which claimed the bears were killed on *non*-guided hunts, and ship the bear skins and skulls to the clients from Alaska. Veys is charged with conspiracy and four Lacey Act trafficking counts. Jairell is charged in these counts, as well as eight additional Lacey Act false labeling violations. The indictment includes a forfeiture count which alleges that a boat owned by the Lodge was used to transport the hunters and bear parts, ultimately aiding in the commission of the felony Lacey Act violations.

Jairell previously was convicted in 2005 in Alaska state court of falsifying residency information (with Veys' assistance) in order to obtain his class-A assistant guide license and hunting licenses. Jairell subsequently lost his licenses and was ordered to pay fines. Veys recently was sued by potential buyers of the Lodge, and was ordered to pay a three million dollar civil judgment. Veys filed for bankruptcy protection of the Lodge assets which are valued at approximately two million dollars.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas / Sentencings

United States v. Luxury Wheels, Inc. et al., No. 1:04-CR-00346 (D. Colo.), AUSA Patricia Davies [redacted]

On June 8, 2006, Luxury Wheels, Inc., an electroplater, and Albert Hajduk, the company's operations manager, pleaded guilty to charges stemming from illegal wastewater discharges into the City of Grand Junction's sewer system. Luxury Wheels pleaded guilty to conspiracy to violate the CWA and to make false statements, and a negligent CWA violation that resulted in the release of toxic fumes to the POTW, injuring a POTW worker. Hajduk pleaded guilty to a false statement violation for submitting false monitoring reports to the POTW and to a negligent CWA violation.

Luxury Wheels electroplated automobile wheels with chrome, using various chemicals for this process including acids and caustics, as well as chemical solutions containing metals. The company had a permit from the City of Grand Junction to discharge treated electroplating wastewater into city sewers. According to the indictment, from May 1999 until September 2003, the defendants violated the CWA by diluting wastes before treating them, by attempting to treat wastewater when their treatment system was overburdened, and by hiring a company to "hydrojet" the company's sewage service line to remove chemical sludge blockages in order to conceal evidence of illegal discharges.

This prosecution has resulted in two published opinions by the District Court, addressing, inter alia, search issues arising when POTW workers sample other than in conformity with compliance sampling procedures under the permit, and myriad challenges to charges alleging violations of the CWA and RCRA.

Pursuant to their respective plea agreements, Luxury Wheels will pay $350,000 in restitution to the POTW worker plus a $50,000 fine. Defendant Hajduk faces a probably Guidelines' sentence of 10-16 months' incarceration. Sentencing is scheduled for August 25, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA's National Enforcement Investigations Center.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Wallace Heidelmark et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Albert Glenn [redacted].

On July 6, 2006, Wallace Heidelmark, president of Indoor Air Quality, Inc. ("IAQ"), an asbestos removal company, was sentenced to serve 24 months' incarceration followed by three years' supervised release. He also must pay a $5,000 fine and will be held jointly and severally liable for restitution in the amount of $41,514.17. IAQ was sentenced to complete two years' probation, pay a $100,000 fine, and $41,514.17 in restitution.

The defendants pleaded guilty in January of this year to two counts of mail fraud and one count of violating the Clean Air Act National Emissions Standard for Hazardous Air Pollutants asbestos work practice standards. The charges arose from illegal asbestos removal projects performed in residences, commercial buildings and a school in 2002. The mail fraud counts stem from a scheme to defraud homeowners concerning the removal of asbestos-containing material in their homes. IAQ had an extensive history of non-compliance and has been cited in three EPA administrative enforcement actions. The company previously paid civil penalties and entered into consent agreements.

As part of their sentence, Heidelmark and IAQ are required to provide restitution to former employees of the company and to homeowners for whom IAQ had performed the removals. With regard to the employees, Heidelmark and IAQ are required to pay for medical examinations to be performed at a local hospital offering a worker health program specifically focused on workers in the asbestos removal industry. Heidelmark and IAQ also were ordered to pay restitution to certain homeowners who subsequently had air testing performed in their homes.

Under the Sentencing Guidelines, Heidelmark faced a term of imprisonment between 63 and 78 months. The primary issue at sentencing was amount of gain that Heidelmark had accrued as a result of his mail fraud. The government argued that the gain should be calculated based upon the costs of air tests that Heidelmark had promised more than 730 homeowners would be performed in their homes after asbestos removal work had been completed, but which Heidelmark and IAQ routinely failed to perform. The government estimated the gain conservatively at more than $350,000.

The court agreed with the government's estimate for the gain resulting from the fraud and agreed with the Guidelines' calculation provided by the government which resulted in an offense level of 26. Rather than imposing a sentence within the Guidelines' range of 63-78 months, however, the court departed downward due to "mitigating circumstances" and sentenced Heidelmark to a term of 24 months imprisonment. The court failed to explain the downward departure and failed to define specifically the "mitigating circumstances" that he believed warranted such a departure.

A third co-defendant, supervisor Jason Scardecchio, pleaded guilty on June 22, 2006, to two counts of mail fraud and one count of violating the asbestos work practice standards. Scardecchio is scheduled to be sentenced on September 21, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Amar Alghazouli et al., No. 05-CR-1148 (S.D. Calif.), AUSA Melanie Pierson [redacted]

Freon Cannister

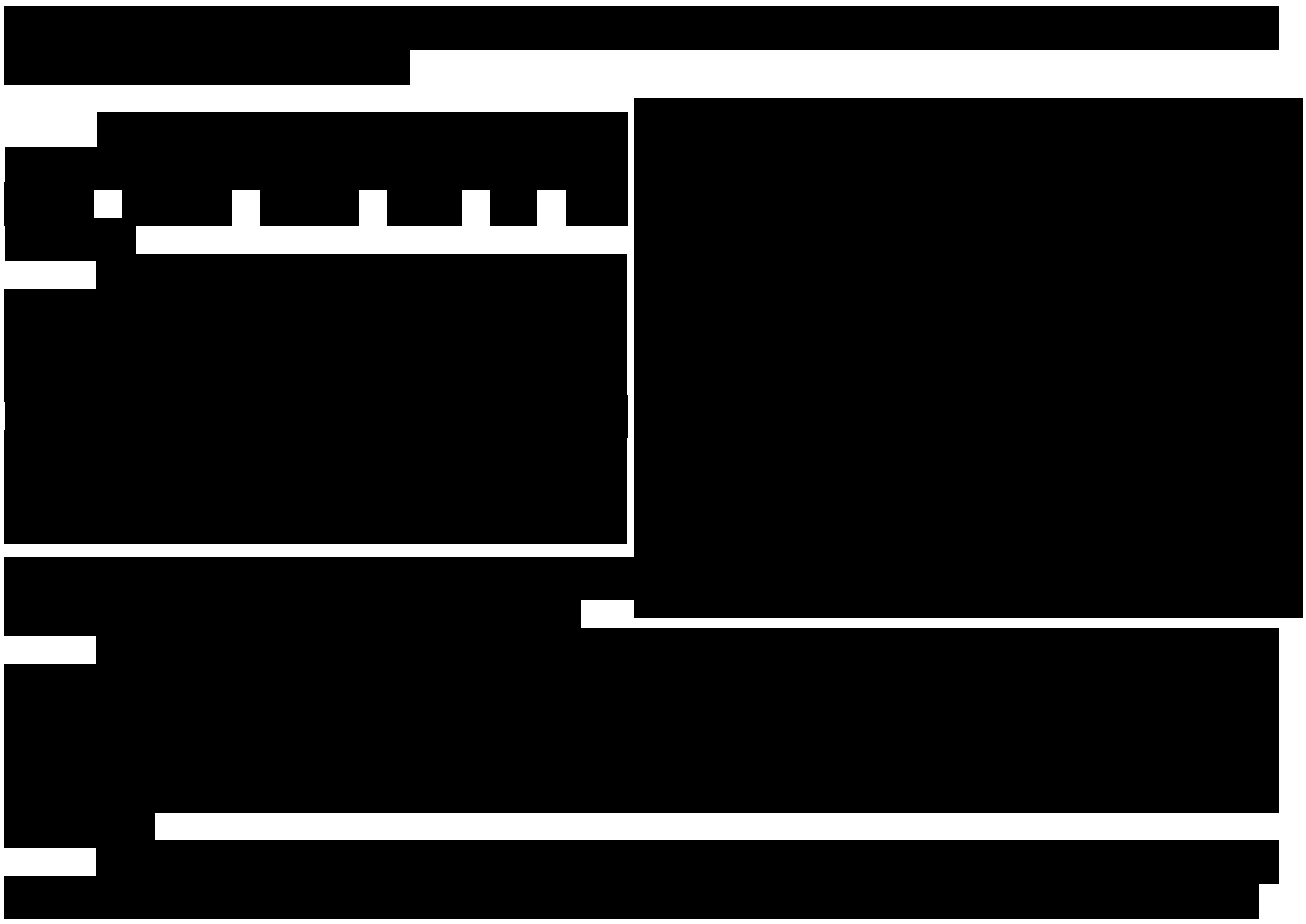
On July 7, 2006, Amar Alghazouli was sentenced to pay a $7,500 fine and serve 41 months' incarceration followed by three years' supervised release. In March of this year, Amar Alghazouli was found guilty of five of the six counts charged for his role in a conspiracy to smuggle ozone depleting substances and to launder money. Specifically, Amar was convicted of conspiracy to violate the CAA and conspiracy to launder money, two smuggling violations, and one CAA violation for the unlawful sale of Freon. He will also be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the United States.

A 15-count indictment was filed in July 2005 charging Ahed Alghazouli, Omran Alghazouli, and Amar Alghazouli with a variety of offenses related to their operation of a Freon smuggling scheme from approximately June 1997 through October 2004. The defendants operated an automotive supply store known as United Auto Supply. They purchased cylinders of R-12 from Mexico, altered the writing on the cylinders to disguise their origin, and then sold them to customers in parking lots in the San Diego area.

Ahed is scheduled for trial to begin on August 21, 2006, and Omran remains a fugitive.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation Division; Federal Bureau of Investigation; and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement, Office of Inspector General.

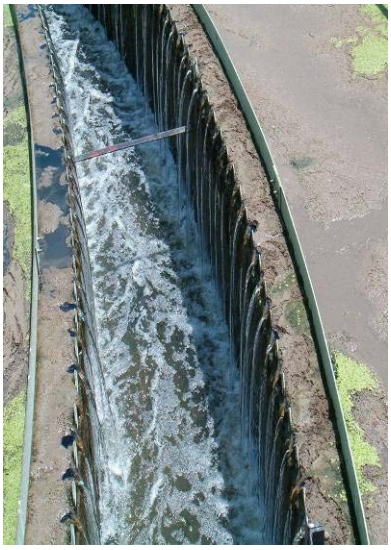
Back to Top



Back to Top

United States v. Puerto Rico Aqueduct and Sewer Authority, No. 3:06-CR-00202 (D. P. R.), ECS Senior Litigation Counsel Howard Stewart and SAUSA Silvia Carreno

On July 7, 2006, Puerto Rico Aqueduct and Sewer Authority ("PRASA") pleaded guilty to a 15-count indictment charging CWA violations based upon a 25-year history of inadequately maintaining and operating the island's wastewater and water treatment systems. PRASA was specifically charged with nine counts of discharges in violation of its NPDES permit at the nine largest POTWs on the island; five counts of illegal discharges from the five water treatment plants that supply drinking water to the largest portion of the local population; and one count charging a direct discharge from the PRASA system to the Martin Pena Creek.




Final Clarifiers

PRASA is a public corporation of the Commonwealth of Puerto Rico created to provide adequate water and sanitary sewer service. PRASA operates the island's entire sewage collection and treatment system of 68 POTWs, 508 pump stations, and related infrastructure. PRASA also operates the island's 133 water treatment plants ("WTP"), which provide drinking water for the local population. The POTWs each discharge treated water under the authority of an NPDES permit issued by EPA. The WTPs also discharge what is referred to as "backwash" under the terms of an NPDES permit. PRASA is the named permittee for each NPDES permit. The illegal discharges from PRASA's POTWs and WTPs are a direct result of the corporation's poor maintenance and operational practices.

The plea agreement states that the Authority will be placed on probation for five years, pay a $9 million fine, agree to make $109 million in repairs and upgrades at the nine POTWs named in the indictment, make $10 million in repairs and upgrades to the Martin Pena sewer system, and fund a study of the five water treatment plants identified in the indictment. The study will be conducted by CH2M Hill, an independent environmental engineering firm, and it will be presented to the district court to determine the appropriate remedy to impose with respect to the water treatment facilities.

An additional comprehensive civil settlement was reached as well, requiring PRASA to spend an estimated $1.7 billion implementing capital improvement projects and other remedial measures at all of its 61 wastewater treatment plants and related collection systems over the next 15 years.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Charles Hungler, Jr. et al., No. 3:06-R-00014 (E.D. Ky.), AUSA Robert Duncan, Jr. [redacted]

On July 12, 2006, Charles Hungler, Jr., and Perfect-a-Waste Sewage Equipment Company ("Perfect-a-Waste") pleaded guilty to an indictment charging one Clean Water Act violation for making a false statement on a discharge monitoring report.

Hungler owns and operates Perfect-a-Waste. The defendants both operate the Edgewood Sewage Treatment Plant, located in Franklin County. On July 28, 2005, Hungler submitted a Kentucky Pollutant Discharge Elimination System Discharge Monitoring Report to Kentucky environmental authorities, falsely stating that samples had been taken when, in fact, they had not.

The defendants are scheduled to be sentenced on November 17, 2006.

Back to Top

United States v. David Inskeep, No. 1:06-CR-10026 (C.D. Ill.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Tate Chambers [redacted].

Discharged Dairy Waste

On July 13, 2006, David Inskeep was sentenced to serve 30 days' incarceration followed by one year of supervised release. He also must pay a $3,000 fine. Inskeep pleaded guilty in March of this year to one count of negligently discharging animal waste into waters of the United. The defendant operated the Inswood Dairy, Inc., a dairy with more than 1,200 cows, that operated a waste management system consisting of a lagoon designed to hold up to approximately 40 million gallons of animal waste. The system used water to flush cattle manure and wastewater from the barns to a central collection point. The waste then was pumped to the lagoon for storage until it could be lawfully removed. Inskeep continued to flush manure and wastewater into the lagoon after state officials repeatedly warned him that the lagoon was too full.

A judge issued an order on February 16, 2001, for the dairy to immediately cease discharging into the lagoon. On February 16 and 17, 2001, however, Inskeep lowered the level in the lagoon by pumping waste from the lagoon through a hose to a tributary that flowed downhill from the dairy, discharging more than one million gallons of waste and manure. The waste pumped from the lagoon flowed into a tributary of the West Fork of Kickapoo Creek, which eventually flows to the Illinois River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources.

Back to Top

United States v. Hoang Nguyen et al., No. 3:05-CR-00015 (S.D. Texas), ECS Trial Attorney Georgiann Cerese [redacted]

On July 21, 2006, Hoang Nguyen and Tam Le were sentenced as a result of pleading guilty to smuggling red snapper caught in violation of the Magnuson Stevens Fisheries Act. Nguyen was sentenced to serve 30 months' incarceration, Le was sentenced to serve 21 months' incarceration, and both will complete three years' supervised release. Le, the crewmember of a commercial fishing vessel, pleaded guilty in February of this year to a smuggling violation for his role in concealing and selling commercial quantities of red snapper that had been illegally imported into the United States. During a vessel boarding in March 2005, federal agents discovered thousands of pounds of red snapper, concealed within a hidden compartment on the fishing vessel. Nguyen, the captain of the vessel, pleaded guilty to a similar charge in January 2006. The fish, which had been caught in the Exclusive Economic Zone after the fishing season had closed, were brought into Texas for eventual sale in Houston.

This case was investigated by the United States Department of Commerce National Oceanic and Atmospheric Association ("NOAA") Fisheries Service Office for Law Enforcement with assistance provided by the Texas Parks and Wildlife Department.

Back to Top

United States v. Parkland Town Center, LLC, et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Jose Bonau [redacted].

On July 21, 2006, Terry Dykes was sentenced to serve 24 months' incarceration followed by two years' supervised release. He was taken into custody and immediately remanded to the Bureau of Prisons. Dykes, a subcontractor, was convicted by a jury in May of this year for Clean Air Act National Emissions Standard for Hazardous Air Pollutants violations for his involvement in the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000. While installing a sprinkler system in the building, another contractor filed a complaint with the local building inspector after he discovered what he believed to be asbestos. Further investigation disclosed that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

Pipe Covered with Asbestos

Parkland Town Center, LLC ("Parkland"), a Palm Beach real estate development firm, and company owner and developer Neil Kozokoff, pleaded guilty just prior to trial. The company pleaded guilty to one violation of the CAA for failure to file notice of a demolition or renovation, and Kozokoff pleaded guilty to being an accessory after the fact of a CAA violation for failure to file notice of demolition or renovation. General contractor Mark Schwartz pleaded guilty prior to indictment to one CAA violation and was sentenced in November 2005 to serve a five-year term of probation.

Kozokoff and Parkland are scheduled to be sentenced on August 1, 2006. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Palm Beach County Sheriff's Department.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

September 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Abrogar, ___ F.3d ___ 2006 WL 2382328 (3rd Cir. 2006). Vessel engineer; "ongoing, continuous or repetitive discharge" sentencing enhancement.**
- **United States v. Michael Hillyer, ___ F.3d ___ 2006 WL 2129845 (4th Cir. 2006). Dredging operation; "aberrant behavior" sentencing departure.**
- **Northern California River Watch v. City of Healdsburg, ___ F.3d ___ 2006 WL 2291155 (9th Cir. 2006). Sewage discharge to quarry pit; Rapanos discussed.**
- **United States v. Evans, ___ F. Supp. 2d ___, 2006 WL 2221629 (M.D. Fla. 2006). Farm labor camp sewage discharges; Rapanos discussed.**

Districts	Active Cases	*Case Type* / Statutes

S.D. Ala.	**US v. Gulf Services Contracting, Inc.**	***Demolition Project/*** **Fraud, False Statement**
C.D. Calif.	**US v. Hisayoshi Kajima** **US v. All Power Manufacturing Company** **US v. Danaos Shipping Co., Ltd.**	***Butterfly Trafficking/*** **ESA, Smuggling** ***Aerospace Parts Builder/*** **CWA** ***Vessel/*** **APPS, Obstruction**
S.D. Calif.	**US v. Amar Alghazouli**	***ODS Smuggling/*** **Conspiracy, Smuggling, CAA**
N.D. Fla.	**US v. Panhandle Trading Inc.** **US v. Christopher Weaver**	***Seafood Importers Mislabeled Catfish/*** **Lacey Act** ***Dolphin Harassment/*** **Marine Mammal Protection Act**
S.D. Fla.	**US v. Parkland Town Center, LLC** **US v. Richard Shaffer** **US v. Harold DeGregory**	***Hotel Renovation/*** **CAA NESHAP** ***Apartment Complex Demolition/*** **CAA NESHAP** ***Transport of Radioactive Material/*** **HMTL, False Statement**
D. Minn.	**US v. Troy Gentry**	***Illegal Bear Hunt/*** **Lacey Act**
D. N. J.	**US v. Chang-Sig O** **US v. MK Shipmanagement Company, Ltd.** **US v. Wallenius Ship Management, Pte., Ltd.**	***Vessel/*** **Conspiracy, APPS, Obstruction** ***Vessel/*** **APPS** ***Vessel/*** **APPS, Conspiracy, Obstruction, False Statement**
N.D. N.Y.	**US v. East Coast Capital Company**	***Building Renovation/*** **Conspiracy, CAA, CWA**
D. Ore.	**US v. Great Cats of the World**	***Ocelot Trafficking/*** **Conspiracy, ESA**
W.D. Pa.	**US v. Industrial-Commercial Consulting International, Inc.**	***Hospital Abatement/*** **Conspiracy, CAA, Obstruction**
E.D. Tex.	**US v. Overseas Shipholding Group**	***Vessel/*** **Conspiracy, APPS, False Statement**
S.D. Tex.	**US v. Citgo Petroleum Corporation**	***Petroleum Refinery/*** **CAA, MBTA**
E.D. Va.	**US v. Michael Johnson** **US v. Richard Wolfe**	***Illegal Elk Hunt/*** **Lacey Act** ***Illegal Elk Hunt/*** **Lacey Act**
W. D. Va.	**US v. Brett Boyce**	***Illegal Elk Hunt/*** **Lacey Act**

Quick Links

Significant Opinions

3rd Circuit

United States v. Abrogar, ___ F.3d ___ 2006 WL 2382328 (3rd Cir. 2006).

In this vessel pollution case, defendant Abrogar appealed the district court's application of a six-level sentencing enhancement pursuant to section 2Q1.3 of the Sentencing Guidelines. Abrogar, the chief engineer aboard the Panamanian-flagged *M/V Phoenix*, pleaded guilty to a one-count information charging him with failing to keep an accurate oil record book, in violation of 33 U.S.C. § 1908(a).

Coast Guard investigation revealed that Abrogar became aware that crew members under his direction were improperly discharging oil contaminated bilge waste directly into the ocean. Instead of ending this practice, Abrogar made multiple entries into the ship's oil record book indicating that the bilge waste had been incinerated and not discharged overboard. During a subsequent Coast Guard inspection of the *Phoenix*, Abrogar lied to inspectors and denied knowledge of any illegal discharges.

The presentence investigation report recommended a six-level enhancement pursuant to Guideline section 2Q1.3(b)(1)(A). This section provides for such an enhancement "if the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment." U.S.S.G. § 2Q1.3(b)(1)(A). The district court accepted the recommendation and sentenced Abrogar to twelve months and one day of imprisonment.

On appeal, the Third Circuit held that the six-level enhancement was misapplied. In so holding, the Court focused on the text of the Act to Prevent Pollution from Ships ("APPS"). Specifically, the Court noted that foreign flagged ships are subject to the criminal provisions in APPS, which implements Annex I of MARPOL, only when the ship is "in the navigable waters of the United States." 33 U.S.C. § 1902(a)(2). Because the illegal discharges all occurred outside of U.S. waters, and because the offense of conviction is restricted to failure to maintain an accurate oil record book within U.S. waters, the Court held that the discharges could not constitute relevant conduct for purposes of a sentencing enhancement. Specifically, the Third Circuit stated, "because the improper discharges are not relevant conduct, they cannot be considered part of the 'offense' under the Guidelines, and therefore the 'offense' did not 'result[] in' repeated discharges, as is required before the six-level enhancement under § 2Q1.3 may be applied." Consequently, the Court vacated Abrogar's sentence and remanded the case for resentencing.

Back to Top

4th Circuit

United States v. Michael Hillyer ___F.3d___2006 WL 2129845 (4th Cir. 2006).

In this dredging case, the government appealed the defendant's sentence of probation. Hillyer pleaded guilty to two felonies involving his illegal use of "prop wash" to dredge an area around pilings he wished to remove. He did so under cover of darkness, over a period of several nights, and despite repeated warnings that his conduct was illegal. On facts that were not in dispute on appeal, Hillyer's advisory offense level under the Guidelines was 13 (or a possible12-18 months' imprisonment). Over the government's objection, the sentencing judge granted a motion for an aberrant behavior departure under USSG § 5K2.20. In so doing, the district court found that Hillyer had "engaged in a single criminal transaction that did not involve significant planning and was of limited duration" and that his conduct was inconsistent with his "long record of being attentive to environmental and safety concerns."

On appeal, the Fourth Circuit held that the court misapplied the departure and remanded the case for resentencing. Specifically, the court held that Hillyer's conduct was not a "single criminal occurrence," as required by § 5K2.20, and that it failed two of the three other elements needed to apply the departure. Those three elements are that the crime must: (1) be committed without significant planning; (2) be of limited duration; and (3) represent a marked deviation by the defendant from an otherwise law-abiding life. U.S.S.G. § 5K2.20(b).

Hillyer caused work crews to wash away sediment using tugboat propellers on multiple occasions, as reflected by the sentencing court's application of 2Q1.3(b)(1)(A), resulting in a six-level increase for "ongoing, continuous, and repetitive discharge and release of a pollutant." In light of his multiple criminal acts, the court held that Hillyer failed the "single criminal occurrence" requirement of § 5K2.20(b).

The defendant's crime also required significant planning. As the court explained, the facts showed that he went to great lengths to have his work crews on site after darkness and used tugboats without running lights to avoid detection. Further, his crimes were repeated over the course of ten days, despite repeated warnings that this prop washing activity was illegal. Because he thereby failed two prongs under § 5K2.20(b), the court did not need to reach the question of whether his conduct "represented a marked deviation by the defendant from an otherwise law-abiding life."

In light of these facts, the court remanded the case for resentencing without the downward departure and advised the sentencing court to determine whether the 12-18 month range without the departure "serve[s] the factors set forth in 18 U.S.C. § 3553(a)."

Back to Top

9th Circuit

Northern California River Watch v. City of Healdsburg, ___ F.3d ___ 2006 WL 2291155 (9th Cir. 2006).

In this civil Clean Water Act case, the City of Healdsburg appealed a district court's judgment that Healdsburg violated the CWA by discharging sewage from its waste treatment plant without a National Pollutant Discharge Elimination System ("NDPES") permit. Healdsburg discharged sewage into a body of water known as Basalt Pond ("the Pond"), a man-made rock quarry pit located next to the Russian River ("the River") – a navigable water of the United States – and separated from the river by only a levee.

The evidence at trial established the following: (1) Healdsburg began discharging wastewater into the Pond in 1978; (2) the annual outflow from the sewage plant is sufficient to fill the Pond every two years; (3) beneath the surface of the Pond and the River is a large aquifer, which serves as the principal pathway for continuous passage of water between the Pond and the River; (4) at times, the River overflows the levee and the waters of the Pond and River commingle; (5) the Pond and the River support similar bird, mammal, and fish populations; and (6) the Pond substantially affects the chemical integrity of the River because the drainage of Pond water into the River increases the concentration of chloride in the River.

The issue on appeal was whether discharge of wastewater into the Pond is subject to the CWA. Specifically, the Court of Appeals for the Ninth Circuit was called upon to interpret the Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), to determine whether the provisions of the CWA extended to the Pond.

The Court of Appeals, treating Justice Kennedy's concurring opinion in *Rapanos* as the controlling rule of law, focused its analysis on whether a significant nexus existed between the Pond and a navigable-in-fact waterway – in this case, the River. Justice Kennedy's *Rapanos* opinion explained that a significant nexus exists "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affects the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" Justice Kennedy further explained in *Rapanos* that "the required nexus must be assessed in terms of the [CWA's] goals and purposes, which are 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'" Applying this standard, the Court of Appeals found a significant nexus between the Pond and the River. Specifically, the Court concluded that the Pond's effects on the River are "not speculative or insubstantial" and that the Pond "significantly affects the physical, biological, and chemical integrity of the Russian River." Because of this connection, the Pond qualified for protection as a "navigable water" under the CWA, and Healdsburg violated the CWA by discharging wastewater into the Pond without a NPDES permit.

Back to Top

District Court

United States v. Evans, ___ F. Supp. 2d ___, 2006 WL 2221629 (M.D. Fla. 2006).

Defendant Evans, along with several others, operated a farm labor contracting business known as the Evans Labor Camp – with camps in Florida and North Carolina – for seasonal farm workers. The Evans Labor Camp provided housing to migrant and seasonal workers and transported the workers to local farms. Located behind the Florida Camp was a small creek.

Beginning in 2003, the FBI, and subsequently the EPA, began investigating the Evans Labor Camp for various violations of federal law. The EPA investigation focused on possible criminal violations of the Clean Water Act resulting from improper discharge of human waste. In June 2005, the EPA executed a search warrant at the Florida Camp. The search warrant permitted EPA agents to "photograph, videotape, trace, diagram, label, and sketch" (1) potential sources of wastewater discharge; (2) above ground and underground plumbing; (3) sewers, manholes, trench systems, and drainage pipes, and (4) sources of wastewater discharge. The government also was permitted to test wastewater and seize any documents relating to wastewater discharge. Eleven days later, the EPA executed a second search warrant at the Florida Camp. This second warrant authorized the government to excavate a PVC pipe, take additional photographs, and conduct more tests on the water.

After a federal grand jury returned an indictment charging, *inter alia*, violations of the CWA, the defendants challenged the validity of the two search warrants executed by the EPA. Specifically, the defendants alleged that the EPA searches were void because the warrant applications did not make a showing of federal jurisdiction over the body of water at issue.

In deciding the motion to suppress, the Court was called upon to apply the Supreme Court's decision in *Rapanos v. United States*, 126 S. Ct. 2208 (2006). The Court stated that the jurisdictional requirement would be met if "the affidavits satisfy either the plurality's test (a relatively permanent, standing or continuously flowing water) or the general parameters of Justice Kennedy's concurrence (a tributary that feeds into a traditional navigable water; not necessarily a continuously flowing stream, river or ocean, but perhaps not also a ditch or drain." Evans, 2006 WL 2221629, at *19.

The search warrant affidavits stated the following: (1) a white PVC pipe extended from the Florida Camp property to the creek behind the Camp; (2) wastewater containing raw human waste directly discharged out of the pipe into the creek; (3) city tax maps and aerial photographs indicate that the creek at issue is the headwaters of Cow Creek, which flows directly into the St. Johns River, a body of water used in interstate and foreign commerce; (4) the creek is a continuously flowing body of water with a width of 7-8 feet and a depth of up to a foot.

The Court found these allegations sufficient to find CWA jurisdiction, regardless of whether the plurality opinion or Justice Kennedy's concurring opinion controls. Accordingly, the Court denied the defendants' motion to suppress the search warrant based on jurisdictional grounds.

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On August 23, 2006, the government filed a notice of appeal regarding three pretrial orders of the court and a motion to stay the trial pending the resolution of the appeal. On August 24th, Judge Molloy granted from the bench the motion to stay. The court said it would rule on any pre-trial

motions not involved in the pending appeal, but otherwise has acknowledged that jurisdiction now rests with the Ninth Circuit.

On July 27, 2006, the district court dismissed the knowing endangerment object of the conspiracy from the superseding indictment. A three-day hearing was held in which oral argument was heard on the motion to dismiss the object from the conspiracy, as well as on 28 other motions *in limine*. The court already dismissed the CAA knowing endangerment object of the conspiracy from the original indictment in June of this year, ruling that it was time-barred.

W.R. Grace ("Grace") and seven of its corporate officials were originally charged with conspiracy to defraud government agencies, including the EPA, knowing endangerment under the CAA, and obstruction of justice. Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. In the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to the EPA. Despite knowledge of the hazardous asbestos contamination, Grace continued to mine, manufacture, process and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

After the mine shut down in 1990, the company sold its contaminated mine properties to local buyers without informing them of the asbestos contamination. In 1999, Grace and company officials continued to mislead and obstruct the government when they failed to disclose the nature and extent of Libby's asbestos contamination to the EPA in response to a CERCLA 104(e) request from EPA's emergency response team.

Both trial dates of September 11, 2006, and March, 2007, have been adjourned.

Back to Top

Indictments

United States v. Overseas Shipholding Group et al., No. 1:06-CR-65 (E. D. Tex.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Lana Pettus [redacted] and AUSA Joe Batte [redacted].

On August 17, 2006, a second superseding indictment was returned by a grand jury against Overseas Shipholding Group, Inc. ("OSG"), and Kun Yun Jho, modifying the language of a previous indictment returned on July 19, 2006. The company was charged with conspiracy, false statement and APPS violations. Jho, the chief engineer of the *M/T Pacific Ruby*, is similarly charged with falsifying the vessel's oil record book by omitting discharges that occurred during a time when Jho, and crew members at his instruction, deliberately "tricked" the oil water separator ("OWS"). The *Pacific Ruby* is flagged in the Marshall Islands and is owned and controlled by OSG.

In or about May 2005, in response to knowledge of deliberate acts of pollution using bypass equipment and the circumvention of pollution control equipment, as well as knowledge that documents on other ships in its fleet had been falsified, OSG installed anti-tricking devices on the ship including a device on the fresh water system to prevent it from being used to trick the OWS.

Between approximately May 2005 and July 2005, Jho directed a subordinate to use a screwdriver to repeatedly jam open a pneumatic valve, part of the ship's pollution control equipment, allowing fresh water to trick the oil content meter. He then made entries in the oil record book designed to mislead Coast Guard officials to believe that the ship's oil pollution control equipment was being properly used.

Trial is scheduled to begin on October 16, 2006. This case was investigated by the United States Coast Guard.

Back to Top

United States v. Troy Gentry et al., No. 06-CR-00235 (D. Minn.), AUSA Michael Dees [redacted]

On August 15, 2006, country singer Troy Lee Gentry and commercial bear guide Lee Marvin Greenly were charged with conspiracy to violate the Lacey Act for illegally killing and tagging a tame black bear. Greenly sold a tame, trophy-caliber black bear to Gentry for approximately $4,650. Following the sale, Gentry allegedly killed the captive-reared bear with a bow and arrow while the bear was enclosed in a pen on Greenly's property. The indictment further states that they subsequently tagged the bear with a Minnesota license and registered the animal as if it had been killed in the wild. Greenly also was charged with two additional violations of the Lacey Act relative to his work as a licensed commercial bear guide.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Citgo Petroleum Corporation et al., No. 2:06-CR-00563 (S. D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted], ECS Trial Attorney Lary Larson [redacted] and SAUSA William Miller [redacted]

On August 9, 2006, a ten-count indictment was returned charging Citgo Petroleum Corporation, its subsidiary, Citgo Refining and Chemicals Co., and Philip Vrazel, the environmental manager at its Corpus Christi, Texas, East Plant Refinery, with criminal violations of the Clean Air Act and the Migratory Bird Treaty Act.

Both the corporation and subsidiary were charged with two counts of operating the East Plant Refinery in violation of the National Emission Standard for Benzene Waste Operations and two counts of operating open top tanks as oil water separators without first installing the required emission controls. The CAA and EPA regulations require Citgo to control the emission of benzene from wastewater produced at the refinery.

The indictment also names Vrazel for failing to identify all of the points in the refinery wastewater system where potentially harmful benzene was generated in a report filed with the Texas Commission on Environmental Quality ("TCEQ") for the year 2000. According to the indictment, Citgo operated its Corpus Christi refinery in 2000 with more than 57 megagrams of benzene in waste streams which were exposed to the air. One megagram is equal to one metric ton. Federal regulations limit refineries to operating with no more than six megagrams of benzene in their exposed waste streams. Citgo is also charged with operating with more than seven megagrams of benzene in its exposed waste streams in 2001.

The indictment states that Citgo used two large open top tanks as oil water separators between January 1994 and May 2003 without the required emission controls. During an unannounced

inspection in March 2002, TCEQ inspectors found approximately 4.5 million gallons of oil in the two open top tanks. These tanks also attracted migratory birds, several of which were killed (including four cormorants, five pelicans, and 20 ducks) after they landed in the open tanks and were trapped in the oil. As a result, Citgo Refining and Vrazel were charged with an additional five counts of violating the Migratory Bird Treaty Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, the FBI, the Texas Parks and Wildlife Division and the Texas Commission on Environmental Quality.

Back to Top

United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [redacted]

On August 7, 2006, Hisayoshi Kajima was arraigned on a 17-count indictment returned July 26, 2006, charging him with ESA and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation indicates that Kojima allegedly sold and smuggled numerous endangered butterfly species into the United States, including a pair of Queen Alexandra's Birdwings. This is the largest known butterfly in the world with a wing span of 12 inches. http://home.att.net/~Bret71/O_alexandriae.htm. The indictment states that documents submitted with this particular shipment declared that the package was a gift of "dry butterfly" worth $30, when in fact it consisted of the two giant butterflies which had been sold for $8,500. Twice in recent months, Kojima allegedly offered for sale the endangered Giant Swallowtail butterfly, an endangered species from Jamaica. The Giant Swallowtail butterfly is the largest butterfly in the western hemisphere. http://home.att.net/~Bret71/P_homerus.htm.

Kojima will remain in custody, as a flight risk, pending trial, which is scheduled to begin September 26, 2006. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Chang-Sig O et al., No. 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted].

On August 3, 2006, a three-count indictment was returned charging chief engineer Chang-Sig O and Mun Sic Wang, second engineer for the *M/V Sun New*, a bulk carrier vessel, with conspiracy, obstruction of justice, and an APPS violation in connection with illegally discharging sludge and oil-contaminated bilge waste into the ocean using two bypass hoses.

According to the indictment, the defendants used two hoses on a trip from Korea to Camden, New Jersey, between November 20, 2005, and December 31, 2005, to circumvent required pollution prevention equipment and dump sludge and oily bilge waste into the ocean. On January 3, 2006, this bypass equipment was discovered by the U.S. Coast Guard during an inspection of the vessel in New Jersey. The discharges were not noted in the oil record book, however, and thereby obstructed the investigation.

This case was investigated by the United States Coast Guard.

Back to Top

Pleas / Sentencings

United States v. All Power Manufacturing Company, No. 06-CR-00612 (C.D. Calif.), AUSA William Carter [redacted]

On August 24, 2006, All Power Manufacturing Company ("All Power"), pleaded guilty to an information charging it with one misdemeanor violation of the CWA for negligently discharging pollutants, namely, petroleum and oil-contaminated wastewaters, into Coyote Creek and the San Gabriel River in March 2004.

All Power was involved primarily in the business of manufacturing parts used in the aerospace industry. During the course of cleaning its machinery, the company generated wastes contaminated with petroleum and oil which usually were transported to a licensed waste disposal facility. At some point after mid-January 2004, an All Power employee emptied the wastes into a floor drain connected to a clarifier that was located on the premises of the facility. The clarifier was typically used to treat wastewaters generated by floor-cleaning operations prior to being discharged into the sewer system maintained by the Los Angeles County Sanitation Districts.

In March 2004, a hose at the facility burst discharging water into the floor drain and ultimately into the clarifier, which held the oil-contaminated wastes. As a result, the clarifier overflowed and discharged those wastewaters to a street gutter, which in turn flowed into the storm drain system and ultimately reached Coyote Creek and the San Gabriel River, both navigable waters of the United States.

The company was sentenced immediately to pay a $150,000 fine, half of which will support community service projects, including the National Marine Fisheries Service and the International Bird Rescue Research Center in San Pedro. All Power also will pay approximately $20,000 in restitution to the Los Angeles County Department of Public Works and the California Department of Fish and Game, which responded to the spill, and complete a one-year term of probation.

This case was investigated by the California Department of Fish and Game, the Los Angeles County Department of Public Works, the City of Santa Fe Springs, and the FBI.

Back to Top

United States v. East Coast Capital Company LLC, et al., No. 5:06-CR-00043, 62, 64 (N.D.N.Y.), AUSA Craig Benedict [redacted].

On August 28, 2006, Andrew Swaap was sentenced to serve 21 months' incarceration followed by two years' supervised release. Swaap was the director of acquisitions for the East Coast Capital Company, LLC ("East Coast"). The defendants were involved in the illegal removal and disposal of asbestos and perchloroethylene (a toxic chemical used in the dry cleaning industry) at a building owned by East Coast, which also hired workers to renovate the facility. The asbestos was disposed of in public trash dumpsters and the chemicals were disposed of into sewer drains.

Asbestos fibers under pipe

East Coast was sentenced on August 24th to pay a $500,000 fine, serve a two-year term of probation, and pay the unpaid balance in clean up costs which was $49,500. The company pleaded guilty in March of this year to a conspiracy to violate the Clean Air and Clean Water Acts.

Glen Middleton, the property manager for the company, was sentenced August 15th to serve 27 months' incarceration followed by two years' supervised release for his involvement in the conspiracy. Middleton arranged for hiring untrained individuals who were not given any protective equipment while they illegally disposed of the asbestos and perchloroethylene. Swaap pleaded guilty to a similar conspiracy violation for helping to hire the untrained works, as well as arranging to purchase the building.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation's Division of Law Enforcement and the New York State Department of Labor's Asbestos Control Bureau. Assistance was also provided by the United States Environmental Protection Agency National Enforcement Investigations Center.

Back to Top

United States v. Michael Johnson et al., No. 1:06-mj-00394 and 395 (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney/SAUSA David Joyce [redacted]

On August 22, 2006, Michael Johnson was sentenced to pay a $6,000 fine and an additional $3,000 in restitution to the National Fish and Wildlife Foundation. Johnson also will serve three years' probation (one year of supervised and two years of unsupervised) and will be prohibited from hunting for three years.

Johnson and co-defendant Robert Brooks each pleaded guilty in May of this year to a one-count information charging a misdemeanor Lacey Act violation. Each defendant received wildlife in the Eastern District of Virginia that was taken in violation of New Mexico state law. Specifically,

Brooks took possession of an elk, which he killed in September 2001, and Johnson received an elk, which he killed in September 2003.

Brooks was sentenced August 15th to pay a $5,000 fine, serve three years' probation, and pay $2,000 in restitution to the National Fish and Wildlife Foundation.

This case was investigated by the United States Fish and Wildlife Service

Back to Top

United States v. Gulf Services Contracting, Inc., et al., No. 1:06-CR-00158, 159 and 160 (S.D. Ala.), AUSA Michael Anderson [redacted]

On August 15, 2006, Gulf Services Contracting, Inc. ("GSCI"), pleaded guilty to one count of major fraud against the U.S. in violation of 18 U.S.C. § 1031, stemming from the removal of asbestos-containing material and lead from federal property. Company president and owner Michael Burge pleaded guilty to a false statement violation and Jonathan Valle, a GSCI supervisor, also pleaded guilty to a false statement violation on August 17th.

From 1997 through 2001, the defendants entered into contracts with the federal government for the purpose of removing asbestos and/or lead from ten federal military facilities in Alabama, Florida, Mississippi, and Georgia. They subsequently submitted reports to the government containing fraudulent training certification information about the employees assigned to the projects, as well as falsified personnel data.

This case was investigated by the United States Environmental Protection Agency, Office of Inspector General, Defense Criminal Investigation Division and the United States Environmental Protection Agency Criminal Investigation Division. Assistance was provided by the United States Army Criminal Investigation Division, the United States Air Force Office of Special Investigations, the United States Naval Criminal Investigative Service, and the Social Security Administration, Office of Inspector General.

Yes EPA-OIG was lead, until their agent retired, then DCIS. Investigation was conducted primarily by them, EPA-CID, SSA-OIG and DCIS. The FBI, NCIS and ICE [redacted] the beginning, but were diverted following 9/11 (hence the contract fraud charges and nothing regarding the recruitment and employment of illegal aliens). AFOSI (Hurlburt Field, FL) assisted with respect to the charges affecting their base.

NOT RESPONSIVE

Back to Top

United States v. Danaos Shipping Co., Ltd., No. 2:06-CR-00502 (C.D. Calif.), AUSA Dorothy Kim [redacted].

On August 14, 2006, Danaos Shipping Co., Ltd. ("Danaos"), a company based in Greece, pleaded guilty to a negligent discharge of oil into the Port of Long Beach from one of its ships and to obstructing a Coast Guard investigation of the oil spill.

The spill came from the *APL Guatemala,* an 803-foot-long, Greek-flagged ocean-going cargo vessel that transported goods around the world. In July 2001, while anchored at the Port of Long

Beach, the vessel leaked oil from its sea chest. (The sea chest is an intake located at the bottom of the ship which supplies seawater to various cooling systems.) After the vessel's crew members observed an oily sheen near the vessel, the spill was reported to the Coast Guard, which investigated the incident. The sheen dissipated soon thereafter, and the Coast Guard left the area.

The following day, crew members observed fresh oil leaking from the starboard side of the vessel. Instead of notifying the National Response Center, however, they poured detergent into the water in an attempt to disperse and hide the spill. That same morning, divers hired by Danaos inspected the ship and noticed oil actively flowing from the vessel. One diver informed a company official on board the ship that he had observed the oil flowing from the vent holes in the ship's sea chest. Danaos officials directed the diver to remove the oil from the sea chest and to falsely state on his report that he had only inspected valves, but had not investigated an oil spill.

As part of a plea agreement, the company has agreed to be sentenced to serve a three-year term of probation, to implement and fund an environmental compliance plan, and to pay full restitution to the Coast Guard and the United States Environmental Protection Agency.

Additionally, Danaos has agreed to pay a $500,000 fine, with $250,000 of the fine to be devoted to community service projects. Fifty thousand dollars of the community service money will go to the Santa Monica Mountains National Recreational Area, and $200,000 will be split between the National Marine Fisheries Service and the Channel Islands National Marine Sanctuary.

The company is scheduled to be sentenced on October 23, 2006. This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Panhandle Trading Inc., et al., No. 5:05-CR-00044 (N.D. Fla.), ECS Trial Attorney Mary Dee Caraway [redacted] and AUSA Stephen Presser [redacted]

On August 11, 2006, Danny D. Nguyen, Panhandle Seafood, Inc. ("PSI"), and Panhandle Trading, Inc. ("PTI"), pleaded guilty to conspiracy to violate the Lacey Act and conspiracy to commit money laundering for their role in an illegal catfish importation scheme.

Eight defendants were charged in a 42-count superseding indictment returned in May of this year. Nguyen was the vice president of both PTI and PSI. Four of the five remaining defendants are located in Vietnam. A fifth defendant, Buu Huy, a/k/a Huy Buu, is awaiting extradition from Belgium.

The indictment alleges that between May 2002 and April 2005 the defendants engaged in a scheme to intentionally mislabel certain frozen farm-raised Vietnamese catfish fillets, which were imported into the U.S. from Vietnam, in order to evade duties that had been imposed by the U.S. Department of Commerce on those imports. According to the plea agreement, Nguyen, PTI, and PSI subsequently engaged in a scheme to sell the frozen catfish fillets as wild-caught grouper in the American and Canadian commercial seafood markets. The scheme involved imports totaling over a million pounds of catfish labeled as grouper, channa, snakehead, or bass. More than 250,000 pounds of the fish have been seized in this investigation.

Sentencing is scheduled for November 17, 2006.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement and the United States Department of Homeland Security, Immigration, Customs and Border Protection.

Back to Top

United States v. Amar Alghazouli et al., No. 05-CR-1148 (S.D. Calif.), AUSA Melanie Pierson [redacted]

On August 11, 2006, Ahed Alghazouli pleaded guilty to a conspiracy to launder money in connection with proceeds from the sale of illegally imported R-12 refrigerant (commonly known as "Freon"). Alghazouli admitted that, between June 1997 and October 2004, he and his brothers, Amar Alghazouli and Omran Alghazouli, operated a business in San Diego known as United Auto Supply, through which they sold automotive supplies, including R-12 purchased from individuals known to them to have smuggled the refrigerant into the United States from Mexico. They purchased cylinders of R-12 from Mexico, altered the writing on the cylinders to disguise their origin, and then sold them to customers in parking lots in the San Diego area.

Amar was sentenced last month after being convicted at trial in March of this year on five of the six counts charged. He was sentenced to pay a $7,500 fine and serve 41 months' incarceration followed by three years' supervised release. Amar was convicted of conspiracy to violate the CAA and conspiracy to launder money, two smuggling violations, and one CAA violation for the unlawful sale of Freon. Both Ahed and Amar will be required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the government.

Ahed is scheduled to be sentenced on December 7, 2006, and Omran remains a fugitive.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation Division; Federal Bureau of Investigation; and the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement, Office of Inspector General.

Back to Top

United States v. Richard Schaffer et al., No. 06-CR-60116 - 60119 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On August 10, 2006, for his guilty plea to one CAA violation, Richard Schaffer was sentenced to serve six months' home detention as a condition of two years' probation, and ordered to pay a $25,000 fine. In addition, Schaffer must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos, and complete 250 hours of community service. Schaffer is the last defendant to be sentenced in this case involving the improper removal of asbestos during a demolition and renovation project in 2003 at the Pine Crest Village Apartment Complex ("Pine Crest") in Fort Lauderdale, Florida.

From approximately April 18, 2003, through April 28, 2003, Tarragon Management, Inc. ("TMI"), managing director Schaffer, project manager Robert Violino, and contractor Benco Development, Inc. ("Benco"), engaged in demolition and renovation activities that disturbed approximately 6,000 square feet of regulated asbestos-containing materials at Pine Crest without complying with the required work standards, in spite of four environmental assessments, an asbestos operations and maintenance program plan identifying the presence of asbestos at the facility, and numerous warnings by the Broward County Department of Planning and the Environmental Protection Asbestos Abatement Coordinator.

In June of this year, TMI pleaded guilty to, and was sentenced for, one CAA NESHAP violation and was ordered to serve a five-year term of probation, pay a $500,000 fine and pay an additional $500,000 in community service to the Florida Environmental Task Force Trust Fund. TMI also must implement a comprehensive compliance plan. Also in June, Violino pleaded guilty to a CAA violation and was sentenced to serve two years' probation with six months of home detention.

Violino was further ordered to pay a $25,000 fine and must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos.

Benco, the construction management company for the project, pleaded guilty to one CAA NESHAP violation in May of this year and was sentenced to complete a two-year term of probation, pay a $25,000 fine, and pay $25,000 in community service to the Florida Environmental Task Force Trust Fund. In addition, Benco's president must complete a 40-hour training course regarding the identification and handling of hazardous substances and wastes, including asbestos.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Broward County Sheriff's Office.

Back to Top

United States v. MK Shipmanagement Company, Ltd., No. 2:06-CR-00307 (D. N. J.), ECS Trial Attorney Joe Poux [redacted] and AUSA Thomas Calcagni [redacted]

On August 8, 2006, MK Shipmanagement Company, Ltd., operator of the *M/V Magellan Phoenix,* was sentenced as a result of pleading guilty in April of this year to one APPS violation for falsifying the ship's oil record book ("ORB"). The company will complete a three-year term of probation and pay a $200,000 fine, $100,000 of which will be split between two whistleblowers who brought this case to the attention of the authorities. An additional $150,000 will go to the National Fish and Wildlife Foundation to be applied toward the Delaware Estuary Foundation. The company also must implement an environmental compliance program.

The ship left Rotterdam in December 2004 and arrived with a cargo of grapes in Gloucester City, New Jersey, in March 2005. The Coast Guard boarded and inspected the ship on March 25, 2005. In the course of their inspection, inspectors learned that the *Magellan Phoenix* had routinely discharged oil sludge and oil-contaminated bilge water directly overboard into the ocean by intentionally by-passing the ship's oily-water separator and without recording the discharges in the ORB.

Noel Abrogar, the ship's chief engineer, previously pleaded guilty to an APPS violation for presenting the ORB to investigators. He was sentenced in January of this year to serve a year and a day of incarceration. Abrogar appealed and the Third Circuit remanded for sentencing on August 18, 2006. [See *Significant Opinions*, page 3, above.]

Back to Top

United States v. Christopher Weaver, No. 5:06-mj-00031 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On August 8, 2006, Christopher Weaver pleaded guilty to a misdemeanor violation of the Marine Mammal Protection Act for knowingly and unlawfully taking a marine mammal, in this case a dolphin.

On Oct. 13, 2005, Weaver was the captain of the *LEO TOO*, a charter fishing vessel operating out of Treasure Island Marina, in Panama City Beach, Florida. During the course of a deep-sea fishing trip, Weaver watched a dolphin grab a fish that one of his fishing clients had hooked. Weaver, who was on the bridge of the ship, fired a .357 magnum handgun at the dolphin while it was in the water near the boat. When the group moved to another fishing spot, Weaver again shot at one or more dolphins. It is unknown whether his shots struck any of the dolphins.

This case was investigated by the National Oceanographic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Harold DeGregory, Jr., No. 05-CR-60201 (S.D. Fla.), AUSAs Lynn Rosenthal [redacted] and Tom Watts-FitzGerald [redacted]

On August 4, 2006, Harold DeGregory, Jr., was sentenced to serve two years' incarceration and was further ordered to forfeit two Piper Navajo aircraft. DeGregory was convicted at trial in January of this year on five of the seven counts charged for the unlawful transportation of hazardous and radioactive material, specifically Iridium-192. He also was convicted of making a materially false statement to the government.

The defendant is the president and registered agent for H&G Import Export of Fort Lauderdale ("H&G"). DeGregory sub-contracted to Amelia Airways, a commercial air carrier, which transported hazardous and radioactive material from Fort Lauderdale to Freeport, Bahamas, without the pilot's knowledge. DeGregory never submitted the required hazardous material manifests, and the documents he provided to Customs agents reflecting transportation of cargo failed to mention the Iridium-192. DeGregory also flew his own aircraft from Freeport, Bahamas, to Fort Lauderdale Executive Airport. The customs declaration form he provided to Customs officials for that flight failed to disclose the hazardous radioactive cargo hidden in the wing compartment of his aircraft, which was discovered upon inspection.

This case was investigated by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement and the Federal Aviation Authority.

Back to Top

United States v. Brett Boyce, No. 3:06-CR-00031(W. D. Va.), ECS Trial Attorneys Wayne Hettenbach [redacted] and David Joyce [redacted] and AUSA Jean Hudson [redacted]

On August 3, 2006, Brett Boyce pleaded guilty to a one-count information charging him with a misdemeanor Lacey Act violation for receiving wildlife (an elk) in interstate commerce. Boyce participated in a hunt in 2003, which was in violation of New Mexico state law.

Sentencing is scheduled for January 8, 2007. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Wallenius Ship Management, Pte., Ltd., et al., No. 2:06-CR-00213 (D.N.J.), ECS Trial Attorney Malinda Lawrence [redacted] and AUSA Thomas Calcagni [redacted].

On August 3, 2006, Wallenius Ship Management, Pte., Ltd. ("WSM"), a Singapore shipping company, was sentenced to pay a $5 million fine. Of that fine, $2.5 million was awarded to, and equally divided among, four whistleblowers in the case. An additional $1.5 million will be devoted to

community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects in New Jersey. WSM also will serve a four-year term of probation with an option to terminate after three years and must implement an environmental compliance plan. Nyi Nyi, the former chief engineer of the *M/V Atlantic Breeze*, was sentenced to complete a two-year term of probation due to a substantial downward adjustment for cooperation.

The defendants pleaded guilty in March of this year to violations associated with the illegal dumping of oily wastes over a period of approximately three years and the overboard dumping of plastics in 2005. The company pleaded guilty to conspiracy to violate APPS for failure to maintain an oil record book ("ORB"), making false statements and writings, and obstructing a government proceeding; three substantive APPS violations for failing to maintain the ORB; and three substantive violations of making materially false statements and using materially false writings. Nyi pleaded guilty to one false statement violation for presenting a false ORB to investigators.

The U.S. Coast Guard began an investigation in November 2005 after crew members on the *Atlantic Breeze*, a Singapore-registered car carrier vessel managed by WSM, sent a fax to an international seafarers' union alleging that they were being ordered to engage in deliberate acts of pollution, including the discharge of oil-contaminated bilge waste and sludge, as well as garbage and plastics. As a result of this tip, the Coast Guard conducted an inspection of the ship and discovered a multi-piece bypass system, referred to on board as "the Magic Pipe," hidden in various locations on the ship.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Industrial-Commercial Consulting International, Inc., No. 2:06-CR-00025 (W. D. Pa.), AUSA Brendan Conway [redacted]

On August 1, 2006, Industrial Commercial Consulting International, Inc., ("ICCI") pleaded guilty to, and was sentenced for, conspiring to illegally remove asbestos-containing material from the former Woodville State Hospital in violation of federal workplace standards. Co-defendant Charles Victoria was charged in June of this year with conspiracy to violate the Clean Air Act and with obstruction of an administrative proceeding. Victoria was hired by ICCI to supervise removal of asbestos-containing material from a portion of the decommissioned hospital from December 1999 through December 2000.

ICCI was sentenced pay a $300,000 fine and complete a three-year term of probation. The company may offset $25,000 of the fine by implementing an environmental compliance plan designed to prevent further violations. Up to $150,000 of the fine may be additionally offset through payments to support environmental projects in the vicinity of the former hospital.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Great Cats of the World, Inc., et al., No. 3:05-CR-00225 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

On August 1, 2006, five defendants from Oregon, California, Texas, and New York were charged with various crimes related to the illegal sale of ocelots, a rare species of leopard protected under the Endangered Species Act ("ESA"). Civil penalties were imposed upon three others, from California, Pennsylvania, and Washington, for their involvement in the illegal trafficking. Nine people have been charged thus far, including Deborah Walding, who pleaded guilty in June of 2005 to an ESA violation and was sentenced in April of this year to serve one month of incarceration and nine months' home confinement, followed by a year of supervised release. Walding also will pay $25,000 in restitution to the World Wildlife Fund's North American Endangered Species Trafficking Program. The plea agreement states that Walding attempted to sell two ocelot kittens in 2002 and two adults in 2004.

As few as 70 ocelots are known to remain in the wild in the United States, most of them on the Laguna Atascosa National Wildlife Refuge in south Texas. The large, nocturnal cats are endangered throughout their range in Texas and Central and South America, mostly as a result of habitat destruction and illegal trafficking in pelts. They are protected by national and international laws.

The investigation in this case uncovered an aggressive, nationwide effort to illegally sell endangered animals while attempting to conceal the activity. Three of the defendants, who pleaded guilty August 2nd, admitted they had lied to officials by making false statements on required documents. A gift of an endangered species is not barred by law. In each of these five cases, the defendant submitted a form claiming that the ocelot was a gift to the purchaser, when in fact it was sold. In each case, the ocelots were sold for thousands of dollars, several for as much as $5,000 each.

Two of the ocelots sold as part of the illegal sales died while under care of the purchaser, although no claim of mistreatment is alleged. Five ocelots have been or will be seized by the U.S. Fish and Wildlife Service, including the two dead animals.

Back to Top

Below are additional details on the individual defendants:

United States v. Isis Society For Inspirational Studies, Inc., a/k/a the "Temple of Isis, 3:06-CR-00313 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

The Isis Society for Inspirational Studies, also known as the "Temple of Isis," is a company located in Geyserville, California. The company pleaded guilty to conspiring to violate the ESA through the illegal sale of six ocelots to purchasers in Texas, Florida, Oregon, and Minnesota. Throughout the course of the conspiracy, the Temple of Isis agreed with ocelot purchasers to mischaracterize the sale of ocelots as "donations" and to mischaracterize the payments for these animals as "contributions" to charitable organizations affiliated with the defendant, including the "Temple of Isis" and the "Isis Oasis Sanctuary." The purchasers falsified the required documentation in an attempt to conceal their actions.

The defendant has agreed to serve a two-year term of probation and may be ordered to pay a $60,000 fine.

Back to Top

United States v. Great Cats of the World, Inc., 3:06-CR-00314 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Great Cats of the World ("Great Cats") is an Oregon corporation located in Cave Junction, Oregon, which formerly operated in Minnesota under the name "Center for Endangered Cats." The information states that the Center for Endangered Cats purchased an ocelot from the Temple of Isis and submitted a document falsely claiming that the ocelot had been "donated," when in fact the defendant paid thousands of dollars for the animal.

Great Cats pleaded guilty to one ESA violation and may be ordered to pay a $10,000 fine. The company has agreed to serve a one-year term of probation and also has agreed to forfeit the illegally purchased ocelot.

Back to Top

United States v. Amelia Rasmussen, 3:06-CR-00312 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Amelia Rasmussen is a resident of Nixon, Texas. The information states that Rasmussen purchased two ocelots from the Temple of Isis and falsely claimed that they had been given to her when in fact she paid thousands of dollars for the animals.

The defendant pleaded guilty to an ESA violation and has agreed to serve a one-year term of probation. She also may be ordered to pay a $15,000 fine.

Back to Top

United States v. Jackie Sinott, 3:06-CR-00311 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

Jackie Sinott is a resident of Silverton, Oregon. The information states that Sinott purchased an ocelot from the Temple of Isis and then falsely claimed that she had received it as a gift despite paying thousands of dollars for the animal.

Sinott will enter a pre-trial diversion agreement which requires her to pay a fine of $10,000. The government has agreed to dismiss the charges against her if she does not violate any laws for six months.

Back to Top

United States v. Glenn Donnelly, No. 3:06-CR-00286 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

An indictment was filed July 19, 2006, charging Glenn Donnelly with purchasing two ocelot kittens from Deborah Walding in April 2002 in violation of the Lacey Act and the ESA. Donnelly also is charged with falsely claiming that the sale was a "donation." Donnelly is scheduled to go to trial on October 10, 2006.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Richard Wolfe et al. (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney/SAUSA David Joyce [redacted].

On July 26, 2006, Richard Wolfe, Christopher Wolfe, and Branden Ellison pleaded guilty to misdemeanor Lacey Act violations. The defendants killed wildlife, including pronghorn antelope and elk, in violation of New Mexico law and received the wildlife in Virginia.

Sentencing is scheduled to take place on October 17, 2006. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Richard Wolfe with elk

United States v. Parkland Town Center, LLC, et al., No. 05-CR-80173 (S.D. Fla.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Jose Bonau [redacted].

On August 1, 2006, Parkland Town Center, LLC ("Parkland"), a Palm Beach real estate development firm, and company owner and developer Neil Kozokoff, were sentenced in this asbestos abatement prosecution. Both defendants were sentenced to serve two-year terms of probation. Parkland also will pay a $125,000 fine and $45,000 to the Statewide Florida Environment Task Force Trust Fund. Kozokoff will pay a $25,000 fine and complete 90 days' home confinement. The plea agreement had only called for 60 days, but the judge added 30 additional days.

Co-defendant Terry Dykes was sentenced in July to serve 24 months' incarceration followed by two years' supervised release. He was taken into custody and immediately remanded to the Bureau of Prisons. Dykes, a subcontractor, was convicted by a jury in May of this year of CAA NESHAP violations for his involvement in the demolition/renovation of a West Palm Beach hotel between October 1999 and March 2000.

Parkland and Kozokoff pleaded guilty just prior to trial. The company pleaded guilty to one violation of the CAA for failure to file notice of a demolition or renovation, and Kozokoff pleaded guilty to being an accessory after the fact of a CAA violation for failure to file notice of demolition or renovation. General contractor Mark Schwartz pleaded guilty prior to indictment to one CAA violation and was sentenced in November 2005 to serve a five-year term of probation.

While installing a sprinkler system in the building, another contractor filed a complaint with the local building inspector after he discovered what he believed to be asbestos. Further investigation disclosed that asbestos had been illegally removed from a large boiler and the attached pipes located on the third floor of the building.

This case was investigated by the United States Environmental Protection Agency with assistance from the Palm Beach County Sheriff's Department.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

October 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Rapanos, 126 S. Ct. 2208 (2006), vacating and remanding 376 F.3d 629 (6th Cir. 2004).**
- **Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 451 F. 3d 77 (2d Cir. 2006).**

Districts	Active Cases	*Case Type* / Statutes

D. Alaska	**US v. Frederick A. Reynolds**	***Illegal Sale Walrus Ivory*/ Conspiracy, Lacey Act, False Statements, Marine Mammal Protection Act, Witness Tampering**
C.D. Calif.	**US v. Chris Mulloy**	***Wildlife Smuggling*/ Smuggling, False Statement**
S.D. Calif.	**US v. Victor's Premier Plating**	***Wastewater Discharges*/ CWA**
D. Colo.	**US v. Joseph Cannella**	***Asbestos Abatement in High School*/ CAA Negligent Endangerment**
N.D. Calif.	**US v. Wassim Azizi**	***Asbestos Abatement*/ CAA**
D. Conn.	**US v. Alan McGlory**	***Photo Processing Plant*/ False Statement**
D. Del.	**US v. Chian Spirit Maritime Enterprises, Inc.**	***Vessel*/ APPS, Conspiracy, Witness Tampering**
M.D. Fla.	**US v. Ronald Evans**	***Labor Camp Operation*/ Migrant and Seasonal Farm Worker Protection Act, Conspiracy, Trafficking, Narcotics, CWA**
S.D. Fla.	**US v. Fermin Fortun**	***Wildlife Refuge Damage*/ Destruction of Federal Property, Trespassing**
D. Idaho	**US v. Krister Evertson**	***Hazardous Metals Waste*/ HMTSA, RCRA**
[redacted]	[redacted]	[redacted]
D. Md.	**US v. Pacific-Gulf Marine, Inc.**	***Vessel*/ APPS**
D. Minn.	**US v. Eco Finishing Company, Inc.**	***Electroplater*/ CWA Pretreatment, Tampering**
D.N.J.	**US v. Sun Ace Shipping Company**	***Vessel*/ APPS**
N.D. N.Y.	[redacted] **US v. Alexander Salvagno**	[redacted] ***Extensive Asbestos Abatements*/ RICO, Conspiracy, CAA, TSCA, Tax Fraud**
S.D.N.Y.	**US v Daniel Storms**	***Falsified Drinking Water Test*/ False Statement**
[redacted]	[redacted]	[redacted]
E.D. Pa.	**US v. Kim Johnson** **US v. McClain**	***Smuggling African Artifacts*/ ESA** ***Wastewater Treatment*/ CWA**
N.D. Tex.	**US v. Melvin Riecke II**	***Improper Asbestos Removal*/ CAA, False Statements, Mail Fraud**
[redacted]	[redacted]	[redacted]

Significant Opinions

Supreme Court

United States v. Rapanos, 126 S. Ct. 2208 (2006), vacating and remanding 376 F.3d 629 (6th Cir. 2004).

Defendant developer (John Rapanos), through affiliated companies, owned various parcels of land in Michigan containing wetlands that lay near ditches into which he discharged fill materials in order to make the properties more useable for development. He did so without a permit and despite receiving a cease and desist letter from state officials and an administrative compliance order from USEPA. He also rejected the conclusion of his own consultant that the sites did in fact contain significant wetlands.

The government brought a civil action under the Clean Water Act against Rapanos and several of his companies, alleging discharges of fill into jurisdictional wetlands, failure to respond to requests for information, and disregard of administrative compliance orders, all in violation of the Act.

Simultaneously, federal criminal charges were brought against John Rapanos under the Act regarding one of the subject sites. He was convicted by a jury, but the U.S. Supreme Court vacated the conviction and remanded in light of its decision in *SWANCC*. Thereafter, the district court set aside the conviction, finding that the government lacked jurisdiction in light of *SWANCC*. However, the Sixth Circuit reversed the district court's holding, reinstated the conviction and remanded for resentencing. The Supreme Court then denied defendant's petition for certiorari.

The civil action led to a bench trial following which the district court found that defendant had filled a substantial number of acres of protected wetlands at three of the subject sites. The Sixth Circuit affirmed the judgment of the district court. It found that there was federal jurisdiction over the wetlands based upon the sites' hydrological connection to the nearby ditches or drains or to more remote traditional navigable waters.

In a companion case (*United States v. Carabell*) plaintiff owners were denied permits to fill in wetlands on their property in order to build condominium units. A drainage ditch along one boundary of the property was separated from the wetlands by an impermeable man-made berm. The ditch ran into a drain that emptied into a creek that in turn flowed approximately one mile into Lake St. Clair, which is part of the Great Lakes system.

After exhausting administrative appeals, plaintiffs filed an action in federal court challenging the Corps' jurisdiction and seeking review of the jurisdictional determinations made by the Corps. The district court found that there was federal jurisdiction over the site because the wetlands in question

were "adjacent to neighboring tributaries of navigable waters and [had] a 'significant nexus' to 'waters of the United States.'"

On appeal, the Sixth Circuit affirmed the district court's decision granting summary judgment to defendant, holding that the wetlands were adjacent to navigable waters. The court agreed with the conclusion by the district court that the ditch constituted a tributary and was "a water of the United States."

The Supreme Court granted certiorari in both cases and consolidated them.

Held: The Court vacated the decisions of the Sixth Circuit in both cases and remanded them for further proceedings. A four-judge plurality, written by Justice Scalia found that the holdings of the Sixth Circuit in both cases should be vacated, and the cases should be remanded for further proceedings. Justice Kennedy joined only in the decision to remand the cases.

According to the plurality, the definition "waters of the United States" includes only "relatively permanent, standing or continuously flowing bodies of water 'forming geographic features.'" It does not, however, include ordinarily dry "channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall" (although it may include waters that dry up in extraordinary circumstances and seasonal rivers.) Such an interpretation, the plurality opinion noted, would also preserve the primary responsibilities and rights of the states to "plan the development and use" of land and water resources. Under the holdings in *Riverside Bayview Homes* and *SWANCC*, the plurality found that the difficulty in delineating precise bounds of regulable waters had justified deference to the Corps' judgment that adjacent wetlands might be defined as waters under the Act. However, mere "reasonable proximity" to waters of the United States would not suffice to confer jurisdiction, and ecological considerations (such as in *Riverside Bayview Homes*) could be taken into account only to resolve the inherent ambiguity in defining where water ends and abutting wetlands begin. Thus, for the plurality, establishing wetlands jurisdiction under the Act requires (1) that an adjacent channel contain a relatively permanent body of water connected to traditional interstate navigable waters and (2) that the wetland have a continuous surface connection with that water. Finally, the plurality opinion noted that discharges into intermittent channels of pollutants that wash downstream probably could constitute discharges from a "point source" in violation of the Act. Because the Sixth Circuit had applied the wrong standard for determining wetlands jurisdiction, and because of the incomplete records below, the matter should be remanded to address these issues.

Justice Kennedy agreed with the plurality that the cases must be remanded, but, contrary to the plurality opinion, concluded that under *SWANCC* the proper test was whether a wetland possessed a "significant nexus" to navigable-in-fact. Like the dissenters, he described the two-pronged test advanced by the plurality as "without support in the language and purposes of the Act" or in the caselaw interpreting it. Under that test, a trickle, if continuous, would be subject to regulation while torrents occurring at irregular intervals through otherwise dry channels would not. Similarly, the "surface-connection" requirement was contrary to the purposes of the Act and unsupported by the decisions in *Riverside Bayside Homes* and *SWANCC*.

Justice Kennedy, again contrary to the plurality, would find that the requisite nexus exists when "wetlands, either alone or in combination with similarly situated lands in the region, significantly affected the chemical, physical, and biological integrity of other covered more readily understood as 'navigable.'" However, he disagreed with the dissenters (and the Corps) that "adjacency to tributaries, however remote and insubstantial," would support jurisdiction. He also found that the Sixth Circuit had erred in holding that a significant nexus can established in all cases by a mere hydrologic connection or by mere adjacency to a tributary.

The four-justice dissenting opinion, written by Justice Stephens, asserted that the Court's decision in *Riverside Bayside Homes*, asserting jurisdiction over wetlands "adjacent to navigable

bodies of water and their tributaries", was controlling. It rejected the plurality's "continuous surface connection" test as "nowhere implied" by that decision, and it found that *SWANCC* dealt only with isolated waters that were not part of a tributary system. The dissenters also wrote that wetlands serve important water quality roles, and wetlands located adjacent to tributaries generally have a "significant nexus" to a watershed's water quality and with traditionally navigable waters located downstream. That said, the dissenters would not overturn the existing regulatory structure in favor of the "significant nexus" standard advanced by Justice Kennedy. Finally, the dissenting opinion found the plurality's analysis of the Act's definition of "point sources" irrelevant to its distinction between permanent and intermittent tributaries.

Justice Breyer filed an additional dissenting opinion arguing that the CWA authority of the Corps extended "the limits of the congressional power to regulate interstate commerce, and urging the Corps promptly to write new regulations explicating the complex technical judgments that Congress intended the agency to make.

Back to Top

Second Circuit

Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 451 F. 3d 77 (2d Cir. 2006).

New York City operates a tunnel as part of a water management system that delivers drinking water from the Catskill Mountains to the City and surrounding area. Water from a reservoir is diverted though the tunnel to a trout stream, and thence to another reservoir, and eventually through an aqueduct and a series of additional reservoirs and tunnels to the City. Because of suspended solids in the originating reservoir, discharges from the tunnel into the stream are more turbid than water already in the stream, impairing its use for fly-fishing and other recreational activities.

Plaintiff environmental groups representing recreational users of the stream brought a citizen suit under the Clean Water Act alleging that the City's discharge of turbid water from the tunnel without a permit violated the Act. The district court dismissed the suit, holding that the discharge did not constitute an "addition" of a pollutant to the stream. On appeal, the Second Circuit reversed the district court, holding that the discharge of water containing pollutants from one distinct water body to another was indeed an "addition of a pollutant" under the Act, and thus that the discharge from the tunnel required a permit. **[See Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 273 F.3d 481 (2d Cir. 2001).]**

Upon remand, the district court granted summary judgment to plaintiffs, ordered defendants to obtain a permit for operation of the tunnel, and assessed a civil penalty upon it.

Held: On the second appeal of this case, the Second Circuit affirmed the judgment of the district court, except as to the amount of the civil penalty, and remanded for recalculation of that penalty. Revisiting its decision on the prior appeal, the court restated its earlier holding that the tunnel was a "point source" under the Act, and that "addition" meant the introduction into navigable water from "any place outside the particular water body to which pollutants are introduced." It again distinguished cases involving dams because here, unlike the taking of water from a source and its subsequent release back into that same source, the tunnel discharged water into the stream from a different, distinct body of water -- an "interbasin," rather than an "intrabasin," transfer. Finally, it

restated its rejection of a "unitary water" theory of the Act, finding that navigable waters of the United States did not constitute a single water body such that transfers of water from any body that is part of the navigable whole to any other body could never be an "addition."

The court further found that the intervening decision by the Supreme Court in *Miccosukee Tribe* should not alter its decision here. That decision did not invalidate the distinction between intrabasin transfers that do not add new pollutants to navigable waters, and interbasin transfers that do, nor did it endorse the "unitary water" theory. The court also disregarded an intervening USEPA regulatory interpretation, indicating congressional intent that water transfers from one navigable water to a separate one should be regulated by the states rather than under the federal NPDES permit program, as not persuasive, since the power of states to allocate quantities of water within their borders was not inconsistent with federal regulation of water quality. Finally, the court rejected the City's argument that other provisions of federal law, including the Safe Drinking Water Act, were more appropriate means for regulating the discharges in question, finding that such regulation should not invalidate separate, independent requirements imposed under the CWA.

The court last addressed the amount of the civil penalty imposed under the factors enumerated in the Act and found that the district court had not abused its discretion. However, it noted an error in calculation of the maximum statutory penalty that could have been imposed and, therefore, remanded the case for possible recalculation in light of that correct maximum amount.

Back to Top

Trials

United States v. Melvin Eugene Riecke II, No. 3:06-CR-00109 (N.D. Tex.), AUSA Phil Umpres [redacted] and SAUSA Cheryl Seager [redacted].

On August 24, 2006, Melvin Eugene Riecke II, general manager of the National Converting and Fulfillment Company, was convicted by a jury of four federal felony violations arising out of the improper removal of asbestos-containing flooring materials. Evidence presented at trial proved that Riecke improperly removed and disposed of asbestos-containing material, that he made false statements to the Texas Department of Health, and that he committed mail fraud when he sent a falsified asbestos renovation/demolition notification form to the Texas Department of Health.

The violations occurred between November 6 and December 10, 2001, when Riecke and his crew demolished a former lumber and hardware store without making any attempt to comply with federal asbestos workplace standards. The defendant committed these acts despite having knowledge of a pre-demolition survey of the building indicating the presence of asbestos-containing material and having signed a contract requiring that he properly remove these materials. Riecke was further found responsible for the illegal dumping of this material on a three and one-half acre industrial site.

This case was investigated by members of the Texas Environmental Crimes Task Force, including the United States Environmental Protection Agency Criminal Investigation Division, the Texas Parks and Wildlife, and the Texas Commission on Environmental Quality. Assistance was also provided by the City of Dallas Marshal's Office.

Back to Top

United States v. Ronald Evans et al., No. 3:05-CR-00159 (M.D. Fla.), AUSA John Sciortino [redacted] SAUSA Jody Mazer [redacted] and DOJ Civil Rights Attorney Susan French [redacted]

Outfall Pipe

On August 25, 2006, Ronald Evans, Sr., was found guilty by a jury of engaging in a continuing criminal enterprise that distributed crack cocaine; conspiracy to distribute crack cocaine; trafficking in untaxed contraband cigarettes; violating the CWA; two counts of violating the Migrant and Seasonal Farm Worker Protection Act; and 50 counts of structuring cash transactions to avoid financial reporting requirements. Evan's wife, Jequita Evans, was found guilty of conspiracy to distribute crack cocaine and 48 counts of structuring cash transactions to avoid financial reporting requirements.

Evans, Sr., owns two labor camps for migrant and seasonal agricultural workers. He and his codefendants operated a camp located in East Palatka, Florida, and another camp in Newton Grove, North Carolina. According to trial witnesses, the defendants operated the camps so as to extract the greatest economic benefit at the lowest possible cost from a group of homeless people. For many years, the defendants recruited African Americans from homeless shelters and other low income areas in cities across the Southeast, including Miami, Tampa, Orlando, Jacksonville, New Orleans, Birmingham, Winston-Salem, and other cities.

The defendants charged the laborers $50 per week for room and board, and they put them to work in the fields for wages at or near minimum wage. At the end of every weekday, the defendants gave the workers the opportunity to purchase, on credit and at inflated prices, crack cocaine and untaxed generic-quality beer and cigarettes at a "company store" located on site. Records were kept of the laborers' purchases, and the defendants deducted these costs from the laborers' weekly pay.

"Advances" of crack cocaine also were available on payday in the workers' pay envelopes. As a result, the need arose for ready access to substantial amounts of cash to acquire drugs on a regular basis. The defendants obtained the money by cashing checks written by their farmer clients. Because large cash transactions must be reported by financial institutions, the defendants instructed the farmers to structure the payments to comply with the reporting requirements. After Evans, Sr., was indicted, he obstructed justice by persuading one farmer to lie on his behalf to investigating IRS agents and to deny that the structuring took place.

With respect to the CWA violation, Cow Creek, a primary tributary of the St. Johns River, flows along the southern border of the Evans' labor camp in East Palatka. Evans, Sr., directed that a large PVC pipe be connected to the labor camp's heavily used septic tanks. The pipe continuously carried raw, untreated human waste underground for some distance and then discharged it directly into Cow Creek. The severely contaminated creek flowed approximately a mile to the St. Johns River.

Nine defendants were originally charged in this case. Eugene Sheppard and Irvin Sutton are fugitives. Guilty pleas were taken between May and July 2006 from Eddie Lee Williams, Nathaniel Davenport, Emma Mae Johnson, Ronald Robert Evans, Jr., and Gilbert Irvin Labeaud, III. All pleaded guilty to conspiracy to possess narcotics except for Labeaud who pleaded guilty to trafficking in untaxed contraband cigarettes.

All defendants are scheduled to be sentenced on November 29, 2006.

This case was investigated by the U.S. Department of Labor's Inspector General's Office, the United State Environmental Protection Agency Criminal Investigation Division, the Drug Enforcement Administration, and the Putnam County Sheriff's Office.

Back to Top

Indictments

United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Michelle Mallard [redacted].

On September 26, 2006, a three-count indictment was returned charging Krister "Kris" Sven Evertson, a.k.a. Krister Ericksson, the owner and president of SBH Corporation, with violating the Hazardous Materials Transportation Safety Act and two RCRA storage and disposal violations.

Evertson transported ten metric tons of sodium metal from its port of entry in Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant allegedly arranged for the transportation of sodium metal not used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. According to the indictment, Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transport, despite the fact that sodium metal and the materials in the tanks are highly reactive with water. The material subsequently was abandoned.

On May 27, 2004, the Environmental Protection Agency responded to the storage facility and removed the sodium metal, some of the sludge in the bottom of the tank, and another tank with corrosive liquid. Commercial laboratories refused to accept the sludge for testing due to its reactivity with water. When EPA tested the sludge at its own lab, it was classified as a hazardous waste. The EPA ultimately spent over a half a million dollars on the cleanup and response to Evertson's abandonment of the hazardous waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Wassim Mohammad Azizi, No. 3:06-CR-00548 (N.D. Calif.), AUSA Stacey Geis [redacted]

On September 22, 2006, Wassim Mohammad Azizi was charged with four felony counts of violating the Clean Air Act.

The indictment alleges that between December 1, 2002, and February 1, 2003, Azizi illegally demolished a building that contained significant amounts of asbestos thereby placing workers and the

public at risk. The defendant allegedly failed to follow the NESHAPs in that he did not properly notify EPA, did not adequately wet the material, failed to remove all the asbestos-containing material from the demolition site, and failed to dispose of it in an approved disposal site.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Chris Mulloy et al., No. 2:06-CR-00692 (C.D. Calif.), AUSA Joe Johns [redacted]

On September 19, 2006, two men were arrested for attempting to smuggle monkeys and birds into the U.S. from Thailand. Robert Cusack was found to have two endangered slow loris pygmy monkeys in his underwear, while birds of paradise escaped from Chris Mulloy's baggage as he attempted to get through Customs at the Los Angeles International Airport.

Slow Loris Pygmy Monkeys

Cusack was sentenced in June 2002 to serve more than five months' incarceration in a previous effort to smuggle four birds of paradise, two lorises, and 50 rare orchids into this country.

Mulloy also tried to sneak two newborn Asian leopard cats past the customs agents in carry-on luggage and later contacted his sister, Darlah Mulloy, to ask for her help in getting rid of the contraband cats. Chris Mulloy was charged with two smuggling violations for illegally receiving, concealing, and transporting wildlife, and two false statement violations. Darlah Mulloy was charged with one smuggling violation and one count of tampering with a witness.

The arrests came at the end of a four-year investigation. One of the smuggled cats has been living with an acquaintance of the Mulloys' for three years. Another was given to a friend who was unable to care for it, and the cat ultimately made its way to the U.S. Fish and Wildlife Service in Texas, where it is being cared for by a wildlife facility. The lorises are housed at the Los Angeles County Zoo, but the four birds of paradise all perished.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Kim Johnson et al., No. 2:06-CR-00501(E.D. Pa.), AUSA Paul Gray [redacted]

On September 19, 2006, Kim Johnson and Virginia Smith were charged in a ten-count indictment with smuggling, possessing, and selling products from endangered and threatened animal species.

The defendants operated a business known as Authentic Africa, located in Philadelphia, as well as a Web site called *AuthenticAfrica.com* where they sold a variety of African artifacts, decorative items, animal skins, and parts. According to the indictment, the defendants sold animal parts in 2002 and 2003 to an undercover United States Fish and Wildlife Service agent. The items included ivory tusks, elephant hair bracelets, a gorilla skull, colobus monkey parts, a python skin, and tiger and jaguar skins. Specifically, they are alleged to have sold an African rock python skin for $450, three helmet masks containing colobus monkey fur for $1,225, an ivory elephant tusk for $2,500, a gorilla skull for $1,500, a tiger skin for $5,500, and a jaguar skin for $8,000. In addition, a leopard skin and skull and a tiger skin were sold for a total of $17,400.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Frederick Reynolds et al., No. 1:06-CR-00003 (D. Ak.), ECS Senior Trial Attorney Bob Anderson [redacted] and SAUSA Todd Mikolop [redacted]

On September 19, 2006, Frederick Reynolds and Michael Sofoulis were variously charged in a nine-count indictment with conspiracy, Lacey Act, false statement, and witness tampering violations, as well as a violation of the Marine Mammal Protection Act, stemming from the illegal sale of walrus ivory.

The defendants are alleged to have illegally sold beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration (tagging). The ivory also may subsequently be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

Four Walrus Headmounts

The indictment alleges that Reynolds removed ivory from walrus carcasses that had washed ashore and then prepared certificates that falsely listed other persons as the “hunter" or "owner" of the walrus parts. Reynolds used tagging gear owned by his mother-in-law to sell the ivory (configured as “headmounts”) for $1,000 or greater with the help of his friend, Sofoulis, a guide. After hearing of the investigation, Sofoulis approached a fellow guide to whom he had sold

ivory and advised him to hide the headmount and remove the tags. He later suggested to this guide/customer that the latter lie to investigating agents about his purchase of the headmount.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Fermin Fortun et al., No. 4:06-CR-10020 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Camp and Excavation Site

On August 31, 2006, Fermin Fortun and his son, Fermin Fortun, Jr., were charged with destruction of federal property valued in excess of $1,000 as well as trespassing, illegally searching for objects of antiquity, and the lighting of fires, all within the Key West National Wildlife Refuge.

Officials began their investigation in June of this year, as they observed the defendants over the course of two months visiting uninhabited Keys within the Refuge. By mid-July, the Fortuns had established themselves at an inland campsite on Boca Grande Key and begun excavation of a site that grew to be approximately eight feet in diameter and ten feet deep. Surveillance by air, from the adjacent waters, and by a team of enforcement officers on the Key confirmed the illegal digging activity, as well as the fact that the defendants had entered a closed part of the Key, set fires at their campsite, and were searching for objects of antiquity without the required authorization or permit for such activities. According to court records, the defendants previously engaged in a similar operation, causing less intrusion and damage to Refuge property, which was assessed at almost $10,000 for remediation.

Boca Grande Key has been part of the Key West National Wildlife Refuge since it was established in 1908 by President Theodore Roosevelt as a preserve and breeding ground for native birds and other wildlife. This refuge was the first established in the Florida Keys and is one of the earliest refuges in the United States. The refuge encompasses more than 200,000 acres with only 2,000 acres of land. The area is home to more than 250 species of birds and is an important sea turtle nesting area.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

Pleas / Sentencings

United States v. Eco Finishing Company et al., No. 06-CR-00152 (D. Minn.), AUSA Bill Koch [redacted]

On September 14, 2006, Eco Finishing Company ("ECF"), an electroplating company, pleaded guilty to an information charging it with the knowing violation of a pretreatment program in violation of the Clean Water Act.

From May 2001 through approximately April 2005, the defendants discharged wastewater which exceeded permitted limits. Investigation revealed a company practice (through internal memos and e-mails) of discussions among management and employees of upcoming inspections by the Metropolitan Council Environmental Services ("MCES"), the local sewer authority. Documents provided by disgruntled employees indicate that production practices were changed during the inspections. Investigators subsequently obtained a search warrant and installed a covert sampling device in the sewer line. Samples taken provided proof that the facility was generally in compliance with its permit during the announced inspections, but quickly fell out of compliance when sewer authorities left the premises. Using this data, a second search warrant was obtained and additional incriminating documents were seized showing that management personnel had directed employees to alter the effluent, change the production process, and take other steps to ensure compliance only during MCES inspections.

Co-defendant Ted Gibbons, a former chemist for ECF, was previously sentenced to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty to one felony CWA pretreatment violation and two felony CWA tampering violations. Gibbons was responsible for analyzing the company's wastewater and for reporting analytical results to the MCES. Gibbons failed to submit laboratory reports to the sewer authority for all wastewater monitoring conducted during each monitoring period, as required by the facility's sewer permit, from at least January 2001 through about April 15, 2005. On two occasions in 2004 and 2005, Gibbons also tampered with sampling equipment during times when the sewer authority was testing the facility's effluent. Gibbons wrote memos to wastewater staff with tips on how they were to stay in compliance during the period that MCES was taking samples. This included the instruction that they were to "leave all water running during all shifts." The investigation is ongoing.

This case is being investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the FBI, the Minnesota Pollution Control Agency, and the MCES.

Back to Top

United States v. Daniel Storms, No. 7:06-CR-00770 (S.D.N.Y.), AUSA Ann Ryan [redacted]

On September 13, 2006, Daniel Storms, a former employee of the New York City Department of Environmental Protection ("DEP"), pleaded guilty to an information charging him with a false statement violation for making fraudulent entries in DEP records relating to the monitoring of drinking water. Storms was responsible for conducting tests to monitor drinking water turbidity at the DEP's Catskill Lower Effluent Chamber. Storms admitted that on February 9, 2006, he made false entries in the log book regarding turbidity levels and did not perform all the necessary steps in the test procedure.

The defendant is scheduled to be sentenced on December 11, 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation and the FBI.

Back to Top

United States v. Alan McGlory, No.3:05-CR-00213 (D. Conn.), ECS Trial Attorney Tom Ballantine [redacted] and AUSA Eric Glover [redacted]

On September 13, 2006, Alan McGlory was sentenced to serve a one-year term of probation and was ordered to pay a $3,000 fine. The court took into consideration the fact that the defendant is ill with lung cancer.

Starting in approximately March 1999, McGlory was the operations manager of a photo processing plant owned by Fujicolor Processing, Inc., in New Britain, Connecticut. McGlory pleaded guilty in August of this year to a CWA false statement violation relating to the illegal discharge of silver from this facility to the POTW.

From around January 2002, McGlory became aware that the equipment at the processing plant would occasionally fail to achieve the effluent limits set in the wastewater pretreatment permit. Despite this knowledge, however, the defendant signed off on discharge monitoring reports which he knew to contain false information. Specifically, the reports indicated that the average monthly silver concentration was 0.57 milligrams per liter, when in fact it was higher. The reports further state that the maximum measured silver concentration was 0.69 milligrams per liter, when McGlory knew they were actually exceeding the maximum permitted limit.

Back to Top

United States v. Steven McClain et al., No. 2:06-CR-00102 (E. D. Pa.), AUSA Seth Weber [redacted] and SAUSA Joseph Lisa [redacted]

On September 13, 2006, wastewater treatment plant superintendent Steven McClain was sentenced to serve a year and one day of imprisonment. The court denied the defendant's request for a period of home confinement, as opposed to a term in prison. The judge emphasized that environmental crimes are serious matters and that the defendant's actions as a senior public official put the health and safety of the community in jeopardy. McClain also was sentenced to serve three additional months in a community detention center, followed by three months of home detention and six months of supervised release to follow his release from prison. Finally, the defendant is required to pay a $4,000 fine.

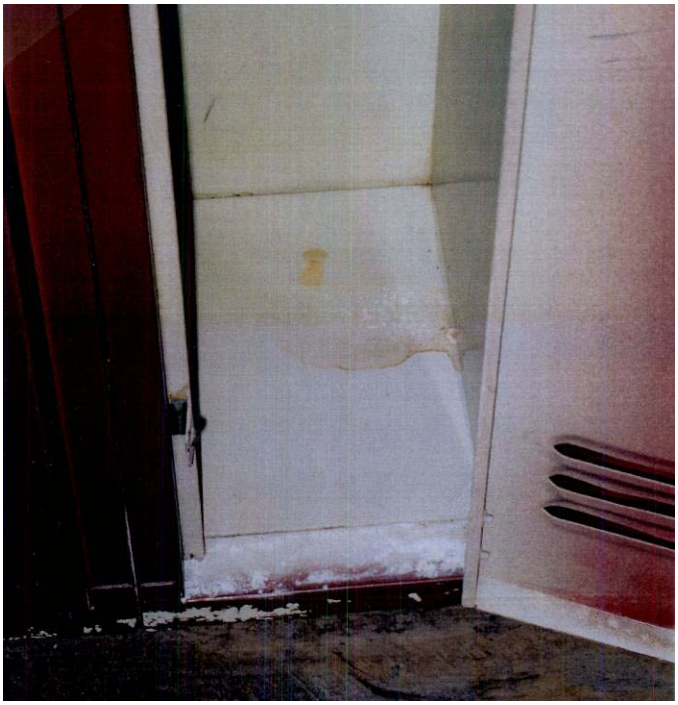
McClain and operator Ronald Meinzer pleaded guilty in April of this year to a two-count information charging them with felony CWA violations for dumping thousands of gallons of untreated sewage into the Delaware River. The defendants ordered workers, in August and September 2004, to wash thousands of gallons of raw sewage and sludge, which had spilled from a digester, into a storm water sewer that led to the Delaware River. Additionally, from approximately 1997 through June 2005, the defendants bleached samples prior to their being sent to an offsite lab for analysis in order to mask fecal coliform levels. The defendants also tampered with plant monitoring equipment by disconnecting devices including alarms on chlorine tanks and digesters at the Bristol Plant.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Joseph Cannella et al., Nos. 1:01-CR-00090, 3:04-CR-00152, 1:05-CR-00103 (D. Colo.), ECS Senior Counsel Jim Morgulec [redacted] AUSAs John Haried [redacted] and Tim Neff [redacted], and SAUSA Linda Kato [redacted]

On September 11, 2006, Joseph Cannella pleaded guilty to two counts of negligent endangerment under the Clean Air Act. The pleas grew out of charges that Cannella, a senior management employee at National Service Cleaning Corporation ("NSCC"), an asbestos abatement contractor, and co-defendant Steven Herron, owner of Steve Herron and Associates ("SH&A"), an asbestos abatement consultant, conspired and caused multiple violations of CAA work practice standards relating to the removal and disposal of asbestos at Fort Morgan High School, in Fort Morgan, Colorado, in July and August, 1999. Both defendants also initially were charged with multiple mail fraud violations. Herron had been charged with making a false writing in violation of 18 U.S.C.§ 1001. As part of the plea, Cannella agreed that a sentence of confinement in the range of 6 to 12 months would be an appropriate disposition. He also agreed to a lifetime ban from the asbestos-abatement industry. Before he could plead guilty, Herron was involved in a serious motor cycle accident and passed away September 14th. A motion to dismiss charges pending against him will be filed. Cannella is scheduled to be sentenced on November 21, 2006.



Asbestos in Locker

Two other co-defendants previously have been sentenced in this case. Daniel Argil also was employed by NSCC to remove asbestos from the school and was sentenced to serve 68 months' incarceration, followed by three years' supervised release, for his role as the project supervisor. He also was ordered to pay $232,052.90 in restitution to the Morgan County School District.

Argil caused a significant amount of hazardous asbestos to be released into the air at Fort Morgan High School and directed employees to mishandle the material during the removal process. A high-powered water sprayer was used to remove the asbestos, which resulted in asbestos being discharged outside the containment area. The water-laden asbestos migrated to areas within the school, including inside lockers and wall systems. After the water evaporated, the asbestos remained as a dry powder that easily became airborne and thus was much more dangerous. As a result of his actions, Argil left Fort Morgan High School contaminated with asbestos when students, faculty, staff and employees returned to the school in the fall of 1999. Further, NSCC employees made efforts to conceal the company's failure to properly conduct the asbestos abatement project. Argil pleaded guilty to two felony CAA violations and a mail fraud violation. Co-defendant David Backus, an employee for SH&A, pleaded guilty to two mail fraud violations and was sentenced in May 2005 to serve 18 months' incarceration followed by three years' supervised release. Backus also was ordered to pay $15,800 in restitution.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

[redacted]

Back to Top

[redacted]

Back to Top

United States v. Sun Ace Shipping Company et al. , 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted]

On September 6, 2006, Sun Ace Shipping Company ("Sun Ace") pleaded guilty to a one-count information charging an APPS violation for failing to maintain an accurate oil record book ("ORB"). In January 2006, during a Coast Guard boarding of the *M/V Sun New*, a bulk carrier vessel operated by Sun Ace, inspectors found that members of the engine room crew had used bypass hoses to discharge oily wastes overboard into the ocean without using the vessel's oil-water separator. Inspectors further discovered that the vessel's crew had disposed of oily waste into the ocean at least twice during the voyage from South Korea to New Jersey between November and December 2005. Chief engineer Chang-Sig O, and Mun Sig Wang, second engineer for the *Sun New*, were previously charged in a three-count indictment with conspiracy, obstruction of justice, and an APPS violation in connection with the use of two bypass hoses for these illegal discharges.

According to the terms of the plea agreement, the company has agreed to pay a $400,000 fine and an additional $100,000 community service payment to the National Fish and Wildlife Program, Delaware Estuary Grants Program, which will be used to protect and restore the natural resources of the Delaware Estuary and its watershed. Sun Ace also may be ordered to serve a three-year term of probation, during which time its vessels will be banned from entering U.S. ports and waters.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Victor's Premier Plating, Inc., et al., No. 05-CR-143 (S.D. Calif.), AUSA Melanie Pierson [redacted]**.**

On September 1, 2006, Victor Zuniga was sentenced to serve 24 months' in custody and ordered to pay a $120,000 fine. Zuniga and his business, Victor's Premier Plating, Inc., were convicted by a jury in May of this year on 24 CWA violations. The court ordered that the fine be paid jointly and severally between the defendants.

Evidence at trial proved that the defendants exceeded the legal limits on discharging wastewater contaminated with zinc on 19 occasions, wastewater contaminated with chromium on one occasion, and wastewater with a low (acidic) pH on four occasions, all between December 2001 and January 2003.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the City of San Diego Metropolitan Wastewater Department, Industrial Wastewater Control Program; and the FBI.

Back to Top

United States v. Pacific-Gulf Marine, Inc. et al., No. 1:06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted], ECS Trial Attorney Malinda Lawrence [redacted], and AUSA Michael Cunningham [redacted]

On August 31, 2006, Pacific-Gulf Marine, Inc. ("PGM"), an American-based ship operator, pleaded guilty to a four-count information charging it with Act to Prevent Pollution from Ships ("APPS") violations for the deliberate overboard discharge of hundreds of thousands of gallons of oil-contaminated bilge waste from four of its ships through the use of a bypass pipe. PGM admitted to circumventing the oily water separator ("OWS") on four giant "car carrier" ships used to transport vehicles.

M/V Fidelio

The criminal investigation began on September 2, 2003, after the U.S. Coast Guard inspected the *M/V Tellus* and *M/V Tanabata* in Baltimore. An inspection in March 2003 of the *M/V Fidelio*, another PGM-managed vessel, disclosed a bypass pipe loaded with oil hidden under the engine room floor. Engineers denied involvement in any illegal conduct during both the March and September inspections. On the *M/V Tanabata*, the pipe used to bypass the OWS allegedly was thrown overboard by the ship's chief engineer after the Coast Guard inspected the vessel in Baltimore. After learning of the federal investigation, PGM conducted an internal investigation, which it disclosed to the government.

Under the terms of the plea agreement, $1 million will be paid as a criminal fine and an additional $500,000 will be devoted to community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects on the Chesapeake Bay and will provide environmental training to those enrolled in U.S. maritime academies. PGM also must complete a three-year term of probation and institute a comprehensive environmental compliance plan.

On June 28th, Stephen Karas and Mark Humphries, former chief engineers of the *M/V Tanabata*, were charged with conspiracy, APPS violations for failing to maintain an oil record book, and false statement violations. Karas also was charged with obstruction of justice for alleged witness tampering, while Humphries was further charged with obstruction for destruction of evidence, that is, allegedly throwing the bypass pipe overboard after the Coast Guard inspection in Baltimore.

PGM is scheduled to be sentenced on November 30, 2006.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Chian Spirit Maritime Enterprises, Inc., et al., No. 1:06-CR-00076 (D. Del.), Senior Trial Attorney Mark Kotila [redacted] and ECS Trial Attorney Jeff Phillips [redacted]

On August 30, 2006, Adrien Dragomir, the chief engineer for the tanker *Irene E/M*, pleaded guilty to one APPS violation for falsifying the oil record book ("ORB"). He was sentenced to serve a one-year term of unsupervised probation. Grigore Manolache, the ship's master, pleaded guilty in July of this year to an information charging him with presenting false information to the U.S. Coast Guard. Two other individuals, Christos Pagones and Evangelos Madias, were charged while still in Greece and may face extradition.

On July 14, 2006, a five-count indictment was returned charging two corporations and four individuals with violations stemming from the illegal discharge of oily waste from the *Irene*, including conspiracy, falsifying oil record book entries, and tampering with witnesses. Defendants charged are Chian Spirit Maritime Enterprises, Inc. ("Chian Spirit"), a Greek-based shipping management company; Venetico Marine S/A, corporate owner of the *Irene*; Venetico Marine owner Madias; Venetico Marine technical supervisor Pagones; chief engineer Dragomir; and ship's master Manolache.

During a routine Coast Guard inspection in December 2005, inspectors uncovered evidence that the ORB had been falsified. Investigation further revealed that the vessel's oil water separator ("OWS") had been inoperable for the previous year and that overboard discharges of untreated oily water and bilge waste had taken place approximately four times per week while in the open ocean. Most of these discharges took place at night or far from shore during trips to various ports, from Africa to Brazil, and from Brazil to the United States. These illegal discharges were either recorded in the ship's ORB inaccurately as "discharges through the OWS" or not recorded at all. The ship's engineers also constructed a bypass pipe, which was hidden during Coast Guard boardings. All defendants are alleged to have encouraged crew members to lie to investigators.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Alexander Salvagno et al., No. 02-CR-0051 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On August 30, 2006, Alexander Salvagno was re-sentenced to serve 25 years' incarceration. This remains the longest sentence ever imposed for an environmental crime. His father, Raul Salvagno, was re-sentenced to serve 19 ½ years' incarceration, which is the second longest environmental criminal sentence. The Salvagnos and AAR Contractor, Inc. ("AAR") also are responsible for nearly $23 million in restitution to be paid to victims and must forfeit an additional $5.7 million to the federal government, some of which will be used to pay restitution to victims.

The two originally were sentenced in December 2004 after being convicted in March 2004 following a five-month trial of 14 felony counts. They were variously convicted of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), conspiracy to violate the CAA and TSCA, substantive CAA violations, and tax fraud violations stemming from an illegal asbestos removal scheme which spanned approximately ten years.

The Salvagnos owned AAR, which was one of the largest asbestos abatement companies in New York State. For almost a decade, the defendants engaged in multiple illegal asbestos abatement projects. From 1990 until 1999, Alex Salvagno secretly co-owned a purportedly independent laboratory, Analytical Laboratories of Albany, Inc. ("ALA"). The Salvagnos used ALA to defraud victims by creating fraudulent laboratory analysis results that were used to show that all asbestos had been properly removed as promised by the defendants. These results were taken from more than 1,555 facilities throughout the state, with the falsification of approximately 75,000 laboratory samples from asbestos abatements at elementary schools, churches, hospitals, state police barracks, the New York legislative office building, and other public buildings and private residences. Witnesses, including many former AAR and ALA employees, testified to "rip and run" activities directed by the defendants that included indoor "snow storms," which were releases of large amounts of visible asbestos into the air during the removal process. Evidence established that workers were knowingly sent into asbestos "hot zones" while being encouraged to work illegally without respirators or without sufficient replacement filters for the respirators. Eight other defendants have been prosecuted in this matter.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Internal Revenue Service, the United States Army Criminal Investigation Division, and the New York State Office of Inspector General. Assistance also was provided by the New York State Departments of Labor and Health.

Back to Top

[redacted]

Back to Top

United States v. All Power Manufacturing Company, No. 06-CR-00612 (C.D. Calif.), AUSA William Carter [redacted]

On August 24, 2006, All Power Manufacturing Company ("All Power") pleaded guilty to an information charging it with one misdemeanor violation of the CWA for negligently discharging pollutants, namely, petroleum and oil-contaminated wastewaters, into Coyote Creek and the San Gabriel River in March 2004.

All Power was involved primarily in the business of manufacturing parts used in the aerospace industry. During the course of cleaning its machinery, the company generated wastes contaminated with petroleum and oil, which usually were transported to a licensed waste disposal facility. At some point after mid-January 2004, a company employee instead emptied these wastes into a floor drain connected to a clarifier that was located on the premises of the facility. The clarifier was typically used to treat wastewaters generated by floor-cleaning operations prior to being discharged into the sewer system maintained by the Los Angeles County Sanitation District.

In March 2004, a hose at the facility burst discharging water into the floor drain and ultimately into the clarifier, which held the oil-contaminated wastes. As a result, the clarifier overflowed and discharged those wastewaters to a street gutter, which in turn flowed into the storm drain system and ultimately reached Coyote Creek and the San Gabriel River, both navigable waters of the United States.

The company was immediately sentenced to pay a $150,000 fine, half of which will support community service projects, including the National Marine Fisheries Service and the International Bird Rescue Research Center in San Pedro. All Power also will pay approximately $20,000 in restitution to the Los Angeles County Department of Public Works and the California Department of Fish and Game, and complete a one-year term of probation.

This case was investigated by the California Department of Fish and Game, the Los Angeles County Department of Public Works, the City of Santa Fe Springs, and the FBI.

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

November 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email this, along with your submission, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Williams, 399 F.3d 450, 452-59 (2nd Cir. 2005).**
- **United States v. Wasserson, 418 F.3d 225, 228-36 (3rd Cir. 2005).**
- **United States v. Thorson, No. 03-C-0074-C, 2004 WL 737522 (W.D. Wis. Apr. 6, 2004), aff'd sub nom. United States v. Gerke Excavating, Inc., 412 F.3d 804 (7th Cir. 2005), vacated and remanded, 126 S. Ct. 2964 (2006), on remand, ___ F.3d ___ (7th Cir. Sept. 22, 2006) (per curiam) (No. 04-3941).**
- **United States v. W. R. Grace, ___ F. Supp. 2d ___, 2006 WL 2258518 (D. Mont. Aug. 8, 2006).**
- **Simsbury-Avon Preservation Society LLC v. Metacon Gun Club, Inc., ___ F. Supp. 2d ___, 2005 WL 1413183 (D. Conn. June 14, 2005), and ___ F. Supp. 2d ___, 2006 WL 2223946 (D. Conn. Aug. 2, 2005).**
- **United States v. W. R. Grace, 429 F. Supp. 2d 1207 (D. Mont. 2006).**

Districts	Active Cases	*Case Type* / Statutes
E.D. Ark	**US v. Wally El-Beck**	***Hazardous Waste Incinerator/* Mail and Wire Fraud**
C.D. Calif.	**US v. Bruce Penny** **US v. Pacific Shrimp** **US v. Rodolfo Rey** [redacted]	***Endangered Fish Sales/* ESA** ***Shrimp Sales/* Lacey Act, False Statement, Use of Counterfeit Government Seal** ***Vessel/* APPS** [redacted]
D. Colo.	**US v. Luxury Wheels**	***Electroplater/* False Statement, Conspiracy, CWA**
N.D. Fla.	**US v. Christopher Weaver**	***Dolphin Taking/* Marine Mammal Protection Act**
S.D. Fla.	**US v. Jared Oshman**	***Spider and Snake Smuggling/* Lacey Act**
C.D. Ill.	**US v. Glen Joffe**	***Wildlife Smuggling/* Conspiracy, MBTA**
S.D. Ind.	**US v. Timothy Boisture**	***Injection Well Cleanup/* Fraud**
[redacted]	[redacted]	[redacted]
S.D. Ohio	**US v. Cognis Corporation**	***Chemical Manufacturer/* Misdemeanor CWA, MBTA**
E.D. Pa.	**US v. Jason Scardecchio**	***Asbestos Abatement/* CAA, NESHAPs, Mail Fraud**
[redacted]	[redacted]	[redacted]
E.D. Va.	**US v. Richard Wolfe**	***Big Game Hunting/* Lacey Act**

Quick Links

Significant Opinions

Second Circuit

United States v. Williams, 399 F.3d 450, 452-59 (2d Cir. 2005).

Defendant Williams was apprehended carrying 14 one-gallon containers of concentrated liquid ammonia aboard a commercial airline flight when one of the containers began leaking ammonia vapors into the passenger cabin. After a jury trial, he was convicted of "knowingly and recklessly" causing the transportation of property containing hazardous material to an air carrier for transportation in air commerce in violation of 49 U.S.C. § 4613(a)(2). The jury acquitted the defendant of "willfully" transporting the material in violation of § 4613(a)(1).

At sentencing, the parties stipulated that, under U.S.S.G. § 2Q1.2 the defendant's base offense level was eight, and that a four-level enhancement applied for release of hazardous gases into the atmosphere. The district court went a step further, finding that the defendant "deliberately snuck [the ammonia] on to the plane" and was "fully aware" that he was not permitted to do so. Accordingly, the court imposed an additional nine-level enhancement for substantial likelihood of death or serious bodily injury. This enhancement brought the defendant's offense level to 21, yielding a sentence of 37-46 months incarceration. The court sentenced the defendant to serve 46 months' imprisonment, followed by three years' supervised release. He was further ordered to pay a $7,500 fine.

On appeal, the defendant claimed that the sentence violated the Sixth Amendment because the district court sentenced him based on conduct for which he was acquitted. The Second Circuit held that there was no violation in the sentence itself, but that, post-*Booker*, the mandatory use of a Guidelines enhancement violates the Sixth Amendment. Thus, the Court remanded for the district court to determine if the sentence would have been the same without the "mandatory" enhancement.

Back to Top

Third Circuit

United States v. Wasserson, 418 F.3d 225, 228-36 (3d Cir. 2005).

Gary Wasserson owned Sterling Supply Company, which supplied products to commercial dry cleaners and laundry facilities in Philadelphia, Virginia Beach, and Hanover, Maryland. When his company went out of business, Wasserson was left with several barrels of hazardous waste in a warehouse. Rather than hire a hazardous waste hauling company to dispose of the material, Wasserson instructed an employee to find a less-expensive means of disposal. The waste was subsequently collected by a company without a hazardous waste permit and transported to a landfill that was not permitted to receive it. Once the waste arrived at the landfill, however, landfill officials recognized a paint-waste odor and isolated the shipment which was later determined to be hazardous waste.

After a jury trial, Wasserson was convicted of three-counts of violating the Resource Conservation and Recovery Act. The defendant's motion for new trial was granted as to two of the counts based on faulty jury instructions. The district court also granted the defendant's motion for judgment of acquittal as to the third count, holding that a generator of hazardous waste could not be convicted on an aiding and abetting theory of unlawful disposal under 42 U.S.C. § 6928(d)(2)(A).

The government appealed the judgment of acquittal, and the Third Circuit reversed, holding that "any or all of the separate RCRA offenses enumerated under § 6928(d), including the prohibition on unlawful disposal, can give rise to aiding and abetting liability under 18 U.S.C. § 2." The *Wasserson* court noted that the absence of the phrase "or causes to be disposed" within the statutory language was of no moment, because "[i]t is well-settled that 18 U.S.C. § 2 applies to the entire federal criminal code unless Congress clearly provides to the contrary."

Back to Top

Seventh Circuit

United States v. Thorson, No. 03-C-0074-C, 2004 WL 737522 (W.D. Wis. Apr. 6, 2004), aff'd sub nom. United States v. Gerke Excavating, Inc., 412 F.3d 804 (7th Cir. 2005), vacated and remanded, 126 S. Ct. 2964 (2006), on remand, ___ F.3d ___ (7th Cir. Sept. 22, 2006) (per curiam) (No. 04-3941).

Defendant Thorson was president of Managed Investments, Inc., a real estate development company that owned a tract of land which it proposed to the state and to the Army Corps of Engineers would be partially filled in order to construct a retail and service business complex. One border of the site abutted a drainage ditch which ran into a stream that flowed in turn to a river that led into a navigable-in-fact river leading to the Mississippi River. These waters were all part of the Mississippi's surface water tributary system. The state denied the application, but defendant Thorson (relying upon *SWANCC* and ignoring the opinion of a biologist that a permit was required) hired Gerke Excavating,

Inc., to place fill material (including stumps, roots and other spoil material) and perform grading activities at the site.

Using bulldozers and trucks, the defendant dumped stumps, roots and sand-based fill into a six-acre tract containing wetlands that it wanted to develop. The wetlands were adjacent to and drained into a ditch that ran into a non-navigable river that in turn ran into a navigable river.

The Corps then issued cease and desist orders. The government subsequently filed a civil action seeking *inter alia* to enjoin defendants Thorson, Managed Investments, and Gerke Excavating from discharging pollutants into waters of the United States without a permit, to require that the defendants remedy damage caused by their activities, and to impose civil penalties, all pursuant to the Clean Water Act. The government then moved for partial summary judgment.

Held: The district court granted the government's motion for judgment on its claim of violation of the CWA. It also dismissed the defendants' counterclaim for a declaratory judgment that the filled portions of the site were not wetlands, but left for trial the status of the remaining unfilled portions of the site. The court determined that trucks used to haul fill material to the site and bulldozers used to push dredged material into piles were "point sources." It also held that the filled portions of the site constituted "waters of the United States," citing *Deaton* and accepting the Corps' criteria under the 1987 Wetland Delineation Manual as standards for identifying wetlands according to their hydrology. The court analyzed in detail and rejected the challenges by defendants' expert to the Corps' methodology and conclusions. It then held that the wetlands in question, which were adjacent to the drainage ditch and hydrologically connected to waters covered under the CWA, were subject to Corps regulation. It rejected the defendants' arguments that, to be regulated, wetlands must be *immediately* adjacent to waters that are actually navigable and, after analyzing the caselaw in detail, followed the reasoning of *Rueth Development*, *Deaton* and *Rapanos* and distinguished *SWANCC* in holding that the Corps could assert jurisdiction over "wetlands adjacent to tributaries of traditionally navigable waters," and that such authority comported with the statutory text of the CWA. The court went on to hold that that regulation did not exceed congressional authority under the Commerce Clause, finding that "[j]ust as Congress may regulate the flow of drugs and guns in interstate commerce, it may regulate the flow of pollutants through the channels of interstate commerce, even if the pollutants do not threaten the capacity of the channel to serve as a conduit in interstate commerce."

On appeal, the Seventh Circuit affirmed. The court first noted that a ditch clearly can be a "tributary of a tributary" under the CWA. It then analyzed the ability of Congress to regulate waterways under its Commerce Clause power, noting favorably the caselaw applying the aggregation of effects principle in allowing for regulating individual acts, and the caselaw broadly construing the breadth of jurisdiction over "waters of the United States" beyond the traditional concept of navigability. It found that wetlands adjacent to tributaries of tributaries of "navigable" waters clearly are subject to regulation under 33 C.F.R. §§ 328.3(a)(1), (a)(5) and (a)(7).

Subsequently, the U.S. Supreme Court granted a petition for *certiorari*, vacated the judgment of the Seventh Circuit and remanded the matter for further consideration in light of its determination in *Rapanos*. The Seventh Circuit in turn remanded the case to the district court for further proceedings. The Seventh Circuit noted the absence of a majority opinion in *Rapanos* and concluded that the concurring opinion by Justice Kennedy in that case, as the narrowest ground to which a majority might have assented, must govern further stages of the litigation.

Back to Top

District Court

United States v. W. R. Grace, ___ F. Supp. 2d ___, 2006 WL 2258518 (D. Mont. 2006).

Defendant corporation and certain current and former employees were charged in a multi-count superseding indictment with various counts of (1) conspiracy to violate the knowing endangerment provision of the Clean Air Act and to defraud the United States, (2) violation of the knowing endangerment provision of the Clean Air Act, and (3) obstruction of justice, all resulting from the alleged release of asbestos-contaminated vermiculite from a mine operated by the company in Montana. All parties filed motions *in limine* seeking a ruling on the appropriate definition of "asbestos" as it appears in the Clean Air Act with respect to the charges in the indictment.

Held: The court denied the government's motion *in limine* and granted the defendants' motion, insofar as the definition of "asbestos" for the purposes of the Clean Air Act counts in the indictment is to be limited to certain of the asbestiform varieties at issue in the case. The knowing endangerment provision of the Act is predicated upon the release of a "hazardous air pollutant" listed (by chemical name and/or by a Chemical Abstract Services number) under 24 USC § 7412 of the Act (a civil regulatory statute). "Asbestos" and its CAS number is included in that list.

The court found that the treatment of asbestos contamination in a prior civil cleanup order issued under CERCLA was not determinative of the meaning of "asbestos" under the Clean Air Act. It further found that, in the context of interpreting a criminal statute, it should not rely simply upon a general reference to "asbestos" contained in a statutory provision, which would leave the jury with the difficult task of evaluating disputed expert testimony as to which minerals fall within the scope of the criminal offense. Similarly, the "definition" section of the CAS Registry number for asbestos offers little guidance as to that determination, other than suggesting a more limited interpretation.

Pursuant to the 1990 Amendments to the Act, EPA promulgated the various National Emission Standards for Hazardous Air Pollutants ("NESHAP"), which include a NESHAP for asbestos that contains a more specific and limited regulatory definition of the substance. Resolving the statutory ambiguity here in favor of the defendant, the court found that the more limited definition of "asbestos" contained in the NESHAP regulation was the more appropriate for instructing the jury at trial.

Back to Top

Simsbury-Avon Preservation Society LLC v. Metacon Gun Club, Inc., ___ F. Supp. 2d ___, 2005 WL 1413183 (D. Conn. June 14, 2005), and ___ F. Supp. 2d ___, 2006 WL 2223946 (D. Conn. Aug. 2, 2005).

Plaintiff association is a group of homeowners who live adjacent to and near an outdoor shooting range operated by the defendant that is situated on an area of wetlands and streams and is part of a designated flood plain area that frequently is flooded. The association and several of its individual members brought a five-count citizen suit alleging violations of RCRA and the Clean Water Act due to the unpermitted discharge of substances, including a large amount of lead shot and target debris, that allegedly damaged an aquatic biota, birds and other wildlife, and threatened neighboring children with lead poisoning. The defendant moved to dismiss.

Held: In its June 14, 2005, decision, the court dismissed the RCRA count that charged disposal of hazardous waste without a permit. However, it denied the motion to dismiss regarding the

remaining RCRA and CWA counts. After finding that the plaintiff had standing to sue, the court found that the regulatory definition of solid waste under RCRA (40 C.F.R. § 262.1(a)) is narrower than its statutory counterpart (42 U.S.C. § 6903(27)) with respect to citizen suits that allege violations of permitting requirements (as opposed to those that allege imminent hazards to health or the environment). It then found that US EPA's interpretation of the term "solid waste" as excluding spent rounds of ammunition and target debris because they were not "discarded material" due to the fact that they had not been "abandoned" by reason of having been shot, was not unreasonable. (At the time of firing, the shooter does not intend to "abandon" the bullet, but rather to put it to its intended use to hit the target.) Thus, a permit was not required for the shooting activity. (However, at some future time, a spent bullet that is left on the ground or in water might become "discarded" and thereby subject to RCRA's remediation provisions.)

In its August 2, 2005, decision, the court found that one of the individual plaintiffs had standing to sue, and thus plaintiff association had standing as well. It granted summary judgment to the defendant on the remaining RCRA counts, leaving one CWA count for trial.

The court found that the broader statutory definition of solid waste (rather than the regulatory definition previously considered in the motion to dismiss the disposal count) was applicable to the RCRA counts charging "open dumping" of waste and alleged imminent and substantial endangerment. USEPA's interpretation that, for these latter purposes, spent lead bullets would become solid waste if discarded (rather than reclaimed or recycled), without regard to whether they had been "abandoned" or "disposed of" as required under the regulatory definition, was reasonable. Since uncontradicted evidence showed no proof of ammunition and target debris leaving the site, and demonstrated that the defendant regularly cleaned up and recycled bullets remaining on the site, the defendant was entitled to summary judgment on the "open dumping" and "imminent hazard" RCRA counts.

Finally, since the plaintiffs had conceded their CWA count alleging dumping of fill material containing lead into waters of the United States without a Corps of Engineers or state section 404 permit, that left remaining for trial only the CWA count alleging discharges of lead bullets and debris into a river and its tributaries and adjacent wetlands without an EPA or state section NPDES permit.

Back to Top

United States v. W. R. Grace, 429 F. Supp. 2d 1207 (D. Mont. 2006).

Defendant corporation and certain current and former employees were charged in a ten-count indictment with various counts of (1) conspiracy to violate the knowing endangerment provision of the Clean Air Act and to defraud the United States, (2) violation of the knowing endangerment provision of the Clean Air Act, (3) wire fraud, and (4) obstruction of justice, resulting from the alleged release of asbestos-contaminated vermiculite from a mine operated by the company in Montana. The defendants filed a series of motions to dismiss various counts of the indictment. The government filed a motion to dismiss the wire fraud counts.

Held: The court denied the defendants' motion to dismiss the conspiracy count as duplicitous, and denied the defendants' motions to dismiss the substantive knowing endangerment counts (1) for failure to allege a required element (that defendants were aware that their conduct in violation of the Act was unlawful), and (2) for failure to allege a breach of an emissions standard. It granted defendants' motion to dismiss the substantive knowing endangerment counts with respect to the criminal offenses that were completed prior to the running of the statute of limitations beginning on November 3, 1999. The court also granted the government's motion to dismiss (without prejudice) the wire fraud counts for failure to allege the required element of materiality.

Acts taken to conceal a criminal conspiracy are considered to have been in furtherance of the conspiracy when those acts were contemplated by the original conspiratorial agreement and carried out in furtherance of the objectives of the main conspiracy. Since the defrauding conspiracy charged in the conspiracy count here was aimed at avoidance of liability for the effects of the contaminated vermiculite on humans and the environment, as well as facilitation of the mine as an on-going concern, such avoidance of liability continued after mining operations ceased in 1990 and also after the mine was sold in 1994, and it continued during the period from 1999 through 2002 in which USEPA conducted a Superfund investigation of the site. Thus, the dual purpose conspiracy to violate the Clean Air Act and to defraud the government constituted a single offense and was not duplicitous.

Citing *International Minerals* and distinguishing *Cheek*, 498 U.S. 192 (1991), *aff'd on remand*, 3 F.3d 1057 (7th Cir. 1993), *cert. denied*, 510 U.S. 1112 (1994), the court found that the language of 42 USC § 7413(c)(5)(B) merely "added content to the knowing endangerment requirement with respect to individual defendants," rejecting the defendants' argument that that subsection changed the required mental state under the statute. Under this public welfare offense statute, a defendant is not required to know that its conduct was unlawful.

The knowing endangerment statute covers releases of any hazardous air pollutant, and under its plain language, the clause in 42 USC § 7413(c)(5)(A) exempting releases that are in compliance with a permit or emissions standard provides an affirmative defense. Therefore, citing *Freter*, 31 F.3d 783 (9th Cir.), *cert. denied*, 513 U.S. 1048 (1994), the court held that the government was not required to allege breach of such a standard in the indictment.

Finally, the court rejected the government's argument that the knowing endangerment crime is not complete until the endangerment ceases. It further found that there is no explicit language in the Act mandating, and no indication that Congress otherwise intended, that such crimes are continuing offenses. Thus, the statute of limitations would not be extended.

NOTE: In a subsequent ruling, the court found that the government had failed to allege an overt act with respect to the conspiracy charge within the statute of limitations period. While the "causing" during the limitations period of releases that might not occur until after its expiration may constitute a completed substantive violation of the knowing endangerment statute, that does not translate into a completed conspiracy in the absence of an overt act within the period. The court therefore granted the defendants' motion to dismiss the knowing endangerment object of the conspiracy charge as time-barred. *See United States* v. *W. R. Grace*, 434 F. Supp. 2d 879 (D. Mont. 2006).

Later, after the government had filed a superseding indictment including allegations of overt acts in furtherance of both the defrauding object and the endangerment object of the conspiracy, the court granted the defendants' motion to dismiss the knowing endangerment object of the conspiracy charge contained in the superseding indictment also as time-barred. Since the failure to allege an overt act in furtherance of the knowing endangerment object had occurred in the original indictment, the court found that the government could not take advantage of a statutory provision allowing a six-month grace period for curing defects by reindictment. *See United States* v. *W. R. Grace*, ___ F. Supp. 2d ___, 2006 WL 2258479 (D. Mont. July 27, 2006).

Back to Top

Trials

United States v. Wally El-Beck et al., No. 4:05-CR-00179 (E.D. Ark.), AUSA Angela Jegley [redacted]

On October 20, 2006, Wally El-Beck was convicted by a jury on 37 counts of mail fraud and one count of wire fraud. Co-defendant Moumen Kuziez's motion for judgment of acquittal was granted on all counts against him.

Between December 31, 2000, and March 5, 2003, El-Beck made numerous fraudulent solicitations to industrial waste generators located in Tennessee and Illinois claiming that he could dispose of their waste through incineration. He received approximately 13,000 drums of wastes at the Arkansas Municipal Waste to Energy facility located in Osceola, Arkansas. The waste in the drums was not incinerated, however, and the companies that generated it were forced to pay a second time to have the drums transported to another site where the waste was properly incinerated.

More than four million dollars has been spent by the U.S. EPA Superfund to clean up the site, in addition to more than one million dollars spent by companies victimized in the scheme.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Postal Service Inspector General's Office with assistance from EPA's National Enforcement Investigations Center.

Back to Top

[redacted]

Back to Top

United States v. Timothy Boisture, No. EV05-CR-0043 (S.D. Ind.), AUSA Steve Debrota and SAUSA Dave Taliaferro

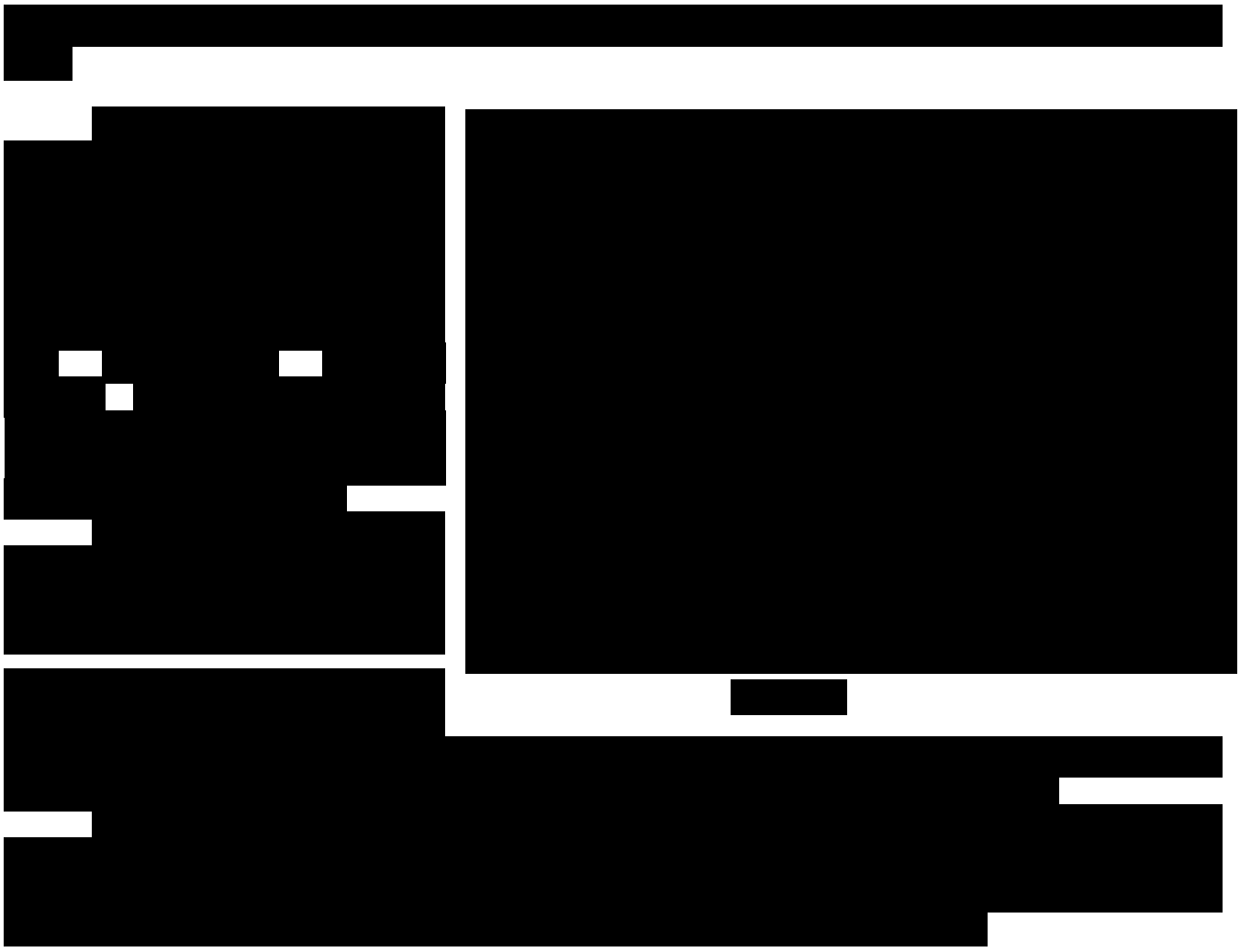
On October 17, 2006, Timothy Boisture, a partner with Environmental Consulting and Engineering Co., Inc., was convicted by a jury on two counts of mail fraud.

The State of Indiana hired the defendant's firm to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants which threatened to flow into a local pond and the Ohio River.

Boisture was convicted of defrauding the state by submitting false invoices, charging over $44,000 for equipment that was never installed and services that were not billed by his subcontractor. He was further convicted of defrauding his partner by inducing three other subcontractors to pay him more than $140,000 in kickbacks. Boisture was acquitted of three other counts charging money laundering, making a false statement and an additional mail fraud violation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Law Enforcement Division of the Indiana Department of Natural Resources, the Internal Revenue Service's Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top



[redacted]

Back to Top

Indictments

United States v. Bruce Penny et al., Nos. 2:06-CR-00761 and 765, 2:06-mj-01688 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On October 6, 2006, an indictment was returned charging three defendants with an Endangered Species Act ("ESA") violation for illegally transporting and selling Asian Arowanas, commonly known as "dragon fish" or "lucky fish."

The dragon fish is native of Southeast Asia and can grow to approximately three feet in length. Under the ESA and international treaties, permits are required to export endangered species from their country of origin, as well as to import them into the United States. In the United States, Asian Arowanas can sell on the black market value for as much as $10,000.

Bruce Penny is charged with selling several Asian Arowanas to a purchaser in New York; Anthony Robles is charged with purchasing dragon fish, selling some to Penny and helping Penny ship some of the fish to the New York buyer; and Peter Wu is charged with transporting and selling an Asian Arowana to an undercover agent with the Fish and Wildlife Service.

William Ho remains charged in a criminal complaint with selling several lucky fish to the New York buyer.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

Pleas / Sentencings

United States v. Jared Ohsman, 1:06-CR-20630 (S. D. Fla.), AUSA Tom Watts-Fitzgerald [redacted]

On October 24, 2006, Jared Ohsman pleaded guilty to, and was sentenced for, a Lacey Act violation for attempting to unlawfully import 35 specimens of a Brazilian species of spider into the United States by mail. He was sentenced to serve 18 months' probation.

In March 2006, a package addressed to Ohsman at a Mesa, Arizona, pet store, was intercepted at the Miami International Mail Facility by Customs and Border Protection inspectors. The package was subsequently delivered to the address specified, and Ohsman picked up the package. When he opened it later, a transponder was activated and he was arrested.

Venomous snakes

A search of Ohsman's apartment in Arizona revealed approximately 200 spiders and over 100 snakes, including venomous exotics and native species. Arizona Game and Fish Department officers seized several of the snakes because of violations of state regulations and Ohsman was convicted in Arizona state court for possession of a restricted species.

This case was investigated by the United States Fish and Wildlife Service, the Arizona Game and Fish Department, the United States Customs and Border Protection Service, and the United States Postal Service.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Jason Scardecchio et al., No. 2:05-CR-00472 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Albert Glenn [redacted].

On October 18, 2006, Jason Scardecchio, lead supervisor of Indoor Air Quality, Inc. ("IAQ"), an asbestos removal company, was sentenced as a result of pleading guilty in June of this year to two counts of mail fraud and one count of violating the Clean Air Act National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. He was sentenced to serve one year and one day of incarceration, followed by a three-year term of supervised release. Scardecchio also will pay $11,804.67 in restitution. The restitution will pay for medical examinations for employees of the company and also will reimburse certain homeowners who had subsequent air testing performed. The court at sentencing noted that a period of incarceration was warranted in order to, among other things, provide for general deterrence in the regulated community. Under the sentencing guidelines, Scardecchio faced a term of imprisonment between 18 and 24 months. Although the court did not state that it disagreed with the guidelines' calculation provided by the government, it chose to downward depart and did not disclose its reasoning.

IAQ and company president Wallace Heidelmark pleaded guilty in January of this year to two counts of mail fraud and one count of violating the NESHAP. The charges arose from illegal asbestos removal projects performed in residences, commercial buildings, and a school in 2002. The mail fraud counts stem from a scheme to defraud homeowners concerning the removal of asbestos-containing material in their homes. IAQ had an extensive history of non-compliance and has been cited in three EPA administrative enforcement actions. The company previously paid civil penalties and entered into consent agreements.

Heidelmark was sentenced in July of this year to serve 24 months' incarceration followed by three years' supervised release. He also must pay a $5,000 fine and will be held jointly and severally liable for $41,514.17 in restitution. IAQ was sentenced to complete two years' probation, pay a $100,000 fine, and the $41,514.17 restitution. The restitution will be provided to former employees and to homeowners. With regard to the employees, Heidelmark and IAQ are required to pay for medical examinations to be performed at a local hospital offering a worker health program specifically focused on workers in the asbestos removal industry. Heidelmark and IAQ also were ordered to pay restitution to certain homeowners who subsequently had air testing performed in their homes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Richard Wolfe et al., Nos. 1:06-mj-00397, 398, 578 (E.D. Va.), ECS Trial Attorney Wayne Hettenbach [redacted] and ECS Trial Attorney David Joyce [redacted]

On October 17, 2006, three hunters were sentenced for illegally killing big game wildlife in New Mexico, in violation of New Mexico state law, and then shipping the trophies back to Virginia. All three defendants were sentenced to serve three years' probation and will be banned from hunting or possessing weapons during their terms of probation.

Christopher Wolfe and Richard Wolfe both took trips to New Mexico in 2002 and 2003. Christopher Wolfe killed an elk and an antelope on the first trip and another elk on the second trip. Richard Wolfe killed an elk on the first trip, and another elk and an oryx on the second trip. Christopher Wolfe pleaded guilty to two misdemeanor Lacey Act violations and was sentenced to serve 30 days' incarceration, followed by five months' home detention. He also must pay a $10,000 fine and $5,200 in restitution to the National Fish and Wildlife Foundation. Richard Wolfe pleaded guilty to two misdemeanor Lacey Act violations and was sentenced to serve 45 days in jail, followed by five months' home detention. He too must pay a $10,000 fine and $5,000 in restitution to the National Fish and Wildlife Foundation

Brandon Ellison made one trip to New Mexico in 2003 and killed an antelope. Ellison pleaded guilty to one misdemeanor Lacey Act violation and was sentenced to pay a $3,000 fine and $1,000 in restitution to the National Fish and Wildlife Foundation.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Christopher Weaver, No. 5:06-mj-00031 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On October 9, 2006, Christopher Weaver was sentenced to pay a $1,000 fine and serve two years' probation, during which time he may not possess a firearm. Weaver pleaded guilty in August of

this year to a misdemeanor violation of the Marine Mammal Protection Act for knowingly and unlawfully taking a marine mammal, in this case a dolphin.

On Oct. 13, 2005, the defendant was the captain of the *LEO TOO*, a charter fishing vessel operating out of Treasure Island Marina, in Panama City Beach, Florida. During the course of a deep-sea fishing trip, Weaver watched a dolphin grab a fish that one of his fishing clients had hooked. Weaver, who was on the bridge of the ship, fired a .357 magnum handgun at the dolphin while it was near the boat. When the group moved to another fishing spot, Weaver again shot at one or more dolphins. It is unknown whether his shots struck any of the dolphins.

This case was investigated by the National Oceanographic and Atmospheric Administration Office of Law Enforcement.

Back to Top

[redacted]

Back to Top

United States v. Luxury Wheels, Inc. et al., No. 1:04-CR-00346 (D. Colo.), AUSA Patricia Davies [redacted]

On September 29, 2006, Luxury Wheels, Inc., an electroplater, and Albert Hajduk, the company's operations manager, were sentenced as the result of conspiracy, false statement and CWA violations. Luxury Wheels was sentenced to serve two years' probation and was ordered to pay a $40,000 fine. The company also must pay $350,000 in restitution to a Grand Junction city employee who suffered respiratory and other injuries as a result of the production of a toxic gas caused by the company's negligent discharge into the Grand Junction sewer system on July 25, 2002. Hajduk was sentenced to serve five months' incarceration followed by five months' home detention.

The defendants pleaded guilty in June of this year to charges stemming from illegal wastewater discharges into the City of Grand Junction's sewer system. The company pleaded guilty to conspiracy to violate the CWA and to make false statements, and a negligent CWA violation that resulted in the

release of toxic fumes to the POTW, injuring a POTW worker. Hajduk pleaded guilty to a false statement violation for submitting false monitoring reports to the POTW and to a negligent CWA violation.

Luxury Wheels electroplated automobile wheels with chrome, using various chemicals for this process including acids and caustics, as well as chemical solutions containing metals. The company had a permit from the City of Grand Junction to discharge treated electroplating wastewater into city sewers. From May 1999 until September 2003, the defendants violated the CWA by diluting wastes before treating them, by attempting to treat wastewater when their treatment system was overburdened, and by hiring a company to "hydrojet" the company's sewage service line to remove chemical sludge blockages in order to conceal evidence of illegal discharges.

This prosecution has resulted in two published opinions by the district court, addressing, *inter alia*, search issues arising when POTW workers sample other than in conformity with compliance sampling procedures under the permit, and myriad other challenges to charges alleging violations of the CWA and RCRA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA's National Enforcement Investigations Center.

Back to Top

United States v. Cognis Corporation, No. 1:06-CR-00109 (S.D. Ohio), AUSA Laura Clemmens [redacted]

On September 28, 2006, Cognis Corporation pleaded guilty to an information charging four negligent violations of the CWA and one violation of the MBTA. Cognis operates a chemical manufacturing facility in Cincinnati. On December 13, 2005, there was an explosion and a pipeline rupture at its facility. This caused a number of illegal discharges from the plant into storm drains containing isodecyl alcohol, adipic acid and other pollutants. The drains empty into Mill Creek, which is a tributary of the Ohio River.

Chemical spill

On December 14, 2005, an inadequate containment dike allowed the discharge of additional pollutants, causing the death of 7,700 fish, 11 Canada geese, and one Mallard duck in and along Mill Creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the United States Fish and Wildlife Service, the Ohio Environmental Protection Agency, the Division of Wildlife of the Ohio Department of Natural Resources, the Cincinnati Fire Department, and the Cincinnati Metropolitan Sewer District.

Back to Top

United States v. Glen Joffe, et al., No. 1:06-CR-00022 (C.D. Ill.), AUSA Steven Kubiatowski

On September 27, 2006, Glen Joffe was sentenced to serve five years' probation for smuggling prohibited wildlife artifacts into the United States, including ivory and items made from tigers. Joffe was further ordered to complete 1,500 hours of community service and to surrender more than $500,000 in prohibited artifacts.

Joffe and co-defendant Claudia Ashleigh-Morgan, who co-own Primitive Art Works gallery in Chicago, were accused of stocking their gallery and home with illegal items. Artifacts included ivory carvings, feathered hairpins, as well as items made from elephants and other animals. The couple first came to the attention of federal agents in March 2003 after they appeared in a newspaper article with items that looked as if they had been made from endangered species. The two subsequently were stopped at O'Hare International Airport in April 2003 as they were coming back from China with illegally imported items made from ivory and sea turtles in their luggage.

Joffe and Ashleigh-Morgan were originally charged in a 20-count indictment for violations including smuggling merchandise made from protected wildlife and making false statements to U.S. Customs agents. Joffe pleaded guilty to a conspiracy to knowingly and fraudulently import protected wildlife, to a felony sale of migratory bird parts and to illegally possessing a headdress made from protected birds. Ashleigh-Morgan was sentenced in June of this year to complete three years' probation for the same felony sale of migratory bird parts. She also was ordered to pay a $12,000 fine and must complete 600 hours of community service.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Pacific Shrimp Company, Inc., et al., No. 2:06-CR-00579 (C. D. Calif.), AUSA Joe Johns

On September 26, 2006, Pacific Shrimp Company, Inc. ("Pacific Shrimp") and Tony Zavala, vice president of sales, pleaded guilty to charges related to a scheme to avoid the payment of Mexican tariffs on frozen shrimp sold to Mexico. Specifically, the defendants admitted to purchasing shrimp from other countries, creating documents falsely claiming the seafood was harvested and inspected in the United States, and then exported the seafood to Mexico without paying the tariffs imposed on such products.

Mexico normally imposes an import duty of at least 20% on all seafood imported into the country. However, under the North American Free Trade Agreement, seafood grown or harvested in the United States may be imported into Mexico duty-free. In order to avoid paying tariffs on foreign seafood, Pacific Shrimp and Zavala created bogus documents to make it appear that their products were harvested in the United States, when in fact the seafood had originated in India.

In May 2003, Pacific Shrimp and its employees created a fictitious certificate of inspection to export approximately 65,000 pounds of frozen peeled shrimp to Mexico. The certificate stated that the shrimp had been inspected by the United States Department of Health Services and that laboratory analyses did not detect the presence of Salmonella, Listeria, Yellowhead virus, Whitespot virus, Cholera or Chloramphenico. The shrimp, in fact, had not been inspected or analyzed by any government agency prior to the export to Mexico. As a result of this scheme, Pacific Shrimp and its Mexican customers avoided paying more than $100,000 in duties to Mexico.

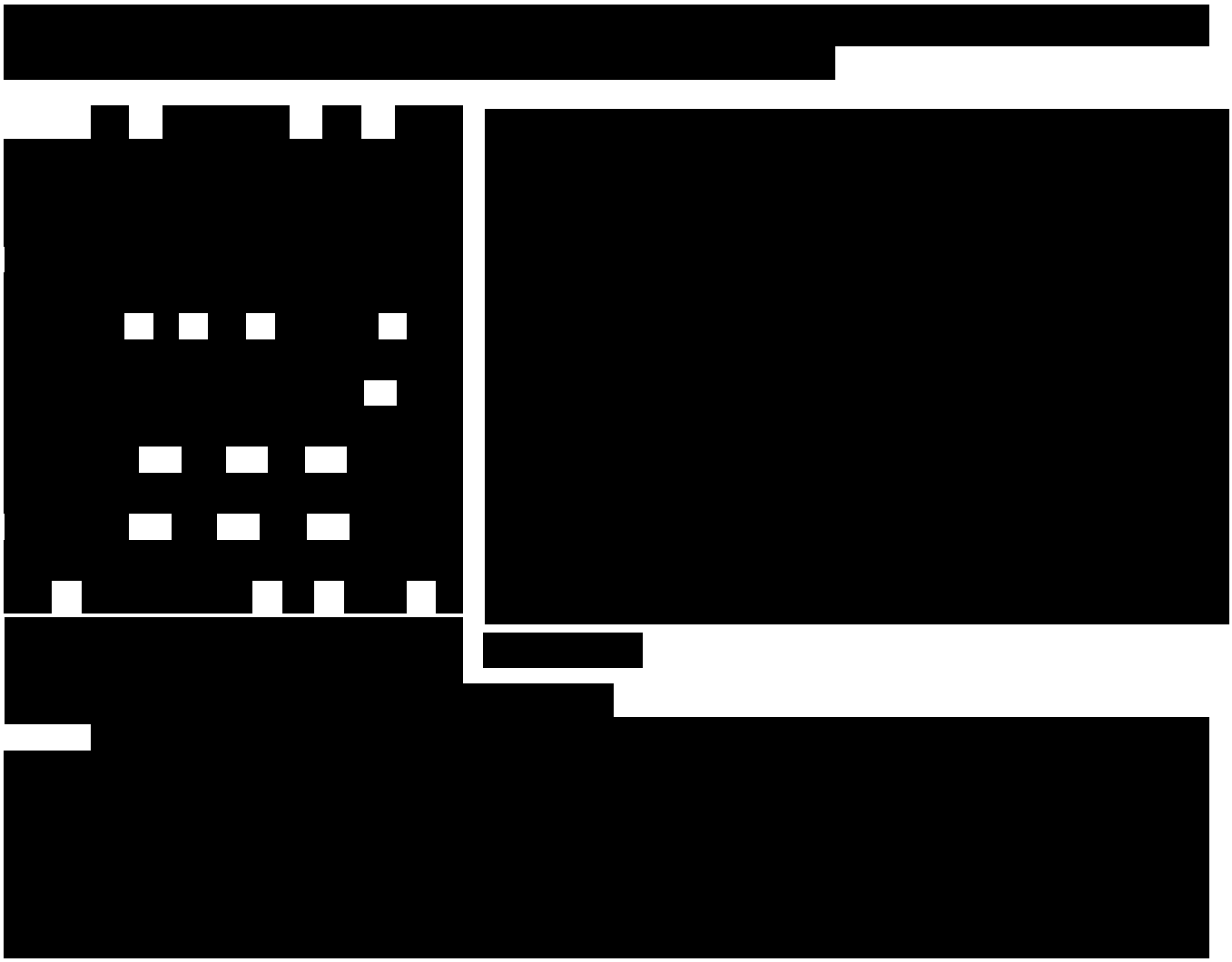
Pacific Shrimp pleaded guilty to two counts of unlawful export of wildlife, two counts of falsifying a government document, and two counts of knowing use of a counterfeit government seal. Pursuant to a plea agreement, Pacific Shrimp is expected to be placed on probation for five years and to pay a $120,000 fine. A $70,000 portion of the fine is anticipated to be earmarked for the Fish Genetics Program operated by the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center. The Fish Genetics Program will collect tissue specimens from species such as sharks, billfishes and tuna, with the goal of expanding the existing fish DNA data base that is used to help protect and manage United States marine mammals and fisheries resources.

Zavala pleaded guilty to the use of a counterfeit government seal. The charge carries a maximum possible penalty of five years in federal prison, but the government has agreed to recommend a sentence of ten months' incarceration.

Both defendants are scheduled to be sentenced on December 4, 2006.

This case was investigated by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement.

Back to Top



[redacted]

Back to Top

United States v. Rodolfo Esplana Rey, No. 06-CR-00315 (C.D. Calif.), AUSAs William Carter [redacted] and Dorothy Kim [redacted], and RCEC Erica Martin [redacted].

On September 22, 2006, Rodolfo Esplana Rey, the chief engineer for the *M/T Cabo Hellas*, a petroleum transport tanker operated by the Overseas Shipholding Group, Ltd., was sentenced to serve six month's incarceration followed by a one-year term of supervised release.

In December 2005, OSG replaced the old oil content meter ("OCM") on several ships in its fleet, including the *Cabo Hellas*. On several occasions between December 2005 and March 20, 2006, Rey tricked the OCM into allowing bilge water to be discharged overboard without first being analyzed by the meter. Specifically, on at least two occasions per month during this period, Rey discharged bilge water from the bilge tanks overboard into the ocean with the stop valve in the closed position. The last occasion was on March 20, 2006, in international waters off the coast of Mexico. Rey also trained a subordinate employee, an oiler, how to bypass the meter and thereby avoid setting off the alarm when oily bilge water was discharged overboard. Rey further made false entries in the oil record book, as well as omitting information, in order to conceal the illegal discharges. During a Coast Guard inspection in March 2006, Rey directed crew members to lie about how they were operating the oil water separator.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

December 2006

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email it, along with your information, to Elizabeth Janes at [redacted]. Material may be faxed to Elizabeth at [redacted] If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for the *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. Johnson, ___ F.3d ___ 2006 WL 3072154 (1st Cir. 2006).**

Districts	Active Cases	*Case Type* / Statutes
N.D. Calif.	United States v. Jeffrey Diaz	*Owl Eggs* / Smuggling, False Statements
C.D. Calif.	United States v. Ionnias Vafeas United States v. Bao Huynh United States v. Andrew Nguyen	*Vessel* / APPS *Lucky Fish* / Endangered Species Act *Cycads* / Endangered Species Act
D. Colo.	United States v. Joseph Cannella	*Asbestos Abatement in High School* / CAA, Negligent Endangerment
N.D. Fla.	United States v. Michael Bonner	*Charter Vessel Permits* / Magnuson-Stevens Act, Conspiracy, False Statements
S.D. Fla.	United States v. Alvin Keel United States v. Anthony Vidal Pego United States v. InStar Services Group United States v. Carib Sea, Inc.	*Sea Turtle Eggs* / Lacey Act, Endangered Species Act *Chilean Sea Bass* / Magnuson-Stevens Act, Obstruction *Condominium Restoration* / CAA *Coral Rock* / Smuggling, Lacey Act
E.D. Ky.	United States v. Charles Hungler, Jr.	*Sewage Treatment Plant Operator* / CWA, False Statements
D. Maine	United States v. Petraia Maritime Ltd.	*Vessel*/ APPS, Obstruction
D.N.J.	United States v. Sun Ace Shipping Company	*Vessel* / APPS
S.D. Ohio	United States v. Robert Horner	*Timber Harvesting* / Theft of Timber from Public Lands

Quick Links

Significant Opinions

First Circuit

United States v. Johnson, ___ F.3d ___ 2006 WL 3072154 (1st Cir. 2006).

This case remanded a Clean Water Act case involving discharges to wetlands for additional fact-finding, in light of the Supreme Court's decision in *Rapanos v. U.S.*, 547 U.S. ___ (2006). For the remand, the majority opinion in *Johnson* held that the *Rapanos* legal standards require a finding of Clean Water Act jurisdiction if the facts support Justice Kennedy's concurring "significant nexus" standard or the plurality "continuous surface connection" standard. Appellants lost their appeal in a civil case alleging that they had illegally discharged pollutants to federally regulated waters without a permit. The waters were wetlands, which had an undisputed "hydrological[] connect[ion] to the navigable Weweantic River by nonnavigable tributaries." Appellants sought a rehearing *en banc* while Rapanos was pending, but their motion was held in abeyance until the Supreme Court issued a decision. Then, in light of Rapanos, the First Circuit vacated its earlier decision and remanded the case for further proceedings.

This decision provides a cogent review of *Rapanos*, discusses several recent applications of that decision to District Court and Court of Appeals cases, and articulates new conclusions about how the multiple standards articulated in *Rapanos* should be applied. The *Johnson* court described those standards as (1) Justice Scalia's plurality opinion that wetlands are jurisdictional waters under the CWA only when there is a "continuous surface connection to bodies that are 'waters of the United States' in their own right;" and (2) Justice Kennedy's concurring opinion that wetlands possessing a "'significant nexus' to waters that are or were navigable in fact or that could reasonably be so made" are jurisdictional.

Since there was no five-vote majority, courts interpreting *Rapanos* must rely on the Supreme Court's rule in *Marks v. United States*, 430 U.S. 188, 193 (1977), to determine how to apply the decision. That case calls on courts interpreting no-majority cases to apply the position taken by the Justices who concurred in the judgment on the "narrowest grounds." The *Johnson* court analyzed *Rapanos* in light of *Marks* and found that divining the narrowest grounds was fraught with difficulty and "shortcomings." In particular, the decision noted that the Ninth Circuit (*No. Cal. River Watch v. City of Healdsburg*, 457 F.3d 1023 (9th Cir. 2006)) and the Seventh Circuit (*United States v. Gerke Excavating*, 2006 WL 2707971 (7th Cir. Sept 22, 2006)) have recently held that Justice Kennedy's

"significant nexus" test represents the narrowest grounds in *Rapanos*, because it limits federal jurisdiction the least. That conclusion may, however, be undermined, according to the *Johnson* court. Given the right factual basis, a court could logically find that a direct (if minor) surface connection to an undisputed jurisdictional water body--the plurality's touchstone--failed to demonstrate Justice Kennedy's significant nexus requirement. The *Johnson* Court explained that Justice Stevens' dissenting opinion offers a resolution of this dilemma because it reflected that "all four [dissenting] ustices would uphold the Corps' jurisdiction . . . in all other cases in which either the plurality's or Justices Kennedy's test is satisfied." More explicitly, Justice Stevens wrote that "in the unlikely event that the plurality's test is met but Justice Kennedy's is not, courts should . . . uphold the Corps' jurisdiction." In light of that analysis, the *Johnson* decision directed the court below to conduct any additional necessary fact-finding and to find jurisdiction if the facts support the standard of either Justice Scalia or of Justice Kennedy. In doing so, the Second Circuit followed the same approach applied by the district court in *United States v. Evans*, ___ F.Supp.2d___(2006).

Trials

United States v. Alvin Keel, No. 9:06-CR-80114 (S.D. Fla.), AUSA Lauren Jorgensen [redacted]

Sea turtle eggs

On October 31, 2006, Alvin Keel was convicted after a bench trial on Lacey Act and Endangered Species Act violations for the unlawful possession of Loggerhead sea turtle eggs and the unlawful transportation of sea turtle eggs.

In July 2006, Keel was seen digging up nests of freshly laid Loggerhead sea turtle eggs, and he was arrested shortly after the incident. Law enforcement officers subsequently discovered a large bag containing two pillow cases filled with 471 sea turtle eggs.

The defendant is scheduled to be sentenced on January 26, 2007. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Indictments

United States v. Petraia Maritime Ltd., No. 2:06-CR-00091 (D. Maine), ECS Trial Attorney Wayne Hettenbach [redacted] and AUSA Rick Murphy [redacted]

On November 22, 2006, a four-count indictment was returned charging Petraia Maritime Ltd. ("PML"), through the actions of its employees, with three APPS violations for failure to maintain an accurate oil record book ("ORB") and one count of obstructing justice.

PML, a Swedish company, was the sole owner and operator of the *M/V Kent Navigator*, a freighter registered in Gibraltar and doing business in Maine. During a port inspection in August 2004, Coast Guard investigators discovered evidence of illegal bilge waste discharges and the concealment of those discharges by failing to record them in the ORB. The obstruction charge stems from the company allegedly concealing and destroying the equipment used to carry out the discharges.

Two PML chief engineers, Felipe Arcolas and Alfredo Lozada, previously pleaded guilty to making false entries in the ORB.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Michael Bonner et al., No. 3:06-CR-00450 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On November 14, 2006, Michael Bonner and Gerald Andrews were charged with conspiracy and two false statement violations for attempting to circumvent a moratorium on charter vessel permits under Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson Act") regulations.

In November 2003, the Magnuson Act placed a moratorium on charter vessel/head boat permits for Gulf coastal migratory pelagic (ocean-going) fish and Gulf reef fish in an effort to address concerns regarding over-fishing and declining fish stocks. The regulation required that any person who could provide the National Marine Fisheries Service ("NMFS") with documentation verifying that, prior to March 29, 2001, s/he had a charter vessel or headboat under construction and had spent at least $5,000 toward construction as of that date was eligible for the permit. Specifically, copies of contracts, receipts, cancelled checks, and other applicable documents were required by NMFS to demonstrate that a permit applicant had a boat under construction and had spent more than $5,000.

The moratorium created a demand for the permits since they were not available to all charter boat owners. Anyone who could not meet the March 2001 deadline would have to purchase a permit from another boat owner with the permits valued at approximately $50,000.

Bonner was an Alabama boat builder and Andrews was a charter-boat fisherman in Florida. The indictment states that, in two separate contracts, the defendants agreed that Bonner would build Andrews two 65-foot commercial fishing vessels. The first, the ENTERTAINER, was to be used by Andrews to replace a boat that Andrews had wrecked off the coast of Florida in 2002. The second, the ESCAPE, was to replace a boat purchased by Andrews and his business partner in 2002.

The defendants are alleged to have submitted to the NMFS sales agreements signed and dated March 2, 2001, for both boats when in fact the agreements were actually signed on or about May 1, 2003, in an attempt to secure charter fishing permits prior to the moratorium's going into effect in September 2003.

Bonner and Andrews are scheduled for trial to begin on January 2, 2007. This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement.

Back to Top

Pleas / Sentencings

United States v. Jeffery Diaz, No. 06-CR-0050 (N.D. Calif.), ECS Senior Trial Attorney Bob Anderson [redacted] and AUSA Michael Nerney [redacted]

On November 28, 2006, which was the eve of trial, Jeffery Diaz pleaded guilty to a four-count indictment stemming from his smuggling of 12 Austrian Eagle Owl eggs into the United States in 2005 (in heated Easter baskets) and then lying about this conduct on customs forms and elsewhere. Diaz specifically pleaded guilty to two felony smuggling counts and two felony false statement counts. Austrian Eagle Owls are listed as endangered and on the CITES Appendix II list. Their retail value is approximately several thousand dollars per bird.

Diaz is scheduled to be sentenced in April 2007. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Owl hatched from smuggled eggs

United States v. Ioannis Vafeas, No. 2:06-CR-00585 (C. D. Calif.), AUSA Dorothy Kim [redacted]

On November 27, 2006, chief engineer Ioannis Vafeas was sentenced to serve seven months' confinement with credit for four months he already had completed. The remaining three months will be served with one month of incarceration and two months' home confinement, followed by two years' supervised release.

Vafeas, a Greek citizen, pleaded guilty in August of this year to an APPS violation for maintaining a false oil record book. From January to June 2006, Vafeas was chief engineer for the *M/T Georgis Nikolos*, a tanker owned by Agiosgeorgis Investments E.N.E. and operated by Diamlemos Shipping Corp., both of which are based in Piraeus, Greece.

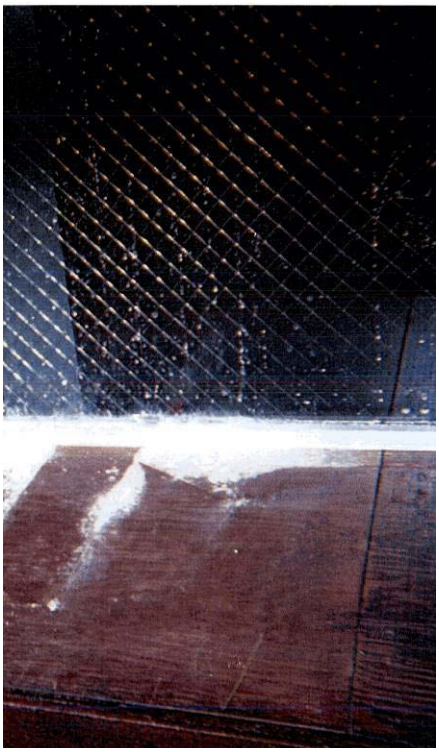
Vafeas admitted that, on numerous occasions, and prior to the ship's arrival in the Port of Long Beach in June of this year, he directed other engine room crew members to use a hose to bypass the oil-water separator on the ship resulting in the discharge of sludge and oily bilge water into the ocean. Vafeas also admitted to destroying the ship's "sounding notebook" used to record waste tank measurements and to directing crew members to dispose of equipment which was used for the illegal discharges.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Joseph Cannella et al., Nos. 1:01-CR-00090, 3:04-CR-00152, 1:05-CR-00103 (D. Colo.), ECS Senior Counsel Jim Morgulec [redacted] AUSAs John Haried [redacted] and Tim Neff [redacted], and SAUSA Linda Kato [redacted]

On November 20, 2006, Joseph Cannella was sentenced to serve six months' home confinement and was ordered to pay a $40,000 fine. The defendant also will be subject to a lifetime ban from the asbestos abatement industry.



Asbestos on indoor window sill

Cannella pleaded guilty in September of this year to two counts of negligent endangerment under the Clean Air Act. The pleas grew out of charges that Cannella, a senior management employee at National Service Cleaning Corporation ("NSCC"), an asbestos abatement contractor, and co-defendant Steven Herron, owner of Steve Herron and Associates ("SH&A"), an asbestos abatement consultant, conspired and caused multiple violations of CAA work practice standards relating to the removal and disposal of asbestos at Fort Morgan High School in Fort Morgan, Colorado, in July and August, 1999. Both defendants also were initially charged with multiple mail fraud violations. Herron had been charged with making a false writing in violation of 18 U.S.C. § 1001. Before he could plead guilty, Herron was involved in a serious motorcycle accident and passed away September 14, 2006. A motion to dismiss charges pending against him was filed.

Two other co-defendants previously have been sentenced in this case. Daniel Argil also was employed by NSCC to remove asbestos from the school and was sentenced to serve 68 months' incarceration, followed by three years' supervised release, for his role as the project supervisor. He also was ordered to pay $232,052.90 in restitution to the Morgan County School District.

Argil caused a significant amount of hazardous asbestos to be released into the air at Fort Morgan High School and directed employees to mishandle the material during the removal process. A high-powered water sprayer was used to remove the asbestos, which resulted in asbestos being discharged outside the containment area. The water-laden asbestos migrated to areas within the school, including inside lockers and wall systems. After the water evaporated, the asbestos remained as a dry powder that easily became airborne and thus was much more dangerous. As a result of his actions, Argil left Fort Morgan High School contaminated with asbestos when students, faculty, staff and employees returned to the school in the fall of 1999. Further, NSCC employees made efforts to conceal the company's failure to properly conduct the asbestos abatement project. Argil pleaded guilty to two felony CAA violations and a mail fraud violation. Co-defendant David Backus, an employee for SH&A, pleaded guilty to two mail fraud violations and was sentenced in May 2005 to serve 18 months' incarceration followed by three years' supervised release. Backus also was ordered to pay $15,800 in restitution.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Charles Hungler, Jr. et al., No. 3:06-R-00014 (E.D. Ky.), AUSA Robert Duncan, Jr. [redacted]

On November 17, 2006, Charles Hungler, Jr., owner of Perfect-a-Waste Sewage Equipment Company ("Perfect-a-Waste"), was sentenced to serve a one-year term of probation. Additionally, Hungler, on behalf of the company, was ordered to pay a $10,000 fine. Hungler pleaded guilty in July of this year, individually and for the company, to a Clean Water Act violation for making a false statement on a discharge monitoring report.

Hungler owns and operates Perfect-a-Waste. The defendants both operate the Edgewood Sewage Treatment Plant, located in Franklin County. On July 28, 2005, Hungler submitted a Kentucky Pollutant Discharge Elimination System discharge monitoring report to Kentucky environmental authorities, falsely stating that samples had been taken when, in fact, they had not.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Antonio Vidal Pego et al., No. 1:05-CR-20740 (S.D. Fla.), ECS Senior Counsel Jim Morgulec [redacted], ECS Senior Trial Attorney Elinor Colbourn [redacted] and AUSA Tom Watts-FitzGerald [redacted]

***F/V Carran* in Singapore**

On November 13, 2006, Antonio Vidal Pego and Fadilur S.A. pleaded guilty and were sentenced on charges involving the illegal importation of Patagonian and Antarctic toothfish (*a.k.a.* "Chilean Sea Bass"). Pego pleaded guilty to an obstruction of justice violation and was sentenced to serve a four-year term of probation. He is further required to cease all involvement in the toothfish industry. Pego also will pay a $400,000 fine, which will go into the Magnuson-Stevens Fisheries Conservation and Management Act Fund ("Magnuson Fund").

Fadilur, a Uruguayan corporation, pleaded guilty to false labeling, importation of illegally possessed fish, and attempted sale of those fish. The company also will complete a four-year term of probation, cease all corporate activities, and dissolve as a business entity within 45 days. Fadilur will pay a $100,000 fine, which is payable to the Magnuson Fund.

In May and June 2004, 11 containers containing toothfish destined for four U.S. ports were seized by National Oceanic and Atmospheric Administration, Office of Law Enforcement ("NOAA") after discrepancies were found in required documentation submitted prior to the containers' arrival. The defendants subsequently provided to investigators additional documents which were found to have been intentionally altered for the purpose of making it appear that the original paperwork was accurate. The government seized more than 53,000 pounds of toothfish, valued at $314,397 wholesale, which arrived in Miami aboard the *F/V Carran*, a cargo vessel from Singapore. This is the first successful federal felony prosecution in the United States for activities involving illegal importation and sale of toothfish. Patagonian toothfish (*Dissostichus eleginoides*) and Antarctic toothfish *(Dissostichus mawsonii*), a.k.a. "Chilean seabass," are a slow-growing, deep sea species of fish found throughout large areas of the sub-Antarctic oceans. They can live approximately 40 years and breed relatively late in life. The Antarctic toothfish is found only in very southern latitudes and alongside the Antarctic icepack and reaches a smaller maximum length than the Patagonian toothfish. Chilean seabass has been the subject of international conservation efforts in the face of increased fishing pressure from both legal and "pirate" fishing.

This case was investigated by NOAA's Office of Law Enforcement, with assistance from the Department of Homeland Security, Customs and Border Protection Service.

Back to Top

United States v. Bao Huynh, No. 06-CR-00247 (C.D. Calif.), Former AUSA William Carter.

On November 13, 2006, Bao Huynh was sentenced to serve two years' probation after earlier pleading guilty to an Endangered Species Act violation for attempting to smuggle Asian Arowana, commonly known as "Lucky" fish, into the United States.

Huynh originally was charged in March of this year with smuggling, false statement, and ESA violations. Arowana are indigenous to Southeast Asia and can live for many years in an aquarium. The fish can grow to an adult length of two to three feet, and they sell for as much as $5,000 apiece in this country.

Huynh attempted to bring a shipment of tropical fish into the United States from Vietnam in January 2006. During an inspection, five Arowanas were found hidden in unmarked bags among other tropical fish. The smuggled fish were not listed on the customs declaration or other attached invoices and shipping papers.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Sun-Ace Shipping Company et al., No. 2:06-CR-00705 (D.N.J.), ECS Trial Attorney David Kehoe [redacted]

Bypass pipe

On November 13, 2006, Sun Ace Shipping Company ("Sun Ace") was sentenced to pay a $400,000 fine plus an additional $100,000 community service payment to the National Fish and Wildlife Foundation, Delaware Estuary Grants Program, which will be used to protect and restore the natural resources of the Delaware Estuary and its watershed. The company also will complete a three-year term of probation during which time its vessels will be banned from U.S. ports and waters.

On September 6, 2006, Sun Ace pleaded guilty to a one-count information charging an APPS violation for failing to maintain an accurate oil record book. In January 2006, during a Coast Guard boarding of the *M/V Sun New*, a bulk carrier vessel operated by Sun Ace, inspectors found that members of the engine room crew had used bypass hoses to discharge oily wastes overboard into the ocean without using the vessel's oil-water separator.

A three-count indictment was previously returned charging chief engineer Chang-Sig O and second engineer Mun Sic Wang with conspiracy, obstruction of justice, and an APPS violation in connection with illegally discharging sludge and oil-contaminated bilge waste into the ocean using two bypass hoses.

According to the indictment, the engineers used two hoses on a trip from Korea to Camden, New Jersey, between November 20, 2005, and December 31, 2005, to circumvent required pollution prevention equipment and dump sludge and oily bilge waste into the ocean. On January 3, 2006, this bypass equipment was discovered by the U.S. Coast Guard during an inspection of the vessel in New

Jersey. The discharges were not noted in the oil record book, however, and thereby obstructed the investigation.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. InStar Services Group, Inc., No. 06-CR-60284 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On November 8, 2006, InStar Services Group, Inc. ("InStar"), pleaded guilty to, and was sentenced for, CAA asbestos violations arising from a condominium restoration project. InStar is in the business of rehabilitating and restoring commercial and multi-family complexes in the wake of disasters. The company was hired to restore the Hawaiian Gardens Condominium Complex for damages caused by Hurricane Wilma. InStar admitted to knowingly failing to file the required advance notification of intent to conduct demolition or renovation activities for projects where asbestos could be disturbed and for knowingly violating the NESHAPs for asbestos during the renovation.

The company was sentenced to serve five years' probation and must pay a $1,000,000 fine. In addition, InStar will pay $2,000,000 in community service to the Florida Environmental Task Force Trust Fund and implement an environmental compliance plan.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Carib Sea, Inc., et al., No. 1:06-CR-20677 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On November 8, 2006, Carib Sea, Inc., an aquarium supply company, and Richard Greenfield pleaded guilty to, and were sentenced for, the illegal importation of more than 42,000 pounds of protected coral rock from Haiti to the United States. In March 2006, the defendants attempted to import approximately 357 bags of coral without a valid permit and in violation of CITES.

Carib Sea was sentenced to serve a three-year term of probation and was ordered to make a $25,000 community service payment to the South Florida National Park Trust. Greenfield also must complete a three-year term of probation and pay a $25,000 fine. The defendants were further held jointly liable for storage and transportation costs exceeding $10,000 for the seizure of the coral and also must publish a notice in three publications related to the aquarium trade, explaining the applicable CITES requirements and how they violated the law.

Back to Top

United States v. Andrew Nguyen, No. 2:05-CR-1208 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] **and AUSA Joseph Johns** [redacted]

On November 2, 2006, Andrew Nguyen pleaded guilty to two smuggling violations and a false declaration in connection with the illegal smuggling of cycads. Nguyen was charged in December 2005 with conspiring to import specimens of cycads protected under CITES. The defendant was further charged with eight counts of smuggling and importing cycads by means of false declarations

and statements and one count of violating the Endangered Species Act. He also attempted to illegally import and sell approximately 800 cycad seeds.

Cycads, which resemble palms or tree ferns, are a small group of primitive-looking plants whose ancestors date back more than 200 million years. Certain cycad species face threats in the wild from habitat loss and over-collection. In April 2001, Nguyen agreed to purchase approximately 50 protected plants from a co-conspirator for approximately $26,000. The plants were shipped to Nguyen from Zimbabwe by a second co-conspirator. Rather than bearing labels with accurate descriptions of the plants, the specimens were labeled with numbers. Nguyen was provided with a key showing which numbers corresponded to which species. The permit accompanying the shipment did not authorize the shipment of any of the species in the actual shipment.

Nguyen is scheduled to be sentenced on December 18, 2006. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Robert Horner et al., Nos. 1:06-CR-00123 and 124 (S.D. Ohio), AUSA Laura Clemmens [redacted]

On October 23, 2006, Robert Horner and Michael Sark pleaded guilty to, and were sentenced for, one count of theft of timber from public lands for illegally harvesting trees from the Wayne National Forest.

In June 2002, Sark trespassed onto the Wayne National Forest and cut down and removed, or significantly damaged, timber with an approximate value of $9,500. In the course of his removing the timber, he also damaged archeological resources. In October, 2003, Horner trespassed into the Forest where he cut down and removed or significantly damaged 43 trees, including five pulpwood quality trees weighing approximately two tons, with a combined value of approximately $6,500.

Each defendant was ordered to pay a $300 fine and complete a one-year term of probation. Sark also will pay $4,570 in restitution to the United States Forest Service plus $3,099 for the damage to archeological resources. Horner will pay approximately $6,500 in restitution to the United States Forest Service.

This case was investigated by the United States Forest Service.

Back to Top

Are you working on Environmental Crimes issues?

Please submit information to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

January 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: ([redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for *Significant Opinions*, *Active Cases*, *Quick Links* and *Back to Top*. Just hold down the **ctrl key** while clicking on the link.

AT A GLANCE

SIGNIFICANT OPINIONS

United States v. Sheon DiMaio, et al., No. 06-0619 (2nd Cir. 2007).

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.).

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	**United States v. Bruce Penny et al.**	***Fish Sales*/ Lacey Act Conspiracy, Lacey Act Smuggling**
N.D. Calif.	**United States v. Coleman Lau**	***Turtle Smuggling*/ Smuggling, False Statement**
D. Conn.	**United States v. Ionia Management et al.**	***Vessel*/ APPS, False Statement, Obstruction**
D. D. C.	**United States v. Lawrence Lewis**	***Sanitary Wastewater*/ Negligent CWA**
[redacted]	[redacted]	[redacted]
S.D. Ind.	**United States v. Derrik Hagerman et al.**	***Wastewater Treatment*/ CWA**
W.D. N.C.	**United States v. Ecosolve, LLC et al.**	***Grease Disposal*/ CWA Conspiracy**
[redacted]	[redacted]	[redacted]
W.D. Va.	**United States v. Southern Finishing, Inc.**	***Wood and Metal Components*/ RCRA Storage**

Additional Quick Links

Significant Opinions

2nd Circuit

United States v. Sheon DiMaio, et al., 2007 WL 3256658 (2nd Cir. 2007).

On December 5, 2007, a summary order was filed by the Second Circuit affirming Sheon DiMaio's sentence of 42 months' incarceration imposed in February 2006. DiMaio was a defendant in the Salvagno litigation, and was employed as a field supervisor who carried out the Salvagnos' orders to engage in and direct others in illegal asbestos activities during approximately five years of this 10-year conspiracy. He pleaded guilty in 2002 to conspiracy to violate the Clean Air and the Toxic Substances Control Acts and to a substantive Clean Air Act violation.

DiMaio challenged his sentence as being unreasonable, pointing to the disparity between his sentence and those who had been given lesser sentences. While some supervisors received longer sentences, other supervisors (who cooperated far more extensively) received greater leniency than DiMaio. The Court rejected his argument, recognizing that DiMaio had cooperated far less than others who received reduced sentences.

The five remaining cooperating defendants were sentenced in December 2006, and in August 2006, Alexander Salvagno was re-sentenced to serve 25 years' incarceration. This remains the longest sentence ever imposed for an environmental crimes' conviction. His father, Raul Salvagno, was re-sentenced to serve 19½ years' incarceration, which is the second longest environmental criminal sentence. Eight other defendants have been prosecuted in this matter.

Back to Top

9th Circuit

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On December 6, 2007, the Ninth Circuit denied W.R. Grace's petitions for *en banc* review of Grace Interlocutory Appeal II. On September 20, 2007, in *United States v. W.R. Grace et al.*, 504 F.3d 745 (9th Cir. 2007), the Ninth Circuit reversed six pretrial orders issued by the district court and remanded the case for trial. Specifically, the Ninth Circuit's order restored the Clean Air Act knowing endangerment object of the conspiracy count that had been twice dismissed by the district court; agreed with the government's definition of asbestos under the Clean Air Act; granted a writ of mandamus to rule that the defendants were not entitled to an affirmative defense that would have required the government to prove visible emissions of asbestos had occurred; and ruled that three categories of evidence excluded by the district court were "of the type reasonably relied upon" by experts under Rule 703 and, therefore, could be used for that purpose by the government. This ruling follows a previous Ninth Circuit opinion issued in July, 2007, that reversed two additional pretrial orders by the district court, which had limited the government's ability to call witnesses and precluded

the government's experts from relying on certain studies and data that had not been identified nine months prior to trial. *(United States v. W.R. Grace et al*, 439 F. 3d 1119 (9th Cir. 2007)). The defendants' petition for *en banc* review of that decision was granted, and oral argument before the Ninth Circuit *en banc* court was heard on December 12, 2007, in Pasadena, Calif.
Back to Top

Pleas / Sentencings

United States v. Ionia Management et al., No. 3:07-CR-00199 (D. Conn.), ECS Trial Attorney Lana Pettus [redacted], AUSA Bill Brown [redacted] and Supervisory AUSA Anthony Kaplan ([redacted]

On December 14, 2007, Ionia Management ("Ionia"), a Greek company that manages a fleet of tanker vessels, was sentenced to pay a $4.9 million fine and will complete a four-year term of probation. A Special Master will be appointed to oversee the company's record keeping on a monthly basis. This Special Master will hold hearings every six months to interview crew members and review records to ensure compliance. Also as part of the sentence, no ship owned by Ionia will be permitted into U.S. ports without first having installed in it special monitoring equipment.

Ionia was convicted by a jury in September on all 18 counts, including several charges that were transferred from three other districts to Connecticut for trial. Ionia was on probation in the Eastern District of New York for a similar case in 2004 at the time of these new offenses.

The indictments, returned in Connecticut, Florida, New York, and the Virgin Islands, variously charged Ionia and two crew members with obstruction, with falsifying records to conceal the illegal discharge of waste oil, and with using and presenting false oil record books to the Coast Guard during port inspections. Petros Renieris, the chief engineer of the *M/T Kriton*, was sentenced last month to pay a $9,000 fine and complete two years' probation. After pleading guilty to an APPS violation, Renieris admitted that he deliberately ignored the conduct of employees he supervised as they dumped oil-contaminated wastes from the ship, bypassing the oily water separator. He also admitted to destroying the bypass hose while the Coast Guard conducted an inspection of the ship.

Second engineer Edgardo Mercurio was sentenced in October 2007 to pay a $1,000 fine and will complete a one-year term of probation. He earlier pleaded guilty to four APPS violations, one from each of the four districts in which he had been charged.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigative Division, with assistance from the Netherlands Royal Military Police, Ministry of Transport, Public Works, and Water Management.
Back to Top

[redacted]

[redacted]

Back to Top

United States v. Ecosolve, LLC, et al., No. 3:07-CR-00098 (W.D.N.C.), AUSA Steven Kaufman [redacted] with assistance from ECS Senior Trial Attorney Jennifer Whitfield [redacted]

On December 11, 2007, Thomas Forebush, a driver and operations manager for Ecosolve, LLC, pleaded guilty to conspiracy to violate the CWA.

Ecosolve was in the business of removing, hauling, pre-treating, and disposing of waste from grease traps of restaurants and other establishments. The nine-year conspiracy involved a scheme in which the defendants agreed to have Ecosolve truck drivers discharge customers' fat, oil, grease, and other waste back into the customers' own grease traps or sometimes have it diverted into other businesses' grease traps instead of removing all of the waste and hauling it to the company's pretreatment facility for processing and disposal. Ecosolve pleaded guilty to three CWA violations and a CWA false statement violation on November 4th. Ralph Rogers, the company owner and president, pleaded guilty to conspiracy to violate the CWA in October of last year.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Lawrence Lewis, No. 1:07-mj-00553 (D.D.C.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Angela Hart-Edwards [redacted]

On December 10, 2007, Lawrence Lewis pleaded guilty to an information charging a negligent CWA violation for discharges of sanitary sewage into Rock Creek in March 2007. Lewis was the director of engineering for a retirement facility located in the District of Columbia and was responsible for, among other things, overseeing the disposal of sanitary wastewater at the facility.

On or about March 29, 2007, Lewis caused a discharge of untreated sanitary sewage into Rock Creek, a navigable water of the United States, when he directed an employee of the facility to connect a hose to a bypass pipe within the facility and to run the hose onto a parking lot where it eventually flowed into a storm drain. The unpermitted discharge into the Creek lasted several hours until Park Police arrived on the scene.

Lewis is scheduled to be sentenced on March 24, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Park Service.

Back to Top

Back to Top

United States v. Southern Finishing, Inc., No. 4:07-CR-00027 (W.D. Va.), AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On December 7, 2007, Southern Finishing, Inc., a manufacturer of wood and metal components for the furniture and cabinet industry, was sentenced to pay a $200,000 fine and must further invest $250,000 into an environmental management system.

The company pleaded guilty in September 2007 to one RCRA violation for illegally storing hazardous waste at its facility in Martinsville, Virginia.

The company accumulated, without a permit, a total of 150 55-gallon drums containing waste paint, solvents and finishes from January 2002 to April 2004. In June 2003, Southern Finishing received an additional shipment of metal-coating material that contained hazardous air pollutants. After later learning that the Clean Air Act prohibits the application of this coating, the company stored this material with the other wastes when the manufacturer refused to take it back. To evade detection by regulators, the hazardous waste drums (many of which were leaking or punctured) were concealed among labeled drums of other waste and product material.

Hazardous waste drums mixed with product drums

This case was investigated by the Blue Ridge Environmental Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, the Roanoke Police Department, and the Virginia Department of Environmental Quality.

Back to Top

United States v. Coleman Lau, No. 07-CR-0482 (N.D. Calif.), AUSA Stacey Geis [redacted]

On November 30, 2007, Coleman Lau pleaded guilty to one felony count of smuggling and one felony count of making a false statement to a government official. Specifically Lau was charged with attempting to smuggle 14 live, baby Fly River turtles into the U.S., and then lied about it on U.S. Customs documents. Fly River turtles are fresh-water turtles native to Indonesia, Papua New Guinea, and Australia, which grow to be approximately two-feet long. At the time of the smuggling, they were under a protected status from each of their native countries. The species now is further protected by the CITES treaty.

Baby Fly River turtle

In March 2004, customs officials at San Francisco Airport found Lau to have the baby turtles hidden on his person. Lau admitted that he knew it was illegal to bring the turtles into the United States and admitted to lying on the customs declaration about whether he was bringing wildlife into the United States. The turtles were turned over to Fish and Wildlife agents who placed them in various zoos and aquariums in the state, as well as in one research center. Lau has managed an aquarium store for several years and Fly River turtles can sell for $500 each.

The defendant is scheduled to be sentenced on February 14, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Hai Nguyen, No. 2:07-CR–00880(C.D. Calif.), AUSA Craig H. Missakian ([redacted]

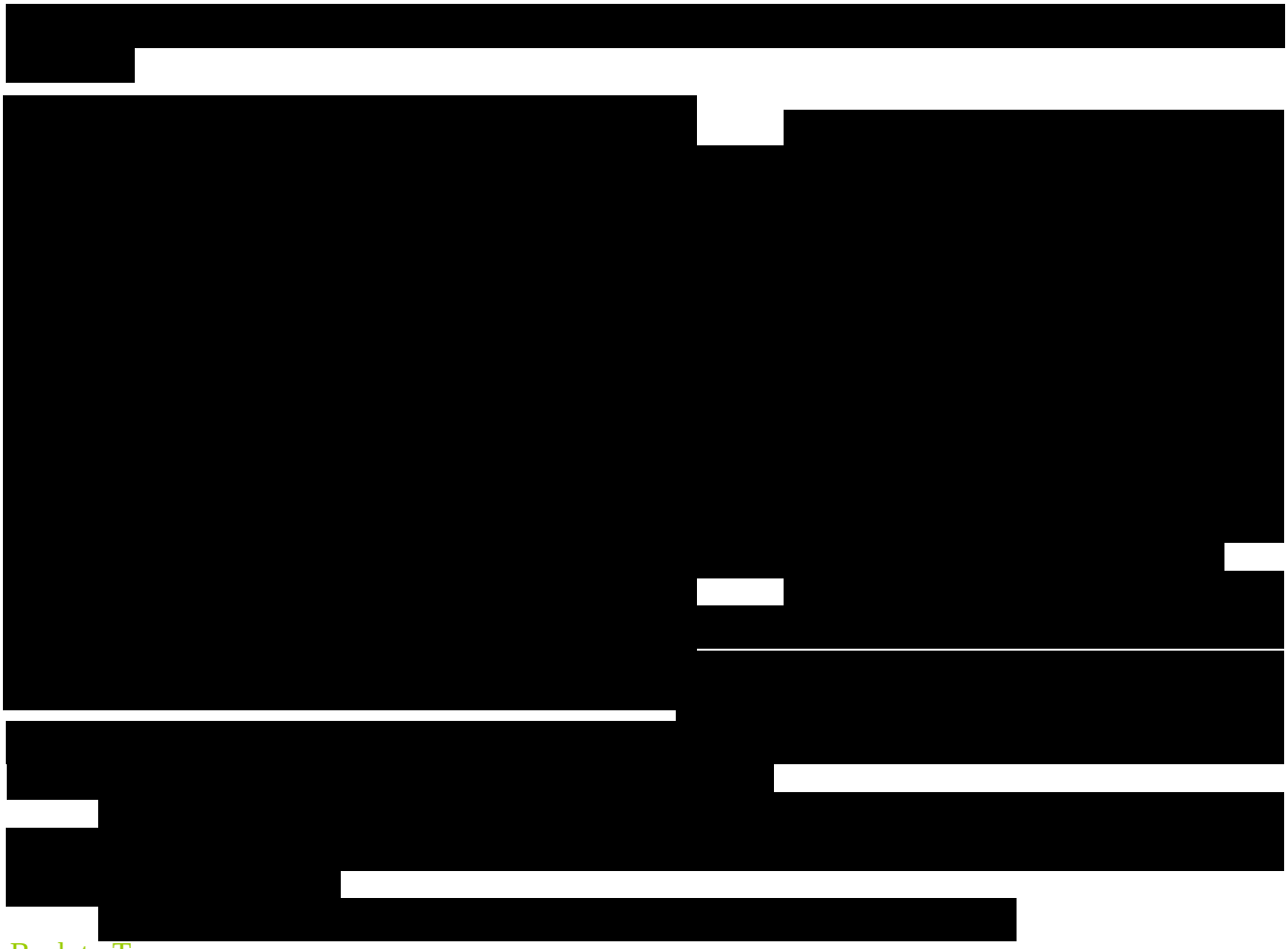
On November 28, 2007, Hai Nguyen pleaded guilty to violating the Marine Mammal Protection Act for stabbing a California sea lion, which had to later be euthanized.

On July 27, 2007, Nguyen was fishing from a dock on the Balboa Peninsula in Newport Beach. The sea lion, which had been swimming in the water near the dock and may have been interfering with Nguyen's fishing, approached the dock, getting close enough so that he could reach down and stab the animal. Witnesses in the area contacted the Newport Beach Police Department, and the defendant was arrested. Animal control officers were later able to trap the sea lion, which was transported to the Pacific Marine Mammal Center in Laguna Beach. Doctors who examined the animal determined that its wounds were too severe for it to recover.

Nguyen is scheduled to be sentenced on March 19, 2008. This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement, and the Newport Beach Police Department.

Back to Top

[redacted]



Back to Top

United States v. Derrik Hagerman et al., No. IP06-CR-0139 (S.D. Ind.), AUSA Steve Debrota [redacted]

On November 15, 2007, Derrik Hagerman, president and owner of Wabash Environmental Technologies ("WET"), was sentenced to serve five years' incarceration after being convicted by a jury earlier this year on all 10 CWA falsification counts charged. WET also was similarly convicted and was sentenced to complete a five-year term of probation. Both defendants will be held jointly and severally liable for $237,680 in restitution to the USEPA Hazardous Substance Superfund.

The defendants were convicted of CWA violations for falsifying monthly monitoring reports and discharge monitoring reports which were sent to the Indiana Department of Environmental Management ("IDEM"). WET formerly operated a waste water treatment facility that accepted liquid waste water from industrial customers. The waste water was treated and eventually discharged into the Wabash River.

The company was permitted to discharge wastes into the river within specific limitations. From January 2004 to November 2004, the defendants reviewed data indicating that they had repeatedly violated their permit limits for ammonia, biological oxygen demand, total suspended solids, copper, zinc and phenol. Hagerman and WET then created and submitted to the IDEM false reports showing few, if any, violations. The court at sentencing described Hagerman's conduct as "cold-blooded deception for profit".

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, IDEM, the Indiana Department of Natural Resources, the Defense Criminal Investigation Service and the FBI.

Back to Top

[redacted]

Back to Top

United States v. Bruce Penny et al., Nos. 2:06-CR-00761 and 765; 2:06-mj-01688 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On November 13, 2007, Bruce Penny was sentenced to serve 12 months and one day of incarceration, followed by three years' supervised release. Penny pleaded guilty earlier this year to conspiracy to violate the Lacey Act for his involvement in illegally transporting and selling Asian Arowanas, commonly known as "dragon fish" or "lucky fish."

The dragon fish is native to Southeast Asia and can grow to approximately three feet in length. Under the ESA and international treaties, permits are required to export endangered species from their country of origin, as well as to import them into the United States. Asian Arowanas can sell on the black market for as much as $10,000 in this country.

Penny sold several lucky fish to a purchaser in New York; Anthony Robles bought some dragon fish, sold some to Penny, and helped Penny ship some of the fish to a New York buyer. Peter Wu transported and sold an Asian Arowana to an undercover agent with the U.S. Fish and Wildlife Service. Robles pleaded guilty to conspiracy to violate the Lacey Act, was sentenced to pay a $2,500 fine, and must complete a three-year term of probation. Wu pleaded guilty to a Lacey Act smuggling violation for his involvement in the scheme; he was sentenced to pay a $11,000 fine and will complete a three-year term of probation.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

February 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may quickly navigate through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. Just hold down the **ctrl key** while clicking on the link.

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	**United States v. Virginia Star Seafood Corp. et al.**	***Mislabeled Catfish/* Lacey Act**
E.D. Calif.	**United States v. Garrett Smith**	***Turtle Smuggling/* Conspiracy, Smuggling, Lacey Act, Money Laundering**
D. Colo.	**United States v. Oscar Cueva** **United States v. Wang Hong** **United States v. Fu Yiner** **United States v. Mark Clyde Booth** **United States v. Lyle Ravenkamp**	***Int'l Trade of Exotic Skin Products/* Conspiracy, Smuggling, Money Laundering** ***Leopard Hunt/* Lacey Act** ***Bird Poisoning/* MBTA**
D. Conn.	**United States v. Ionia Management**	***Vessel/* Probation Violation, APPS, Obstruction, False Statement**
[redacted]	[redacted]	[redacted]
S.D. Fla.	**United States v. Karl Kuhn et al.** **United States v. Lawrence Beckman**	***Manatee Taking/* Endangered Species Act** ***Coral Harvest/* Lacey Act**
S.D. Ind.	**United States v. Derrik Hagerman et al.**	***Wastewater Treatment Facility/* CWA**
D. Md.	**United States v. Robert Langill** **United States v. Mark Humphries**	***Asbestos Abatement Naval Station/* CAA** ***Vessel/* Conspiracy, APPS, Obstruction, False Statement**
[redacted]	[redacted]	[redacted]
S. D. Miss.	**United States v. Robert Lucas**	***Septic Systems in Wetlands/* Appeal Bond Revoked, Conspiracy, CWA, Mail Fraud**
E.D. Mo.	**United States v. Eric Johnson**	***Sediment Runoff and Misused Bank Loans/* CWA, Bank Fraud**
E.D. Pa.	**United States v. Banko Lazic**	***Asbestos Abatement at Elementary School/* CAA**

Additional Quick Links

Indictments

United States v. Garrett Smith, No. 2:07-CR-00573 (E.D. Calif.), AUSA Robert Tice-Raskin [redacted]

On January 9, 2008, Garrett Smith was arrested on a previously sealed indictment charging him and an unknown international co-conspirator, known as "Turtle Man," with a variety of wildlife smuggling violations. The 21-count indictment charges both defendants with conspiracy, smuggling protected tortoises, false labeling of wildlife, unlawful sale of wildlife, and money laundering. Smith is further charged with one count of destruction or removal of property to prevent seizure during execution of a search warrant.

Burmese Tortoises

According to the indictment, Smith, working with the "Turtle Man" (who is believed to reside in Singapore), engaged in a conspiracy to illegally smuggle wild tortoises into the United States for sale. The overseas conspirator and others acting at his direction obtained Burmese Star Tortoises and Indian Star Tortoises in Asia and sold them to Smith via e-mail transactions. The tortoises, illegally imported into this country using misleading labels and without proper documentation, then were sold to distributors and customers across the United States. Approximately 30 protected Indian Star Tortoises and five protected Burmese Star Tortoises were imported illegally. Burmese Star adults can sell on the black market for up to $7,000 each, with Juveniles and sub-adults selling for approximately $3,750.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Trials

[redacted]

[redacted]

Back to Top

Pleas

United States v. Oscar Cueva, No. 1:07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted], ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On January 18, 2008, Oscar Cueva pleaded guilty to a felony count of conspiracy to smuggle protected sea turtle and exotic skins and skin products into the United States and to launder funds in support of that smuggling.

Boots and belt made from exotic skins

Cueva and ten others were indicted in Denver in August 2007, following a multi-year U.S. Fish and Wildlife undercover investigation named "Operation Central." Cueva was charged with co-defendants Miguel Vazquez Pimentel, Martin Villegas Terrones, and Esteban Lopez Estrada, all Mexican nationals, in connection with the smuggling of sea turtle and other exotic leathers and exotic leather products into the United States from Mexico. Cueva, acting as a "mule" or middleman, received sea turtle and other exotic skins, boots, and other products from his co-defendants in Mexico and brought these products into the United States in violation of U.S. and international law. In furtherance of the smuggling activities, Cueva also participated in the transfer of funds from the United States to Mexico.

There are seven known species of sea turtles. Five of the seven species are listed as "endangered" under the U.S. Endangered Species Act. Sea turtles are often killed illegally for their meat, skins, eggs and shell, all of which have commercial value. Cueva was involved in smuggling into the United States wildlife parts and products with a total fair market value of between $200,000 and $400,000.

This case is the culmination of a three-year undercover operation conducted by the United States Fish and Wildlife Service and the result of a joint operation among the Department of Justice;

the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

Back to Top

United States v. Virginia Star Seafood Corporation, et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] ECS Trial Attorney Mary Dee Caraway [redacted] and AUSA Joe Johns ([redacted]

On January 14, 2008, David Wong pleaded guilty to violating the Lacey Act for purchasing and re-selling a specific species of fish in the catfish family when he reasonably should have known that the fish had been imported illegally.

Wong admitted to purchasing and re-selling frozen *Pangasius hypophthalmus* fillets, a type of catfish, marketed by the approved trade names of "swai" or "tra," but referred to in some seafood markets as "basa." The fish that Wong purchased was labeled as "sole" and imported without the payment of the required anti-dumping duty of 63.88 percent.

Between November 2005 and May 2006, in a series of six transactions, Wong purchased on behalf of his employer, over $197,000 worth of frozen fish fillets from Virginia Star Seafood Corporation ("Virginia Star"). In each of these transactions, the fish ordered and received was labeled as "sole." Wong knew, however, that the fish he purchased was in fact *Pangasius hypophthalmus*, and was properly subject to both an import and anti-dumping duty.

An anti-dumping duty was placed on *Pangasius hypophthalmus* imports from Vietnam in January 2003 after a petition was filed by American catfish farmers alleging that this fish was being sold in the United States at less than fair market value. According to the indictment, between July 2004 and June 2005, Virginia-based seafood companies Virginia Star and International Sea Products Corporation, illegally imported from Vietnamese companies Binh Dinh, Antesco and Anhaco more than ten million pounds of Vietnamese catfish by identifying the fish to U.S. Customs and Border Protection officials as other species of fish, including sole, grouper, flounder and conger pike.

The indictment further alleges that, after the Vietnamese catfish was imported into the United States, Henry Nguyen and other salesmen for the Virginia companies marketed and sold the illegally imported catfish to seafood buyers including Wong of True World Foods, Inc., Henry Yip of T.P. Company, and David Chu of Dakon International. Yip entered a guilty plea to a misbranding violation in November 2007. True World Food Chicago LLC, a subsidiary of Wong's then-employer, True World Food, Inc., entered a guilty plea to a single Lacey Act violation last month.

This case was investigated by Immigration and Customs Enforcement, the National Marine Fisheries Service, and the Food and Drug Administration.

Back to Top

United States v. Mark Clyde Booth, No. 07-CR-00485 (D. Colo.), ECS Senior Trial Attorney Bob Anderson ([redacted] ECS Trial Attorney Jim Nelson [redacted] and AUSA Greg Holloway [redacted]

On January 11, 2008, Mark Clyde Booth pleaded guilty to a single felony Lacey Act false labeling count. Both admitted he had falsified CITES permit applications for the importation of the trophy parts of a leopard he illegally killed in South Africa in 2003. Claiming that the animal was killed in Zimbabwe, Booth's leopard along with four others that were killed illegally were imported to Denver in November 2004. In his plea agreement, the defendant has agreed to serve a three-year term of probation, pay a $10,000 fine and make a $5,000 community service payment. Booth also will be

banned from any hunting during the probationary period. He is scheduled to be sentenced on March 22, 2008.

Booth is the fifth individual to be convicted in this case, including the two South African guides who arranged the illegal hunts, the Denver taxidermist who accepted the shipment, and another U.S. hunter.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Wang Hong et al., No. 1:07-CR-00357 (D. Colo.), ECS Senior Trial Attorney Bob Anderson ([redacted] Trial Attorney Colin Black [redacted] AUSA Linda McMahan [redacted]

On January 3, 2008, Wang Hong pleaded guilty to smuggling. Wang Hong was charged together with another Chinese national, Stephen Cheng, in relation to several shipments of violin bows decorated with Hawksbill sea turtle shell, as well as 10 kilograms of raw Hawksbill sea turtle shell, sent from China to the United States. The sea turtle product was sold to agents working undercover in Colorado during 2006 and 2007. Wang was the first Chinese defendant to plead guilty in the Operation Central investigation, and a third Chinese national, Fu Yiner, was sentenced this month (*SEE* Sentencing Section below).

The Hawksbill sea turtle is listed as endangered under the Endangered Species Act. This case was investigated by the United States Fish and Wildlife Service and is the result of a joint operation among the Department of Justice; the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

Back to Top

United States v. Eric Johnson, No. 4:07-CR-00760 (E.D. Mo.), AUSA Michael Reap ([redacted] and SAUSA Ann Rauch [redacted]

On December 20, 2007, Eric Johnson pleaded guilty to violating the Clean Water Act for failing to maintain runoff controls at his building site, resulting in storm water run-off into Dry Branch Creek. Johnson also pleaded guilty to bank fraud stemming from his misusing bank loans on a development project.

Johnson, the owner and operator of a construction site known as Providence on Peine and Providence Meadows developments, had obtained construction storm water permits. In August 2004, inspectors observed numerous permit violations at both Providence sites, including lack of inspections and failure to maintain runoff controls, resulting in the off-site migration of a significant amount of sediment and accumulation of sediment to Dry Branch Creek.

From 2003 to 2006, Johnson was in the business of developing and building residential subdivisions in both St. Charles and Lincoln counties. Johnson had a long history of violations at all the sites including stormwater discharges and filling of wetlands. Upon discovery of these violations by the Missouri Department of Natural Resources, Army Corps of Engineers, and USEPA, the defendant would dissolve his businesses and move on to the next project. Johnson also has liens and lawsuits filed by subcontractors on all his developments.

In addition, Johnson had obtained a loan with First Service Bank, now known as Stifel Bank and Trust, for $2.6 million to develop a residential subdivision known as Woodsmill Estates. An escrow account was opened at a title insurance company to pay subcontractors of the development. During the time of the loan, however, Johnson used the escrow money to pay bills and subcontractors on other projects. The bank ultimately discovered this practice and foreclosed on the loan, which

resulted in a loss to the bank in excess of $100,000. Johnson's business partner, who co-signed on the loan, has incurred losses between $400,000 and $500,000.

Johnson is scheduled to be sentenced on March 7, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

Sentencings

[redacted]

Back to Top

United States v. Robert Lucas et al., No. 1:04-CR-00060 (S.D. Miss.), ECS Assistant Chief Deborah Harris [redacted] ECS Senior Trial Attorney Jeremy Korzenik [redacted], AUSA Jay Golden [redacted] ECS Paralegal Josh Allen [redacted] and ENRD Appellate Attorney Katherine Barton [redacted]

On January 22, 2008, Judge Guirola revoked Robert Lucas, Jr.'s appeal bond after finding that he had continued to commit the same type of offenses for which he was convicted. Lucas was ordered to report to jail on January 22nd On January 24th, Lucas filed a motion in the Fifth Circuit for an emergency stay of that order that was summarily denied.

The court had allowed the defendant to remain free pending the resolution of his Fifth Circuit appeal. Lucas, whose release was conditioned on good behavior, had continued to sell and lease wetland lots at his Big Hill Acres development to new tenants, and he was filling wetlands at Big Hill Acres, as well as at another one of his developments. Evidence of these post-conviction crimes was presented at a recent hearing before the judge who presided over the trial in 2005.

After seven weeks of trial, Lucas, his daughter Robbie Wrigley, M.E. Thompson, Jr., Big Hill Acres, and Consolidated Investments, Inc., were convicted in February 2005 on all counts. Lucas, Wrigley, Thompson, Jr., and the two companies were found guilty on 40 counts arising from their development of a large tract of the wetland known as Big Hill Acres in southern Mississippi. They were further convicted of conspiracy and mail fraud for selling home sites on this property to hundreds of families despite numerous warnings from public health officials that the illegal septic systems they

were installing in saturated soil were likely to fail and could cause contamination of the property and the drinking water aquifer.

As early as 1996, inspectors from the U.S. Army Corps of Engineers ("ACOE") informed Robert Lucas that substantial portions of the Big Hill Acres property contained wetlands and could not be developed as home sites. The Mississippi Department of Health and other regulatory agencies issued warnings to the defendants of the public health threat they were creating by continuing to install septic systems in saturated soil. Neither those warnings nor cease and desist orders from both the ACOE and EPA deterred the defendants from installing the septic systems. As a result, residents suffered from seasonal flooding and the discharge of sewage from failing septic systems onto the ground around their homes.

Wrigley and Thompson, Jr., were each sentenced in December 2005 to serve 87 months in prison followed by three years of supervised release, and they each must pay a $15,000 fine. Big Hill Acres, Inc., was ordered to pay a $4.8 million fine and will complete a five-year term of probation. Consolidated Investments, Inc., was sentenced to serve five years' probation and is required to pay a $500,000 fine.

This case was investigated by the United States Environmental Protection Agency and the Federal Bureau of Investigation, with assistance from the Environmental Protection Agency Region Four Wetlands Section and the United States Department of Agriculture's Soil Conservation Service.

Back to Top

United States v. Fu Yiner et al., No. 1:07- CR-00360 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] ECS Trial Attorney Colin Black [redacted], and AUSA Linda McMahan [redacted]

On January 22, 2008, Chinese national Fu Yiner was sentenced to serve 138 days of incarceration (time served) for his role in smuggling endangered Hawksbill sea turtle shell and shell products from China into the United States. Fu pleaded guilty earlier this month to one felony smuggling violation.

Fu knowingly sent four shipments of raw shell and guitar picks made from Hawksbill sea turtle shell from China to undercover agents in Colorado during 2006 and 2007. The five kilograms of unworked shell and 300 guitar picks together were valued at over $3,000. Another Chinese national, Wang Hong, pleaded guilty January 3rd to a similar smuggling violation.

This case was investigated by the United States Fish and Wildlife Service and is the result of a joint operation between the Department of Justice; the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

Back to Top

United States v. Karl F. Kuhn II et al., No. 07-CR-60227 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On January 18, 2008, Charles Podesta, Jr., and Karl Kuhn II were each sentenced for the "taking" of a West Indian Manatee by hooking it on a fishing line, in violation of the Endangered Species Act. Podesta will complete 30 days' incarceration followed by 30 days' home confinement and one year of supervised release. He also will perform 100 hours of community service and post to his "MySpace"® web site a public apology for his conduct. Kuhn will serve 15 days' incarceration followed by one year of supervised release and also will be required to perform 100 hours of community service.

On March 13, 2007, Podesta posted a pair of videotape clips on the "MySpace" website he maintained under the name "Nerezza." The video clips depicted the defendants attempting and ultimately succeeding in hooking and fighting a manatee in a Fort Lauderdale-area canal. Kuhn was identifiable directly from the video clips, while Podesta was later identified through follow-up investigation on other postings to the site.

According to data collected by the Florida Fish and Wildlife Conservation Commission Marine Mammal Pathobiology Laboratory, 26 manatee deaths have been associated with fishing gear between 1974 and 2006.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Branko Lazic, No. 2:07-CR-00324 (E.D. Pa.), ECS Senior Counsel Rocky Piaggione [redacted] AUSA Albert Glenn [redacted] and SAUSA Joseph Lisa ([redacted]

On January 11, 2008, Branko Lazic, owner of Bilaz, Inc., was sentenced to serve six months' home confinement as a condition of three years' probation and must complete 50 hours' community service. Lazic pleaded guilty in June 2007 to one Clean Air Act violation for the improper removal of asbestos from the Mattison Elementary School in Ambler, Pennsylvania, in June 2002.

The defendant and his company were hired to remove asbestos from several areas in the elementary school, which was undergoing renovation. Lazic admitted that he left the elementary school during the asbestos removal process despite knowing that it was likely the workers he employed would not properly remove the asbestos.

After the removal work was completed in preparation for the new school year, janitors and teachers removed a white dust residue from the floors and furniture. Lazic will further pay $6,097 in restitution to RT Environmental, Inc., which was the lead contracting company that had to pay for the subsequent cleanup. This is the amount that was not reimbursed by insurance companies and other subcontractors.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Pennsylvania Attorney General's Office.

Back to Top

United States v. Robert Langill, No. 8:07-CR-00425 (D. Md.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Gina Simms [redacted]

On January 10, 2008, Robert Langill was sentenced to serve 60 days' incarceration, followed by 10 months' home detention, and two years of supervised release, for violating the Clean Air Act in connection with asbestos abatement at the U.S. Naval Air Station, Patuxent River.

From 2001 to 2004, Langill was employed with a Maryland asbestos abatement company as an asbestos abatement project supervisor. In 2003, the company entered into an agreement with the U.S. Navy to remove asbestos-containing material from several buildings undergoing renovation or demolition at the U.S. Naval Air Station, Patuxent River, Maryland.

From October 2003 to January 2004, Langill directed the removal of transite panels containing asbestos from Buildings 692, 213 and 425 in a manner that violated federal asbestos abatement work practice standards, in that workers were directed to remove the panels by smashing them with hammers and crowbars, allowing the transite to fall to the ground and break, causing asbestos fibers to be released into the environment. The transite panels from Building 692 had not been adequately wetted

and no notification of the abatement activity had been given to the Maryland Department of Environment prior to the commencement of the abatement activity. In addition, unlabelled, improperly sealed bags of the broken asbestos-containing transite panels from Building 692 were stored on the grounds of the naval facility overnight in a truck owned by the company.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Naval Criminal Investigative Service.

Back to Top

United States v. Mark Humphries, No. 2:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence ([redacted]) ECS Senior Trial Attorney Richard Udell ([redacted]) with assistance from AUSAs Tonya Kowitz([redacted]) and Michael Cunningham ([redacted])

M/V Tanabata

On January 10, 2008, Mark Humphries, the former chief engineer of the *M/V Tanabata*, a vessel managed by Pacific Gulf Marine ("PGM"), was sentenced to serve six months' incarceration, followed by two years' supervised release, for conspiring to make illegal discharges of oily waste and for lying to the Coast Guard. Specifically, Humphries was convicted by a jury in October 2007 of conspiracy with four objects: to make illegal discharges, in violation of APPS; to maintain a false ORB, in violation of APPS; to make false statements, in violation of 18 U.S.C. §1001; and to obstruct an agency proceeding, in violation of 18 U.S.C. §1505. He also was convicted of two false statement violations and acquitted on an obstruction violation.

Evidence proved that the *Tanabata* had a removable bypass pipe that was used to discharge oily waste without the use of an oily-water separator ("OWS"). Humphries' former subordinates, including other engineers, testified that he did not use the OWS. Humphries referred to the bypass pipe as the "illegal pipe" and directed that it be hidden when the ship was in port so that it would not be discovered by the Coast Guard.

Humphries deliberately bypassed the OWS on the *Tanabata*, and concealed the crime by making false entries in the oil record book. This practice involved a number of subordinate engine department crew members, including students at U.S. maritime academies receiving on-the-job training as cadets. Humphries had participated in and directed similar criminal conduct on two other ships.

PGM, an American-flagged car-carrier ship based in Baltimore, pleaded guilty to and was sentenced last January for charges of making illegal discharges of oil-contaminated waste from each of four ships managed by the company. After learning of the investigation, PGM conducted and voluntarily disclosed the results of an internal investigation and cooperated with investigators and prosecutors. PGM was sentenced to pay a $1 million fine and an additional $500,000 in community service payments. The company is completing a three-year term of probation under the terms of an

environmental compliance program that includes audits by an outside firm and review by a court-appointed monitor. Humphries is the fifth chief engineer to have been prosecuted for similar crimes in this investigation.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ionia Management et al., No. 3:07-CR-00199 (D. Conn.), ECS Trial Attorney Lana Pettus [redacted] AUSA Bill Brown [redacted] and Supervisory AUSA Anthony Kaplan [redacted]

On January 10, 2008, a probation violation hearing was held with the court finding that Ionia Management ("Ionia") had violated probation by bringing one of its ships into a U.S. port without the required monitoring equipment. The judge will determine a penalty after receiving the Special Master's first report.

Ionia, a Greek company that manages a fleet of tanker vessels, was sentenced last month to pay a $4.9 million fine and will complete a four-year term of probation. A Special Master will be appointed to oversee the company's record-keeping on a monthly basis. This Special Master will hold hearings every six months to interview crew members and review records to ensure compliance. Also as part of the sentence, no ship owned by Ionia Management will be permitted into U.S. ports without first having installed in it special pollution monitoring equipment.

Ionia was convicted by a jury in September on all 18 counts of the indictment, including several charges that were transferred from three other districts to Connecticut for trial. Ionia already was on probation in the Eastern District of New York for a similar case in 2004 at the time of these new offenses.

The indictments, returned in Connecticut, Florida, New York, and the Virgin Islands, variously charged Ionia and two crew members with falsifying records to conceal the illegal discharge of waste oil, using and presenting false oil record books to the Coast Guard during port inspections, and with obstruction. Petros Renieris, the chief engineer of the *M/T Kriton*, recently was sentenced to pay a $9,000 fine and complete two-years' probation. After pleading guilty to an APPS violation, Renieris admitted that he deliberately ignored the conduct of employees he supervised as they dumped oil-contaminated wastes from the ship, bypassing the oily water separator. He also admitted to destroying the bypass hose while the Coast Guard conducted an inspection of the ship.

Second engineer Edgardo Mercurio was sentenced in October 2007 to pay a $1,000 fine and will complete a one-year term of probation. He earlier pleaded guilty to four APPS violations, one from each of the four districts where he had been charged.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Secret Service.

Back to Top

United States v. Lyle Ravenkamp, No. 1:07-mj-01245 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Linda McMahan [redacted]

On January 3, 2008, Lyle Ravenkamp pleaded guilty and was sentenced for his role in the poisoning deaths of more than 2,200 migratory birds on agricultural land. Ravenkamp pleaded guilty to a misdemeanor violation of the Migratory Bird Treaty Act for the misapplication of the chemical insecticide Carbofuran in June 2006 to a 95-acre sunflower field in Lincoln County, Colorado.

Ravenkamp admitted that he applied the compound on the surface of the field, instead of below the surface, as he knew it was intended to be used. As a result, more than 2,200 migratory birds, including Mourning Doves, Horned Larks, Western Meadowlarks, Red-winged Blackbirds, and Common Grackles died after ingesting the insecticide, which is known to be highly toxic to birds.

The defendant was sentenced to pay the maximum fine of $15,000, pay an additional $15,000 in restitution to the Colorado Wildlife Heritage Fund, and relinquish his pesticide applicator's license. Ravenkamp also will complete a three-year term of probation during which time he must perform community service in the form of specific wildlife habitat improvements to two parcels of property Ravenkamp owns in Lincoln County. These improvements will be coordinated with the Colorado Division of Wildlife and are valued at approximately $30,000.

This case was investigated by the United States Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

United States v. Lawrence Beckman, No. 9:07-CR-80137 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On December 20, 2007, Lawrence Beckman was sentenced to serve three months' incarceration followed by two years' supervised release and will pay a $2,000 fine. Beckman pleaded guilty in October 2007 to Lacey Act violations in connection with the illegal importation of more than 500 pounds of live rock, coral, and sea fans illegally harvested from Bahamian waters. According to court documents, in October 2002, Beckman made a commercial harvesting trip from Lake Worth Inlet, Florida, to the Bahamas aboard his vessel the MARY ANNE. The purpose of the trip was to acquire merchandise to sell in an aquarium supply business owned by Beckman. The defendant failed to obtain written permission from Bahamian authorities, as required by Bahamian conservation laws, to harvest hard and soft coral species within the Commonwealth of the Bahamas.

After securing 500 specimens of *Gorgonia*, commonly referred to as sea fans, and 500 pounds of live rock and coral, Beckman steered a course for Lake Worth Inlet. En route, the Coast Guard spotted his boat running without required navigation lights and intercepted the vessel.

Coast Guard boarding officers noted four large drums of fuel on the deck of the vessel and multiple sets of scuba equipment. During a safety and document check, they located the contraband corals in specially equipped "live wells" and in a converted fuel tank below a hatch cover in the main cabin, and they took the MARY ANNE to the Coast Guard Station at Lake Worth Inlet. Beckman subsequently admitted that he had been on a commercial harvesting trip to an area about 1.5 nautical miles east of Sandy Cay in the Bahamas and that he did not possess any permit from the Commonwealth allowing him to harvest marine resources from Bahamian waters.

Coral reef destruction has been the subject of intense debate both within the United States and at the meetings of the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, a treaty to which the United States and approximately 150 other countries are party. Loss of reef habitat, which is one of the most productive and diverse ecosystems, is a world-wide concern. As nurseries for marine species of commercial value, as well as a source of income from recreational fishing and eco-tourists, and a protective barrier for coastlines, a significant effort is underway to preserve the existing reef structures and reverse their decline.

This case was investigated by the NOAA Fisheries Office of Law Enforcement and the United States Coast Guard.

Back to Top

CORRECTION:
In the January 2008 edition of the Bulletin we neglected to credit EPA Regional Counsel Dave Mucha for his involvement in the Hagerman et al. prosecution below:

United States v. Derrik Hagerman et al., No. IP06-CR-0139 (S.D. Ind.), AUSA Steve Debrota [redacted] and SAUSA David Mucha [redacted].

On November 15, 2007, Derrik Hagerman, president and owner of Wabash Environmental Technologies ("WET"), was sentenced to serve five years' incarceration after being convicted by a jury earlier this year on all 10 CWA falsification counts charged. WET also was similarly convicted and was sentenced to complete a five-year term of probation. Both defendants will be held jointly and severally liable for $237,680 in restitution to the USEPA Hazardous Substance Superfund.

The defendants were convicted of CWA violations for falsifying monthly monitoring reports and discharge monitoring reports, which were sent to the Indiana Department of Environmental Management ("IDEM"). WET formerly operated a waste water treatment facility that accepted liquid waste water from industrial customers. The waste water was treated and eventually discharged into the Wabash River.

The company was permitted to discharge wastes into the river within specific limitations. From January 2004 to November 2004, the defendants reviewed data indicating that they had repeatedly violated their permit limits for ammonia, biological oxygen demand, total suspended solids, copper, zinc and phenol. Hagerman and WET then created and submitted to the IDEM false reports showing few, if any, violations. The court at sentencing described Hagerman's conduct as "cold-blooded deception for profit".

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, IDEM, the Indiana Department of Natural Resources, the Defense Criminal Investigation Service and the FBI.

Back to Top

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

March 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: ([redacted]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. Just hold down the **ctrl key** while clicking on the link.

AT A GLANCE

☞ **United States v. Robert Lucas et al., ___F.3d___, 2008 WL 274401 (5th Cir. Feb. 1, 2008).**

Districts	Active Cases	*Case Type* / Statutes
[redacted]	[redacted]	[redacted]
S. D. Calif.	**United States v. Damon Silva**	***Discharges from Docked Vessel/* CWA**
D. Colo.	**United States v. Esteban Lopez Estrada** **United States v. Jorge Caraveo et al.** **United States v. Wang Hong** **United States v. Leon Butt Jr. d/b/a Outdoor Adventures et al.**	***Int'l Trade of Exotic Skin Products/* Conspiracy, Smuggling, Money Laundering** ***Deer, Elk and Black Bear Hunts/* Lacey Act**
S.D. Fla.	[redacted] **United States v. Stanley Saffan et al.**	[redacted] ***Undersized Sailfish Harvest/* Lacey Act, Forfeiture**
N. D. Ga.	**United States v. Deryl Parker**	***Paint Waste Transported/* RCRA, Prior RCRA Conviction**
E. D. Ky.	**United States v. David Bowling, Jr., et al.**	***Septic Waste Discharged/* CWA**
D. Md.	**United States v. Patrick Brown** **United States v. Stephen Karas**	***Vessel/* Conspiracy, False Statement**
[redacted]	[redacted]	[redacted]
S. D. Miss.	**United States v. Dennie Pridemore**	***Sham Recycling Facility/* RCRA, False Statement**
D. Nev.	**United States v. Cody Bartolini**	***Interstate Sale of Reptiles/* Lacey Act**

Districts	Active Cases	*Case Type* / Statutes
S. D. N.Y.	**United States v. Miritello**	***DEP Employee/*** **False Statement**
S.D. Ohio	**United States v. James Schaffer**	***Deer Hunting Business/*** **Conspiracy, Lacey Act**
W.D. Okla.	**United States v. Guy Hylton et al.**	***Railroad Depot Renovation/*** **CAA Negligent Endangerment, False Statement**
[redacted]	[redacted]	[redacted]
E. D. Pa.	**United States v. George Chittenden** **United States v. Moshe Rubashkin et al.**	***Paint Waste/*** **RCRA Storage** ***Textile Waste/*** **RCRA Storage, False Statement**
[redacted]	[redacted]	[redacted]
D. P. R.	**United States v. Ramallo Bros. et al.**	***Waste Ink Discharges/*** **Misdemeanor CWA, False Statement**
E.D. Tex.	**United States v. William Stoner** **United States v. Site Concrete, Inc.**	***Importation of Harmful Fish/*** **Lacey Act** ***Drinking Water Contamination/*** **False Statements**
N.D. Tex.	**United States v. Robert Potts et al.**	***Paint Waste/*** **CWA misdemeanor**
S. D. Tex.	**United States v. B. Navi Ship Management Services et al.**	***Vessel/*** **APPS, False Statement**
D. V. I.	**United States v. Cleve-Allan George**	***Demolition Project/*** **CAA, False Statement**

Additional Quick Links

Significant Opinions

Fifth Circuit

United States v. Robert Lucas et al., ___F.3d___, 2008 WL 274401 (5th Cir. Feb. 1, 2008).

On February 1, 2008, the Fifth Circuit affirmed the criminal convictions of three individuals and two corporations for conspiracy, mail fraud, and Clean Water Act ("CWA") violations under CWA sections 402 and 404, 33 USC §§ 1342 and 1344. The defendants sold house lots and installed septic systems in wetlands, while representing that the properties were dry. The septic systems failed, rending the properties uninhabitable and causing sewage discharges into the wetlands and adjacent waters. In this post-*Rapanos* appeal, the court of appeals: (1) rejected the defendants' challenges to CWA jurisdiction, noting that they did not challenge the instruction as inconsistent with *Rapanos;* (2) found the evidence was sufficient to satisfy the CWA jurisdictional standards set forth in the plurality, concurring, and dissenting opinions in *Rapanos*; and (3) rejected an unconstitutional vagueness challenge based on abundant evidence that the defendants should have known the wetlands might be regulated. Regarding the section 402 violations, the court held that the septic systems were subject to NPDES permit requirements and the defendants were liable pursuant to 18 U.S.C. § 2 (aiding and abetting) for pollutant discharges from the septic systems even though the systems were operated by the homeowners and not the defendants. The court rejected numerous criminal-law based challenges, including: (1) a claim that the defendants were subjected to double jeopardy by the district court's handling of their motion for acquittal; (2) challenges to the jury instruction and sufficiency of the indictment and evidence on the mail fraud counts, the sufficiency of the indictment and evidence on the conspiracy count for one defendant, and several evidentiary rulings including refusal to allow telephonic deposition of a witness and denial of a motion for severance of the defendants; and (3) various challenges to the sentencing decisions.

Back to Top

Trials

Back to Top

Indictments

United States v. William Stoner, No. 5:08-CR-00024 (E.D. Tex.), AUSA Jim Noble [redacted]

On February 5, 2008, William Stoner was charged with one felony and two misdemeanor Lacey Act violations of 16 U.S.C. § 3372(a)(2)(A), the importation of harmful fish without a permit across state lines. The indictment alleges that, on three separate occasions in 2006 and 2007, Stoner transported unsterilized Asian Grass Carp from Arkansas to Texas without securing the required permits in violation of Texas state law. The carp were to be delivered to the Quail Creek Country Club golf course and placed in the ponds to keep down the weeds. Stoner would scuba dive in the depths of the six ponds at the club, raking through weeds and algae to find as many as 3,000 balls each time for which he was paid ten cents a ball. He bought the carp so that he could more easily locate the golf balls.

Acting on a tip from an Arkansas fish farmer, federal agents stopped Stoner in Texarkana and arrested him with what they said was a load of 50 unsterilized Asian grass carp, which devour marine vegetation and other fish so aggressively that they can alter an entire ecosystem. Fish and Wildlife agents ultimately were forced to recover and destroy the carp from five different water hazards at the country club, due to the risk that a flood event on the San Marcos River would allow the fish to escape the golf course and threaten native vegetation, including endangered Texas wild rice.

This case was investigated by Arkansas Game and Fish Commission, Texas Parks and Wildlife, and the United States Fish and Wildlife Service.

Back to Top

United States v. George Chittenden, No. 2:08-CR-00063 (E.D. Pa.), AUSA Cathy Votaw [redacted]

On February 1, 2008, an information was filed against George Chittenden, the owner of Spra-Fin, Inc., a powder-coating and painting facility, charging him with a RCRA violation for storage of hazardous waste in 2004 and 2005.

After closing Spra-Fin in mid-2004, Chittenden left behind a variety of wastes at the facility, including hazardous solvents, paints and finishes. The wastes were stored in places such as unlocked trailers, a fenced area, and outdoors on a concrete pad for more than a year until they were discovered by EPA investigators in April 2005. In the summer of 2005, Chittenden attempted to complete an EPA-supervised clean up, but EPA had to finish the job in the fall of 2005.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center.

Back to Top

Pleas

United States v. Patrick Brown, No. 1:07-CR-00339-WMN (D. Md.), ECS Trial Attorney David Joyce [redacted], ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Tanya Kowitz [redacted]

M/V Fidelio

On February 28, 2008, chief engineer Patrick Brown pleaded guilty to conspiracy and a false statement violation.

Brown was the chief engineer of the *M/V Fidelio* from 1994 to 2004. The *Fidelio* was operated by Pacific Gulf Marine ("PGM") from 2001 to 2004. From October 2001 through March 2003, the *Fidelio* used a bypass pipe to make illegal overboard discharges of oil-contaminated bilge waste. Brown knew of this practice and caused employees under his supervision to repeatedly discharge this unprocessed waste. He further was aware that the entries made in the oil recordbook under his supervision were falsified in order to conceal the illegal bypasses.

Brown is the fifth chief engineer to be prosecuted in this investigation. PGM previously was sentenced to pay $1.5 million after pleading guilty to circumventing the oily water separator on four giant "car carrier" ships it operated.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Damon Silva, No. 3:08-CR-00491(S.D. Calif.), AUSA Melanie Pierson [redacted]

On February 21, 2008, Damon Silva pleaded guilty to three misdemeanor CWA violations in connection with three oil-pollution incidents involving a vessel docked in San Diego Harbor.

Silva admitted that, between September 14, 2006 and December 2, 2006, he lived aboard the *FV Kathryn Ann*, which was docked at the G Street pier in San Diego Harbor. On September 18, 2006, Silva spilled diesel fuel from the vessel onto the pier and used a hose to rinse the fuel into the harbor. The second incident occurred on November 14, 2006, when Silva used a hose to pump oily bilge water from the *Kathryn Ann*, allowing the oily bilge water to be discharged from the hose into the water. The third incident transpired on December 2, 2006, when the defendant transferred diesel fuel aboard the boat and allowed the fuel to overflow from the deck into the water.

As part of the plea agreement, Silva has agreed to reimburse the United States Coast Guard $12,203.64 and the California Department of Fish and Game Oil Spill Response Trust Fund $2,404.20

for the costs incurred in responding to these three incidents. Silva is scheduled to be sentenced on May 20, 2008.

This case was investigated by the United States Coast Guard, the United States Environmental Protection Agency Criminal Investigation Division, the California Department of Fish and Game, and the San Diego Harbor Police.

Back to Top

United States v. Stanley Saffan et al., No. 1:07-CR-20553 (S.D. Fla.), AUSA Tom Watts FitzGerald [redacted]

Undersized Sailfish

On February 20, 2008, Stanley Saffan, Adam Augusto, Therapy Charter Fishing Yacht, Inc., ("Therapy Charter") and Duchess Charter Fishing Yacht, Inc., ("Duchess Charter") pleaded guilty to charges stemming from the illegal harvest of sailfish. The defendants, along with Sean Lang, Brian Schick and Ralph Pegram were initially charged in July of last year with conspiracy, wire fraud, obstruction of justice, and fisheries offenses.

Between October 2003 and May 2005, the defendants operated two charter fishing vessels, both named THERAPY-IV, from Haulover Inlet in North Miami Beach. Lang, Schick, and Saffan (who owned both corporations) were licensed by the U.S. Coast Guard to carry passengers for hire on charter trips. The indictment charges that undersized billfish were caught and landed, and that the landings were not reported to federal authorities. The indictment further charged that an undisclosed deal existed between the charter operation and a local taxidermy company to pay the crew and boat owners for inducing anglers to sign contracts for mounting the sailfish that were caught.

Saffan pleaded guilty to two Lacey Act violations and Augusto and both corporations pleaded guilty to one Lacey Act violation. As part of the corporate plea agreement with Duchess Charter, the company has agreed to recommend that the vessel be forfeited to the United States at sentencing. Therapy Charter has agreed to forfeit 125 per cent of the appraised value of the boat to the United States at sentencing.

On February 29th, co-defendants Schick and Pegram were sentenced after previously pleading guilty to a Lacey Act violation. Pegram was sentenced to serve one year and a day of incarceration and Schick will complete a three-year term of probation. Saffan, Augusto, and the companies are scheduled for sentencing on May 21, 2008, and Lang is scheduled for May 23rd.

This case was investigated by the NOAA Office of Enforcement, the Florida Fish and Wildlife Conservation Commission, and the United States Fish and Wildlife Service.

Back to Top

United States v. Eric Leon Butt, Jr., d/b/a Outdoor Adventures et al., No. 1:07-CR-00331 (D. Colo.), No. 1:07-CR-000331, ECS Senior Trial Attorney Bob Anderson ([redacted], Trial Attorney Jim Nelson ([redacted] and AUSA Linda McMahan [redacted]

On February 15, 2008, Eric Leon Butt, Jr., d/b/a *Outdoor Adventures*, pleaded guilty to conspiracy to violate the Lacey Act stemming from the interstate sale and transport of deer, elk and black bear killed unlawfully in Colorado between 2002 and 2005. Butt and co-defendant Paul Ray Weyand, d/b/a *Memories on the Wall Taxidermy*, were charged in August 2007 with conspiracy and seven Lacey Act violations.

Butt was a registered outfitter who provided guided hunts for big game animals in Colorado, and Weyand was a taxidermist who received business from Butt's clients. Butt encouraged hunters who did not possess the appropriate big-game license to kill animals that Butt later falsely tagged using his license or another hunter's. Butt referred clients to Weyand who was aware that the carcasses he received for mounting had been illegally killed.

Weyand remains scheduled for trial to begin on April 14, 2008, and Butt is scheduled to be sentenced on May 27th.

Back to Top

United States v. Robert Potts et al., No. 3:07-CR-00112 (N.D. Tex.), AUSA Marcus Busch ([redacted]

On February 12, 2008, guilty pleas were taken from all defendants in this case stemming from the illegal storage, transportation and disposal of hazardous paint waste at an unpermitted facility.

The Store Decor Company, Inc.-Retailgraphics Inc. ("Store Decor") company president Robert Potts, plant manager Willie Thames, and store employee James Epting were variously charged in June of last year with conspiracy to violate RCRA, plus three substantive RCRA violations.

The Store Decor is a retail graphics business that used paint, solvents and inks and did not have a permit to store the resultant hazardous waste. The indictment states that, from January 2002 until early May 2004, the defendants allegedly conspired to illegally store, transport, and dispose of paint waste. In May 2004, Store Decor, Potts and Thames are further charged with transporting seven 55-gallon drums of hazardous waste paint without a manifest and then disposing of these drums at an unpermitted facility. The company pleaded guilty to a RCRA violation and the three individuals each pleaded guilty to one CWA misdemeanor violation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Kaufman County Sheriff's Office.

Back to Top

United States v. Esteban Lopez Estrada, No. 07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted], ECS Trial Attorney Colin Black ([redacted] and AUSA Linda McMahan ([redacted]

On February 8, 2008, Esteban Lopez Estrada, a Mexican national, pleaded guilty to one felony count of smuggling and one felony count of money laundering in connection with the smuggling of sea turtle and other exotic skins and skin products into the United States from Mexico. Six of the seven defendants detained in the case have now pleaded guilty: Chinese nationals Fu Yiner and Wang Hong; Mexican national Carlos Leal Barragan; Oscar Cueva of McAllen, Texas; and Jorge Caraveo of El Paso, Texas [*SEE* below for additional information on Barragan, Caraveo and Hong.]

Lopez Estrada and 10 others were indicted in Denver in August 2007, following a multi-year U.S. Fish and Wildlife undercover investigation named "Operation Central." Lopez Estrada was charged in two separate indictments for his role in the smuggling. He operated a business in Leon, Mexico, named *Botas Exoticas Canada Grande*, through which he bought and sold exotic leathers, including sea turtle, caiman, ostrich and lizard skins; manufactured boots and belts from the skins; and sold the skins, boots, and belts to customers in the United States. After arranging sales to customers in the U.S., Lopez Estrada sent the exotic leathers and leather products to co-defendants Caraveo and Cueva in Mexico for illegal importation into the United States. As payment for the skins, boots, and belts, he received international wire transfers from Colorado to his Mexican bank account.

Lopez Estrada is scheduled to be sentenced on April 30, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. James Schaffer, No. 2:08-CR-00022 (S.D. Ohio), AUSA Mike Marous [redacted]

On February 8, 2008, James Schaffer pleaded guilty to a Lacey Act conspiracy and two Lacey Act violations stemming from his illegal operation of a hunting business in South Carolina. Schaffer's company, Graham's Turnout Hunt Company, attracted hunters from states such as South Carolina, Florida and Georgia. Between August and November 2005, Schaffer worked with a co-conspirator in Ohio to transport a total of 54 white tail deer from Ohio to South Carolina, without the proper documentation and without proper testing.

Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. Schaffer also never obtained the proper state permits to allow the deer to be transported into South Carolina. Without proper testing for diseases, the imported deer could infect the local deer population in South Carolina.

As part of the plea agreement, the defendant has agreed to pay $50,000 to the National Wildlife Trust Fund and $50,000 to the South Carolina Harry Hampton Wildlife Fund. He also could be sentenced to complete 500 hours community service in a South Carolina park picking up trash or a comparable activity.

Back to Top

United States v. B. Navi Ship Management Services et al., Nos. 4:08-CR-00032 and 00033 (S.D. Tex.), ECS Trial Attorney Jim Nelson [redacted] ECS Senior Litigation Counsel Howard Stewart [redacted] and AUSA William Miller [redacted]

On February 7, 2008, Italian shipping company B. Navi Ship Management Services ("B. Navi Ship Management") and Chief Engineer Dushko Babukchiev, pleaded guilty to charges stemming from the illegal dumping of oily sludge, bilge wastes and oil contaminated ballast water from the *M/V Windsor Castle*, a 27,000 gross-ton bulk carrier vessel.

On August 17, 2007, the *Windsor Castle* was boarded by Coast Guard inspectors when it arrived at port in Houston, Texas. During the boarding, inspectors learned that the chief engineer had ordered crew members to dump oil sludge and bilge wastes into the ocean and had falsified the ship's oil record book to conceal these discharges. With assistance from several lower level crew members, inspectors discovered and seized the bypass hose and pipes used to dump the oil sludge, bilge waste, and contaminated ballast water overboard.

B. Navi Ship Management pleaded guilty to a two-count criminal information charging it with an APPS violation and a false statement violation. Chief Engineer Babukchiev pleaded guilty to a

false statement violation for presenting the oil record book to inspectors during the August 2007 boarding. Babukchiev is scheduled to be sentenced on February 15, 2008, and the company will be sentenced on April 23, 2008.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Moshe Rubashkin et al., No. 07-CR-00498 (E.D. Pa.), SAUSA Joe Lisa [redacted] and AUSA Michelle Morgan-Kelly [redacted]

On February 4, 2008, Moshe Rubashkin pleaded guilty to illegally storing hazardous waste generated from the Montex Textile plant. His son, Sholom Rubashkin previously pleaded guilty to a false statement related to the ownership and operation of the family's textile dyeing, bleaching and weaving business when it was declared a superfund site.

After being in operation for 12 years, the plant closed in 2002 with numerous containers of hazardous waste left behind. After local authorities responded to two fires at the plant, EPA and the city of Allentown initiated a major clean-up of the property in October 2005. In responding to a CERCLA 104(e) letter sent in February 2006 regarding the parties responsible for cleanup at the site, Sholom Rubashkin denied that his family had owned and operated the plant during the relevant time periods.

The plea agreement requires both defendants to be jointly and severally liable for $450,000 in restitution to be shared between USEPA and the city of Allentown. Sentencing for Sholom Rubashkin is scheduled for March 18, 2008, and his father is scheduled for July 16th.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, and the Environmental Protection Agency Office of Inspector General.

Back to Top

United States v. Jorge Caraveo et al., No.07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted], ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On January 29, 2008, Jorge Caraveo of El Paso, Texas, and Carlos Leal Barragan, a Mexican national, pleaded guilty to felony charges in connection with the smuggling of sea turtle and other exotic skins and skin products into the United States from Mexico. Caraveo pleaded guilty to three counts of smuggling, and Leal Barragan pleaded guilty to one smuggling count and one count of money laundering.

Caraveo, Leal Barragan and nine others were charged in Denver in August 2007, following a multi-year United States Fish and Wildlife undercover investigation named "Operation Central." Chinese nationals Fu Yiner and Wang Hong, and Oscar Cueva of McAllen, Texas, pleaded guilty to smuggling charges earlier this month.

Caraveo and Leal Barragan were charged along with co-defendants Maria de los Angeles Cruz Pacheco, Octavio Munoz, and Esteban Lopez Estrada, all Mexican nationals. Caraveo received sea turtle and other exotic skins, boots, and other products from his co-defendants in Juarez, Mexico, and brought the skins, boots and other products into the United States in violation of U.S. and international law. Leal Barragan admitted to buying sea turtle skins in Mexico and then selling them to customers in Mexico and undercover agents in the United States. He then sent the skins to Caraveo for smuggling

across the border into the United States. As payment for the skins, Leal Barragan received international wire transfers from Colorado to his Mexican bank account.

It is estimated that Caraveo smuggled wildlife parts and products into the United States with a total fair market value of between $200,000 and $400,000. Both defendants are scheduled to be sentenced on April 25, 2008.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Cody Bartolini, No. 2:07-CR-00237 (D. Nev.), AUSA Christina Brown

On January 23, 2008, Cody Bartolini pleaded guilty to three felony counts of attempted unlawful interstate sale of wildlife, specifically, seven Green Mamba snakes, two Forest Cobras, one Black-Neck Spitting Cobra, and five different breeds of rattlesnakes.

According to the indictment, between December 2006 and March 2007, Bartolini attempted to sell the snakes on the Internet, even though he knew he had captured some of the snakes in violation of Nevada state law. Under Nevada law, it is illegal to possess certain non-indigenous snakes without proper licensing and permits. It also is illegal to possess indigenous snakes (such as the rattlesnakes charged in the indictment) without proper permits, even those designated under state law as "unprotected," when the snakes are possessed for a commercial purpose.

Wildlife agents were notified by an Ohio game warden that Bartolini was offering to sell and trade venomous reptiles via the Internet. Agents were able to determine that Bartolini had been offering venomous snakes for sale or trade via the Web from his residence in Las Vegas since at least September of 2004. A search warrant executed at the defendant's residence resulted in the seizure of 48 snakes of various species, as well as a caiman, a Gila monster, and an alligator snapping turtle.

Bartolini is scheduled to be sentenced on April 24, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Sentencings

United States v. Stephen Karas et al., No. 1:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence (ECS Senior Trial Attorney Richard Udell and AUSA Tonya Kowitz

On February 28, 2008, Stephen Karas was sentenced to serve a two-year term of probation to include 60 days' community service and will pay a $500 fine. This former chief engineer provided significant cooperation during the investigation and testified as a government witness at Mark Humphries' trial. Karas pleaded guilty in March 2007 to a conspiracy to violate APPS, to make false statements, and to obstruct a Coast Guard proceeding, as well as to a substantive false statement violation.

Karas and Humphries, former chief engineers of the PGM-managed *M/V Tanabata*, were charged in June 2006 with violations related to the illegal dumping of bilge waste. The criminal investigation began in September 2003 after the U.S. Coast Guard inspected the ship in Baltimore. During the September inspection both engineers denied involvement in any illegal conduct. Evidence

at Humphries' trial indicated that the pipe used to bypass the oily water separator was thrown overboard by Humphries after the Coast Guard had inspected the vessel in Baltimore.

Karas admitted to using the bypass pipe and to concealing it during U.S. port calls. He also admitted to making false entries in the oil record book which stated that discharges were being made through the oily water separator, when it was bypassed entirely.

Humphries was convicted in October 2007 of conspiracy as well as two false statement violations. He was sentenced to serve six months' incarceration followed by two years' supervised release.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ramallo Brothers Printing, Inc. et al., No. 3:07-CR-00449 (D.P.R.), ECS Senior Litigation Counsel Howard Stewart [redacted]

On February 27, 2008, Angel Ramallo was sentenced to pay a $25,000 fine and to serve three years' probation stemming from waste ink discharges onto property owned by Ramallo Brothers Printing, Inc. ("Ramallo Bros."). Guilty pleas taken in October 2007 from the company and Angel Ramallo resolved three separate matters. Ramallo Bros. pleaded guilty to two false statement counts and Angel Ramallo pleaded guilty to a misdemeanor violation for the negligent discharge of wastes into the Loiza River.

In approximately 1985, Ramallo Bros. leased a 47-acre plot of land northwest of the city of Canobanas, Puerto Rico. The site is referred to as "La Finka" (the farm) by company employees and is a former sugar mill. The printing process used by the Ramallo Bros. created a variety of wastes including an oily liquid from the afterburner process, waste ink and solvents. These wastes and by-products were placed in drums and disposed of at "La Finka" on a regular basis. Ramallo Bros. leased the property from Southwire Company and operated at the site until approximately June of 1999.

In September 15, 2000, the EPA issued a request to Ramallo Bros. seeking information about the site pursuant to section 104(e) of CERCLA. The section 104(e) request was related to EPA's investigation of the "La Finka" site. In its response, the company falsely denied knowledge of any disposals.

In a separate inquiry by the Puerto Rico Environmental Quality Board ("EQB"), the company provided EQB with dump tickets purporting to show the proper disposal of ink and waste water at a local POTW. The POTW that was to have received the waste, however, was closed and the environmental manager for the company was aware of the closure.

The company was sentenced in October 2007 to pay a $500,000 fine for the false statement made to EPA and $250,000 for the false dump tickets provided to EQB. The company also will complete a four-year term of probation to run concurrently for each false statement.

In a third matter, EQB inspected the Ramallo warehouse located in San Juan. A subsidiary company, Caribbean Forms, shares and operates from the same warehouse space. An EQB inspection of the property behind the warehouse revealed that the ground was saturated with blue ink and other liquid wastes. A pipe had ruptured, but Angel Ramallo, who was responsible for safety and environmental compliance, did nothing to prevent the wastes from reaching the Loiza River.

This case was investigated by the United States Environmental Protection Agency Office of the Inspector General, the United States Environmental Protection Agency Criminal Investigation Division and the Puerto Rico Environmental Quality Board.

Back to Top

United States v. Deryl Parker, No. 3:07-CR-00011 (N.D. Ga.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Susan Coppedge [redacted]

On February 26, 2008, Deryl Parker was sentenced to serve 16 months' incarceration followed by one year of supervised release. Parker pleaded guilty in November of last year to one RCRA violation for transporting 17 drums of hazardous and ignitable paint waste without a manifest.

From February 2003 to May 2004, Parker possessed at least 17 drums containing hazardous waste, with each drum holding approximately 55 gallons. These drums contained used lacquer thinner and waste paint which were comprised of xylene, acetone, and toluene - ignitable hazardous waste. Shortly after agents interviewed the defendant about these drums, he transported them to a disposal company without a manifest. Parker has a prior conviction for the storage and transportation of hazardous waste, and a superfund cleanup site already exists in Senoia, Georgia, due to his prior violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cleve-Allan George et al., No. 2003-20 (D. V. I.), ECS Chief Stacey Mitchell [redacted], ECS Assistant Chief Joseph Poux [redacted] and AUSA Major Coleman [redacted]

On February 26, 2008, Cleve-Allan George was sentenced to serve 33 months' incarceration followed by three years' supervised release. Co-defendant Dylan Starnes received a similar sentence in July of last year. Both were convicted by a jury in June 2005 on all 16 counts, including Clean Air Act and false statement violations, related to a demolition project in a low-income housing neighborhood.

George and Starnes were hired by the Virgin Islands Housing Authority ("VIHA") to remediate asbestos in an old building scheduled for demolition. They filed a work plan with the VIHA which indicated that they would follow all applicable regulations, including EPA and OSHA regulations. The defendants did not follow the asbestos work practice regulations by, among other things, failing to properly wet the asbestos during removal. The defendants also filed false air monitoring documents with the VIHA and falsely labeled the asbestos as non-friable when it was sent to Florida for disposal.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Virgin Islands Department of Planning and Natural Resources with sampling and analysis assistance from the National Enforcement Investigations Center.

Back to Top

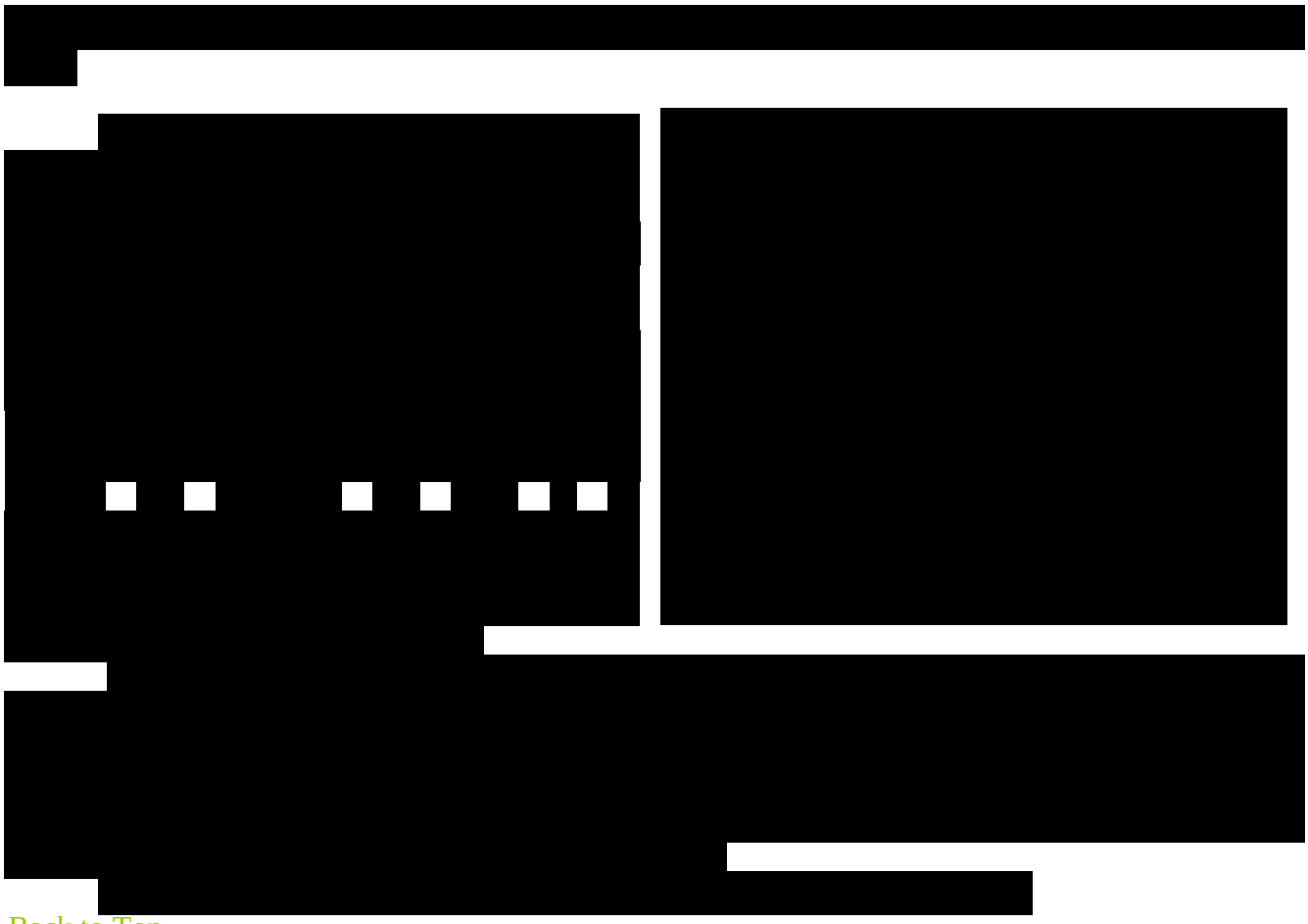
United States v. David Bowling, Sr., et al., No. 7:07-CR-00013 (E.D. Ky.), AUSA Robert Duncan [redacted]

On February 26, 2008, David Bowling, Sr., owner and operator of Dave's Concrete, Inc., was sentenced for violating the Clean Water Act for illegally discharging pollutants into U.S. waters. Bowling will serve a year in prison, followed by one year of supervised release, and pay a $260,000 fine. The company was sentenced to serve five years' probation and will pay a $130,000 fine.

Bowling admitted to discharging septic wastes from December 2005 to December 2006 into Burnt Cabin Branch Creek, which feeds into the Big Sandy River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Kentucky Environmental Protection Cabinet.

Back to Top



Back to Top

United States v. Site Concrete Inc., No. 4:07-CR-00192 (E.D. Texas), AUSA Shamoil Shipchandler .

On February 19, 2008, Site Concrete Inc., was sentenced to pay a $50,000 fine for making false statements to EPA to conceal microbiological contamination in new drinking water lines at a construction site in Fairview, Texas.

Site Concrete admitted that, in May 2006, it submitted false water samples to EPA through the Texas Commission for Environmental Quality, concealing the presence of contamination. The company was required to ensure that water in the new lines at the project was free of contamination before being placed in service.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Occupational Safety and Health Administration.

Back to Top

United States v. Wang Hong et al., No. 1:07-CR-00357 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] Trial Attorney Colin Black ([redacted] AUSA Linda McMahan [redacted]

On February 19, 2008, Wang Hong was sentenced to serve 167 days (time served) followed by three years' supervised release. Wang pleaded guilty last month to a smuggling violation for shipping four shipments of Hawksbill sea turtle shell and violin bows decorated with Hawksbill sea turtle shell, valued at a total of over $5,000, to undercover U.S. Fish and Wildlife agents working in Colorado during 2006 and 2007. The Hawksbill sea turtle is listed as endangered under the Endangered Species Act.

This case was investigated by the United States Fish and Wildlife Service and is the result of a joint operation among the Department of Justice; the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

Back to Top

[redacted]

United States v. Dennie Pridemore, No. 5:06-CR-00043 (S.D. Miss.), ECS Senior Trial Attorney Jeremy Korzenik ([redacted] and Trial Attorney Malinda Lawrence ([redacted]

Drums with Hazardous Waste

On February 7, 2008, Dennie Pridemore was sentenced to serve 41 months' incarceration followed by three years' supervised release, for illegally storing and disposing of hazardous waste. Restitution will be determined at a later date.

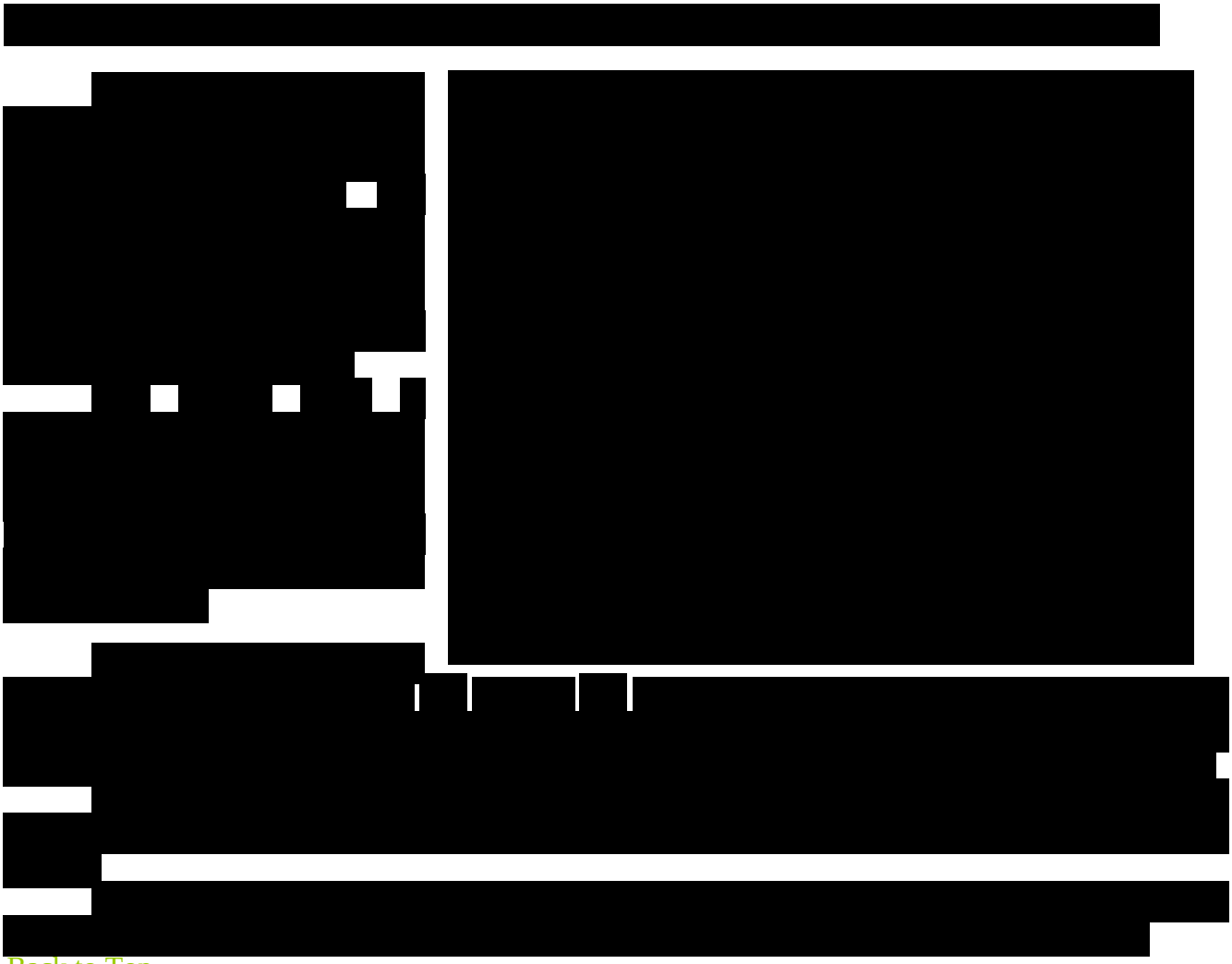
Pridemore pleaded guilty in November 2007 to all six counts in the indictment charging him with four RCRA and two false statement violations stemming from the operation of Hydromex, Inc., a sham recycling facility.

From 2000 through 2003, Pridemore, the former company president and manager, stored and disposed of hazardous waste without a permit with the intent of portraying his company as a recycler and as thereby exempt from RCRA regulation. He specifically caused millions of pounds of spent paint abrasives contaminated with the toxic heavy metals lead,

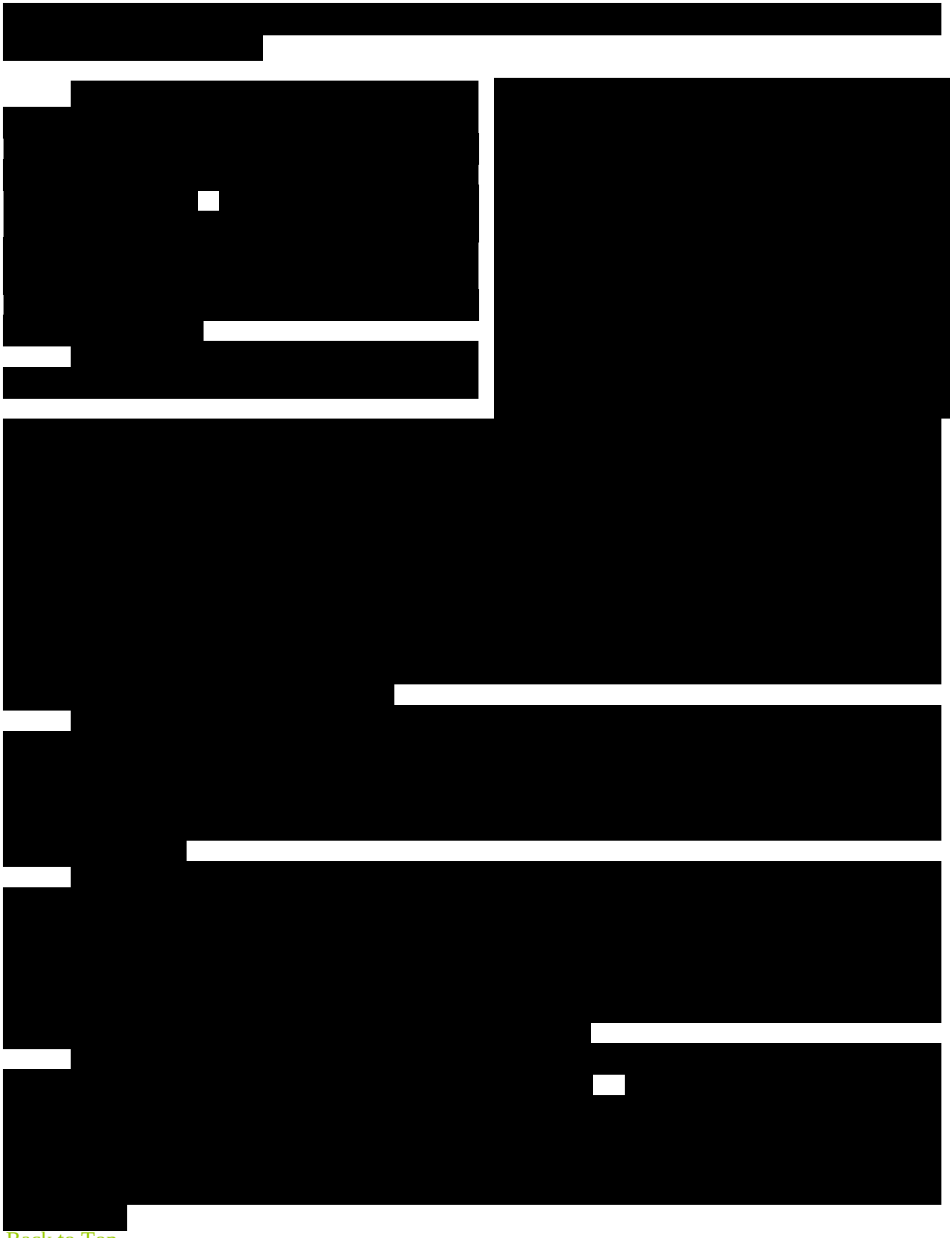
cadmium, and chromium to be disposed of on the Hydromex site by mixing the hazardous waste with cement to form blocks on the pretext that these blocks were useful, marketable products when, in fact, they were not.

The company never sold any of the construction blocks made from the waste Pridemore claimed to be recycling and the storage pads for heavy equipment that he constructed by pouring hazardous waste into the ground were mere fictions to conceal disposal. Hydromex never made any money from the products it manufactured. The only income it ever received was from the generator, which paid Hydromex to accept its hazardous waste. Pridemore also made false statements to state and federal agencies in his efforts to deceive them into believing in the legitimacy of his recycling operation.

Back to Top



Back to Top



Back to Top

United States v. Nicholas Miritello, No. 7:07-CR-00603 (S.D.N.Y.), AUSA Anne Ryan [redacted]

On January 23, 2008, Nicholas Miritello, an employee of the New York City Department of Environmental Protection ("NYDEP"), pleaded guilty to a felony false statement violation. Miritello originally was charged with four felony false statement violations for making false entries in NYDEP records relating to the turbidity levels of drinking water.

NYDEP is required to monitor water for turbidity at four-hour intervals every day at the facility known as the Catskill Lower Effluent Chamber. The defendant was charged with making false entries in the log book, which supposedly reflect numerical results derived by the various tests he was required to run, when in fact he had not performed all of the required steps on four separate occasions in 2005.

Although turbidity itself causes no ill health effects, it can interfere with disinfection and provide a medium for microbial growth. Turbidity further may indicate the presence of disease-causing organisms, including bacteria, viruses, and parasites. Miritello is scheduled to be sentenced on April 24, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation, and the Federal Bureau of Investigation.

Back to Top

United States v. Guy Hylton et al., No. 5:06-CR-00299 (W.D. Okla.), AUSA Randy Sengel ([redacted]) and SAUSA Kathleen Kohl [redacted]

On January 10, 2008, Guy Hylton, Jr., was sentenced to serve six months' incarceration and ordered to pay a $15,000 fine. Co-defendant Chick Little was sentenced to serve eight months' incarceration followed by two years' supervised release. Both are appealing their sentences.

Hylton, Jr., the city manager for Elk City, Oklahoma, and Little, a building superintendent for the city, were found guilty by a jury in August 2007 of a Clean Air Act ("CAA") negligent endangerment charge. Little also was convicted of a false statement violation.

In May 2002, Hylton bought a former railroad depot built in the 1900s that was renovated and used by Elk City. During a five-month period in 2003, inmates from a local work program were used to remove asbestos from the property without being provided the proper protective clothing or equipment.

The defendants originally were charged with a CAA knowing endangerment violation and a CAA violation for causing the waste to be taken to a dump that was not licensed to handle it. Both had been charged with false statements for informing investigators that the waste had been properly disposed. The jury convicted on the lesser negligent endangerment offense.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

April 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes[redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. Just hold down the **ctrl key** while clicking on the link.

AT A GLANCE

- **United States v. Beau Lewis, --- F.3d ----, 2008 WL 659578 (9th Cir. Mar. 13, 2008).**

Districts	Active Cases	*Case Type* / Statutes
[redacted]	[redacted]	[redacted]
C. D. Calif.	**United States v. True World Foods Chicago**	***Illegal Catfish Imports/*** **Conspiracy, Lacey Act, Food and Drug Act, Trafficking**
N. D. Calif.	**United States v. John Cota**	***Vessel Pilot/*** **Negligent CWA, MBTA**
D. Colo.	**United States v. Martin Villegas Terrones** **United States v. Paul Weyand** **United States v. Mark Clyde Booth** **United States v. Cotter Corporation**	***Int'l Trade of Exotic Skin Products/*** **Conspiracy, Smuggling, Money Laundering** ***Deer, Elk and Black Bear Hunts/*** **Lacey Act** ***Leopard Hunts/*** **Lacey Act** ***Solvent Discharge/*** **MBTA**
M. D. Fla.	**United States v. James Driggers et al.** **United States v. Zane Fennelly**	***Fuel Tank Drained/*** **CWA Misdemeanor** ***Spiny Lobster Fishing/*** **Destruction of Property to Avoid Seizure**
[redacted]	[redacted]	[redacted]
N.D. Ill.	**United States v. David Jacobs**	***Electroplating Waste Disposal and Embezzlement/*** **RCRA, ERISA**
[redacted]	[redacted]	[redacted]
S. D. Iowa	**United States v. Mark Allen Wright**	***POTW Employee/*** **False Statement**

Districts	Active Cases	*Case Type* / Statutes
W. D. Ky.	**United States v. Canal Barge Company, et al.**	***Benzene Spill/* PWSA**
E. D. La.	**United States v. Energy Partners, Ltd.**	***Compressor Oil Spill/* RHA**
D. Md.	**United States v. Frank Coe**	***Vessel/* Conspiracy, APPS**
N. D. N.Y.	**United States v. John Chick**	***Asbestos Removal/* CAA Conspiracy**
S.D. Ohio	**United States v. James Schaffer**	***Deer Hunting Business/* Conspiracy, Lacey Act**
E. D. Pa.	**United States v. George Chittenden**	***Paint Waste/* RCRA Storage**
W. D. Pa.		***Tiger Skin Shipment* / Lacey Act**
D. S. D.	**United States v. Dakota Pork Industries**	***Meat Processing Wastewater Discharge/* CWA Tampering**
E. D. Tenn.	**United States v. Archer Daniels Midland Company**	***Cellulose Wastewater Discharge/* CWA**
S. D. Tex.	**United States v. Dushko Babukchiev**	***Vessel/* APPS, False Statement**

Additional Quick Links

Significant Opinions

9th Circuit

United States v. Beau Lewis, --- F.3d ----, 2008 WL 659578 (9th Cir. Mar. 13, 2008), ECS Senior Trial Attorney Bob Anderson (406) 829-3322, ENRD Appellate Attorney John Smeltzer (202) 305-0343, and former Appellate Attorney Todd Aagaard.

On March 13, 2008, the Ninth Circuit reversed and remanded a judgment against Beau Lewis who was convicted of conspiracy and illegally importing protected reptiles into the United States. In an earlier appeal, the Ninth Circuit reversed Lewis' convictions because, in the Ninth Circuit's view, the district court improperly excluded a 117-day period of pre-trial delay under the Speedy Trial Act due to a government motion seeking to present the testimony of its case agent sequentially and in installments. [*United States v. Lewis*, 349 F.3d 1116 (9th Cir. 2003)]

In the first appeal ("Lewis I"), the Ninth Circuit remanded the matter to the district court to determine whether to dismiss the indictment with or without prejudice under the Speedy Trial Act. On remand, the district court dismissed without prejudice, stating that the Ninth Circuit had limited the period of delay he should consider to be 117-days.

Lewis was re-indicted, convicted by another jury and he again appealed, raising numerous issues. Stating that the district court incorrectly read Lewis I as limiting its review to the discrete 117-day period that the court earlier found sufficient to violate the Speedy Trial Act, the Ninth Circuit remanded for the district court to review the entirety of the pre-trial delay suffered by the defendant and to make specific factual findings as to which periods are excluded under the Act. In the Ninth Circuit's view, these additional periods of delay may have exacerbated the prejudice to the defendant and thus may weigh in favor of dismissing the indictment with prejudice.

Judge O'Scannlain dissented, stating that the Speedy Trial Act did not require the court to calculate the precise number of days.

Back to Top

Trials

United States v. Canal Barge Company, Inc., No. 4:07-CR-00012 (W. D. Ky.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSAs Madison Sewell [redacted] and Randy Ream [redacted]

On March 21, 2008, after hearing 10 days of testimony, the jury returned guilty verdicts against all four defendants (three individuals and the corporation) for violating the Ports and Waterways Safety Act ("PWSA"). They were acquitted on the conspiracy and negligent Clean Water Act charge.

Stains from benzene leak on Barge 222

Canal Barge Company, Inc. ("CBC"), port captain Paul Barnes, captain Jeffrey Scarborough, and pilot Randolph Martin were charged in June of last year with conspiracy and PWSA and CWA violations. On or about June 16, 2005, CBC Barge 222 had a benzene leak while on the Ohio River and failed to report the leak (or hazardous condition) to the United States Coast Guard. The defendants were further alleged to have concealed the leak by patching it up and then transferred the barge to another barge company without informing the second company of the leak. A few days later the patch failed, causing another leak, exposing crew members on the vessel to benzene fumes, and requiring them to seek medical attention.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Coast Guard.

Back to Top

Indictments

[redacted]

[redacted]

Back to Top

United States v. John Cota, No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell ([redacted], AUSA Stacey Geis [redacted], and AUSA Jonathan Schmidt [redacted]

On March 17, 2008, Joseph Cota, the pilot of the *Cosco Busan*, a 65,131-ton container ship that collided with the San Francisco Bay Bridge this past November resulting in the discharge of approximately 58,000 gallons of oil, was charged with a negligent violation of the Clean Water Act and a violation of the Migratory Bird Treaty Act.

According to the information, Cota was licensed as a bar pilot and was utilized for navigating ships through challenging waters. In California large ocean-going vessels are required to be piloted when entering or leaving port.

On November 7, 2007, while piloting the *Cosco Busan* from port in heavy fog, Cota purportedly failed to pilot a collision-free course and failed to adequately review the proposed course with the captain and crew on official navigational charts. Further, Cota allegedly failed to use the ship's radar as he approached the Bay Bridge, failed to use positional fixes, and failed to verify the ship's position using official aids of navigation throughout the voyage. These failures led to the ship's striking the bridge and causing the discharge of several thousand gallons of heavy fuel oil.

The spill caused the deaths of approximately 2,000 birds, including Brown Pelicans, Marbled Murrelets and Western Grebes. The Brown Pelican is a federally-designated endangered species and the Marbled Murrelet is a federally-designated threatened species and an endangered species under California law.

This case is part of an on-going investigation being conducted by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service, and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

Pleas

United States v. Archer Daniels Midland Company, No. 1:08-CR-00017 (E. D. Tenn.), AUSA Matthew Morris [redacted]

On March 5, 2008, Archer Daniels Midland Co., owner and operator of the Southern Cellulose Plant, pleaded guilty to four Clean Water Act violations for illegally discharging pollutants into a city storm drain leading to a tributary of Chattanooga Creek, which flows to the Tennessee River. The

company will pay a $100,000 fine and has agreed to donate $100,000 for advanced training for local and state environmental regulators and investigators in the Chattanooga area.

In October 2003, and during two days in April 2004, the company discharged process wastewater containing cotton fibers and other pollutants without a NPDES permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Tennessee Department of Environment and Conservation.

Back to Top

United States v. David Jacobs, No. 1:07- CR-00527 (N.D. Ill.), AUSA April Perry [redacted].

On March 5, 2008, David Jacobs, the president and owner of Northwestern Plating Works Inc., pleaded guilty to a two-count indictment charging him with failing to properly dispose of hazardous wastes generated through the firm's electroplating processes and with embezzling nearly $1 million from an employee pension plan.

Drums of electroplating waste

Northwestern Plating had been active in the metal finishing business since the 1920s, but ceased operations in August 2005. The Chicago Department of Environment eventually investigated the plant and discovered large amounts of plating chemicals and wastes. Between July 2005 and April 2006, Jacobs illegally stored and disposed of cyanides, acids, corrosives, brass, copper, zinc, and nickel in violation of RCRA.

The second count of the indictment states that the company operated an employee profit-sharing plan that provided retirement income to employees. The plan was administered by Jacobs, who also acted as the sole trustee for the plan. Between September 2001 and March 2005, Jacobs converted $830,000 in plan funds for his own use in violation of ERISA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Labor. Jacobs is scheduled to be sentenced on June 18, 2008.

Back to Top

United States v. Dakota Pork Industries, No. 4:08-CR-40001 (D.S.D.), AUSA Dennis Holmes [redacted]

On March 7, 2008, Dakota Pork Industries, Inc. (“DPI”), pleaded guilty to a Clean Water Act violation for tampering with a monitoring device.

DPI formerly operated a meat-processing plant that discharged wastewater into the City of Mitchell’s POTW. The company’s NPDES permit required continuous pH monitoring since the company had previously discharged waste water with levels that were as low as 5 and as great as 12.5. Ph levels this extreme could cause damage to POTW equipment.

Beginning at an unknown date and continuing until about October 2004, DPI employees periodically readjusted the calibration screw on the pH monitor after hearing the alarm that indicated

the pH levels were outside permitted levels. This action, in turn, caused the recorded results to falsely indicate the discharge was within limits.

At other times, after observing that the effluent was exceeding permit limits, employees also would remove the monitoring probe from the effluent stream and place it in a beaker of clean water or buffering solution for extended periods of time causing false results to be recorded. Finally, on occasion, employees submitted false pH data to the city in its monthly reports.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

United States v. James Schaffer, No. 2:08-CR-00022 (S.D. Ohio), AUSA Mike Marous [redacted]

On March 10, 2008, James Schaffer entered his guilty plea to a Lacey Act conspiracy and two Lacey Act violations stemming from his illegal operation of a hunting business in South Carolina. Schaffer's company, Graham's Turnout Hunt Company, catered to hunters from states such as South Carolina, Florida and Georgia. Between August and November 2005, Schaffer conspired with a co-conspirator in Ohio to transport a total of 54 white tail deer from Ohio to South Carolina, without the proper documentation and without proper testing.

Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. Schaffer also never obtained the proper state permits to allow the deer to be transported into South Carolina. Without proper testing for diseases, the imported deer could infect the local deer population in South Carolina.

As part of the plea agreement, the defendant has agreed to pay $50,000 to the National Wildlife Trust Fund and $50,000 to the South Carolina Harry Hampton Wildlife Fund. He also could be sentenced to complete 500 hours community service in a South Carolina Park picking up trash or a comparable activity.

Back to Top

[redacted]

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Martin Villegas Terrones, No. 1:07-CR-00358 (D. Colo.), Senior Trial Attorney Bob Anderson ([redacted], Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On March 11, 2008, Martin Villegas Terrones, a Mexican national, pleaded guilty to federal smuggling charges in connection with the sale and shipment of endangered sea turtle skins and skin products from Mexico to the United States.

A total of 12 people were charged in Denver in August 2007 following "Operation Central," a multi-year undercover United States Fish and Wildlife investigation. Villegas and six other defendants were arrested the following month.

The seven defendants who were arrested in this case have now pleaded guilty: Chinese nationals Fu Yiner and Wang Hong; Mexican nationals Carlos Leal Barragan and Esteban Lopez Estrada; and Oscar Cueva and Jorge Caraveo from Texas. Fu Yiner and Wang Hong also have been sentenced to serve 138 days of imprisonment and 167 days of imprisonment, respectively.

There are seven known species of sea turtles. Five of the seven species are listed as endangered under the Endangered Species Act and all seven species are protected by CITES. Sea turtles are frequently killed illegally for their meat, skins, eggs and shell, all of which have commercial value.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Frank Coe, No. 1:07-CR-00177 (D. Md.), ECS Trial Attorney David Joyce ([redacted] ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Tanya Kowitz [redacted]

Fidelio bypass

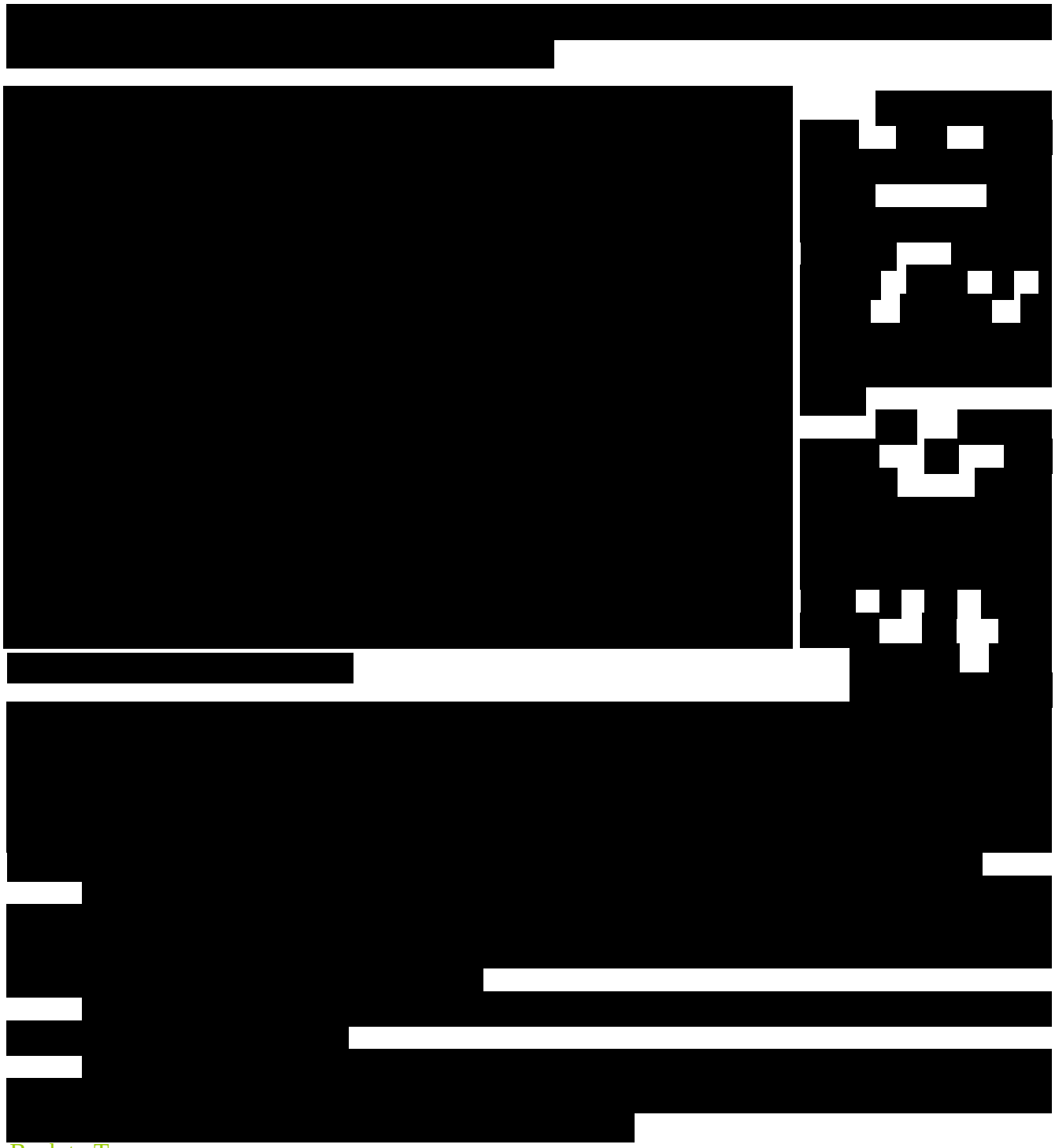
On March 12, 2008, Frank Coe was sentenced to pay a $500 fine and complete a two-year term of probation. Coe, a chief engineer for the *M/V Fidelio,* pleaded guilty in May of last year to a conspiracy and an APPS violation for falsifying the ship's oil record book.

During his tenure as a chief engineer and a first engineer, Coe was involved in the illegal overboard discharge of oil-contaminated waste water and, as chief engineer, was responsible for the entries made in the ORB that did not reflect these discharges. The oil water separator was, in fact, rarely used on this ship. During a Coast Guard inspection in

March 2003, Coe was unable to demonstrate that the OWS worked and, when a bypass pipe was subsequently discovered filled with oil, he denied having any knowledge of it.

The *M/V Fidelio* was one of four car carrier vessels managed by Pacific-Gulf Marine. The company was sentenced in 2007 to pay a $1 million fine, $500,000 in community service, and will complete three years of probation.

Back to Top



Back to Top

United States v. George Chittenden, No. 2:08-CR-00063 (E.D. Pa.), SAUSA Martin Harrell (and AUSA Cathy Votaw .

On March 19, 2008, George Chittenden, the owner of Spra-Fin, Inc., a powder-coating and painting facility, pleaded guilty to a one-count information charging a RCRA violation for storage of hazardous waste in 2004 and 2005.

After closing Spra-Fin in mid-2004, Chittenden left behind a variety of wastes at the facility, including hazardous solvents, paints and finishes. The wastes were stored in places such as unlocked trailers, a fenced area, and outdoors on a concrete pad for more than a year until they were discovered by EPA investigators in April 2005. In the summer of 2005, Chittenden attempted to complete an EPA-supervised clean up, but the Agency had to finish the job in the fall of 2005.

Abandoned drums of hazardous waste

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center.

Back to Top

United States v. Paul Weyand, No. 1:07-CR-00331 (D. Colo.), ECS Senior Trial Attorney Bob Anderson Trial Attorney Jim Nelson and AUSA Linda McMahan

On March 25, 2008, Paul Weyand pleaded guilty to three misdemeanor Lacey Act violations stemming from the interstate sale and transport of deer, elk and black bear killed unlawfully in Colorado between 2002 and 2005. Weyand d/b/a *Memories on the Wall Taxidermy*, provided taxidermy and shipments' services to hunting clients of defendant Eric Butt, *d/b/a Outdoor Adventures*.

Butt was a registered outfitter who provided guided hunts for big game animals in Colorado, and Weyand was a taxidermist who received business from Butt's clients. Butt encouraged hunters who did not possess the appropriate big-game license to kill animals that Butt later falsely tagged using his license or another hunter's. Butt referred clients to Weyand who was aware that the carcasses he received for mounting had been illegally killed. Butt, who pleaded guilty last month to a Lacey Act conspiracy, is scheduled to be sentenced on May 27, 2008, and Weyand is scheduled to be sentenced on October 29, 2008.

Back to Top

Sentencings

United States v. Mark Clyde Booth, No. 07-CR-00485 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted], ECS Trial Attorney Jim Nelson [redacted], and AUSA Greg Holloway [redacted].

On March 21, 2008, Mark Clyde Booth was sentenced to pay a $10,000 fine, make a $5,000 community service payment to the National Fish and Wildlife Foundation, and complete a three-year term of probation.

Booth pleaded guilty in January of this year to a single felony Lacey Act false labeling violation. Booth admitted he had falsified CITES permit applications for the importation of the trophy parts of a leopard he illegally killed in South Africa in 2003. Claiming that the animal was killed in Zimbabwe, Booth's leopard along with four others that were killed illegally were imported to Denver in November 2004.

Booth is the fifth individual to be convicted in this case, including the two South African guides who arranged the illegal hunts, the Denver taxidermist who accepted the shipment (See *U.S. v. Weyand* in the previous Plea Section), and another American hunter.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. James Driggers et al., No. 8:07-CR-00378, 452, 510 (M.D. Fla.), AUSA Cherie L. Krigsman [redacted]

On March 17, 2008, James Driggers was sentenced to serve 15 months' imprisonment, followed by a one-year term of supervised release, for discharging diesel fuel from a fuel tank into a storm drain that flowed into McKay Bay Preserve, part of Tampa Bay, in violation of the Clean Water Act. Driggers, a former Cypress Gulf Development Corporation employee, was the third defendant to be sentenced for the unlawful discharge that occurred in October 2006. Co-defendant William Styers, after earlier pleading guilty to a CWA misdemeanor, was sentenced on March 11th to pay a $2,500 fine, complete a one-year term of probation and perform 200 hours of community service.

Driggers with tank draining fuel

On October 17, 2006, company mechanics Driggers and Styers were instructed to clean out a 2,000 gallon above-ground fuel storage tank that was clearly labeled with "No. 2 Diesel Fuel" on both sides of the tank. Driggers positioned the tank over a storm drain located on 34th Street in Tampa, Florida, and allowed the contents of the tank to empty out for approximately 20 to 25 minutes. As

Driggers' supervisor, Styers saw that he was dumping the fuel into the drain, but he did nothing to stop it. The fuel discharge caused a fish kill and was observed by a number of citizens who immediately contacted the authorities.

After pleading guilty to a CWA misdemeanor violation, the company was sentenced in January 2008 to pay a $5,000 fine and $21,000 in clean-up costs. It also paid civil penalties in the amount of $10,301 to the Florida Department of Environmental Protection and $3,000 to the United States Coast Guard.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Florida Department of Environmental Protection, and the United States Coast Guard.

Back to Top

[redacted]

Back to Top

United States v. Cotter Corporation, No. 1:08-po-01022 (D. Colo.), Senior Trial Attorney Bob Anderson [redacted] and AUSA Linda McMahan [redacted]

On March 12, 2008, the Cotter Corporation pleaded guilty and was sentenced for its role in the poisoning deaths of migratory birds at its uranium processing facility near Canÿon City, Colorado.

Cotter pleaded guilty to a misdemeanor violation of the Migratory Bird Treaty Act, in connection with a spill of approximately 4,500 gallons of organic solvent in October 2005, which was released from a building at the processing facility and flowed into a catchment pond. Approximately 40 geese and ducks were killed after coming into contact with the solvent, which was removed by Cotter employees within a few days of the spill.

The company was sentenced to pay a $15,000 fine plus $15,000 in restitution to be paid to the National Fish and Wildlife Foundation. During a one-year term of probation, the company will prepare and implement an environmental compliance plan designed to prevent future spills and ensure speedy, effective clean-up of any discharges that might occur.

This case was investigated by the United States Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

United States v. True World Foods Chicago, LLC, et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted], ECS Trial Attorney Mary Dee Caraway [redacted] and AUSA Joe Johns [redacted]

On March 11, 2008, True World Foods Chicago, LLC, ("True World Foods") was sentenced to pay a $60,000 fine for its role in purchasing and re-selling falsely labeled frozen fish fillets in violation of the Lacey Act. The corporation further forfeited $197,930 which represented its purchase value of the fish and agreed, pursuant to a plea agreement entered on December 10, 2007, to publish a full page advertisement regarding this incident in a seafood industry publication of wide circulation.

A multi-count indictment was returned in May 2007, charging True World Foods, David Wong, Henry Yip, Virginia Star Seafood Corp., International Sea Products Corp., Silver Seas Company, Blue Ocean Seafood Corporation, Henry Nguyen, Peter X. Lam, Arthur Yavelberg, Cafatex, Anhaco, Antesco, Binh Dinh Import Export Company, David Chu, Dakon International, and T.P. Company with conspiracy to violate the Lacey Act, the Food, Drug, and Cosmetics Act, and customs laws, specifically for knowingly entering goods by payment of duty less than owed, entry of goods by means of false statements, and trafficking in illegally imported merchandise. Several defendants were further charged with substantive violations of the Lacey Act, entry of goods by means of false statements, importation contrary to law, and trafficking in illegally imported merchandise.

The conspiracy charge stems from the defendants' illegal scheme to import from Vietnam millions of pounds of *Pangasius hypophthalmus*, aka Vietnamese catfish, aka basa, by identifying and labeling the fish as other species in an effort to avoid an anti-dumping duty that was imposed on Vietnamese catfish in January of 2003. The substantive charges involve the defendant importers' creation of false paperwork and labels for the fish and the submission of false statements to Customs and Border Patrol to effect the illegal entry of the fish.

The indictment further alleges that, after the Vietnamese catfish were imported into the United States, Henry Nguyen and other salesmen for the Virginia companies marketed and sold the illegally imported catfish to seafood buyers, including Henry Yip of T.P. Company, David Wong of True World Foods, Inc., and David Chu of Dakon International. Nguyen additionally is charged with attempting to re-export the product following the execution of a search warrant.

Wong pleaded guilty earlier this year to one Lacey Act violation and Yip pleaded guilty last year to a misbranding violation. The remaining defendants are scheduled for trial April 22, 2008.

This case was investigated by Immigration and Customs Enforcement, the National Marine Fisheries Service, and the Food and Drug Administration.

Back to Top

United States v. John Chick, No. 06-CR-514 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On March 6, 2008, John Chick was sentenced to serve 15 months' incarceration followed by three years' supervised release. He also will pay $108,000 for cleanup costs.

Chick pleaded guilty in January 2007 to conspiracy to violate the Clean Air Act stemming from the illegal removal of asbestos from the Cayuga County Board of Elections Building in Auburn, New York. He originally was charged with conspiring to violate the CAA; six substantive CAA violations related to the illegal removal and disposal of asbestos from the building in February 2006; and three counts of making false statements, including denying that he used Cayuga County prison inmates to perform some of the illegal work and falsely stating that he gave them masks during the removal activities.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation, with assistance from the New York State Department of Labor, Asbestos Control Bureau.
Back to Top

United States v. Mark Allen Wright, No. 3:07-CR-00507 (S.D. Iowa) AUSA Joel Barrows ([redacted]

On March 3, 2008, Mark Allen Wright, the POTW director for the City of Oxford, was sentenced to serve two years' probation and ordered to perform 120 hours of community service as the result of pleading guilty to a false statement violation.

On monthly reports required to be submitted by the POTW to the Iowa Department of Natural Resources, Wright admitted to falsifying data regarding specific discharge parameters on approximately 37 reports between September 2002 and March 2006.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Iowa Department of Natural Resources.
Back to Top

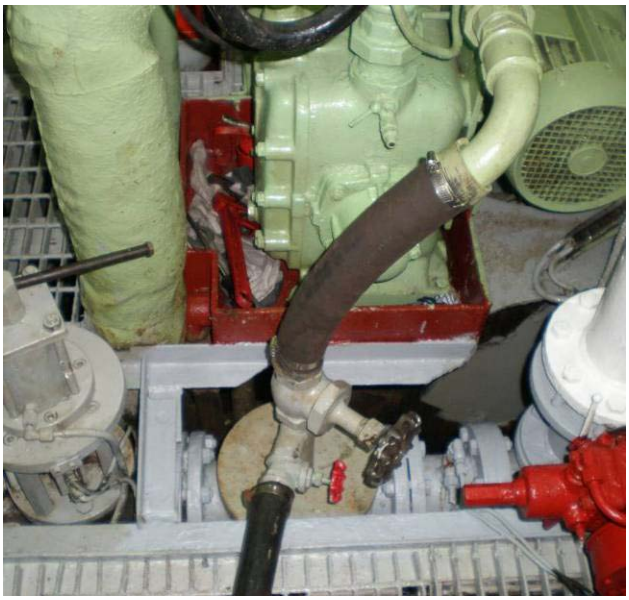
United States v. Zane Fennelly, No. 3:07-CR-00204 (M.D. Fla.), ECS Trial Attorney Georgiann Cerese [redacted] **and AUSA John Sciortino** [redacted]

On February 28, 2008, Zane Fennelly was sentenced to serve four months' incarceration followed by one year of supervised release. Fennelly, the former captain of a Jacksonville, Florida-based commercial fishing vessel, pleaded guilty in October 2007 to a violation of 18 U.S.C. § 2232 for knowingly disposing of, and attempting to destroy, three bags containing spiny lobsters that were caught within the exclusive economic zone ("EEZ") of the United States.

The spiny lobster fishery in the EEZ off the coast of Florida is only open from August 6th through March 31st. On July 21, 2006, upon the approach of United States Coast Guard and Florida Fish and Wildlife Conservation Commission officers, Fennelly attempted to get rid of his out-of-season spiny lobster tail catch. The bags did not sink, however, and were retrieved by law enforcement.

This case was investigated by the National Oceanic and Atmospheric Administration ("NOAA") Fisheries Service Office for Law Enforcement, the Florida Fish and Wildlife Conservation Commission and the United States Coast Guard.
Back to Top

United States v. Dushko Babukchiev et al., Nos. 4:08-CR-00032 and 00033 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted] ECS Trial Attorney Jim Nelson ([redacted] and SAUSA William Miller [redacted]



Bypass in place on the ship

On February 19, 2008, chief engineer Dushko Babukchiev was sentenced to serve a three-year term of probation. A fine was not assessed. Babukchiev and Italian shipping company B. Navi Ship Management Services ("B. Navi Ship Management") pleaded guilty February 7th to charges stemming from the illegal dumping of oily sludge, bilge wastes, and oil contaminated ballast water from the *M/V Windsor Castle*, a 27,000 gross-ton bulk carrier vessel.

On August 17, 2007, the *Windsor Castle* was boarded by Coast Guard inspectors when it arrived in port in Houston, Texas. During the boarding, inspectors learned that the chief engineer had ordered crew members to dump oil sludge and bilge wastes into the ocean and had falsified the ship's oil record book to conceal these discharges. With assistance from several lower level crew members, inspectors discovered and seized the bypass hose and pipes used to dump the oil sludge, bilge waste, and contaminated ballast water overboard.

B. Navi Ship Management pleaded guilty to a two-count criminal information charging it with an APPS violation and a false statement violation. Babukchiev pleaded guilty to a false statement violation for presenting the oil record book to inspectors during the August 2007 boarding. The company is scheduled to be sentenced on July 9, 2008.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Energy Partners, Ltd., No. 2:08-CR-00021 (E. D. La.), AUSA Dee Taylor ([redacted])

On February 21, 2008, Energy Partners, Ltd., an oil and gas exploration and production company pleaded guilty to a Rivers and Harbors Act violation. In February 2006, in the aftermath of Hurricane Katrina, the company allowed a leak of compressor oil to spill into the Mississippi River for several days and failed to promptly clean it up. The company was sentenced to pay a $75,000 fine, pay $25,000 restitution to the Louisiana State Police, and complete a one-year term of inactive probation.

Oiled pelican from spill

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Coast Guard Investigative Service, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

May 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: ([redacted]. Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

- **United States v. McWane Inc., et al. --- F.3d ----, 2008 WL 794982 (11th Cir.(Ala.) Mar. 27, 2008)**

[redacted]

Districts	Active Cases	*Case Type* / Statutes
E. D. Ark.	**United States v. Wally El-Beck**	***Waste Incinerator/*** **Mail Fraud, Wire Fraud**
C. D. Calif.	**United States v. Ann Sholtz**	***Pollution Credits Trading/*** **Wire Fraud**
N. D. Calif.	**United States v. John Cota** **United States v. Luke Brugnara et al.** **United States v. Steven Tieu et al.** **United States v. Danny Yep**	***Vessel Pilot/*** **Negligent CWA, MBTA, False Statement** ***Blocking Access to Upstream Habitat/*** **ESA, False Statement** ***Stuffed Tiger Import/*** **Endangered Species Act, Lacey Act** **Asian Arowana Fish Sales/** ***Endangered Species Act***
S. D. Fla.	**United States v. George A. Townsend, III.**	***Yellowfin Tuna Import/*** **Lacey Act**
N.D. Ill.	**United States v. Crown Chemical, Inc. et al.**	***Cleaning Products Wastewater/*** **Pretreatment CWA, Conspiracy**
E. D. La.	**United States v. M&N Foods, Inc.**	***Food Processor Wastewater/*** **Negligent CWA**
D. Mass.	**United States v. Albania Deleon et al.** **United States v. Aristides Couto**	***Asbestos Training Certificates/*** **CAA, False Statement, Mail Fraud, Tax, Conspiracy** ***Fish Wholesaler/*** **False Statement, Evading Currency Transaction Reporting Requirements**
D. Minn	**United States v. Keith Rosenblum et al.**	***Metal Finishing Waste/*** **Negligent CWA, Conspiracy,**
[redacted]	[redacted]	[redacted]

Districts	Active Cases	*Case Type* / Statutes
E. D. Mo.	**United States v. Jason Becks** **United States v. Matthew Burghoff**	***Hazardous Waste Abandoned/* RCRA** ***Asbestos Abatement/* CAA, Bank Fraud, Money Laundering, False Statement**
D. N. J.	**United States v. Danny Chien**	***Internationally Protected Wood/* Smuggling**
E. D. N. C.	**United States v. Paccship (UK), Ltd.** **United States v. James E. Johnson, Jr. et al**	***Vessel/* APPS, False Statement** ***Duck Hunt/* MBTA, Conspiracy**
W. D. Pa.	**United States v. Charles Victoria**	***Asbestos Abatement/* CAA, Conspiracy**
[redacted]	[redacted]	[redacted]
E. D. Tex.	**United States v. William Stoner** **United States v. John Mazoch**	***Importation of Harmful Fish/* Lacey Act** ***Gas Cylinder Storage/* RCRA, Conspiracy**
W.D. Wash.	**United States v. Frankie Gonzales et al.**	***Whale Hunt/* Marine Mammal Protection Act, Conspiracy**

Additional Quick Links

Significant Opinions

11th Circuit

United States v. McWane Inc., et al. --- F.3d ----, 2008 WL 794982 (11th Cir. (Ala.) Mar. 27, 2008)

On March 27, 2008, the Eleventh Circuit denied the government's petition for rehearing *en banc*. Judge Wilson (joined by Judge Barkett) issued a 20-page dissent from the denial of rehearing, in which he adopted many of the government's arguments and called the Eleventh Circuit panel's error "one of exceptional importance, implicating both the jurisdictional scope of the CWA and the interpretation of fragmented [Supreme Court] decisions generally." Further, Judge Wilson called the panel's decision to remand the case for new trial "bizarre" given that eight Supreme Court justices likely would have found CWA jurisdiction in the case. The government has 90 days to file a petition for *certiorari* with the Supreme Court.

On October 24, 2007, the Eleventh Circuit vacated the convictions in *United States v. Robison*, 505 F. 3d 1208 (2007), and remanded the case for a new trial. The court held that the district court failed, in light of *Rapanos v. United States*, 126 S.Ct. 2208 (2006), to provide the correct jury instructions on the jurisdictional issue of what constituted a "water of the United States" under the Clean Water Act, that the error was not harmless, and that the defendants therefore were entitled to a new trial on the Clean Water Act counts. The *Rapanos* case was decided by the Supreme Court almost one year after the trial had ended. The court also reversed the defendants' convictions on the conspiracy charge, without discussion, and on the false statement violation.

Back to Top

District Courts

[redacted]

[redacted]

Back to Top

Trials

United States v. Frankie Gonzales et al., No.3:07-CR-05656 (W.D. Wash.), AUSA Jim Oesterle [redacted]

Gray whale with buoys

On April 8, 2008, after a one-day bench trial, Wayne Johnson and Andrew Noel were found guilty of conspiracy and a violation of the Marine Mammal Protection Act ("MMPA").

Five members of the Makah Tribe were charged in October 2007 with violations including conspiracy, unauthorized whaling and MMPA violations for the illegal killing of a gray whale off the coast of Washington in September 2007. William Secor, Frankie Gonzales and Theron Parker pleaded guilty March 27th to a MMPA violation.

The day before the hunt, Noel sought weapons and ammunition from the Makah Tribe, claiming he was going to use the weapons for practice. He also received permission to borrow a 12-foot boat from the Tribe and obtained a large red buoy from a Makah tribal employee. On September 8, 2007, the five men set out from a location near Neah Bay in the 12-foot boat and a 19-foot boat registered to Frankie Gonzales.

Near Seal Rock off the northwest coast of Washington State, the men encountered a gray whale and struck it with at least four harpoons. They attached buoys to the whale to stop it from escaping, and they then shot it approximately16 times with the high powered weapons obtained earlier. The fatally injured whale swam approximately nine miles and then, some 12 hours after it was struck, it died and sank in about 700 feet of water. Secor, Gonzales and Parker are scheduled to be sentenced on June 6, 2008. Johnson and Noel are scheduled to be sentenced on June 20, 2008.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Service Office of Law Enforcement and the United States Coast Guard.

Back to Top

United States v. Keith Rosenblum et al., No. 2:07-CR-00294 (D. Minn.), AUSA David Genrich [redacted]

Inside the plant, north line

On March 31, 2008, two top officials of the Eco Finishing Company ("ECF"), a metal finishing business, were convicted of multiple Clean Water Act violations following a nine-day trial. A jury convicted Keith Rosenblum, company president and CEO, of a CWA conspiracy, two felony CWA violations and 10 negligent CWA counts. Martin Meister, a plant manager, was convicted on eight negligent CWA violations.

A superseding indictment was filed in January 2008 charging the defendants with conspiracy and several violations of CWA permit conditions related to, among other things, violations of limits on the company's discharge of metals and cyanide in its industrial wastewater. ECF, which operates around the clock, typically discharges approximately 60,163 gallons of industrial wastewater per day. Investigation began after the Metropolitan Council Environmental Services ("MCES") was contacted in January 2005 by an ECF environmental manager who was concerned about the company's wastewater treatment practices. The manager reported that violations documented during internal wastewater monitoring were not reported to MCES and that the facility's cyanide destruction system was not working properly. Internal documents revealed that the company was discharging levels of metals and cyanide that were well above the permitted limits.

Investigation further revealed that ECF on several occasions changed its production and wastewater treatment practices when regulators were conducting on-site compliance testing. This activity was designed to deceive regulators by limiting the company's discharge of pollutants when it was being monitored. When regulators ended compliance testing, the company would resume normal operations, often resulting in violations.

ECF pleaded guilty to one knowing CWA violation and was sentenced in February 2007 to pay a $225,000 fine, $25,000 in restitution to the Federal Transport Program, and is completing a three-year term of probation. Ted Gibbons, a former chemist for ECF, was sentenced in May 2006 to serve 18 months' incarceration followed by one year of supervised release. Gibbons previously pleaded guilty to one felony CWA pretreatment violation and two felony CWA tampering violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the FBI, the Minnesota Pollution Control Agency, and the Metropolitan Council Environmental Services.

Back to Top

Indictments

United States v. John Cota, No. 3:08-CR-00160(N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] AUSA Stacey Geis [redacted] and AUSA Jonathan Schmidt [redacted]

Damage to Bay Bridge by the *Cosco Busan*

On April 22, 2008, a superseding indictment was returned adding charges that Joseph Cota made false statements to the Coast Guard concerning his medications and medical conditions in 2006 and 2007. Cota was the pilot of the *Cosco Busan*, a 65,131-ton container ship that collided with the San Francisco Bay Bridge this past November resulting in the discharge of approximately 58,000 gallons of oil. He was initially charged last month with a negligent violation of the Clean Water Act and a violation of the Migratory Bird Treaty Act.

According to court documents, Cota was licensed as a bar pilot and was utilized for navigating ships through challenging waters. In California, large ocean-going vessels are required to be piloted when entering or leaving port. On November 7, 2007, while piloting the *Cosco Busan* from port in heavy fog, Cota purportedly failed to pilot a collision-free course and failed to adequately review the proposed course with the captain and crew on official navigational charts. Further, Cota allegedly failed to use the ship's radar as he approached the Bay Bridge, failed to use positional fixes, and failed to verify the ship's position using official aids of navigation throughout the voyage. These failures led to the ship's striking the bridge and causing the discharge of several thousand gallons of heavy fuel oil.

The spill has caused the deaths of approximately 2,000 birds, including Brown Pelicans, Marbled Murrelets and Western Grebes. The Brown Pelican is a federally endangered species and the Marbled Murrelet is a federally threatened species and an endangered species under California law.

The new charges include two counts of lying to the Coast Guard on annual medical forms. Coast Guard regulations require that pilots undergo an annual physical examination that results in the completion of a medical evaluation form. The form must be completed by a licensed physician or physician's assistant, signed by the pilot, and then submitted to the Coast Guard. Cota is alleged to have knowingly and willfully made false statements on the forms when he certified that all the information he provided was complete and true to the best of his knowledge. In fact, the indictment states that Cota knew that the information he provided was neither complete nor true, including information regarding his current medications, the dosage, possible side effects and medical conditions for which the medications were taken.

This case is part of an on-going investigation being conducted by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. Luke Brugnara et al., No. 3:08-CR-00236 (N.D. Calif.), AUSA Maureen Bessette [redacted]

On April 10, 2008, Luke Brugnara and his corporation, Brugnara Corporation, were charged with four counts of "taking" steelhead trout in violation of the Endangered Species Act and two counts of making a false statement during the course of the investigation.

According to the indictment, Brugnara is alleged to have intentionally blocked the flow of Little Arthur Creek, an important watershed for steelhead, through his private dam on property purchased by his corporation in 2001 in Gilroy, California. Steelhead are known to migrate upstream of the dam on this property, and the population of steelhead in the Little Arthur Creek, running through the defendant's property, is listed as a threatened species. One of the reasons for this decline in steelhead populations is that their access to historic spawning and rearing areas upstream of dams has been blocked.

From approximately January 2007 through April 2007, the defendant allegedly closed off the opening or portal in his dam which had allowed the steelhead to migrate upstream. State and federal investigators located and observed numerous trapped adults downstream of the dam that were unable to migrate upstream to suitable spawning habitat. A federal fisheries biologist determined the trapped adult steelhead were of paramount importance to the survival of the species due to their low number found in the Pajaro River watershed and recommended that the adults be rescued and moved upstream. When the rescue team arrived to move the steelhead upstream, investigators found that they were gone and located significant evidence of poaching and trapping activities.

During the investigation Brugnara is accused of making false statements to local law enforcement officers for stating that he had not taken the fish that were caught in his dam and that he had not used the type of fishing lure that was capable of catching steelhead trout.

This is the first federal criminal case in the country charging an individual and corporation with the taking of steelhead through blocking access to upstream habitat.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the California Department of Fish and Game.

Back to Top

United States v. Jason Becks, No. 4:08-CR-00198 (E.D. Mo.), SAUSA Anne Rauch [redacted] **and AUSA Michael Reap** [redacted]

On April 3, 2008, Jason Becks was charged with two RCRA violations for the transportation and disposal of hazardous waste.

According to the indictment, Becks was hired in January 2008 to complete an environmental site assessment at Economy Tire, Inc., in St. Louis, Missouri. Becks contracted with the owner of the building to remove and dispose of six 55 gallon drums inside the building for $600. The defendant then allegedly took the drums to another location where he abandoned them. Trial is scheduled to begin on June 2, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Matthew Burghoff, No. 4:08-CR-00199 (E.D. Mo.) SAUSA Anne Rauch (and AUSA Michael Reap

On April 3, 2008, Matthew Burghoff was charged with multiple counts of bank fraud, money laundering, false statements and violations of the Clean Air Act stemming from his renovation of a building in St. Louis and numerous other buildings and businesses in the St. Louis area.

In September 2007, the City of St. Louis Air Pollution Control Division received an anonymous tip stating that unqualified personnel were removing asbestos-insulated piping at the Ford Building. On October 1, 2007, an inspector with the Missouri Department of Natural Resources conducted an inspection and observed asbestos debris swept into piles and approximately 60 black bags containing dry asbestos material. Burghoff as the owner and operator of the building was present during this inspection.

The indictment also states that Burghoff falsely told an EPA agent that he had employed an environmental company to inspect the Ford Building for the presence of asbestos before commencing any demolition work and that none had been found. He told the agent that vagrants must have broken into the building, cut and removed all of the pipes and left the asbestos behind.

The bank fraud and money laundering charges stem from a loan the defendant made from the Montgomery Bank in order to purchase and renovate the Ford Building. The indictment states that Burghoff had a subcontractor inflate a bill by approximately $133,000 that was then forwarded to the bank, which subsequently paid the extra money to the subcontractor. The subcontractor then kicked back the money to Burghoff. Finally, the defendant is charged with diverting money from bank loans on other buildings he renovated, representing the money as funds to be paid to subcontractors. Trial is currently scheduled to begin on June 16, 2008.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Danny Chien et al., No.1:08-CR-00279 (D. N. J.), ECS Senior Trial Attorney Elinor Colbourn and AUSA Seth Kosto .

On April 16, 2008, Danny Chien, a Taiwanese citizen and resident of Shanghai, China, and Style Craft Furniture Co., Ltd., ("Style Craft") were each charged with one count of smuggling internationally protected wood.

Style Craft, a manufacturer of wooden baby furniture located primarily in China, imported approximately $15 million in declared value of wood furniture in 2004-2005.

According to the indictment, on approximately May 23, 2005, Chien, the day-to-day manager and president of Style Craft Furniture, shipped a container of furniture from China into the United States at Port Elizabeth, N.J., containing a wood commonly called "ramin." The indictment alleges that the ramin originated from the wild in Indonesia and was imported without a valid required export permit or re-export certificate in violation of the CITES. International efforts to curb the illegal harvest of ramin, used in the manufacture of baby cribs, include its listing in Appendix II of CITES. The United States, Indonesia, Malaysia, and China are signatories to the convention.

For any trade of these species, CITES requires that the country of origin must issue a valid export permit. A permit can only be obtained if it has been determined that the export of the species will not be detrimental to the species' survival and that the specimen was not obtained in violation of wildlife protection laws. For any re-export, the country of re-export must issue a valid re-export certificate. The export permit or re-export certificate must be obtained prior to importation into the United States.

Ramin is a light colored tropical hardwood found in tropical forests in parts of Southeast Asia, including Indonesia and Malaysia. These forests also serve in part as habitat for endangered orangutan. Indonesia has one of the highest rates of deforestation of any country, much of it due to illegal timber harvest. As a result, the Indonesian government is attempting to combat the illegal harvest of timber, including ramin, in part to protect the remaining orangutan habitat.

This case was investigated by the United States Department of Agriculture Office of the Inspector General.

Back to Top

United States v. Albania Deleon et al., No. 1:07-CR-10277 (D. Mass.), AUSA Jonathan Mitchell [redacted]

On March 12, 2008, Albania Deleon, owner of the Environmental Compliance Training School ("ECTS"), was charged in a superseding indictment with conspiracy, five false statement violations, six mail fraud violations and 16 counts of procuring false tax returns. The charges are in addition to the initial indictment filed in August 2007 charging Deleon and employee Jose Francisco Garcia-Garcia with one false statement violation for issuing false asbestos training certifications. Garcia-Garcia pleaded guilty to the false statement charge in December of last year.

ECTS was one of the largest certified asbestos training schools in Massachusetts. Between 2001 and 2006, Deleon is alleged to have routinely issued asbestos certificates to people who did not attend required training courses or pass required tests. Many of those who received fraudulent certificates were illegal immigrants who then worked for a temporary service company, Methuen Staffing, also owned by Deleon, at demolition and construction sites overseeing asbestos removal.

The tax violations stem from the defendant's concealing the size of her payroll from IRS to avoid paying taxes. She did this, among other ways, by maintaining two payrolls where she deducted the correct amount of tax for some of her employees, but paid the majority of them using a second payroll wherein income taxes were not withheld nor were payroll taxes paid to the IRS. Finally, the mail fraud violations are based upon Deleon allegedly mailing to insurance representatives workers compensation insurance documentation that concealed the existence of those workers who received paychecks without taxes withheld, reducing the amount of workers compensation insurance that she paid.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Massachusetts Division of Occupational Safety.

Back to Top

Pleas

United States v. Crown Chemical, Inc., et al., No. 06-CR00545 (N.D. Ill.), AUSA Tim Chapman [redacted]

On April 14, 2008, Crown Chemical, Inc. ("Crown") and company president and owner James Spain, pleaded guilty to conspiring to violate the CWA between approximately November 1985 and November 2001 by discharging untreated wastewater in violation of an approved pretreatment program. A third defendant, Catalino Uy, pleaded guilty to the same offense on March 12, 2008.

Crown manufactured cleaning products for residential, commercial and industrial use. Many of the products exhibited a pH lower than the local ordinance limit of 5-10. Wastewater exhibiting unlawfully high and low pH (some of which qualified as hazardous waste under RCRA) was generated during the cleaning of Crown's process tanks. Despite knowing about the pH limits, Spain directed Crown employees to discharge all of the untreated wastewater to the Crestwood, Illinois, POTW. As Crown's plant manager for many years, Uy also directed the unlawful discharges.

During the execution of a search warrant in November 2001, Spain falsely told the agents that all of Crown's wastewater was neutralized before discharge. Spain also instructed other Crown employees to tell the agents the same lie. On various occasions during the lengthy period of violation, Spain falsely informed the POTW that Crown did not discharge industrial waste to the sewer system.

Spain and Crown are scheduled to be sentenced on September 3, 2008, but Uy has not yet been scheduled. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. M & N Foods, Inc., No. 2:08-CR-00086 (E. D. La.), AUSA Dee Taylor ([redacted]

On April 3, 2008, M & N Foods, Inc., a food manufacturing company, pleaded guilty to a misdemeanor Clean Water Act violation for failing to file required discharge monitoring reports with the Louisiana Department of Environmental Quality ("LDEQ") for more than two years.

The company, which made spaghetti sauce and salad dressing for retail sale, was required by its permit to take samples of its wastewater discharge every six months and to report those results to the LDEQ. An inspection in November 2005 revealed that the company had not sampled, analyzed or forwarded the reports for the monitoring periods of 2003, 2004 and the first half of 2005.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. William Stoner, No. 5:08-CR-00024 (E.D. Tex.), AUSA Jim Noble ([redacted]

On April 7, 2008, William Stoner pleaded guilty to a misdemeanor Lacey Act violation for the importation of harmful fish without a permit across state lines. Stoner admitted that he transported approximately 50 unsterilized Asian Grass Carp from the state of Arkansas into the state of Texas without a permit.

The information states that, on November 21, 2007, the defendant delivered the carp to the Quail Creek Country Club golf course to put them in the ponds to help keep down the weeds. Stoner would scuba dive in the depths of the six ponds at the club, raking through weeds and algae to find as many as 3,000 balls each time for which he was paid ten cents a ball. He bought the carp so that he could more easily locate the golf balls.

Acting on a tip from an Arkansas fish farmer, federal agents stopped Stoner in Texarkana and arrested him with a load of unsterilized carp, which devour marine vegetation and other fish so aggressively that they can alter an entire ecosystem. Fish and Wildlife agents ultimately were forced to recover and destroy the carp from five different water hazards at the country club, due to the risk that a flood event on the San Marcos River would allow the fish to escape the golf course and threaten native vegetation, including endangered Texas wild rice.

This case was investigated by Arkansas Game and Fish Commission, Texas Parks and Wildlife, and the United States Fish and Wildlife Service.

Back to Top

United States v. Paccship (UK), Ltd., No. 4:08-CR-00016 (E.D. N.C.), ECS Assistant Chief Joe Poux [redacted] AUSAs Banumathi Rangarajan [redacted] and Thomas Murphy ([redacted]

On April 4, 2008, Paccship (UK), Ltd. ("Paccship), pleaded guilty to a three-count information charging it with one APPS violation and two false statement violations stemming from the illegal oily-waste discharge activities on two of its ships, the *M/V Pac Antares* and *M/V Pac Altair*, which were boarded by Coast Guard officials on two separate occasions in Morehead City, North Carolina. The company was sentenced to pay a $1.7 million fine, complete a four-year term of probation, pay $400,000 in community service projects, and will implement an environmental compliance program that includes a court-appointed monitor and outside independent auditing of its ships.

In April 2006, inspectors uncovered evidence that crewmembers aboard the *Antares* had discharged oil-contaminated waste from the ship prior to arriving in the United States and that the crewmembers had falsified the ship's oil record book ("ORB") in order to conceal the discharges. In November 2006, as the investigation of the *Antares* continued, the *Altair* arrived in Morehead City. Again inspectors uncovered similar evidence that crewmembers had discharged oil-contaminated waste from the ship prior to arrival in the United States and that they had falsified the ship's ORB. The chief engineer on the *Altair* and the second engineer on the *Antares* already have pleaded guilty to false statement violations.

This case was investigated by the United State Coast Guard Criminal Investigative Service.

Back to Top

United States v. Charles Victoria, No. 2:06-CR-00230 (W.D. Pa.), AUSA Brendan Conway ([redacted]

On March 31, 2008, Charles Victoria pleaded guilty to conspiracy to violate the Clean Air Act. Victoria was a foreman for Industrial Commercial Consulting International, Inc. ("ICCI") which had been hired to remove asbestos-containing material from a portion of the decommissioned Woodville State Hospital in 1998.

During several inspections by USEPA and the Allegheny County Health Department a variety of violations were found, including the dry removal of asbestos and failure to properly contain the asbestos-containing material. One inspection revealed that insulation containing asbestos that had been ripped from a steam pipe was allowed to sit on the ground for nearly a year. Some of this

asbestos eventually made its way into a nearby creek. ICCI previously was sentenced to pay a $300,000 fine and complete a three-year term of probation. The company may offset $25,000 of the fine by implementing an environmental compliance plan designed to prevent further violations. Up to $150,000 of the fine may additionally be offset through payments to support environmental projects in the vicinity of the former hospital. Victoria is scheduled to be sentenced on July 25, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA National Enforcement Investigations Center and the Allegheny County Health Department.

Back to Top

United States v. John Mazoch et al., No. 1:07-CR-00086 (E.D. Tex.), AUSA James Noble ([redacted])

On March 31, 2008, John Mazoch, the vice president of Coastal Welding Supply ("CWS"), located in Beaumont, Texas, pleaded guilty to a RCRA conspiracy violation stemming from the unlawful storage of compressed gas cylinders.

In January 2006, state and federal investigators discovered approximately 555 compressed gas cylinders, containing various types of industrial gases, in a self storage facility in Sulphur, Louisiana. Investigators determined that Mazoch had directed the transportation of the cylinders, first from one CWS site to another in Sulphur, Louisiana. Then he directed James Hebert, a contractor working for CWS, to remove them from a second site. In March 2005, Mazoch paid Hebert $30,000 to take possession of the cylinders, and in April 2005 Hebert rented the storage unit where the cylinders were discovered.

Hebert and Mark Sample, a CWS employee who supervised Hebert and assisted with transporting the cylinders, both pleaded guilty in May of last year to a RCRA conspiracy violation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana Department of Environmental Quality Criminal Investigation Division.

Back to Top

United States v. George A. Townsend, III, No. 1:08-CR-20056 (S.D. Fla.) AUSA Tom Watts-FitzGerald [redacted]

Fishing vessel, the *UNDA*

On March 10, 2008, George A. Townsend III pleaded guilty to a Lacey Act violation for the illegal importation of more than 11,000 pounds of yellowfin tuna from Trinidad and Tobago into Miami. Townsend owned and operated the Canadian-registered commercial longline fishing vessel, the *UNDA*, through a Bahamian-registered company and a business he incorporated in Canada. He did not hold a license to fish or tranship fish on the high seas.

On June 7, 2005, Townsend caused approximately 11,063 pounds of yellowfin tuna to be shipped in foreign commerce from Trinidad and Tobago to a seafood dealer in Miami, Florida. As part of the plea agreement, Townsend also will forfeit the fish.

This case was investigated by the NOAA Office of Law Enforcement.

Back to Top

Sentencings

United States v. Steven Tieu et al., No. 4:08-CR-00203 and 204 (N.D. Calif.), AUSA Maureen Bessette [redacted]

On April 24, 2008, Steven Tieu was sentenced to serve ten months' home confinement as a condition of three years' probation and will pay $5,000 in restitution to Panthera, a wild cat conservation organization. Tieu also will fund a plaque to be posted with an exhibit at the San Francisco Museum of Natural History educating the public about endangered wild felines.

Stuffed tiger

Tieu and co-defendant Nicki Phung pleaded guilty April 16th to illegally importing a mounted stuffed tiger from Ho Chi Minh City, Vietnam, into San Francisco International Airport in December 2007. Tigers are listed as endangered species and neither defendant had obtained either an export permit from Vietnam or an import permit from the United States.

Phung pleaded guilty to a Lacey Act violation and Tieu pleaded guilty to an ESA violation. Phung is scheduled to be sentenced on July 25, 2008.

This case was investigated by the United States Fish and Wildlife Service and the United States Customs and Border Protection.

Back to Top

United States v. Anne Sholtz, No. 2:05-CR-00017 (C. D. Calif.), AUSAs Dorothy Kim ([redacted]) and Joe Johns ([redacted]).

On April 14, 2008, Anne Sholtz was sentenced to complete a five-year term of probation with a special condition of a one-year term of home confinement.

Sholtz pleaded guilty three years ago to one wire fraud violation. She admitted to using forged documents and her knowledge of trading pollution credits to defraud AG Clean Air, a New York-based company that trades in energy credits, in January 2005. She was charged with taking $12.5 million from investors who were falsely told that the money would be used to purchase pollution credits that would be sold to a Southern California Mobil refinery.

In 1993, the South Coast Air Quality Management District, the air pollution control agency that regulates 28,000 pollution-emitting businesses in the Los Angeles metropolitan area, established the Regional Clean Air Incentive Market or RECLAIM. In 1998, the United States Environmental Protection Agency approved the RECLAIM program, under which each pollution-emitting facility is issued an annual allocation that limits the amount of nitrogen oxides and sulfur oxides that can be emitted. If a facility improves its pollution-control equipment, it may sell part of its pollution-producing allocation via RECLAIM Trading Credits or RTCs.

Sholtz was the owner of Sholtz & Associates, which later merged with another company and became EonXchange. Through these companies, she operated an Internet site called Automated Credit Exchange ("ACE"), which was a forum for companies to trade and sell RTCs. ACE was closed in August 2002 due to bankruptcy.

The defendant approached an officer of AG Clean Air in 1999, telling him that Mobil Corporation needed to purchase a large quantity of RTCs for use at a refinery in southern California. Over the next two years, AG Clean Air purchased $12.5 million worth of RTCs based on Sholtz's representations that Mobil would purchase the RTCs for $17.5 million. Sholtz sent AG Clean Air a $9 million payment, but when AG Clean Air demanded the remaining money, she claimed that Mobil was having trouble paying for the RTCs. As part of the fraud, the defendant sent a series of faxes and e-mails to AG Clean Air that purportedly documented ongoing negotiations between Ace and Mobil. In 2002, Sholtz finally admitted that she had fabricated documents and had associates pretend to be Mobil employees. She claimed that she was forced into these lies by an ACE employee who sold RTCs without her knowledge. AG Clean Air eventually filed a lawsuit against Sholtz and her company.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the South Coast Air Quality Management District.

Back to Top

[redacted]

Back to Top

United States v. Aristides Couto, No. 1:07-CR-10319 (D. Mass.), AUSA Jon Mitchell ([redacted]

On April 8, 2008, Aristides Couto was sentenced to serve one year and one day of incarceration followed by three years' supervised release and will pay a $10,000 fine.

Couto pleaded guilty in November 2007 to a two-count information charging him with concealing a scheme to pay cash to fishing vessel owners for their catches by falsifying reports to the National Oceanographic and Atmospheric Administration ("NOAA") and by structuring hundreds of cash transactions.

Over several years, Couto operated a fish wholesale business through which he bought fish directly from commercial fishing vessels and resold it to wholesalers and retailers. Beginning in at

least 2002, Couto convinced fishing boat captains to sell their fish to him by offering to pay for part of their catch in cash ranging from $2,000 to $10,000 per trip.

In exchange for his willingness to pay in cash, the defendant often demanded and received prices for fish that were lower than the prevailing daily prices. He also paid captains cash for fish caught in excess of regulatory limits, thereby enabling them to avoid detection by law enforcement.

Couto concealed his cash payments in two ways. First, he routinely lied in the dealer reports he was required to submit to NOAA by understating the amount of fish he purchased. NOAA relies on these reports to help it balance the interests of the fishing industry with the appropriate regulations to conserve the size of fish stocks. Over a four-year period, the defendant concealed approximately $774,000 in fish purchases from authorities.

In addition to falsifying his dealer reports, Couto sought to hide his large cash transactions by structuring cash withdrawals from his bank accounts to avoid regulations that require banks to report to the U.S. Department of the Treasury cash transactions over $10,000. Over a three-year period, he withdrew cash in $9,900 increments on 133 occasions.

This case was investigated by the NOAA Fisheries Office of Enforcement and the Internal Revenue Service.

Back to Top

Back to Top

United States v. Wally El-Beck, No. 4:05-CR-00179 (E.D. Ark.), AUSA Angela Jegley ([redacted]

On March 20, 2008, Wally El-Beck, the operator of a municipal incinerator, was sentenced to serve 18 months' imprisonment after being convicted by a jury in October 2006 of 37 counts of mail fraud and one count of wire fraud.

Between December 31, 2000, and March 5, 2003, El-Beck made numerous fraudulent solicitations to industrial waste generators located in Tennessee and Illinois claiming that he could dispose of their waste through incineration. He received approximately 13,000 drums of waste at the Arkansas Municipal Waste to Energy facility located in Osceola, Arkansas. The waste in the drums was not incinerated, however, and the companies that generated it were forced to pay a second time to have the drums transported to another site where the waste was properly destroyed.

More than four million dollars has been spent by the U.S. EPA Superfund to clean up the site, in addition to more than one million dollars spent by companies victimized in the scheme.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Arkansas Department of Environmental Quality and the United States Postal Service Inspector General's Office with assistance from the EPA's National Enforcement Investigations Center.

Back to Top

United States v. Danny Yep, No. 3:07-CR-00481 (N.D. Calif.), AUSA Stacey Geis [redacted]

On March 20, 2008, Danny Yep was sentenced to serve two months' incarceration followed by four months' home confinement for selling an endangered species to an undercover United States Fish and Wildlife Service agent via the Internet.

In 2004, Yep was apprehended for selling an Asian Arowana fish to an agent using an Internet auction site called Aquabid. Asian Arowanas, commonly known as "dragon fish" or "lucky fish" are native to Southeast Asia and can grow to approximately three feet in length. Under the ESA and international treaties, permits are required to export endangered species from their country of origin, as well as to import them into the United States. In the United States, Asian Arowanas can sell on the black market for as much as $10,000.

This case is part of a larger federal effort to crack down on the illegal trade of endangered and protected species on the Internet, upon which illegal traffickers are relying more heavily to offer their goods for sale.

Yep also will pay a $2,000 fine and complete three years' supervised release. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. James E. Johnson, Jr., et al. 4:07-CR-00054 (E.D.N.C.), AUSA Barbara Kocher ([redacted]

On March 11, 2008, five defendants pleaded guilty to, and were sentenced for, Migratory Bird Treaty Act violations stemming from an illegal duck hunt. James E. Johnson, Jr., Able Bland and John Ragland pleaded guilty to MBTA violations, and Troy Godwin and Raymond Rhoden pleaded guilty to an MBTA conspiracy.

For the 2006/2007 hunting season, Johnson purchased more than 20 tons of corn. On January 12 and 14, 2007, Johnson's employees Godwin and Rhoden**,** using Johnson's boat, placed corn in Porpoise Creek, thereby illegally baiting the area. On January 16, 2007, Godwin and Rhoden

transported Johnson, Ragland, and Bland to a waterfowl hunting blind in Porpoise Creek. From the position of the blind, Johnson, Ragland and Bland shot several Scaup ducks. Johnson then contacted Godwin and Rhoden, who had previously left the area, to return to the blind to retrieve the freshly killed ducks. Once the ducks were retrieved, Johnson, Ragland and Bland then resumed hunting.

Johnson was sentenced to pay a $7,500 fine and will complete a one-year term of probation. Rhoden and Godwin were ordered to pay $500 fines and complete a one-year term of probation. Bland and Ragland were each sentenced to pay $1,000 fines. During their probationary periods, the defendants are not allowed to hunt.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

June 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

United States v. Grace, __F3d.__ 2008 WL 2052204 (9th Cir. May 15, 2008).

Districts	Active Cases	*Case Type* / Statutes
[redacted]	[redacted]	[redacted]
C. D. Calif.	United States v. Pacific Operators Offshore United States v. Union Pacific Railroad Company United States v. Hai Nguyen	*Natural Gas Pipeline*/ Outer Continental Shelf Lands Act *Wastewater Discharge*/ Negligent CWA *Seal Stabbing*/ Marine Mammal Protection Act
N. D. Calif.	United States v. Wassim Mohammad Azizi United States v. Jereme James	*Building Demolition*/ CAA *Importing Reptiles*/ Smuggling, Lacey Act
S. D. Calif.	United States v. Damon Silva	*Discharges from Docked Vessel*/ Negligent CWA
D. Colo.	United States v. Esteban Lopez Estrada	*Sea Turtle Products*/ Smuggling, Money Laundering
S. D. Fla.	[redacted] United States v. Max Moghaddam et al. United States v. Zamorro Shone United States v. Stanley Saffan et al.	[redacted] *Caviar Export*/ Lacey Act, Endangered Species Act, Conspiracy *Queen Conch Import*/ Misbranding Food *Sailfish Harvest*/ Lacey Act Forfeiture

Districts	Active Cases	*Case Type* / Statutes
[redacted]	[redacted]	[redacted]
D. Hawaii	**United States v. David Williams**	***Vessel*/ False Statement**
S. D. Ind.	**Unites States v. Richard Reece**	***Electroplating Wastes*/ RCRA**
E. D. La.	**United States v. M&N Foods, Inc.**	***Food Processor Wastewater*/ Negligent CWA**
D. Mass.	**United States v. Charles Manghis et al.**	***Ivory Smuggling*/ Smuggling, False Statement, Conspiracy**
E. D. Mo.	**United States v. Eric Johnson** **United States v. Jason Becks**	***Developer*/ CWA, Bank Fraud** ***Abandoned Drums*/ RCRA**
D. Nev.	**United States v. Patricia Vincent** **United States v. Cody Bartolini**	***Tree Destruction*/ Unlawfully Cutting Trees on U.S. Land** ***Internet Reptile Sale*/ Lacey Act**
W. D. N. C.	**United States v. Kirby Dean Case**	***POTW*/ CWA False Statement**
N. D. Ohio	**United States v. David Geisen et al.**	***Nuclear Facility*/ Concealment, False Writings**
S. D. Ohio	**United States v. Rager Fertilizer Company**	***Fertilizer Wastes*/ CWA**
D. Ore.	**United States v. The National Navigation Company**	***Vessel*/ APPS, False Statement**
E. D. Tex.	**United States v. Simply Aquatics, Inc., et al.** **United States v. Dile Kent McNair**	***Hazardous Waste*/ RCRA** ***Metal Plating Waste*/ RCRA**
S. D. Tex.	**United States v. Sidney Berle Baldon II**	***Fuel Excise Taxes*/ Tax Evasion, Conspiracy**
W.D. Wash.	**United States v. Floyd Stutesman et al.**	***Timber Harvesting*/ Theft of Govt. Property, Depredation against Govt. Property, Conspiracy**

Additional Quick Links

Significant Opinions

9th Circuit

United States v. W.R. Grace et al., __F3d.__ 2008 WL 2052204 (9th Cir. May 15, 2008).

On May 15, 2008, the *en banc* Ninth Circuit court held that a U.S. Attorney's certification under 18 U.S.C. § 3731 (that the government's interlocutory appeal from an order suppressing or excluding evidence in a criminal case is not taken for purpose of delay, and that the suppressed or excluded evidence is substantial proof of a material fact) is sufficient to establish the court of appeals' jurisdiction to consider the appeal. The court overruled prior decisions that had "required that the government's bare certification be backed up by a preliminary showing that the excluded evidence truly is material."

The Ninth Circuit also held, overruling its prior decision in *United States v. Hicks*, 103 F.3d 837 (9th Cir. 1996), that a district court, "as part of the court's inherent authority to manage its docket," may require the government to disclose a final list of its trial witnesses prior to trial. The court concluded that the district court in this case did not abuse its discretion by requiring the government to provide such a list more than one year before trial. The court further stated that, if the government does decide to add specific witnesses or evidence it believes was precluded by the district court's pretrial orders, it will be up to district court to address the request in accordance with the principles set forth in this opinion.

Back to Top

Trials

United States v. Wassim Mohammad Azizi, No. 3:06-CR-00548(N.D. Calif.), AUSA Stacey Geis [redacted]

Demolished building

On May 14, 2008, after a seven-day jury trial, Wassim Mohammad Azizi was convicted of three felony counts of violating the Clean Air Act stemming from the illegal demolition of a building that contained significant amounts of asbestos.

Azizi purchased a commercial building with the intent to demolish it and construct a new building. Following the purchase and the discovery that the building contained asbestos, the defendant hired an unlicensed handyman to commence with the demolition.

Between December 1, 2002, and February 1, 2003, Azizi illegally demolished the building and placed workers and the public at risk. He was convicted of violating several work practice standards,

including the failure to properly notify the Air District, failure to wet the asbestos-containing material, failure to keep it in leak-tight containers, and failure to dispose of it at an authorized location.

Sentencing is scheduled for August 27, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Jereme James, No. 2:07-CR-01004 (C.D. Calif.), AUSA Joe Johns ([redacted]) and Reema El-Amamy ([redacted])

Fiji Island banded iguana

On April 11, 2008, Jereme James was found guilty by a jury of smuggling and a Lacey Act violation for concealing several extremely rare iguanas within a prosthetic leg to bring them illegally into the United States.

The Fiji Island banded iguana (*Brachylophus fasciatus*) is threatened with extinction and is protected under CITES. While on a trip to Fiji in September 2002, James took three Fiji Island banded iguana hatchlings from an ecological preserve and then attempted to smuggle them into the U.S. After receiving a tip that James possessed several specimens of the endangered species, the United States Fish and Wildlife Service opened an undercover investigation. During the investigation, James told an undercover agent that he had sold a trio of Fiji Island banded iguanas four years ago for $32,000. After a series of meetings with the defendant, agents executed a search warrant at James' house and recovered four Fiji Island banded iguanas.

James is scheduled to be sentenced by on July 14, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Indictments

United States v. Simply Aquatics, Inc., et al., No. 1:08-CR-00067 (E.D. Tex.), AUSA Jim Noble [redacted]

Chlorine gas cylinders

On May 7, 2008, an indictment was returned charging Simply Aquatics, company president Kevin Hester and his father, Lyle Hester, a shop foreman, with conspiracy and four RCRA violations for illegally transporting and disposing of hazardous wastes.

Simply Aquatics is in the business of installing and servicing water treatment chemical injection systems for municipalities. In the process they used chemicals such as gaseous chlorine and sodium hydroxide to clean out the systems.

The indictment states that a former employee contacted the National Response Center alleging that managers routinely ordered employees to wash out drums containing hazardous chemicals onto the ground at a "drum washout area."

It is further alleged that in May 2006, the defendants transported 33 compressed gas cylinders under high pressure, containing a combined total of 952 pounds of chlorine gas, without a manifest and to an unpermitted site where he disposed of it without a permit. The defendants also are charged with disposing of the 33 cylinders by burying them on Kevin Hester's property.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Environmental Enforcement Task Force.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted].

On April 25, 2008, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were charged with conspiracy, false labeling of export shipments, and the illegal export of internationally protected American paddlefish roe (eggs) during July 2005 through April 2007.

The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and it is now listed as an Endangered Species. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish has become a substitute for sturgeon caviar and, as such, has become quite valuable. According to the indictment, the defendants did not have the necessary permits for these exports and also had falsely stated on shipping invoices and customs documents that the shipment contained bowfin roe, which is sometimes used as a caviar substitute.

The defendants remain scheduled for trial beginning October 14, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Kirby Dean Case, No. 3:08-CR-00077 (W.D.N.C.), AUSA Steven Kaufman ([redacted]

On April 22, 2008, Kirby Dean Case was charged in a two-count indictment with Clean Water Act violations for discharging pollutants from the Town of Dallas POTW ("POTW") into the Dallas Branch of the Catawba River Basin in violation of the POTW's permit. Case is further charged with filing DMRs with the North Carolina Department of Environment and Natural Resources between November 2006 and December 2007, which included falsified sample levels for chlorine, ammonia, fecal coliform, and other materials.

On April 14, 2008, the Town of Dallas, North Carolina, was fined more than $140,000 by the state for the improper operation and maintenance of the POTW resulting in discharges of poorly treated or untreated wastewater that blanketed a half-mile of the receiving stream with sludge four to eight inches deep.

The fine, the state's largest for water pollution, was imposed by the North Carolina Division of Water Quality which found during an inspection in November 2007 that the town's wastewater treatment plant was severely noncompliant, with half of its treatment capacity out of service and the remaining half overloaded with sewage solids. Solids also were present in the chlorine contact

chamber. Since the chlorine dosing chamber was not in use, the effluent from the plant was not disinfected. Although solids were being discharged with effluent, the town submitted samples that made it appear that the plant was adhering to the state's permit limits for the discharge.

During the inspection, the Dallas branch (a tributary of Long Creek), was observed to have a several-inch thick layer of partially-treated sewage about half a mile downstream from the plant's discharge point. State inspectors also found evidence of two unreported spills – one of untreated sewage, the other of partially treated wastewater – that reached the Dallas branch as well. The Town has been fined by the state 27 times since March 2003 for amounts totaling nearly $43,000.

This case is part of an on-going investigation by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina Division of Water Quality.

Back to Top

Pleas

United States v. Zamorro Shone, No. 1:08-CR-20034 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On May 23, 2008, Zamorro Shone, of Vancouver, British Columbia, Canada, pleaded guilty to a two-count indictment for his involvement in the smuggling of significant quantities of queen conch from Canada to the United States in violation of the U.S. Food, Drug and Cosmetic Act.

Queen Conch

From about October 2005 through March 2006, the defendant and others associated with Caribbean Conch, Inc., a Hialeah, Florida-based seafood company, caused multiple shipments of queen conch from Haiti through Canada to the United States, totaling 6,972 pounds. At the time queen conch from Haiti was under international embargo, and it also would have required special permit documentation to enter the United States, if legally harvested elsewhere.

Queen conch is protected under CITES, but it is not listed under the ESA as a protected species The ESA does allow for criminal charges for trading in wildlife contrary to CITES. In September 2003, an embargo was enacted by the CITES parties for queen conch and conch products that originated from many of the conch-producing countries of the Caribbean to help stem the significant declines in the species due in large part to rampant illegal harvesting. The embargo banned all imports of queen conch to any nation that was a signatory to CITES.

Shone and his Canada-based company, Pacific Marine Union Corporation, received the queen conch shipped by air from Haiti to Toronto, and they re-packaged it as "Frozen Whelk meat, product of Canada," arranging transportation by refrigerated truck to Hialeah. In March 2006, a shipment of 2,100 pounds of falsely-labeled conch was intercepted by a United States Fish and Wildlife Service Inspector in Buffalo, New York. The Fish and Wildlife Service's National Forensic Laboratory in Ashland, Oregon, conducted DNA analysis of the seafood product and confirmed it was queen conch and not whelk, which sometimes is used as a cheap substitute.

Co-defendants Janitse Martinez and Ramone Placeres each were sentenced in January 2008 to serve two months' imprisonment, followed by one year of supervised release. Placeres was further

ordered to pay a $10,000 fine. Martinez and Placeres were, respectively, the owners of Caribbean Conch, Inc., and Placeres & Sons Seafood, Inc.

The 18-month long investigation by Canadian and American enforcement authorities led to the simultaneous execution of search warrants in both countries and the seizure of more than 63,000 pounds of illegally traded queen conch involving Shone and other parties already convicted in separate proceedings in the United States and Canada.

Shone is scheduled to be sentenced on June 27, 2008.

These cases were investigated by the United States Fish and Wildlife Service, NOAA Office of Law Enforcement, and the Wildlife Officers of Environment Canada's Wildlife Enforcement Branch, Wildlife Enforcement Division, in Halifax, Montreal, Toronto, and Vancouver. The United States National Marine Fisheries Service and Canadian and American border officials also contributed to this investigation.

Back to Top

United States v. Jason Becks, No. 4:08-CR-00198 (E.D. Mo.), SAUSA Anne Rauch ([redacted]) and AUSA Michael Reap [redacted]

On May 22, 2008, Jason Becks pleaded guilty to one RCRA disposal violation.

Becks was hired in January 2008 to complete an environmental site assessment at Economy Tire, Inc., in St. Louis, Missouri. Becks contracted with the owner of the building to remove and dispose of six 55 gallon drums inside the building for $600. The defendant then took the drums to another location where he abandoned them.

Sentencing is scheduled for August 7, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Dile Kent McNair, No. 6:08-CR-00027 (E.D Tex.), AUSA Jim Noble ([redacted])

Solid hazardous waste

On May 20, 2008, Dile Kent McNair, the operator of Extreme Metal Finishing, Inc., a metal plating business, pleaded guilty to a RCRA storage violation for storing spent cyanide plating bath solutions and plating bath residues from the bottoms of plating baths without a permit.

McNair operated the metal plating business from September 2004 through October 2006. On three occasions in 2006, Texas Commission on Environmental Quality inspectors conducted inspections at the facility and observed McNair's storage of thousands of gallons and pounds of both liquid and solid hazardous wastes. In October 2006, after McNair moved the operations to a new facility, he continued to store the waste at the previous facility without a permit.

McNair and other metal plating companies with which he has been associated have a history of extensive noncompliance, two of them having been the subjects of previous criminal prosecutions. In 1994, McNair pleaded guilty to a felony CWA violation in case against Crews Plating, Inc., and in August, 2004, Perfection Industries pleaded guilty to one CWA false statement violation for fabricated DMRs. McNair further pleaded guilty to a felony count of Felon in Possession of a Firearm. In

January 2008, he was sentenced to serve 18 months in federal prison as a result of a probation violation from his conviction in the Perfection Industries, Inc., case.

Also on May 20, McNair pleaded guilty to attempting to bribe an Assistant District Attorney with $5,000 in an effort to get the prosecutor to dismiss a pending D.W.I. charge.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality Special Investigation Division, and the Texas Environmental Enforcement Task Force.

Back to Top

United States v. Pacific Operators Offshore, No. 2:08-CR-00189 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] and AUSA Joe Johns [redacted].

On May 19, 2008, Pacific Operators Offshore pleaded guilty to a one-count information charging a violation of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1350(c)(1) for illegally storing natural gas in a degraded pipeline in January 2002.

The company operates an oil and natural gas drilling station with two platforms a few miles off Santa Barbara. The illegal conduct involved storing or "stacking" natural gas from 2000 to 2002 in deteriorating underground pipes after the pipes had been found by the Minerals Management Service ("MMS") to be unfit for service and then attempting to hide this illegal conduct from the MMS. Although there was no actual leak into the environment, the risk to human health, the workers on the platforms, and the environment from a potential leak or explosion of natural gas from the pipeline, which ran underneath Coastal Highway 101, was significant.

Sentencing is scheduled for September 15, 2008, and the company faces a maximum statutory fine of $500,000. This case was investigated by the United States Department of Interior.

Back to Top

United States v. David Williams, No. 1:07-CR-00376 (D. Hawaii), ECS Assistant Chief Joe Poux [redacted], AUSA Ronald G. Johnson, Chief of the USAO Major Crimes Section ([redacted] AUSA William L. Shipley [redacted], and USCG Commander Timothy P. Connors.

On May 1, 2008, David Williams, a Chief Warrant Officer in the U.S. Coast Guard and the Main Propulsion Assistant for the Coast Guard Cutter *RUSH*, pleaded guilty to an 18 U.S.C. § 1001 false statement violation.

Williams originally was charged in August 2007 in a two-count indictment with obstructing the investigation of the overboard discharge of bilge wastes, authorized by Williams, through a deep sink, which then drained directly into Honolulu Harbor. He was further charged with making a false statement.

As the Main Propulsion Assistant, he oversaw the maintenance of the main diesel engines and other machinery in the engine room for the *RUSH*, a 378-foot high endurance cutter stationed in Honolulu. According to the indictment, on or about March 8, 2006, Williams authorized the direct discharge of bilge wastes through the sink into Honolulu Harbor, bypassing the oily water separator. Approximately a week later, the State of Hawaii Department of Health received an anonymous complaint that the ship's crew members were ordered to pump approximately 2,000 gallons of bilge waste into Honolulu Harbor. On May 1, 2006, investigators from the United States Coast Guard Investigative Service and the Environmental Protection Agency received confirmation from personnel who had personally been involved that bilge wastes indeed had been discharged into the harbor.

When questioned by investigators, Williams denied authorizing personnel to discharge bilge waste and also denied knowledge of any bypasses.

Sentencing is scheduled for August 19, 2008. This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

[redacted]

Back to Top

United States v. Union Pacific Railroad Company, No. 2:06-CR-00607 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On April 16, 2008, Union Pacific Railroad Company ("UPRC") pleaded guilty to two misdemeanor Clean Water Act violations for negligently discharging pollutants, specifically petroleum and oil-contaminated wastewater, into the Los Angeles River from January 2001 through March 2003.

UPRC engaged in locomotive maintenance and repair operations at the Taylor Yard ("the Yard"), which is located on the eastern banks of the Los Angeles River. The Yard also is adjacent to an area designated as a bird sanctuary. Operations at the Yard generated large amounts of pollutants, including waste petroleum and oils, waste lubrication and hydraulic oils, used antifreeze, and petroleum and oil- contaminated wastewater. These pollutants were discharged via piping systems into wastewater ponds located on the Yard.

During rain events in January and August 2001, a combined total of approximately 350 gallons of wastewater was discharged from the ponds into the River due to the company's failure to properly maintain its treatment system.

This case was investigated by the California Department of Fish and Game, the Los Angeles County Fire Department, Hazardous Materials Division, and the Federal Bureau of Investigation.

Back to Top

United States v. Charles Manghis et al., No. 1:08-CR-10090 (D. Mass.), AUSA Nadine Pellgrini [redacted]

On April 24, 2008, Charles Manghis was charged with multiple counts of smuggling sperm whale and elephant ivory illegally into the United States, making false statements to federal agents, and conspiracy to smuggle sperm whale and elephant ivory into the United States. Co-defendant Andriy Mikhalyov, a Ukrainian citizen, was charged with conspiring with Manghis and others to import sperm whale ivory from the Ukraine through California to Massachusetts.

The indictment alleges that from 2003 to 2005, Manghis illegally smuggled sperm whale ivory and elephant ivory into the United States and that he made false statements to federal agents regarding this activity. Between 2002 and 2005, Manghis and Mikhalyov, a seller located in Odessa, Ukraine, are alleged to have conspired to illegally import sperm whale teeth so that Manghis, who works in scrimshaw, could re-sell the items here in the United States.

This case was investigated by NOAA's Office of Law Enforcement, the United States Fish and Wildlife Service, and Immigration and Customs Enforcement.

Back to Top

United States v. Sidney Berle Baldon II et al., 4:07-CR-00279 (S.D. Tex.), AUSA Joe Magliolo, Jr. [redacted]

On April 14, 2008, Sidney Berle Baldon II, owner-operator of Mid-Coast International, a distributor of kerosene and other products; Tracey Dale Diamond, an officer of Mid-Coast; and employee Yousef Ishaq Abuteir pleaded guilty to conspiracy to impede the Internal Revenue Service in the proper collection of federal fuel excise taxes.

Court documents state that between July 2002 and November 2003, Baldon and Diamond, acting for Mid-Coast, purchased more than $10 million dollars worth of kerosene fuel from Calcasieu Refining Company. They falsely represented in letters to Calcasieu that the fuel was purchased for export to Mexico only, thus no excise taxes were assessed or paid by Mid-Coast. The untaxed fuel then was transported from Louisiana to Mid-Coast locations in Houston and Channelview, Texas, where the fuel was mixed with other materials including middle distillate oil, a bi-product of asphalt production. The untaxed blended fuel was then transported by drivers acting on instructions from Abuteir to retail filling stations in the Houston area where it was sold as taxable motor fuel. Abuteir personally delivered cash to Baldon and Diamond for the purchase of the fuel obtained from Calcasieu Refinery. All three defendants also face state charges of engaging in a motor fuel tax scheme arising from the importation of motor fuel without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Internal Revenue Service Criminal Investigation Division, Immigration and Customs Enforcement, Department of Transportation, the State Comptroller of Public Accounts' Criminal Investigation Division, the Harris County Precinct One Constables Office and the Travis County District Attorney's Office.

Back to Top

United States v. Floyd Stutesman et al., No. 3:07- CR-05642 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On March 24, 2008, Floyd Stutesman pleaded guilty to conspiracy to commit depredation against property of the United States by removing timber cut in the Olympic National Forest.

Stutesman, along with codefendants Craig James and Bruce Brown were charged in September 2007 in a three-count indictment with violations stemming from their illegally cutting down 31 old growth western red cedar trees, some of which were more than six hundred years old, to sell to timber mills for processing in the Olympic National Forest.

'Radar' and tree stump

From between November 2006 and February 2007, the defendants are alleged to have damaged and stolen the trees, obtained legitimate forest harvesting permits and then used those permits to illegally transport this old growth wood. The defendants are specifically charged with conspiracy to commit depredation against Forest Service property, one count of damage to United States property, and one count of theft of government property. James and Brown remain scheduled for trial to begin on October 14, 2008, and Stutesman is scheduled to be sentenced on June 20, 2008.

This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

Back to Top

Sentencings

United States v. Patricia Vincent, No. 08-CR-00001 (D. Nev.), AUSA Ron Rachow ([redacted]

Tree stump

On June 5, 2008, Patricia Vincent was sentenced to pay $100,000 restitution and to complete 80 hours of community service with $35,000 to be paid to the U.S. Forest Service and $65,000 paid to the National Forest Foundation. Vincent pleaded guilty on May 2, 2008, to one misdemeanor count of unlawfully cutting trees on U.S. land, in violation of 18 USC §1853. Vincent had arranged to have three ponderosa pines cut down on federal land near Lake Tahoe to give her a better view of the lake. She originally had been charged with theft of government property and willingly damaging government property.

The pines were on a plot the U.S. Forest Service had designated as environmentally sensitive as part of a water quality plan to help protect the clarity of Lake Tahoe. The trees were estimated to be 80 to 100 years old.

This case was investigated by the United States Forest Service.

Back to Top

United States v. Stanley Saffan et al., No. 1:07-CR-20553 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On May 21 and May 23, 2008, two corporations and two individuals were sentenced for their involvement in the illegal harvest of sailfish.

Sailfish

Between October 2003 and May 2005, the defendants operated two charter fishing vessels, both named THERAPY-IV, (one 44.7 feet and the other of 54 feet), from Haulover Inlet in North Miami Beach. Sean Lang, Brian Schick, and Stanley Saffan (the owner of both Therapy Charter Fishing Yacht, Inc., ("Therapy Charter") and Duchess Charter Fishing Yacht, Inc., ("Duchess Charter")) were licensed by the U.S. Coast Guard to carry passengers for hire on charter trips.

The defendants were charged with catching and landing undersized billfish, and the landings were not reported to federal authorities. They were further charged with orchestrating an undisclosed deal between the charter operation and a local taxidermy company to pay the crew and boat owners for inducing anglers to sign contracts for mounting the sailfish that were caught.

Saffan previously pleaded guilty to two Lacey Act violations, and Augusto, Lang, Schick, Pegram and both corporations pleaded guilty to one Lacey Act violation.

Saffan was sentenced to serve a five-year term of probation, complete 500 hours' community service, pay a $35,000 fine and $75,000 in restitution to be divided among approximately 200 fraud victims. These angler victims include those who were duped into paying taxidermy fees as they were falsely told among other things, that their actual fish had be killed in order to obtain a mount. Augusto was sentenced to serve one year and a day of incarceration followed by two years' supervised release. A fine was not assessed. Lang was sentenced to complete a three-year term of probation and a fine was not assessed.

Duchess Charter will serve a one-year term of probation and forfeit the 44.7-foot vessel. Therapy Charter will complete a three-year term of probation and in lieu of forfeiture of the second vessel will pay $50,000 representing 125 per cent of the appraised value of the larger vessel. Specifically, that amount will be paid into the Magnuson-Stephens Fisheries Conservation and Management Act Fund. Pegram was previously sentenced to serve one year and a day of incarceration and Schick was sentenced to complete a three-year term of probation.

This case was investigated by the NOAA Office of Enforcement, the Florida Fish and Wildlife Conservation Commission, and the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Damon Silva, No. 3:08-CR-00491(S.D. Calif.), AUSA Melanie Pierson [redacted]

On May 20, 2008, Damon Silva was sentenced to serve one year of incarceration followed by one year of supervised release. He also will pay a $7,500 fine and $14,607.84 in restitution for clean up costs.

Silva pleaded guilty in February 2008 to three misdemeanor CWA violations in connection with three oil-pollution incidents involving a vessel docked in San Diego Harbor.

Between September 14, 2006, and December 2, 2006, Silva lived aboard the *FV Kathryn Ann*, which was docked at the G Street pier in San Diego Harbor. On September 18, 2006, Silva spilled diesel fuel from the vessel onto the pier and used a hose to rinse the fuel into the harbor. The second incident occurred on November 14, 2006, when Silva used a hose to pump oily bilge water from the *Kathryn Ann*, allowing the oily bilge water to be discharged from the hose into the water. The third

incident transpired on December 2, 2006, when the defendant transferred diesel fuel aboard the boat and allowed the fuel to overflow from the deck into the water.

The cleanup costs will reimburse the United States Coast Guard in the amount of $12,203.64 and the California Department of Fish and Game Oil Spill Response Trust Fund will receive $2,404.20 for the costs incurred in responding to these three incidents.

This case was investigated by the United States Coast Guard, the United States Environmental Protection Agency Criminal Investigation Division, the California Department of Fish and Game, and the San Diego Harbor Police.

Back to Top

United States v. Hai Nguyen, No. 2:07-CR–00880(C.D. Calif.), AUSA Craig H. Missakian ([redacted]

On May 15, 2008, Hai Nguyen was sentenced to serve a three-year term of probation and complete 200 hours of community service. Nguyen pleaded guilty last November to violating the Marine Mammal Protection Act for stabbing a California sea lion, which later had to be euthanized.

On July 27, 2007, Nguyen was fishing from a dock on the Balboa Peninsula in Newport Beach. The sea lion, which had been swimming in the water near the dock and may have been interfering with Nguyen's fishing, approached the dock, getting close enough so that he could reach down and stab the six-foot long animal with a steak knife. Witnesses in the area contacted the Newport Beach Police Department, and the defendant was arrested. Animal control officers were later able to trap the sea lion, which was transported to the Pacific Marine Mammal Center in Laguna Beach. Doctors who examined the animal determined that the knife had pierced its heart and that it would not recover.

This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement, and the Newport Beach Police Department.

Back to Top

United States v. Richard Reece, No. 1:07-CR-00036 (S.D. Ind.) SAUSA David Mucha ([redacted]**and AUSA Steven DeBrota** [redacted]

On May 8, 2008, Richard Reece was sentenced to serve six months of home confinement followed by six months in a community confinement facility after pleading guilty in January 2008 to three RCRA violations. He also was ordered to pay approximately $57,000 in restitution to the U.S. Environmental Protection Agency, the Indiana Department of Environmental Management, and Delaware County for their emergency response costs.

Hazardous waste in trailers

In about 1996, Reece accumulated equipment and electroplating chemicals to start an electroplating business in Farmland, Ind., named Synco Technology, Inc. In June 2002, he transported drums and containers of chemical wastes, which were corrosive, toxic and ignitable, in trailers from his Farmland facility to a vacant lot near a convenience store in Muncie. In May 2003, he had the trailers transported to a parking lot in an industrial park in Muncie without authorization or notification to the property owners. The wastes were discovered in 2004 after citizens complained to local health officials of chemical odors.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the Indiana Department of Environmental Management and Indiana Inter-Agency Environmental Crimes Task Force.

Back to Top

United States v. David Geisen et al., No. 3:06-CR-00712 (N.D. Ohio), ECS Senior Trial Attorney Richard Poole [redacted], ECS Trial Attorney Tom Ballantine ([redacted], AUSA Christian Stickan [redacted] and ECS Paralegal Lois Tuttle [redacted]

On May 1, 2008, David Geisen was sentenced to serve four months' home detention as a condition of three years' probation. He is further required to complete 200 hours of community service and pay a $7,500 fine. Geisen was convicted by a jury in October 2007 of concealment and false writing violations, but acquitted on two false statement violations. Co-defendant Rodney Cook was acquitted on all counts.

Pictures taken in 12RFO of the reactor vessel head flange showing boric acid with rust d flowing out of the weep holes.

In January 2006, a five-count indictment was returned charging engineering manager Geisen and systems engineer Andrew Siemaszko, former employees of FirstEnergy Nuclear Operating Company ("FENOC"), and consultant Rodney Cook with a scheme to conceal information from the Nuclear Regulatory Commission ("NRC") and with making false statements to the NRC.

FENOC owns and operates the Davis-Besse plant near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant's safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.

FENOC previously entered into a deferred prosecution agreement in this case, agreeing that the United States can prove that knowing false statements were made on behalf of the corporation.

Siemaszko remains scheduled for trial to begin on August 11, 2008. This case was investigated by the NRC Office of Investigations.

Back to Top

United States v. Esteban Lopez Estrada, No. 07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted], ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan ([redacted]

On April 30, 2008, Esteban Lopez Estrada was sentenced to serve two years' incarceration followed by three years' supervised release. He also will pay a $1,700 fine.

Lopez Estrada, a Mexican national, pleaded guilty in February of this year to felony smuggling and money laundering violations in connection with the smuggling of sea turtle and other exotic skins and skin products into the United States from Mexico.

Lopez Estrada and 10 others were indicted in Denver in August 2007, following a multi-year U.S. Fish and Wildlife undercover investigation named "Operation Central." Lopez Estrada was

charged in two separate indictments for his role in the smuggling. He operated a business in Leon, Mexico, named *Botas Exoticas Canada Grande*, through which he bought and sold exotic leathers, including sea turtle, caiman, ostrich and lizard skins; manufactured boots and belts from the skins; and sold the skins, boots, and belts to customers in the United States. After arranging sales to customers in the U.S., Lopez Estrada sent the exotic leathers and leather products to co-defendants Jorge Caraveo and Oscar Cueva in Mexico for illegal importation into the United States. As payment for the skins, boots, and belts, he received international wire transfers from Colorado to his Mexican bank account.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. The National Navigation Company, No. 3:08-CR-00154, 187 and 198 (D. Ore., W.D. Wash., E.D. La.), ECS Trial Attorney Ron Sutcliffe [redacted], AUSAs Dwight Holton [redacted] Jim Oesterle [redacted] and Dee Taylor [redacted]

On April 29, 2008, The National Navigation Company ("NNC") pleaded guilty to, and was sentenced for, 15 felony charges related to vessel pollution violations. The company, based in Cairo, Egypt, admitted to violating the Act to Prevent Pollution from Ships and to making false statements to federal officials.

M/V *Wadi Al Arish*

The case arose from an investigation of a bulk cargo vessel named the *M/V Wadi Al Arish*. During a routine inspection in November 2007 Coast Guard inspectors found evidence of illegal dumping of waste oil. Investigators from the Coast Guard and Environmental Protection Agency launched a fleet-wide investigation, boarding vessels and interviewing dozens of crew members at multiple ports in the Pacific Northwest and along the Gulf Coast. The investigation uncovered evidence of violations aboard six vessels in NNC's fleet. Crews on these vessels dumped thousands of gallons of waste oil, including sludge, in oceans around the world and falsified official ship records, including the oil record book.

The company was sentenced to pay a total monetary penalty of $7.25 million – the largest ever in the Pacific Northwest for a case involving the falsification of ship logs to conceal deliberate pollution from ships. Of this amount $2,025,000 will fund various environmental projects in Oregon administered by the National Fish and Wildlife Fund ("NFWF") through the Oregon Governor's Fund for the Environment. Washington State will receive $350,000 through the NFWF-administered Puget Sound Marine Conservation Fund. Louisiana will receive $175,000 through the NFWF-administered Vessel Source Pollution Prevention and Compliance Fund.

This case was jointly investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Eric Johnson, No. 4:07-CR-00760 (E.D. Mo.), AUSA Michael Reap [redacted] and SAUSA Ann Rauch [redacted]

On April 29, 2008, Eric Johnson was sentenced to serve 15 months' incarceration and was ordered to pay $100,000 restitution for Clean Water Act violations associated with a subdivision development he owned. He also previously pleaded guilty to bank fraud stemming from loans on other

subdivision properties in which he used building escrow money to pay other obligations, resulting in foreclosure and losses to his partner and the lender.

Johnson, the owner and operator of a construction site known as Providence on Peine and Providence Meadows developments, had obtained construction storm water permits. In August 2004, inspectors observed numerous permit violations at both Providence sites, including lack of inspections and failure to maintain runoff controls, resulting in the off-site migration of a significant amount of sediment and accumulation of sediment to Dry Branch Creek.

From 2003 to 2006, Johnson was in the business of developing and building residential subdivisions in both St. Charles and Lincoln counties. Johnson had a long history of violations at all the sites including stormwater discharges and filling of wetlands. Upon discovery of these violations by the Missouri Department of Natural Resources, Army Corps of Engineers, and USEPA, the defendant would dissolve his businesses and move on to the next project. Johnson also has liens and lawsuits filed by subcontractors on all his developments.

In addition, Johnson had obtained a loan with First Service Bank, now known as Stifel Bank and Trust, for $2.6 million to develop a residential subdivision known as Woodsmill Estates. An escrow account was opened at a title insurance company to pay subcontractors of the development. During the time of the loan, however, Johnson used the escrow money to pay bills and subcontractors on other projects. The bank ultimately discovered this practice and foreclosed on the loan, which resulted in a loss to the bank in excess of $100,000. Johnson's business partner, who co-signed on the loan, has incurred losses between $400,000 and $500,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Carlos Leal Barragan et al., No. 07-CR-00359 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted].

On April 25, 2008, Carlos Leal Barragan, a Mexican national, was sentenced to serve 16 months' incarceration followed by three years' supervised release. Leal Barragan pleaded guilty in January of this year to felony charges in connection with the smuggling of sea turtle and other exotic skins and skin products into the United States from Mexico.

Leal Barragan was charged along with co-defendants George Caraveo, Maria de los Angeles Cruz Pacheco, Octavio Munoz, and Esteban Lopez Estrada, all Mexican nationals. Leal Barragan's family has been involved for many years in the tanning of sea turtle hides, purchased from fishermen. The skins are sold to boot makers in Mexico and are sometimes smuggled to boot makers in the United States. Leal Barragan sent three shipments comprising approximately 360 sea turtle skin pieces, along with sea turtle boots, belts and shoes from Mexico to undercover agents of the USFWS working in Colorado during 2007, in violation of U.S. law and international treaty. The value of these items is approximately $30,000.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Cody Bartolini, No. 2:07-CR-00237 (D. Nev.), AUSA Christina Brown [redacted]

On April 24, 2008, Cody Bartolini was sentenced to pay a $10,000 fine, complete a five-year term of probation and forfeit his reptiles and other equipment. Bartolini pleaded guilty in January of this year to three felony counts of attempted unlawful interstate sale of wildlife, specifically, seven Green Mamba snakes, two Forest Cobras, one Black-Neck Spitting Cobra, and five different breeds of rattlesnakes.

According to the indictment, between December 2006 and March 2007, Bartolini attempted to sell the snakes on the Internet, even though he knew he had captured some of the snakes in violation of Nevada state law. Under Nevada law, it is illegal to possess certain non-indigenous snakes without proper licensing and permits. It also is illegal to possess indigenous snakes (such as the rattlesnakes charged in the indictment) without proper permits, even those designated under state law as "unprotected," when the snakes are possessed for a commercial purpose.

Wildlife agents were notified by an Ohio game warden that Bartolini was offering to sell and trade venomous reptiles via the Internet. Agents were able to determine that Bartolini had been offering venomous snakes for sale or trade via the Web from his residence in Las Vegas since at least September 2004. A search warrant executed at the defendant's residence resulted in the seizure of 48 snakes of various species, as well as a caiman, a Gila monster, and an alligator snapping turtle.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. M & N Foods, Inc., No. 2:08-CR-00086 (E. D. La.), AUSA Dee Taylor [redacted]

On April 16, 2008, M & N Foods, Inc., a food manufacturing company, was sentenced to serve one year of probation and a fine was not assessed. The company pleaded guilty April 3rd to a misdemeanor Clean Water Act violation for failing to file required discharge monitoring reports with the Louisiana Department of Environmental Quality ("LDEQ") for more than two years.

The company, which made spaghetti sauce and salad dressing for retail sale, was required by its permit to take samples of its wastewater discharge every six months and to report those results to the LDEQ. An inspection in November 2005 revealed that the company had not sampled, analyzed, or forwarded the reports for the monitoring periods of 2003, 2004, and the first half of 2005.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Rager Fertilizer Co., No. 2:07-CR-00126 (S.D. Ohio), AUSA Mike Marous ([redacted] and SAUSA Mike McClary [redacted]

On April 16, 2008, Rager Fertilizer Co. ("RFC") was sentenced to pay a $5,000 fine and $10,000 in restitution. The company pleaded guilty last year to one Clean Water Act violation for discharging pollutants without a permit.

RFC is a business that operates liquid bulk fertilizer storage and conducts fertilizer application. The facility had a discharge point at Little Walnut Creek, which drains into Walnut Creek, a tributary of the Scioto River. The facility used a dike containment area to hold fertilizer that had spilled from storage tanks. In May 2003, the company discharged spilled fertilizer, containing ammonia, nitrogen and phosphorus from the dike through a series of drainage tiles and basins into the Little Walnut Creek without a permit.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency and the Ohio Bureau of Criminal Investigation and Identification.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

July 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

- [redacted]
- [redacted]
- United States v. Grace, __F3d.__ 2008 WL 2052204 (9th Cir. May 15, 2008).

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. Fairport Shipping, Ltd.	*Vessel*/ APPS
C. D. Calif.	United States v. Union Pacific Railroad Company	*Wastewater Discharge*/ CWA misdemeanor
D. Colo.	United States v. Oscar Cueva United States v. George Caraveo	*Sea Turtle Products*/ Conspiracy, Smuggling, Money Laundering
S. D. Fla.	United States v. George Townsend	*Yellowfin Tuna Import*/ Lacey Act
D. Idaho	United States v. Abner Schultz et al.	*Dredge and Fill*/ CWA
D. Minn.	United States v. Tia Yang et al.	*Smuggled Wildlife Parts/ Conspiracy to Smuggle Wildlife and Anabolic Steroids*
[redacted]	[redacted]	[redacted]
D. N. J.	United States v. Clipper Marine Services et al.	*Vessel*/ Conspiracy, APPS, False Statement
[redacted]	[redacted]	[redacted]
S. D. N. Y.	United States v. Nicholas Miritello	*NYDEP Employee*/ False Statement
D. Ore.	United States v. Durbin Hartel United States v. Spencer Environmental Inc. et al.	*Worker Death*/ Obstruction, False Statement *Waste Recycler*/ RCRA
E. D. Pa.	United States v. Reederei Karl Schlueter et al.	*Vessel*/ APPS

Districts	Active Cases	*Case Type* / Statutes
E. D. Tenn.	**United States v. Gerald Lakota**	***Film Developing Plant*/ CWA, False Statement**
N. D. Tex.	**United States v. James Epting et al.**	***Paint Waste*/ RCRA, CWA Misdemeanor**
S. D. Tex.	**United States v. The Hunting Consortium et al.**	***Hunting from Helicopters*/ Lacey Act**
[redacted]	[redacted]	[redacted]
S. D. W. V.	**United States v. Michael Joe Clark**	***Meth Lab*/ CAA Negligent Endangerment, Controlled Substances Act**

Additional Quick Links

Significant Opinions

2nd Circuit

[redacted]

Back to Top

5th Circuit

[redacted]

[redacted]

Back to Top

9th Circuit

W.R. Grace v. United States, __U.S.__, __S.Ct.__ 2008 WL 1740074 (9th Cir. June 23, 2008).

On June 23, 2008, the Supreme Court denied both of the defendants' petitions for certiorari. The defendants' petitions sought review of two specific holdings of a September 20, 2007, Ninth Circuit decision (504 F.3d 745), which had reversed the district court's earlier orders. The first issue was whether the Clean Air Act's inclusion of "asbestos" in its list of hazardous air pollutants, 42 U.S.C. §7412(b)(1), provides an independent definition and gives fair notice of its scope in a criminal prosecution charging defendants with "knowingly releas[ing] into the ambient air [a] hazardous air pollutant listed pursuant to section 7412," and knowing at the time of the release "that [they] thereby place[] another person in imminent danger of death or serious bodily injury" in violation of 42 U.S.C. §7413(c)(5)(A). The second issue was whether the knowing endangerment object of the Clean Air Act conspiracy count in the superseding indictment was timely filed pursuant to 18 U.S.C. §3288, which allows the government six months to re-indict whenever an indictment is dismissed for any reason after the applicable statute of limitations has expired, except "where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations or some other reason that would bar a new prosecution."

Back to Top

Trials

United States v. Hunting Consortium et al., No. 4:07-CR-00381 (S.D. Tex.), ECS Trial Attorneys Wayne Hettenbach [redacted] and Madison Sewell [redacted] with assistance from ECS Senior Trial Attorney Claire Whitney [redacted] and ECS Paralegal Kate Hasty ([redacted]

On June 12, 2008, jurors acquitted The Hunting Consortium, a hunting outfitter based in Berryville, Virginia, and Robert Kern, the company president, after hearing 11 witnesses in this five-day trial. The defendants were charged in September 2007 with violating the Lacey Act for conducting an illegal hunt in Russia.

Snow Sheep

There were several rulings during the trial that adversely affected the government's case. U.S. District Judge David Hittner denied the government's request to instruct on the lesser included offense (negligence), and would not allow the government to show jurors a video of a defense witness (a Russian hunting official) showing that, contrary to his testimony, he had received cash from U.S. hunters on other hunts outfitted by Kern.

According to the indictment, in the summer of 2002, Kern organized and participated in a big-game hunt in Russia. During the hunt, Kern employed helicopters to locate trophy-sized moose and sheep for hunters on the trip. The helicopters then were used as airborne shooting platforms by the hunters. The use of helicopters in the taking of wildlife is prohibited by Russian law. The trophy parts of the wildlife were then transported from Russia and imported into the United States at Bush Intercontinental Airport in Houston. The defense claimed that, under Russian law, the hunt was legal because the meat was to be used at a Russian children's school.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Indictments

United States v. Durbin Hartel, No. 2:08-CR-00266 (D. Ore.), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton ([redacted].

On June 5, 2008, Durbin Hartel, a former engineer with Spencer Environmental Inc. ("SEI"), was charged with obstruction of justice and false statement violations for covering up the death of a worker at the SEI facility.

Timothy Smith, a summer employee of SEI, was told to pressure wash a 10,000 gallon wastewater tank. Following the cleaning, Smith suffered lung damage, which progressed and ultimately resulted in his death. Hartel is alleged to have filled a wastewater tank with a viscous sludge (rocker lube) to conceal its former contents. Attempts to determine what the actual substance was that caused Smith's injury were thwarted by the wastewater tank having been filled. When Oregon Department of Environmental Quality and Oregon Occupational Safety and Health Division investigators interviewed Hartel, he denied any knowledge that the tank had been filled with sludge despite his allegedly ordering an SEI worker to fill the tank.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Oregon Department of Environmental Quality, and the Oregon Occupational Safety and Health Division.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Tia Yang et al., No. 0:08-CR-00150 (D. Minn.), AUSA LeeAnn Bell [redacted]

Elephant teeth

On May 13, 2008, a mother and daughter were indicted in connection with smuggling protected wildlife into the U.S. for financial gain. Pa Lor and Tia Yang each were charged with one count of conspiracy to smuggle wildlife and one count of conspiracy to distribute and possess with intent to distribute anabolic steroids.

The indictment alleges that from October 2005 to August 2006, the two women conspired to fraudulently bring wildlife into the U.S. for sale and offer wildlife for sale at a booth at the International Marketplace in St. Paul. The wildlife included parts of Asian elephant, giant squirrel, leopard cat, mongoose, and the elegant flying squirrel. On October 23, 2005, Lor arrived at the Minneapolis-St. Paul International Airport from Laos and did not declare any animal or wildlife items on her Customs and Border Protection Declaration form. During an inspection of Lor's baggage, approximately 1,388 individual pieces of undeclared wildlife, including two Asian elephant teeth, 17 serow horns, 51 pieces of douc langur (a primate), leopard cat, red or rusty-spotted cat and giant squirrel.

Two undercover buys were made by agents in November of 2005 and June 2006, yielding animal parts from species including slow loris, bear and unidentified primates. A search warrant was executed in August 2006 at the booth that was leased by Yang and operated by Lor, with several wildlife items recovered including: black-striped weasel, gibbon, leaf monkey, monitor lizard, tapir, slider turtles, reticulated python and small-clawed otter. Additionally, agents recovered a total of 184 units of anabolic steroid smuggled into the U.S. or offered for sale at the flea market.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas

United States v. Clipper Marine Services et al., No. 2:07-CR-00264 (D.N.J.), ECS Senior Trial Attorney David Kehoe [redacted] **and AUSA Brad Harsch** [redacted]**.**

On June 19, 2008, Clipper Marine Services ("Clipper Marine") pleaded guilty to the first three counts of an 11-count indictment charging conspiracy, an APPS violation, and a false statement violation arising from the dumping of oily waste in international waters from the *M/T Clipper Trojan*. Clipper Marine signed the agreement on behalf of the other two defendants, Clipper Wonsild Tankers

Holding A/S ("Clipper Wonsild") and Trojan Shipping Co., Ltd. ("Trojan Shipping"). In this novel agreement, the company has agreed, as part of an environmental compliance plan ("ECP"), to retrofit certain ships with state-of-the-art oily water separators and implement a real-time remote monitoring system to track oil waste levels and the usage of oil waste processing equipment on board five of its ships.

Clipper Marine also has agreed to pay a $3.25 million fine and make a community service payment of $1.5 million, for a total monetary payment of $4.75 million. The remote monitoring system will allow the Coast Guard and on-shore employees of the company to monitor waste levels and the use of oil waste processing equipment using data transmitted via satellite.

In accordance with the plea agreement, Clipper Marine, a subsidiary of Clipper Wonsild, has agreed to pay the fine, as well as the community service payment, and will manage the ECP. The Plan will be funded by both Clipper Wonsild and Trojan Shipping, the Bahamian owner of the *Clipper Trojan*.

The indictment returned in March 2007 charged vessel crew members with dumping oil sludge directly overboard in May and June of 2006 and with regularly dumping oil-contaminated bilge water overboard between March and June of 2006. Clipper Wonsild and Clipper Marine are Danish companies that commercially operated and managed the vessel. All three companies are part of The Clipper Group A/S, a global shipping consortium based in Denmark.

[redacted]

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Gerald Lakota, No. 3:07-CR-0019663 (E.D. Tenn.), ECS Assistant Chief Joseph Poux [redacted] and AUSA Matthew Morris [redacted]

On June 18, 2008, Gerald Lakota, a former employee of Fujicolor Processing, pleaded guilty to a Clean Water Act violation for falsifying discharge monitoring reports ("DMRs").

As an employee at Fujicolor's film developing facility in Terrell, Texas, Lakota was responsible for environmental compliance at the plant, which included preparing and submitting the plant's wastewater DMRs. In order to ensure compliance, from January 1999 through May 2002, Lakota selectively screened samples of the facility's wastewater effluent and did not report those results that contained unpermitted levels of silver.

Due to the defendant's health problems, he agreed to waive venue and agreed to plead guilty in the Eastern District of Tennessee where he now resides.

In a related matter, after disclosing the findings of an internal investigation to federal and state officials, Fujicolor pleaded guilty in September 2007 to negligently operating a source in violation of a pretreatment permit at its facility in Terrell and was sentenced to pay a $200,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Texas Commission on Environmental Quality.

Back to Top

[redacted]

Back to Top

United States v. Abner Schultz et al., No. 4:08-CR-00101 (D. Idaho), ECS Trial Attorney James B. Nelson [redacted] and AUSA Michael J. Fica [redacted]

On May 29, 2008, Abner Schultz pleaded guilty to a felony Clean Water Act violation arising out of unlawful dredge and fill work in the Salmon River between June and November 2005. The unlawful activity occurred on the Wagonhammer Campground property in North Fork, Idaho, which is owned by Schultz. A spring-fed tributary to the Salmon River flows across the Wagonhammer Campground and into the Salmon River.

Upper fill along Salmon River

Specifically, Schultz pleaded guilty to discharging dredge and fill material below the ordinary high water mark of both the Salmon River and the tributary. The information charges that Schultz directed employees of Dahle Construction, L.L.C., to place more than 400 linear feet of perforated irrigation pipe into the tributary and to cover the pipe with approximately 300 cubic yards of rock and topsoil. Schultz later directed Dahle Construction employees to dredge approximately 500 cubic yards of dirt and rock from the tributary and place that dredged material along the bank of the Salmon River, below the ordinary high water mark, and in low-lying wetland areas connected to the tributary. The dredge and fill work was in violation of a permit issued by the United States Army Corps of Engineers.

Pursuant to the plea agreement, Schultz has agreed to remove all fill material from the tributary and the Salmon River. He faces a maximum penalty of three years' imprisonment, five years'

probation, and a $250,000 fine. Dahle Construction and its owner Kent Dahle each pleaded guilty to misdemeanor CWA violations on April 1, 2008, for their roles in the unlawful dredge and fill activity. Sentencing in that case is scheduled for August 5, 2008, and Schultz is scheduled to be sentenced on August 15, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division and National Oceanic and Atmospheric Administration.

Back to Top

United States v. Michael Joe Clark, No. 2:08-CR-00063 (S.D.W.V.), SAUSA Perry McDaniel [redacted]

Anhydrous ammonia tank

On May 27, 2008, Michael Joe Clark pleaded guilty to violating the negligent endangerment provision of the Clean Air Act and also to a violation of the Controlled Substances Act for the theft of anhydrous ammonia and for causing a release of this extremely hazardous substance.

On February 27, 2008, Clark broke into a 1,000 gallon tank of anhydrous ammonia that was used to treat acidic water at a former coal mining site, with the intent to steal ammonia to manufacture methamphetamine. As Clark was siphoning the ammonia into a propane tank, the valve broke and caused a release of anhydrous ammonia. The release burned Clark's hands and lungs, resulting in his being hospitalized. Several emergency responders also required medical attention. The chemical release further resulted in a voluntary shelter-in-place for residents adjacent to the site. The release lasted for several hours and required numerous attempts by emergency personnel to stop the leak.

Clark is scheduled to be sentenced on September 3, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Fairport Shipping, Ltd. (D. Alaska), No. 3:04-CR-00130, AUSA Karen Loeffler [redacted] and AUSA Aunnie Steward [redacted]

On June 23, 2008, Fairport Shipping, LTD, headquartered in Athens, Greece, pleaded guilty to, and was sentenced for, an APPS oil record book violation. The company was sentenced to pay a $250,000 fine with $150,000 suspended on the condition that it commit no further violations of United States' laws.

On March 6, 2002, the *M/V Asahi*, a refrigerated cargo vessel operated by Fairport Shipping, entered Dutch Harbor, Alaska. A subsequent inspection by the U.S. Coast Guard revealed a seven-foot "by-pass" hose that allowed oily water and pump oil waste to be discharged from bilge and waste oil storage tanks directly overboard. On at least two occasions during a voyage from Tokyo, the hose was

used to bypass pollution control equipment. The chief engineer, despite never using the oil water separator ("OWS"), entered statements in two oil record books indicating that the OWS had been used, further falsifying the amounts of sludge that were burned.

The company was originally charged in November 2004 in a five-count indictment, but avoided prosecution until this month.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the United States Coast Guard Investigative Service.

Back to Top

United States v. Oscar Cueva, No. 1:07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On June 20, 2008, Oscar Cueva was sentenced to serve 16 months' incarceration followed by three years' supervised release. He also will be required to make either a $5,000 community service payment to the Ocean Conservancy's "SEE Turtles" project, complete 350 hours of community service for an approved sea turtle conservation program or project, or participate in the production of a public service announcement encouraging the observance of laws that conserve sea turtles and prohibit the smuggling of their parts and products.

Cueva pleaded guilty in January of this year to a felony count of conspiracy to smuggle protected sea turtle and exotic skins and skin products into the United States and to launder funds in support of that smuggling.

Cueva and ten others were indicted in Denver in August 2007, following a multi-year U.S. Fish and Wildlife Service undercover investigation named "Operation Central." Cueva was charged with co-defendants Miguel Vazquez Pimentel, Martin Villegas Terrones, and Esteban Lopez Estrada, all Mexican nationals, in connection with the smuggling of sea turtle and other exotic leathers and exotic leather products into the United States from Mexico. Cueva, acting as a "mule" or middleman, received sea turtle and other exotic skins, boots, and other products from his co-defendants in Mexico, and brought these products into the United States in violation of U.S. and international law. In furtherance of the smuggling activities, Cueva also participated in the transfer of funds from the United States to Mexico.

There are seven known species of sea turtles. Five of the seven species are listed as "endangered" under the Endangered Species Act. Sea turtles often are killed illegally for their meat, skins, eggs and shell, all of which have commercial value. Cueva was involved in smuggling into the United States wildlife parts and products with a total fair market value of between $200,000 and $400,000.

This case was investigated by the United States Fish and Wildlife Service and the result of a joint operation among the Department of Justice; the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

Back to Top

United States v. Reederei Karl Schlueter et al., No. 2:08-CR-00341 (E.D. Pa.), ECS Trial Attorneys Lana Pettus (and Colin Black and AUSA Sarah Grieb

On June 16, 2008, Reederei Karl Schlueter, the operator of GmbH & Co. KG ("RKS"), a ship management company, and chief engineer Nikola Ilijic were sentenced after pleading guilty to an APPS violation for falsifying the oil record book ("ORB") for the commercial vessel *M/V MSC Uruguay* ("*Uruguay*").

Bypass hose

Ilijic was sentenced to pay a $5,000 fine and complete a 30-month term of probation. RKS was sentenced to pay a $1,000,000 fine with an additional $200,000 community service payment that will go to the National Fish and Wildlife Foundation. The company also will implement an environmental compliance plan.

On or about January 25, 2008, the *Uruguay* arrived in the Port of Philadelphia. Based in part on a letter from some of the ship's crew members, the Coast Guard inspected the ship and discovered evidence indicating that oily bilge waste had been discharged directly overboard on or about December 2, 2007, and January 3 and 4, 2008. The information further states that on or about January 25, 2008, the ORB was presented to officials with false entries indicating that the oil water separator had been used on December 3, 2007, and January 4, 2008.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Nicholas Miritello, No. 7:07-CR-00603 (S.D.N.Y.), AUSA Anne Ryan ([redacted])

On June 12, 2008, Nicholas Miritello, an employee of the New York City Department of Environmental Protection ("NYDEP") was sentenced to serve two years' probation. A fine was not assessed.

Miritello pleaded guilty in January of this year to a felony false statement violation, after being charged with four false statement violations for making false entries in NYDEP records relating to the turbidity levels of drinking water.

NYDEP is required to monitor water for turbidity at four-hour intervals every day at the facility known as the Catskill Lower Effluent Chamber. The defendant was charged with making false entries in the log book, which supposedly reflect numerical results derived by the various tests he was required to run, when in fact he had not performed all of the required steps on four separate occasions in 2005.

Although turbidity itself causes no ill health effects, it can interfere with disinfection and provide a medium for microbial growth. Turbidity further may indicate the presence of disease-causing organisms, including bacteria, viruses, and parasites.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation, and the Federal Bureau of Investigation.

Back to Top

United States v. James Epting et al., No. 3:07-CR-00112 (N.D. Tex.), AUSA Marcus Busch ([redacted])

On June 11, 2008, James Epting is the final defendant to be sentenced in this case involving the illegal storage, transportation and disposal of hazardous paint waste at an unpermitted facility. Epting, an employee of The Store Decor Company, Inc.-Retailgraphics Inc. ("Store Decor") will complete a three-year term of probation and pay $3,412 in restitution to the Texas Commission on Environmental Quality ("TCEQ").

On June 4, 2008, Store Decor and company president Robert Potts were sentenced. The company will pay a $50,000 fine, pay $50,000 in restitution to the Kaufmann County Sheriff's Office Federal Seizure Fund and complete a two-year term of probation. Potts will pay a $25,000 fine, $3,412 in restitution to the TCEQ and complete a one-year term of probation,.

Store Decor, Potts, Epting and plant manager Willie Thames were variously charged in June 2007 with conspiracy to violate RCRA, plus three substantive RCRA violations.

The Store Decor is a retail graphics business that used paint, solvents, and inks and did not have a permit to store the resultant hazardous waste. The indictment states that, from January 2002 until early May 2004, the defendants conspired to illegally store, transport, and dispose of this paint waste. Store Decor, Potts, and Thames were further charged with transporting seven 55-gallon drums of hazardous waste paint without a manifest in May 2004, and then disposing of these drums at an unpermitted facility.

In February 2008 the company pleaded guilty to a RCRA violation and the three individuals each pleaded guilty to one CWA misdemeanor violation. Thames was sentenced May 21, 2008, to pay a $25,000 fine, $3,412 restitution to the TCEQ, and will complete a one-year term of probation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Kaufman County Sheriff's Office.

Back to Top

United States v. Union Pacific Railroad Company, No. 2:06-CR-00607 (C.D. Calif.), AUSA Dorothy Kim [redacted]

On June 9, 2008, Union Pacific Railroad Company ("UPRC") was sentenced to pay a $200,000 fine and will make a $200,000 community service payment to the United States Fish and Wildlife Foundation. The company will further complete a three-year term of probation with a special condition to pay full restitution to the California Department of Fish and Game, the United States Coast Guard, and the Los Angeles County Fire Department, Health Hazardous Materials Division for cleanup costs.

UPRC pleaded guilty in April of this year to two misdemeanor Clean Water Act violations for negligently discharging pollutants, specifically petroleum and oil-contaminated wastewater, into the Los Angeles River from January 2001 through March 2003.

The company engaged in locomotive maintenance and repair operations at the Taylor Yard ("the Yard"), which is located on the eastern banks of the Los Angeles River. The Yard also is adjacent to an area designated as a bird sanctuary. Operations at the Yard generated large amounts of pollutants, including waste petroleum and oils, waste lubrication and hydraulic oils, used antifreeze, and petroleum and oil-contaminated wastewater. These pollutants were discharged via piping systems into wastewater ponds located on the Yard.

During rain events in January and August 2001, a combined total of approximately 350 gallons of wastewater was discharged from the ponds into the River due to the company's failure to properly maintain its treatment system.

This case was investigated by the California Department of Fish and Game, the Los Angeles County Fire Department, Hazardous Materials Division, and the Federal Bureau of Investigation.

Back to Top

United States v. Spencer Environmental Inc. et al., No. 3:07-00381 (D. Ore.), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton ([redacted]

On June 5, 2008, Donald Spencer was sentenced to serve six months' incarceration followed by one year of supervised release. A fine was not imposed. His company, Spencer Environmental Inc. ("SEI"), was sentenced to pay $150,000, half of which will be paid as a fine, and the other half will be paid to the National Fish and Wildlife Fund to promote resource conservation and rehabilitation in Oregon.

Waste oil

SEI and company president Donald Spencer pleaded guilty last year to RCRA charges stemming from mishandling waste at a recycling and wastewater treatment plant they operated. Specifically, SEI pleaded guilty to a RCRA violation for accepting

corrosive and ignitable hazardous wastes without a permit between 2001 and 2003. The company also pleaded guilty to mishandling waste oil in violation of RCRA. Donald Spencer pleaded guilty to a single count of mishandling waste oil stemming from repeatedly overfilling a waste pit used for oily wastes and then failing to properly clean up the resultant spills between 1999 and 2003.

SEI received a variety of waste streams for recycling, including used oil, which was the bulk of its business. It also received wastewater from a leaking underground gasoline storage tank remediation site, which was tested to be ignitable. The company also discharged molybdenum, zinc, and grease to Portland's POTW in excess of its permit limitations.

The case arose from an investigation into a fire at SEI's former facility. Following the sale of SEI's facility, a fire broke out when a welding spark touched off used oil residue in a pit and quickly spread to other oil-soaked parts of the facility, largely destroying the facility and leading to the contamination of Johnson Creek, a tributary of the Willamette River known to contain threatened salmonids.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. George A. Townsend III, No. 1:08-CR-20056 (S.D. Fla.) AUSA Tom Watts-FitzGerald [redacted]

On June 2, 2008, George A. Townsend III was sentenced to pay a $3,000 fine which will be paid into the Magnuson-Stevens Fisheries Fund and will complete a two-year term of probation.

Townsend pleaded guilty in March of this year to a Lacey Act violation for the illegal importation of more than 11,000 pounds of yellowfin tuna from Trinidad and Tobago into Miami, Florida. The defendant owned and operated the Canadian-registered commercial longline fishing vessel, the *UNDA*, through a Bahamian-registered company and a business he incorporated in Canada. He did not hold a license to fish or transship fish on the high seas.

On June 7, 2005, Townsend caused approximately 11,063 pounds of yellowfin tuna to be shipped in foreign commerce from Trinidad and Tobago to a seafood dealer in Miami. As part of the plea agreement, Townsend also will forfeit the fish.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Jorge Caraveo et al., No.1:07-CR-00358 and 00359 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted].

On May 30, 2008, Jorge Caraveo was sentenced to serve 18 months' incarceration followed by three years' supervised release. A fine was not assessed. Caraveo pleaded guilty in January of this year to three felony smuggling violations in connection with the smuggling of sea turtle and other exotic skins and skin products into the United States from Mexico.

Caraveo received sea turtle and other exotic skins, boots, and other products from his co-defendants in Juarez, Mexico, and brought these and other products into the United States in violation of U.S. and international law. Co-defendant Carlos Leal Barragan admitted to buying sea turtle skins in Mexico and then selling them to customers in Mexico and undercover agents in the United States. He then sent the skins to Caraveo for smuggling across the border into the United States. It is estimated

that Caraveo smuggled wildlife parts and products into the United States with a total fair market value of between $200,000 and $400,000.

Caraveo, Leal Barragan and nine others were charged in Denver in August 2007, following a multi-year United States Fish and Wildlife undercover investigation.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Are you working on Environmental Crimes issues?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

August 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. Alaska Electric Light and Power	*Bald Eagle Nest/* Bald and Golden Eagle Protection Act
[redacted]	[redacted]	[redacted]
N. D. Calif.	United States v. Fleet Management Limited et al. United States v. Casilda Shipping, Ltd. et al.	*Vessel/* APPS, Obstruction, False Statement, Migratory Bird Treaty Act *Vessel/* Conspiracy, APPS, False Statement
S. D. Fla.	United States v. Mac Rivenbark United States v. Zamorro Shone	*Orchids/* Lacey Act *Queen Conch Shipments/* Food, Drug and Cosmetics Act
S. D. Ga.	United States v. Ofer (Ships Holding) Ltd. et al.	*Vessel/* APPS, Misprision of Felony
N.D. Ill.	United States v. David Jacobs	*Metal Finisher/* RCRA, Employee Retirement Income Security Act
N. D. Iowa	United States v. Ken Pap	*Zinc Plating Facility/* RCRA
D. Md.	United States v. Patrick Brown et al.	*Vessel/* Conspiracy, APPS, False Statement
[redacted]	[redacted]	[redacted]
E. D. Mich.	United States v. HSKM, Inc.	*Nickle-Chrome Alloy Manufacturer/* RCRA
[redacted]	[redacted]	[redacted]
W. D. Mo.	United States v. Thomas Jerry Nix, Jr.	*Paddlefish Roe/* Conspiracy, Lacey Act
[redacted]	[redacted]	[redacted]
E. D. N. Y.	United States v. Lawrence Aviation Industries, Inc. et al.	*Aeronautics Industry/* RCRA
[redacted]	[redacted]	[redacted]
W. D. N. Y.	United States v. Ronald Jagielo	*Chronic Violator, Metal Plating Facility/* RCRA
W.D. N.C.	United States v. Kirby Case	*POTW/* Clean Water Act
S. D. Tex.	United States v. B. Navi Ship Management Services et al.	*Vessel/* APPS, False Statement
W.D. Wash.	United States v. Darrel Norris et al. United States v. Andrew Noel et al.	*Pigeon Breeders/* Migratory Bird Treaty Act *Illegal Whale Hunt/* Marine Mammal Protection Act

Additional Quick Links

Trials

[redacted]

Back to Top

Indictments

United States v. Fleet Management Limited et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSAs Stacey Geis ([redacted] and Jonathan Schmidt [redacted]

On July 22, 2008, a grand jury returned a second superseding indictment charging Fleet Management Limited, a Hong Kong ship management company, with negligently causing the discharge of 50,000 gallons of oil from the *Cosco Busan* into the San Francisco Bay in November 2007. The company is further charged with falsifying documents to conceal the company's negligence after the ship crashed into the San Francisco Bay Bridge. Captain John Cota was previously charged in this matter.

Fleet Management, the company responsible for operating the *Cosco Busan*, was charged with three false statement violations and three counts of obstructing justice. According to the indictment, Fleet Management, acting through senior ship officers and shore-based supervisory officials, concealed documents with the intent to obstruct the investigation of the spill. The falsified documents include a fictitious passage plan for November 7, 2007, the day of the crash, as well as for two prior voyages made after the company assumed management of the vessel in October 2007.

The corporation is further charged with Clean Water Act misdemeanor violations and with violating the Migratory Bird Treaty Act for causing the death of protected species of migratory birds. As a result of the discharge of heavy fuel oil from the *Cosco Busan*, approximately 2,000 birds died, including brown pelicans, marbled murrelets, and western grebes. The brown pelican is a federally endangered species and the marbled murrelet is a federally threatened species and an endangered species under California law.

Fleet Management is now charged as a co-defendant with Cota, a California ship pilot who was responsible for navigating ships through challenging waters. On the day of the spill, while piloting the ship from port in heavy fog, the captain and the company purportedly failed to pilot a collision-free course and failed to adequately review the proposed course with the crew on official navigational charts. Further, the defendants allegedly failed to use the ship's radar as they approached the Bay Bridge, failed to use positional fixes, and failed to verify the ship's position using official aids of navigation throughout the voyage. These failures led to the ship's striking the bridge and causing the discharge of approximately 50,000 gallons of heavy fuel oil.

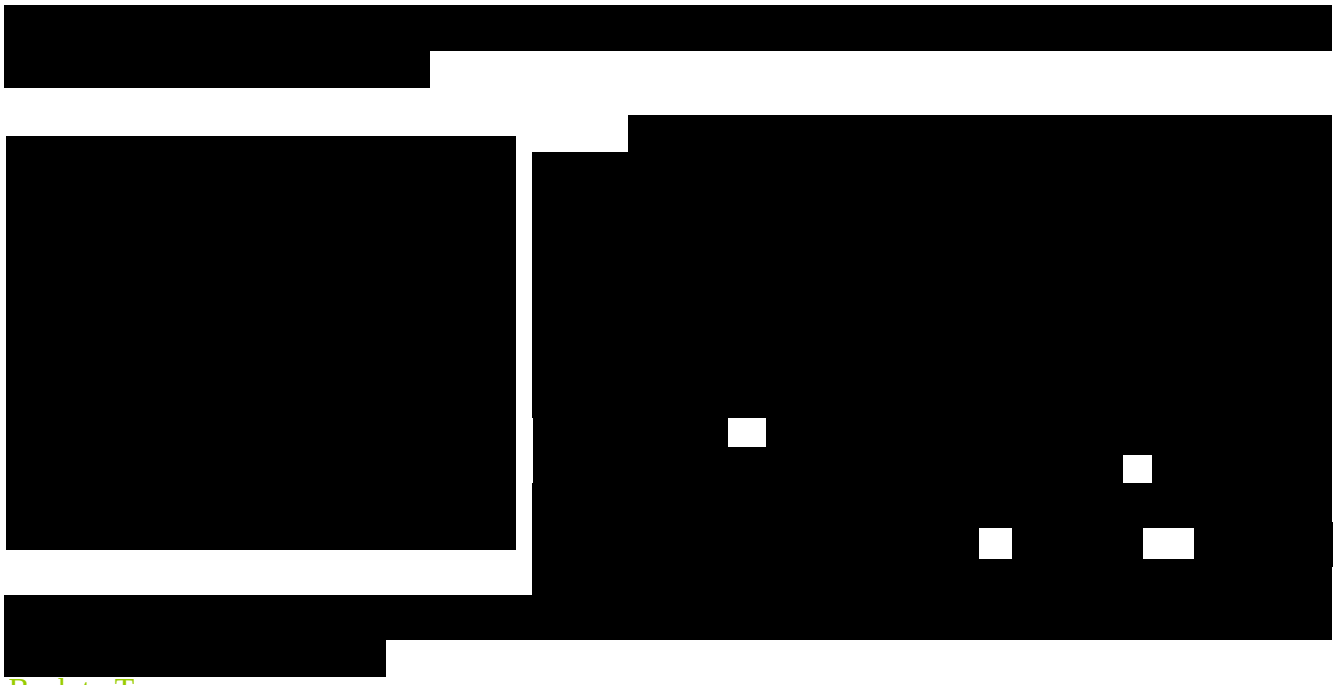
Fleet Management also is charged with negligence for failing to adequately train the new crew that it had placed on the ship and for failing to post an adequate lookout.

Cota also is charged with making false statements to the Coast Guard in 2006 and 2007 concerning his medications and medical conditions. Coast Guard regulations require that pilots have an annual physical examination that results in the completion of a medical evaluation form. The form must be completed by a licensed physician or physician's assistant, signed by the pilot, and then submitted to the Coast Guard. Cota is alleged to have knowingly and willfully made false statements on the forms when he certified that all the information he provided was complete and true to the best of his knowledge. In fact, the indictment states that Cota knew that the information he provided was neither complete nor true, including information regarding his current medications, the dosage, possible side effects and medical conditions for which the medications were taken.

On July 17, 2008, during a motions' hearing, the court denied Cota's motion to dismiss the Clean Water Act count and his motion to dismiss the false statement counts. The court granted Cota's motion to sever the false statement counts from the CWA and MBTA counts. A trial on the CWA counts is tentatively scheduled to begin on October 6, 2008.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top



Back to Top

United States v. Mac Rivenbark, No. 1:08-CR-20633 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On July 10, 2008, an indictment was filed against Mac Rivenbark charging him with Lacey Act violations in connection with the illegal importation of more than 1,400 orchids from the Republic of the Philippines in February 2005.

The indictment alleges that, on February 25, 2008, Riverbank presented documents to customs authorities at Miami International Airport falsely stating that this shipment of orchids had been artificially propagated, when in fact they were collected from the wild in the Republic of the Philippines.

Orchids attached to tree bark

Orchids are protected under CITES and have been listed under the international treaty since January 1975.

This case was investigated by the United States Fish and Wildlife Service, the United States Department of Agriculture, Office of Inspector General, and the United States Immigration and Customs Enforcement.

Back to Top

United States v. Thomas Jerry Nix, Jr., No. 3:08-CR-05015 (W.D. Mo.), AUSA Steven M. Mohlhenrich [redacted].

Paddlefish roe

On July 9, 2008, Thomas Jerry Nix, Jr., was charged in a seven-count indictment for violations stemming from using illegal nets to harvest the roe (eggs) from paddlefish that subsequently was processed into caviar and sold to a Tennessee company. Between January 11 and February 11, 2008, Nix is alleged to have sold approximately 387 pounds of paddlefish caviar out of state for $35,820.

The indictment states that, from December 31, 2007, to February 17, 2008, Nix and an unindicted co-conspirator participated in a conspiracy to transport and sell paddlefish roe that was taken in violation of state and federal laws. Nix set gill nets (a commercial fishing net set vertically in the water so that fish swimming into it are entangled by the gills in its mesh) in Table Rock Lake ("the Lake"). Nix returned to check the nets every one to three days, removing the fish that were caught, and relocating the nets on the Lake as the paddlefish moved upstream to spawn.

After removing and packaging the roe from the fish he had caught, and in order to conceal his illegal activities, Nix allegedly weighted the dead fish with rocks so that they would sink in the Lake. The defendant processed the roe into caviar, which was weighed, packaged, transported and sold in Tennessee. According to the indictment, Nix represented that the caviar had been lawfully taken in Arkansas, which was untrue since the defendant did not possess a fishing license from the state, nor did he possess the required permits and documents from the state of Missouri, where he resides.

On February 17, 2008, Nix and his co-conspirator were apprehended by Missouri Department of Conservation agents with approximately 78 pounds of unprocessed paddlefish roe. A search of the

defendant's residence revealed approximately 91 pounds of paddlefish roe that had been processed into caviar and packaged in containers labeled for sale to a company located in Tennessee.

In addition to conspiracy, Nix is charged with one Lacey Act violation for possessing and transporting unprocessed paddlefish roe taken in violation of federal regulations and five Lacey Act counts for transporting and selling paddlefish caviar across state lines. A forfeiture allegation will require Nix to forfeit equipment and vehicles, including a 20-foot Bumblebee 200 Pro boat and trailer.

The American paddlefish is native to the Mississippi River drainage system and is taken for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines. The paddlefish is a close relative of the sturgeon from which most commonly known caviars were obtained. With diminishing worldwide sturgeon populations and increased international protection for declining stocks, American paddlefish has become an increasingly popular and valuable substitute for sturgeon caviar. Female paddlefish reach reproductive maturity at nine to 11 years of age, producing up to 10 pounds of roe, and can weigh 100 pounds or more.

This case was investigated by the United States Fish and Wildlife Service and the Missouri Department of Conservation.

Back to Top

United States v. Casilda Shipping, Ltd. et al., No. 4:08-CR-00448 (N.D. Calif.), AUSAs Stephen Corrigan [redacted] and Wade Rhyne [redacted]

Rio Gold

On July 9, 2008, Casilda Shipping, Ltd., a Greek company that owns the *Rio Gold*, a 23,000 ton ocean-going cargo ship flagged in Malta; Genesis Seatrading Corporation, the Greek operator; and Pantelis Thomas, the Greek chief engineer; were charged with conspiracy to violate APPS, substantive violations of APPS, false statements made to the Coast Guard, and the falsification of records. The charges stem from the illegal discharge of oil and garbage into the ocean on several occasions prior to the *Rio Gold's* call on the port of Oakland on May 26, 2008.

According to the indictment, between July 2007 and May 2008, Thomas ordered the crew to use a bypass to illegally discharge oily waste overboard, as well as to discharge two large plastic barrels, one filled with oil sludge and the other filled with hydrochloric acid. The oil record book was falsified to conceal these activities as well.

The violations came to the attention of the Coast Guard after four crew members stepped forward while the ship was being inspected in Oakland on May 26, 2008. Subsequent investigation uncovered the bypass pipe and the omissions and false entries made in the oil record book.

This case was investigated by the United States Coast Guard.

Back to Top

Pleas

[redacted]

Back to Top

United States v. Alaska Electric Light and Power, No. 3:08-CR-00022 (D. Alaska), AUSA Aunnie Steward [redacted].

On July 16, 2008, Alaska Electric Light and Power ("AEL&P") pleaded guilty to a violation of the Bald and Golden Eagle Protection Act for destroying a bald eagle nest during construction of the Dorothy Lake Hydroelectric project in southeast Alaska. The company was sentenced to pay a $50,000 fine and will pay $50,000 in community service, which is to be dedicated to raptor rehabilitation in southeast Alaska. An additional $25,000 in restitution will be paid to the United States Forest Service as reimbursement for a historic cabin that also was destroyed during blasting.

As part of the permit for the project, AEL&P was required to minimize impact to the bald eagles in the area. The company was warned repeatedly that it was required to protect a tree known to contain a bald eagle nest and had been denied permission by the Department of Interior to take the tree down. Despite this knowledge, the tree with the nest was destroyed.

During the investigation it also was discovered that AEL&P was not in compliance with certain Clean Water Act requirements. These violations were dealt with through a civil resolution with the U.S. Environmental Protection Agency.

As part of its sentence, the company will serve 18 months' probation during which time it will update a Juneau area raptor study completed in 2001 and ensure that any recommendations are carried out on any new facilities to ensure avian protection. AEL&P also will undertake education of its employees, agents and contractors regarding obligations under the Bald and Golden Eagle Protection Act.

This case was investigated by the United States Fish and Wildlife Service and the United States Forest Service with assistance from the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Darrel Norris et al., No. 3:08-CR-05487 (W. D. Wash.), AUSA Jim Oesterle

On July 15, 2008, Darrel Norris, a pigeon breeder, pleaded guilty to a Migratory Bird Treaty Act ("MBTA") violation for killing a peregrine falcon. The case is a result of a year-long undercover sting targeting bird club members accused of killing thousands of hawks and falcons.

Along with 11 other members of the Northwest Roller Jockeys Pigeon Club prosecuted so far, Norris raised "roller" pigeons for competition. The unusual birds stall in flight, tumbling downward and performing acrobatics. The stalls make rollers easy prey for falcons and hawks, prompting some pigeon owners to kill the protected birds.

Investigation revealed that roller pigeon club members had killed as many as 2,000 hawks and falcons annually. Among the species killed were Cooper's hawks, red-tailed hawks and peregrine falcons, all of which are protected by international treaty.

Ten other defendants have pleaded guilty to MBTA violations and have paid fines or have been sentenced to perform community service. The court sentenced Norris to complete 120 hours of community service, stating that a fine would be too burdensome on the 69-year-old defendant.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Kirby Dean Case, No. 3:08-CR-00077 (W.D.N.C.), AUSA Steven Kaufman (

On July 15, 2008, Kirby Dean Case, the operator of a wastewater treatment plant, pleaded guilty to two Clean Water Act violations. Case admitted to discharging pollutants from the Town of Dallas publically owned treatment works ("POTW") into the Dallas Branch of the Catawba River Basin in violation of the POTW's permit. He also admitted to filing discharge monitoring reports with the North Carolina Department of Environment and Natural Resources between November 2006 and December 2007that included falsified sample levels for chlorine, ammonia, fecal coliform, and other materials.

On April 14, 2008, the Town of Dallas, North Carolina, was fined more than $140,000 by the state for the improper operation and maintenance of the POTW resulting in discharges of poorly treated or untreated wastewater that blanketed a half-mile of the receiving stream with sludge four to eight inches deep.

The fine, the state's largest for water pollution, was imposed by the North Carolina Division of Water Quality, which found during an inspection in November 2007 that the town's wastewater treatment plant was severely noncompliant, with half of its treatment capacity out of service and the remaining half overloaded with sewage solids. Solids also were present in the chlorine contact chamber. Since the chlorine chamber was not in use, the effluent from the plant was not disinfected. Although solids were being discharged with effluent, the town submitted samples that made it appear that the plant was adhering to the state's permit limits for the discharge.

During the inspection, the Dallas branch (a tributary of Long Creek), was observed to have a several-inch thick layer of partially-treated sewage about half a mile downstream from the plant's discharge point. State inspectors also found evidence of two unreported spills – one of untreated sewage, the other of partially treated wastewater – that reached the Dallas branch as well. The Town has been fined by the state 27 times since March 2003 for amounts totaling nearly $43,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina Division of Water Quality.

Back to Top

United States v. Lawrence Aviation Industries, Inc. et al., No. 2:06-CR-00596 (E.D.N.Y.), AUSA Mark Lesko [redacted]

On July 9, 2008, Lawrence Aviation Industries, Inc., ("LAI") and its owner and operator, Gerald Cohen, pleaded guilty to RCRA violations for their roles in storing more than 12 tons of hazardous waste at the facility.

LAI began operating in 1959 and manufactured titanium sheets used primarily in the aeronautics industry. Cohen became the sole owner and operator of LAI in 1982. Part of the manufacturing process required the use of large tanks containing corrosive acid and base liquids. At some point in time, LAI stopped using two of the tanks in the manufacturing operations, and instead used them to store liquids and sludge.

Tank containing hazardous waste

An inspection and testing of the contents of the tanks by USEPA and NYDEC in April 2003, confirmed that they contained corrosive hazardous waste, which had been stored without a permit.

Sentencing is scheduled for November 7, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Conservation.

Back to Top

United States v. HSKM, Inc., No. 1:08-CR-20365 (E.D. Mich.), AUSA Janet Parker [redacted] and SAUSA Dave Mucha [redacted].

On July 7, 2008, a corporation formerly known as Hoskins Manufacturing Company, and now known as HSKM, Inc., pleaded guilty to a TSCA violation.

Hoskins Manufacturing produced specialty nickel-chrome alloys and once had several facilities in Michigan, which it abandoned in 2001 when it went out of business. The violation specifically stems from the defendant's abandonment of a PCB-containing transformer at one of its facilities.

Hoskins Manufacturing became the focus of a joint criminal investigation by EPA and MDEQ after Superfund emergency response teams responded to the three abandoned manufacturing sites in Michigan in 2003 and 2004. At sentencing, which is scheduled for October 7, 2008, the now-defunct corporation will be required to repay $1.7 million in Superfund costs over the course of a year, and also will be required to publish a public apology.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Environmental Quality.

Back to Top

[redacted]

[redacted]

Back to Top

Sentencings

United States v. George Chittenden, No. 2:08-CR-00063 (E.D. Pa.), SAUSA Martin Harrell ([redacted] and AUSA Cathy Votaw [redacted].

Agents sampling hazardous wastes

On July 21, 2008, George Chittenden was sentenced as the result of illegally storing hazardous waste in 2004 and 2005.

Chittenden, the owner of Spra-Fin, Inc., a powder-coating and painting facility, closed the facility in mid-2004, leaving behind a variety of wastes, including hazardous solvents, paints, and finishes. The wastes were stored in places such as unlocked trailers, a fenced area, and outdoors on a concrete pad for more than a year until they were discovered by EPA investigators in April 2005. In the summer of 2005, Chittenden attempted to complete an EPA-supervised clean up, but the agency had to finish the job in the fall of 2005. The defendant pleaded guilty in March of this year to a RCRA storage violation.

Chittenden was sentenced to serve three years' probation with a special condition of five months' home confinement. He will complete 160 hours of community service within the first year of probation and publish advertisements detailing his conviction and sentence in a local newspaper and trade publication. Despite the fact that EPA spent more than $140,000 in clean up costs, the court found that the defendant was financially unable to pay full restitution. He was ordered to pay $12,000 during the term of probation.

Back to Top

United States v. David Jacobs, No. 1:07- CR-00527 (N.D. Ill.), AUSA April Perry [redacted] and SAUSA Dave Mucha [redacted].

On July 17, 2008, David Jacobs, the president and owner of Northwestern Plating Works, Inc., was sentenced to serve 46 months' incarceration followed by three years' supervised release. Jacobs pleaded guilty in March of this year to a two-count indictment charging him with failing to properly dispose of hazardous wastes generated through the firm's electroplating processes and with embezzling nearly $1 million from an employee pension plan.

Northwestern Plating had been active in the metal finishing business since the 1920s, but ceased operations in August 2005. The Chicago Department of Environment investigated the plant and discovered large amounts of plating chemicals and wastes. Between July 2005 and April 2006, Jacobs illegally stored and disposed of cyanides, acids, corrosives, brass, copper, zinc, and nickel in violation of RCRA.

The second count of the indictment states that the company operated an employee profit-sharing plan that provided retirement income to employees. The plan was administered by Jacobs, who also acted as the sole trustee for the plan. Between September 2001 and March 2005, Jacobs converted approximately $830,000 in plan funds for his own use in violation of the Employee Retirement Income Security Act. As part of his sentence, Jacob will pay $832,890 in restitution to victims of the pension fraud and $1,259,695 in restitution to EPA for clean up costs.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Labor.

Back to Top

[redacted]

Back to Top

United States v. Ken Pap, No. 5:07-CR-04043 (N.D. Iowa), AUSA Forde Fairchild [redacted]

Corroded drums

On July 10, 2008, Ken Pap, the owner of a zinc plating facility, was sentenced to serve four months' home detention followed by three years' supervised release. He also will pay a $30,000 fine stemming from a guilty plea last April to one RCRA storage violation.

Until approximately September 2004, the defendant had stored hazardous waste containing illegally high concentrations of chromium and cadmium at his Sac City zinc plating facility without a permit.

An EPA inspection of the facility in September 2004 revealed a 2,000 gallon tank overflowing in the basement, wastewater accumulating on the basement floor, and more than seventy 55-gallon drums throughout the facility. Many of the drums were rusting, unmarked, and in danger of falling apart. The drums had been stacked two or three high and four to five deep in some areas. Inspectors determined that many of the areas were unsafe for inspection because of the condition of the drums.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. B. Navi Ship Management Services et al., Nos. 4:08-CR-00032 and 00033 (S.D. Tex.), ECS Trial Attorney Jim Nelson [redacted] ECS Senior Litigation Counsel Howard Stewart [redacted] and SAUSA William Miller [redacted]

On July 9, 2008, B. Navi Ship Management Services ("B. Navi Ship Management"), an Italian shipping company, was sentenced to pay a $1.2 million fine and a $500,000 community service payment to the National Fish and Wildlife Foundation. The company will complete a three-year term of probation and implement an environmental compliance plan with a court appointed monitor.

B. Navi Ship Management and chief engineer Dushko Babukchiev pleaded guilty in February of this year to charges stemming from the illegal dumping of oily sludge, bilge wastes, and oil contaminated ballast water from the *M/V Windsor Castle*, a 27,000 gross-ton bulk carrier vessel.

On August 17, 2007, the *Windsor Castle* was boarded by Coast Guard inspectors when it arrived at port in Houston, Texas. During the boarding, inspectors learned that the chief engineer had ordered crew members to dump oil sludge and bilge wastes into the ocean and had falsified the ship's oil record book to conceal these discharges. With assistance from several lower level crew members, inspectors discovered and seized the bypass hose and pipes used to dump the oil sludge, bilge waste, and contaminated ballast water overboard.

B. Navi Ship Management pleaded guilty to an APPS violation and a false statement violation. Babukchiev pleaded guilty to a false statement violation and was sentenced in February to serve a three-year term of probation. A fine was not assessed

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Ronald Jagielo, No. 1:07-CR-00190 (W.D.N.Y.), AUSA Marty Littlefield ([redacted]

Hazardous waste on the ground

On June 30, 2008, Ronald Jagielo was sentenced to serve 21 months' incarceration followed by three years' supervised release. He also will pay $1 million in restitution to the USEPA for cleanup costs.

Jagielo pleaded guilty in August 2007 to a RCRA violation for disposing of hazardous wastes between January 2004 and November 2006 at his family-owned business, MRS Plating. The wastes, containing cadmium, chromium and corrosive liquids, were dumped in and around his company's electroplating facility. The EPA currently is engaged in a clean-up of the facility as a Superfund waste site.

This is Jagielo's second felony conviction for violating criminal environmental laws. MRS Plating, a now defunct corporation, also was previously prosecuted in 1996 and in 2000. In 1996 MRS paid a $40,000 fine plus more than $16,000 in restitution. The company paid a $90,000 fine and more than $30,000 in restitution in 2000. Jagielo was sentenced to serve one year of incarceration in 2000 and paid a $4,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation.

Back to Top

United States v. Andrew Noel et al., No. 3:07-CR-05656 (W.D. Wash.), AUSA Jim Oesterle ([redacted]**and AUSA Carl Blackstone** [redacted]

Gray Whale

On June 30, 2008, all defendants in this case involving an illegal whale hunt were sentenced. Wayne Johnson and Andrew Noel were sentenced to jail time (and were remanded into custody) after being convicted at trial this past April of conspiracy and a violation of the Marine Mammal Protection Act ("MMPA"). William Secor, Frankie Gonzales and Theron Parker pleaded guilty in March 2008 to an MMPA violation and each was sentenced to complete a term of probation.

Five members of the Makah Tribe were charged in October 2007 with violations including conspiracy, unauthorized whaling and MMPA violations for the illegal killing of a gray whale off the coast of Washington in September 2007.

The day before the hunt, Noel sought weapons and ammunition from the Makah Tribe, claiming he was going to use the weapons for practice. He also received permission to borrow a 12-foot boat from the Tribe and obtained a large red buoy from a Makah tribal employee. On September 8, 2007, the five men set out from a location near Neah Bay in the 12-foot boat and a 19-foot boat registered to Frankie Gonzales.

Near Seal Rock off the northwest coast of Washington State, the men encountered a gray whale and struck it with at least four harpoons. They attached buoys to the whale to stop it from escaping,

and then shot it several times with the high powered weapons obtained earlier. The fatally injured whale swam approximately nine miles and then, some 12 hours after it was struck, it died and sank in about 700 feet of water.

Johnson will serve five months' incarceration followed by one year's supervised release. He also will be required to complete 175 hours of community service. Noel will serve three months' incarceration followed by one year's supervised release. He will complete 200 hours of community service. Gonzales and Secor will complete two years' probation and 100 hours' community service and Parker will complete two years' probation plus 150 hours' community service.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Service Office of Law Enforcement and the United States Coast Guard.

Back to Top

United States v. Patrick Brown et al., Nos. 1:07-CR-0098 and 00339 (D. Md.), ECS Senior Trial Attorney Richard Udell (and AUSA Rod Rosenstein

On July 2, 2008, chief engineers Patrick Brown and Deniz Sharpe each were sentenced to complete two-year terms of unsupervised probation. Sharpe will pay a $500 fine and complete 60 hours of community service and Brown will pay a $1,000 fine and complete 80 hours of community service.

These were the last two defendants to be sentenced in the Pacific Gulf Marine ("PGM") prosecutions. Brown previously pleaded guilty to conspiracy and to an 18 U.S.C. § 1001 false statement violation and Sharpe pleaded guilty to an APPS violation.

Both defendants were employed as chief engineers for the *M/V Fidelio*. The *Fidelio* was one of four car carrier vessels managed by American-based operator PGM. From October 2001 through March 2003, the *Fidelio* used a bypass pipe to illegally discharge oil-contaminated bilge waste overboard. Brown knew of this practice and caused employees under his supervision to repeatedly discharge this unprocessed wastewater. He further was aware that the entries made in the oil record book ("ORB") under his supervision were falsified in order to conceal the illegal bypasses.

Sharpe admitted that, on November 17, 2003, he failed to note in the ORB that overboard discharges of bilge waste had been made without going through the oil water separator ("OWS"). During his tenure both as chief engineer and as first engineer, Sharpe was involved in the deliberate discharge of oil-contaminated waste water which had not been processed through the OWS and for which entries were either falsely made or omitted from the ORB.

PGM previously was sentenced to pay $1.5 million after pleading guilty to circumventing the OWS on the four giant car carrier ships it operated.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ofer (Ships Holding) Ltd. et al., Nos. 4:08-CR-00103 and 00104 (S.D. Ga.), AUSA Jeff Buerstatte with assistance from ECS Trial Attorney Chris Costantini

On June 27, 2008, Ofer (Ships Holding) Ltd ("Ofer") pleaded guilty to a two-count information for violations stemming from failure to maintain the oil record book ("ORB") for the *M/V Marseille*. The ORB was presented to U.S. Coast Guard personnel during a port inspection in October 2007. Investigation revealed that oily water discharges made through an illegal bypass had not been recorded in the ORB between October 5 and October 18, 2007. The company was sentenced to pay a $780,000

fine and to complete a three-year term of probation. A portion of the fine, $280,000, was applied toward the APPS violation and half of that will be paid to whistleblower crew members, who were directed to install a bypass pipe allowing wastes to be discharged illegally at night. One crew member will be paid $126,000, and two other crew members will receive $7,000 each for their assistance during the investigation.

[redacted]

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Zamorro Shone, No. 1:08-CR-20034 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On June 27, 2008, Zamorro Shone was sentenced to time served, with credit for four and a half months' incarceration, and one year of supervised release. A fine was not assessed.

Shone, a Canadian citizen, pleaded guilty in May of this year to a two-count indictment for his involvement in the smuggling of significant quantities of misbranded queen conch from Canada to the United States in violation of the U.S. Food, Drug and Cosmetic Act.

From about October 2005 through March 2006, the defendant and others associated with a Hialeah-based seafood company, known as Caribbean Conch, Inc., caused multiple shipments of queen conch from Haiti through Canada to the United States, totaling 6,972 pounds. At the time queen conch from Haiti was under international embargo, and would have required special permit documentation to enter the United States, if legally harvested elsewhere.

Queen conch is protected under CITES, but it is not listed under the Endangered Species Act as a protected species. In September 2003, an embargo was enacted by the CITES parties for queen conch and conch products that originated from many of the conch-producing countries of the Caribbean to help stem the significant declines in the species due in large part to rampant illegal harvesting. The embargo banned all imports of queen conch to any nation that was a signatory to CITES.

Shone and his Canadian-based company, Pacific Marine Union Corporation, received the queen conch shipped by air from Haiti to Toronto, and they re-packaged it as "Frozen Whelk meat, product of Canada," arranging transportation by refrigerated truck to Hialeah, Florida. In March 2006, a shipment of 2,100 pounds of falsely-labeled conch was intercepted by a United States Fish and Wildlife Service Inspector in Buffalo, New York. The Fish and Wildlife Service's National Forensic Laboratory in Ashland, Oregon, conducted DNA analysis of the seafood product and confirmed it was queen conch and not whelk, which sometimes is used as a cheap substitute.

Co-defendants Janitse Martinez and Ramone Placeres each were sentenced in January of this year to serve two months' imprisonment, followed by one year of supervised release. Placeres was further ordered to pay a $10,000 fine. Martinez and Placeres were, respectively, the owners of Caribbean Conch, Inc., and Placeres & Sons Seafood, Inc.

The 18-month long investigation by Canadian and American enforcement authorities led to the simultaneous execution of search warrants in both countries and the seizure of more than 63,000 pounds of illegally traded queen conch.

These cases were investigated by the United States Fish and Wildlife Service, National Oceanic and Atmospheric Administration Law Enforcement Office, and the Wildlife Officers of Environment Canada's Wildlife Enforcement Branch, Wildlife Enforcement Division, in Halifax, Montreal,

Toronto, and Vancouver. The United States National Marine Fisheries Service and Canadian and American border officials also contributed to this investigation.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

September 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

- United States v. Robinson, 521 F.3d 1319 (11th Cir. 2008).

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. Jesse Rivera et al. United States v. Robert Becker	*Halibut Sales/* Lacey Act *Fisheries/* Lacey Act, Conspiracy, False Statement
N.D.Calif.	United States v. Nicki Phung et al. [redacted]	*Tiger Import/* Lacey Act, ESA [redacted]
D. Colo.	United States v. Wayne Breitag et al.	*Leopard Hunt/* Lacey Act, Smuggling
S. D. Fla.	United States v. David Driefort United States v. Clive Brown	*Lobster Fishing/* Conspiracy, Lacey Act *Sea Turtle Import/* ESA
D. Hawaii	United States v. David Williams	*Vessel/* False Statement
D. Md.	United States v. David Muir et al.	*Asbestos Abatement/* Conspiracy to Defraud the Small Business Admin.
D. Minn.	United States v. Tia Yang et al.	*Wildlife Smuggling/* Smuggling Conspiracy
E.D. Mo.	United States v. James Raulerson United States v. Jason Becks	*Waste Dumping/* CWA *Abandoned Drums/* RCRA
W. D. Mo.	United States v. Richard Sturgeon	*Public Works/* CWA
N.D. Ohio	United States v. Andrew Siemaszko et al.	*Nuclear Plant/* Concealment of Material Fact, False Writings
D. Ore.	United States v. Thomas Libby United States v. Kinder Morgan Bulk Terminals, Inc.	*Fish Processor/* CWA Misdemeanor *Terminal Operator/* Ocean Dumping Act
[redacted]	[redacted]	[redacted]
D. S. D.	United States v. Dakota Pork Industries	*Meat Processor/* CWA
E.D. Tex.	United States v. Simply Aquatics et al.	*Water Treatment Service/* RCRA

Additional Quick Links

Significant Opinions

11th Circuit

United States v. Robison, 521 F.3d 1319 (11th Cir. 2008)

On August 22, 2008, in *United States v. Robison* (also known as *United States v. McWane*) the government filed a petition for writ of certiorari in the Supreme Court and is asking the Court to answer the following question presented: Whether the "significant nexus" standard described by the opinion concurring in the judgment in *Rapanos v. United States*, 547 U.S. §§715, 767 (2006) (Kennedy, J.), establishes the exclusive rule of law for determining whether particular streams are "waters of the United States" covered by the Clean Water Act ("CWA"), 33 U.S.C. 1362(7), even in cases where CWA coverage has been established under the standards adopted by the four-Justice plurality in *Rapanos* and by the four *Rapanos* dissenters.

On March 27, 2008, the Eleventh Circuit denied the government's petition for rehearing *en banc*. Judge Wilson (joined by Judge Barkett) issued a 20-page dissent from the denial of rehearing, in which he adopted many of the government's arguments and called the Eleventh Circuit panel's error "one of exceptional importance, implicating both the jurisdictional scope of the CWA and the interpretation of fragmented [Supreme Court] decisions generally." Further, Judge Wilson called the panel's decision to remand the case for new trial "bizarre" given that eight Supreme Court justices likely would have found CWA jurisdiction in the case.

On October 24, 2007, the Eleventh Circuit vacated the convictions and remanded the case for a new trial. The court held that the district court failed, in light of *Rapanos* to provide the correct jury instructions on the jurisdictional issue of what constituted a "water of the United States" under the CWA, that the error was not harmless, and that the defendants therefore were entitled to a new trial on those counts. The *Rapanos* case was decided by the Supreme Court almost one year after the trial had ended. The court also reversed the defendants' convictions on the conspiracy charge, without discussion, and on the false statement violation.

Back to Top

Trials

United States v. Andrew Siemaszko et al., No. 3:06-CR-00712 (N.D. Ohio), ECS Trial Attorney Tom Ballantine [redacted], AUSA Christian Stickan [redacted] and ECS Paralegal Lois Tuttle [redacted]

On August 25, 2008, after two days of deliberations in this nearly three-week trial, the jury convicted Andrew Siemaszko of three 18 U.S.C § 1001 false statement violations including concealment of a material fact (one count) and false writings (two counts).

In January 2006, a five-count indictment was returned charging Siemaszko, a systems engineer, and engineering manager David Geisen, both former employees of FirstEnergy Nuclear Operating Company ("FENOC"), and consultant Rodney Cook with a scheme to conceal information from the Nuclear Regulatory Commission ("NRC") and with making false statements to the NRC.

Davis Besse plant

FENOC owns and operates the Davis-Besse plant near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant's safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.

Geisen was convicted by a jury in October 2007 of concealment and false writing violations, but acquitted on two false statement violations. Co-defendant Rodney Cook was acquitted on all counts. Geisen was sentenced in May 2008 to serve four months' home detention as a condition of three years' probation. He is further required to complete 200 hours of community service and pay a $7,500 fine.

FENOC previously entered into a deferred prosecution agreement in this case, agreeing that the United States can prove that knowing false statements were made on behalf of the corporation.

This case was investigated by the NRC Office of Investigations.

Back to Top

Indictments

United States v. David Dreifort, No. 4:08-mj-03081 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Approximately 1,197 lobster tails

On August 7, 2008, David Dreifort was arrested as a result of his involvement in an out-of-season lobstering operation that included the use of illegal artificial habitat placed in the Florida Keys National Marine Sanctuary ("Sanctuary") and the stockpiling of approximately 1,500 pounds of lobster tail for sale after the opening of Florida's commercial lobster season August 6, 2008. This amount of lobster tail is 1,000 times greater than the legal bag limit for a mini season sport diver.

The complaint charges Dreifort with a Lacey Act conspiracy and substantive Lacey Act violations. As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendant, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

According to court documents, investigators became aware of a group constructing artificial lobster habitats in the lower Keys. Agents then tracked a boat owned by Dreifort as it traveled within the Sanctuary, harvesting out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads.

This case was investigated by National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

United States v. Wayne Breitag et al., No. 1:08-CR-00318 (D. Colo.), ECS Trial Attorney Jim Nelson [redacted] and AUSA Greg Holloway [redacted]

On August 6, 2008, Wayne Breitag and Jerry Mason were indicted on charges stemming from smuggling the hides and a skull of two leopards into the United States in violation of the Convention on the International Trade of Endangered Species ("CITES"). The leopards are alleged to have been illegally hunted and killed in South Africa and then smuggled into Zimbabwe to enable the hunters to obtain false CITES permits. The pair are further charged with Lacey Act false labeling violations.

Breitag with leopard

Leopards are listed on Appendix I of CITES. CITES requires that prior to the transport of any part of an Appendix I species from one country to another, an export permit from the country of origin (or a re-export certificate), and an import permit from the country to which the specimen will be shipped, must be obtained and accompany the shipment. The CITES authorities in South Africa set a yearly quota on the number of export permits issued by that country for Appendix I species, such as leopards. These permits are only issued for leopards which have been killed with a valid hunting permit.

According to the indictment, both Breitag and Mason traveled to South Africa in August 2002 to hunt leopards while guided by a South African outfitter named Jan Swart d/b/a "Trophy Hunting Safaris." Both Breitag and Mason shot and killed leopards even though they did not possess permits. Because the leopards were killed illegally, neither defendant was able to legally obtain a valid CITES export permit from South Africa. In order to import the animal parts into the United States, they obtained fraudulent CITES export permits from Zimbabwe.

Swart arranged to have the hides smuggled from South Africa into Zimbabwe, where he purchased the fraudulent export permits. Breitag and Mason then submitted applications to the U.S. Fish and Wildlife Service claiming to have hunted the leopards in Zimbabwe. In November 2004, inspectors seized animal parts at the Denver International Airport including those from the leopards killed by the defendants.

Swart pleaded guilty to smuggling violations in May of last year and is currently serving an eighteen-month prison sentence.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas

United States v. David Muir et al., No. 8:08-CR-00345 and 350 (D. Md.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Gina Simms [redacted]

On August 13 and 19, 2008, guilty pleas were taken in this case stemming from defrauding the United States Small Business Administration ("SBA") by individuals associated with asbestos abatement companies. David Muir and Scott Reiter both pleaded guilty to a conspiracy to defraud the SBA. Reiter further pleaded guilty to a money laundering conspiracy.

In the fall of 1999, Scott Reiter worked for or was associated with three Maryland companies that performed asbestos and lead abatement and demolition work at federal and private facilities. Between 1998 and 2007, all three companies participated in the SBA's 8(a) program. For one of the companies, Reiter represented himself to different contractors and subcontractors doing business with the company as the division's manager, project manager, and as a company officer. Muir worked for these companies since 1998 and represented himself as operations manager, project manager, quality control manager and vice president.

Unbeknownst to the SBA and in violation of its regulations, Reiter, Muir, and their co-conspirators exerted significant financial and operational control over the three Maryland corporations in a variety of ways, including: personally indemnifying the liabilities of one of the companies, which enabled it to obtain higher bonding and 8(a) contracts of higher value than the company otherwise would have qualified; for exercising significant control over the contracts bid upon by all three companies; and exercising control over the selection and payment of subcontractors on behalf of two of the companies.

In addition, Reiter and Muir failed to disclose that approximately $900,000 in bonuses were paid to these defendants and their co-conspirators, and that their bonuses and other compensation far exceeded the compensation paid to the disadvantaged individual. The defendants knew that they and the co-conspirators provided critical bonding, financial and operational support to the three 8(a) certified companies. Furthermore, during the course of the conspiracy, Muir as a company president submitted fraudulent annual updates to the SBA in which he falsely certified that the companies continued to meet the SBA regulations related to eligibility, including those which prohibit financial and operational control of the firm by a non-disadvantaged individual.

Muir is scheduled to be sentenced on October 30, 2008, and Reiter is scheduled to be sentenced on November 10, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the EPA National Enforcement Investigations Center, the SBA Office of Inspector General, and the Naval Criminal Investigative Service.

Back to Top

United States v. Simply Aquatics, Inc., et al., No. 1:08-CR-00067 (E.D. Tex.), AUSA Jim Noble [redacted]

On August 8, 2008, Lyle Hester, a shop foreman, and his son Kevin, the president of Simply Aquatics, each pleaded guilty to a RCRA violation. Both originally were charged in May of this year, along with the company, with conspiracy and four RCRA violations for illegally transporting and disposing of hazardous wastes. The charges against the company will be dismissed.

Simply Aquatics is in the business of installing and servicing water treatment chemical injection systems for municipalities. In the process they used chemicals such as gaseous chlorine and sodium hydroxide to clean out the systems.

Unearthed chlorine gas cylinders

In January 2007, investigators with the Environmental Protection Agency and the Texas Commission on Environmental Quality executed a search warrant on Kevin Hester's property and discovered that both Kevin and his father Lyle had buried 113 old compressed gas cylinders in a ten-foot deep hole on the property. The investigators determined that 33 of the cylinders were under high pressure and contained a combined total of 952 pounds of chlorine gas.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Environmental Enforcement Task Force.

Back to Top

[redacted]

Back to Top

United States v. Richard Sturgeon, No. 2:08-CR-04032 (W.D. Mo.), AUSA Lawrence Miller ([redacted]**and SAUSA Anne Rauche** [redacted]**.**

On July 31, 2008, Richard Sturgeon, a former public works director for the City of Lake Ozark, Missouri, pleaded guilty to failing to report the discharge of raw sewage into the Lake of the Ozarks.

This criminal plea is the first in the nation to result from a tip submitted to the U.S. Environmental Protection Agency's tip line web site.

As the public works director, Sturgeon was responsible for overseeing the city's waste water treatment facility and reporting sewage bypasses. Lake Ozark co-owns and operates the Lake of the Ozarks Regional Waste Water Treatment Facility with the City of Osage Beach.

The City of Lake Ozark has a history of overflows and/or bypass events from the waste water treatment facilities' lift stations into the Lake of the Ozarks. Citizen request forms maintained by the city document numerous incidents of lift station sewage bypasses that were never reported to the Missouri Department of Natural Resources ("MDNR"). The city has routinely failed to notify MDNR when the bypasses occurred.

On September 11, 2007, MDNR staff observed a bypass at a lift station resulting in the discharge of 10,000 to 15,000 gallons of raw sewage into the lake. DNR officials informed the city about the bypass, and the city took action to stop the flow. The city, however, did not conduct a cleanup and did not provide written notification of the bypass.

Analysis of lake water conducted two days after the event showed elevated levels of ammonia, nitrogen, and fecal coliform that exceeded the criteria deemed safe for recreation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. James Raulerson, No. 1:08-CR-0019 (E.D. Mo.), SAUSA Ann Rauch ([redacted] and AUSA Michael Reap ([redacted]

On July 31, 2008, James Raulerson, the owner of a farm in southeastern Missouri, pleaded guilty to violating the Clean Water Act in connection with the dumping of waste products from a biodiesel plant into a canal.

The charges against Raulerson arose after the Missouri Department of Conservation received an anonymous call in October 2007 that a tanker truck had been observed dumping its contents into a canal known as Belle Fountain Ditch. Investigators discovered an undetermined amount of decomposing glycerine in the canal and were able to trace it back to the defendant, who admitted that he dumped glycerine, methanol, and oil into the canal. At least 30,000 fish were killed as a result of the spill.

Sentencing is scheduled for November 24, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Missouri Department of Natural Resources and the Missouri Department of Conservation.

Back to Top

United States v. Tia Yang et al., No. 0:08-CR-00150 (D. Minn.), AUSA LeeAnn Bell [redacted]

On July 25, 2008**,** Pa Lor and Tia Yang each pleaded guilty to with one count of conspiracy to smuggle wildlife. The mother and daughter team also were initially charged with one count of conspiracy to distribute and possess with intent to distribute anabolic steroids.

Dhoc skins

Between October 2005 and August 2006, the two women conspired to fraudulently bring wildlife into the U.S. for sale and offer wildlife for sale at a booth at the International Marketplace in St. Paul, Minn. The wildlife

included parts of Asian elephant, giant squirrel, leopard cat, mongoose, and the elegant flying squirrel. On October 23, 2005, Lor arrived at the Minneapolis-St. Paul International Airport from Laos and did not declare any animal or wildlife items on her Customs and Border Protection Declaration form. During an inspection of Lor's baggage, inspectors discovered approximately 1,388 individual pieces of undeclared wildlife, including two Asian elephant teeth, 17 serow horns, 51 pieces of douc langur (a primate), leopard cat, red or rusty-spotted cat and giant squirrel.

Two undercover buys were made by agents in November of 2005 and June 2006, yielding animal parts from species including slow loris, bear and unidentified primates. A search warrant was executed in August 2006 at the booth that was leased by Yang and operated by Lor, with several wildlife items recovered including: black-striped weasel, gibbon, leaf monkey, monitor lizard, tapir, slider turtles, reticulated python and small-clawed otter.

Back to Top

Sentencings

United States v. Thomas Libby (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted].

On August 25, 2008, Thomas Libby, the former manager of California Shellfish Company Inc., d.b.a. Point Adams Packing Company ("PAPCO") was sentenced for a misdemeanor violation of the Clean Water Act. Libby will complete a one-year term of probation and will pay a $3,250 fine. PAPCO and its lessee, California Spray Dry ("CSD"), previously pleaded guilty to violating the CWA and are awaiting sentencing for discharging unpermitted chicken processing wastewater from PAPCO's fish processing facility located in Hammond, Oregon.

PAPCO had a NPDES permit to discharge fish processing wastewater from its facility. In June of 2003, PAPCO leased a portion of its facility to CSD. CSD intended to process chicken carcasses at the PAPCO facility for the production of various by-products including flavoring for pet foods. Neither company obtained a modification to the permit to allow the discharge of chicken processing wastewater to the Columbia River. As a result, there were unpermitted discharges beginning in December of 2003 until approximately June of 2004.

Several neighbors of the facility complained about odors from the discharges which led to the investigation of this matter.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from Oregon State Police.

Back to Top

United States v. Jesse Rivera et al., No. 1:07-CR-00006(D. Alaska), AUSA Steven Skrocki [redacted]

On August 21, 2008, Jesse and Artimeo Rivera were sentenced after pleading guilty last month to a misdemeanor Lacey Act violation stemming from their involvement in illegally selling and shipping halibut caught under the Sitka Sound Subsistence Halibut program. A third defendant, who pleaded guilty Mario Rivera, has not yet been sentenced. The two brothers (Jesse and Mario) and their cousin (Artimeo) were initially charged in a seven-count indictment with conspiracy to violate the

Lacey Act and substantive Lacey Act violations. They each were licensed as subsistence fisherman, which meant that they were only permitted to catch halibut for consumption purposes, and then only allowed to sell $400 worth of fish in any given year.

In 2004, investigation and evidence obtained from fisheries observers provided grounds for the execution of search warrants on a Seattle seafood wholesaler. As a result of that search, investigators found checks and other records which established that, during the summer of 2003, the Riveras shipped more than 10,000 pounds of subsistence-caught halibut to the wholesaler. In exchange for the halibut, the Riveras were paid more than $50,000.

Jesse Rivera was sentenced to serve six months' imprisonment and will pay a $40,000 fine. Artimeo Rivera will serve one month in a half-way house and pay a $5,000 fine. Both also will complete a three-year term of probation with a special condition that prohibits them from engaging in any commercial or subsistence fishing.

This case was investigated by the National Marine Fisheries Service, Division of Law Enforcement.

Back to Top

United States v. David Williams, No. 1:07-CR-00376 (D. Hawaii), ECS Assistant Chief Joe Poux ([redacted], AUSA Ronald G. Johnson, Chief of the USAO Major Crimes Section [redacted] AUSA William L. Shipley ([redacted] and USCG Commander Timothy P. Connors ([redacted]

On August 20, 2008, David Williams, a Chief Warrant Officer in the U.S. Coast Guard and the Main Propulsion Assistant for the Coast Guard Cutter *RUSH*, was sentenced to pay a $5,000 fine, serve a two-year term of probation and complete 200 hours' community service. Williams pleaded guilty in May of this year to an 18 U.S.C. §1001 false statement violation.

Williams originally was charged in August 2007 in a two-count indictment with obstructing the investigation of the overboard discharge of bilge wastes, authorized by Williams, through a deep sink, which then drained directly into Honolulu Harbor. He was further charged with making a false statement.

As the Main Propulsion Assistant, he oversaw the maintenance of the main diesel engines and other machinery in the engine room for the *RUSH*, a 378-foot high endurance cutter stationed in Honolulu. According to the indictment, on or about March 8, 2006, Williams authorized the direct discharge of bilge wastes through the sink into Honolulu Harbor, bypassing the oily water separator. Approximately a week later, the State of Hawaii Department of Health received an anonymous complaint that the ship's crew members were ordered to pump approximately 2,000 gallons of bilge waste into Honolulu Harbor. On May 1, 2006, investigators from the United States Coast Guard Investigative Service and the Environmental Protection Agency received confirmation from personnel who had personally been involved that bilge wastes indeed had been discharged into the harbor.

When questioned by investigators, Williams denied authorizing personnel to discharge bilge waste and also denied knowledge of any bypasses.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Robert Becker, No. 1:07-CR-0002 (D. Alaska), AUSA Stephen Cooper [redacted]

On August 14, 2008, Robert Becker was sentenced to pay a $20,000 fine and will complete a five-year term of probation. Becker pleaded guilty earlier this year to two Lacey Act violations for the

sale of unlawfully possessed fish and for making a false record of fish sold in interstate commerce, plus an 18 U.S.C. § 1001 false statement violation.

A 12-count superseding indictment was filed against Becker in February 2008 with additional Lacey Act charges for fisheries violations. The new charges stated that, in February and March, 2005, Becker conspired with others to falsify Individual Fishing Quota ("IFQ ") records and that he falsified a prior Notice of Landing and a Landing Report for 4,000 pounds of halibut. Becker reported the fish on the quota of another IFQ cardholder who was not present during this trip.

Becker had earlier been charged in connection with three unlawful fishing trips in November 2004 and January 2005 to the Fairweather Grounds in the Gulf of Alaska during which some 17,000 pounds of Demersal Shelf Rockfish were taken. During these three fishing trips, the Fairweather Grounds and all of the East Yakutat Section were closed to directed fishing.

Becker falsified his fish landing tickets and his logbook to reflect that the fishing took place in open waters. The total wholesale value of Becker's unlawfully caught fish was nearly $25,000.

This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Kinder Morgan Bulk Terminals, Inc., No. 3:08-CR-00185 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted].

On August 13, 2008, the Kinder Morgan Bulk Terminals, Inc. ("KMBT") pleaded guilty to, and was sentenced for, violating the Ocean Dumping Act. The court sentenced KMBT to pay $240,000. Of this amount, $84,000 will fund various environmental projects in Oregon administered by the National Fish and Wildlife Fund through the Oregon Governor's Fund for the Environment.

This case arose out of an investigation of the *J/A Aladdin Dream II*, a bulk cargo vessel. KMBT, which operates the terminal for a Canadian customer, received an off-specification load of potash at its Portland T-5 Terminal in August of 2003. Inspectors hired by the customer discovered the off-specification potash, which is similar to "lite salt," and is used as a fertilizer, had clumped due to water exposure, rendering the load not fit for sale to large buyers of potash. There was no time to run the conveyors backwards so they could unload the bad potash and it had to be loaded onto the vessel. A terminal employee paid the ship's master to store the contaminated product on deck for the purpose of disposing of it at sea.

KMBT saved approximately $78,000 for its customer by avoiding landfill costs for disposal of the product.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Nicki Phung et al., No. 4:08-CR-00203 and 204 (N.D. Calif.), AUSA Maureen Bessette [redacted]

Stuffed tiger wrapped in cloth

On August 8, 2008, Nicki Phung was sentenced to serve six months' home confinement as a condition of three years' probation, and Phung will pay $5,000 in restitution to a non-profit organization that protects great cats, throughout the world.

Phung and co-defendant Steven Tieu pleaded guilty in April of this year to illegally importing a mounted stuffed tiger from Ho Chi Minh City, Vietnam, into San Francisco International Airport in December 2007. Tigers are listed as an endangered species and neither defendant had obtained either an export permit from Vietnam or an import permit from the United States. Specifically, Phung pleaded guilty to a Lacey Act violation and Tieu pleaded guilty to an ESA violation.

Tieu previously was sentenced to serve ten months' home confinement as a special condition of three years' probation and will pay $5,000 in restitution to Panthera, a wild cat conservation organization. Tieu also will fund a plaque to be posted with an exhibit at the San Francisco Museum of Natural History educating the public about endangered wild felines.

This case was investigated by the United States Fish and Wildlife Service and the United States Customs and Border Protection.

Back to Top

United States v. Jason Becks, No. 4:08-CR-00198 (E.D. Mo.), SAUSA Anne Rauch [redacted] **and AUSA Michael Reap** [redacted]

On August 7, 2008, Jason Becks was sentenced to serve 12 months and one day imprisonment after pleading guilty in May of this year to a RCRA disposal violation. Becks was further ordered to pay $29,000 in restitution to the United States EPA for clean up costs.

Becks was hired in January 2008 to complete an environmental site assessment at Economy Tire, Inc., in St. Louis, Missouri. Becks contracted with the owner of the building to remove and dispose of six 55 gallon drums inside the building for $600. The defendant then took the drums to another location where he abandoned them.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Dakota Pork Industries, No. 4:08-CR-40001 (D.S.D.), AUSA Dennis Holmes [redacted]

On August 5, 2008, Dakota Pork Industries ("DPI") was sentenced to pay a $50,000 fine plus $175,000 restitution to the City of Mitchell, which was paid in full at the time of sentencing. The company pleaded guilty in March of this year to a Clean Water Act violation for tampering with a monitoring device.

DPI formerly operated a meat-processing plant that discharged wastewater into the City of Mitchell's POTW. The company's industrial users permit required continuous pH monitoring since

the company had previously discharged waste water with levels that were as low as 5 and as great as 12.5. PH levels this extreme could cause damage to POTW equipment.

Beginning at an unknown date and continuing until about October 2004, DPI employees periodically readjusted the calibration screw on the pH monitor after hearing the alarm that indicated the pH levels were outside permitted levels. This action, in turn, caused the recorded results to falsely indicate the discharge was within limits.

At other times, after observing that the effluent was exceeding permit limits, employees also would remove the monitoring probe from the effluent stream and place it in a beaker of clean water or buffering solution for extended periods of time, causing false results to be recorded. Finally, on occasion, employees submitted false pH data to the city in its monthly reports.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States. Clive Brown, No. 08-CR-60186 (S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted]

On July 30, 2008, Clive Brown pleaded guilty to, and was sentenced for, an Endangered Species Act violation for illegally importing endangered sea turtle parts and eggs into the United States. Brown was sentenced to pay a $1,000 fine and will complete a two-year term of probation.

On April 20, 2008, Brown entered the United States at Fort Lauderdale International Airport on a flight from Jamaica. During a routine examination by a Customs agent

Sea turtle flipper and eggs

the defendant was found to be carrying 11 sea turtle eggs and a segment of a sea turtle shoulder with an attached flipper.

Forensic DNA analysis at NOAA's Center for Coastal Environmental Health and Biomolecular Research in Charleston, South Carolina, identified the sea turtle eggs and flipper as originating from a Hawksbill sea turtle.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement and the Agricultural Specialists of Customs and Border Protection.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

October 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	United States v. Pacific Operators Offshore	*Natural Gas Drilling Station/* Outer Continental Shelf Lands Act
N.D. Calif.	United States v. Wassim Mohammad Azizi	*Building Demolition/* CAA
S.D. Ga.	United States v. Daniel Cason	*POTW Director/* CWA
D. Idaho	United States v. Robert Webb United States v. Kent Dahle, et al	*Methamphetamine Lab Cleanup/* RCRA storage Dredge and Fill Project/ CWA misdemeanor, CWA
E.D. La.	United States v. Cypress Bayou Industrial Painting, Inc.	*Painting Company/* CWA misdemeanor
W.D. La.	United States v. Citgo Petroleum Group	*Oil Spill/* CWA misdemeanor
[redacted]	[redacted]	[redacted]
E.D. Mich.	United States v. Comprehensive Environmental Solutions, Inc.	*Waste Disposal Facility/* CWA, False Statement
D. Minn.	United States v. Keith Rosenblum et al. United States v. Steven Taylor	*Metal Finisher/* Conspiracy to violate CWA, CWA misdemeanor *Wolf Hunt/* ESA
E.D. Mo.	United States v. Matthew Burghoff	*Building Renovation/* CAA, Bank Fraud
W.D. Mo.	United States v. John Richards United States v. Thomas Jerry Nix, Jr.	*Reptile Sales/* Lacey Act *Caviar Harvest/* Conspiracy to violate Lacey Act
D. Mont.	United States v. Randall Reis et al.	*Chemical Manufacturer/* RCRA storage
E.D.N.Y.	United States v. Parkway Village Equity Corporation et al.	*Asbestos Abatement/* Conspiracy to violate CERCLA, TSCA
N.D.N.Y.	United States v. Mark Desnoyers United States v. John Wood et al.	*Asbestos Abatements/* Conspiracy to violate CAA and Mail Fraud, CAA, False Statement, Mail Fraud *Asbestos Abatements/* Conspiracy to violate CAA and Mail Fraud, Pre-trial release violations
N.D. Ohio	United States v. Tania Siyam	*Ivory Smuggling/* Lacey Act, Smuggling
M.D. Pa.	United States v. Hershey Creamery Company	*Ice Cream Manufacturer/* CAA failure to implement risk management plan
W.D. Pa.	United States v. Charles Victoria et al.	*Asbestos Abatement/ Conspiracy to violate CAA*
E.D. Tenn.	United States v. Gerald Lakota	*Film Developing Facility/* CWA

Districts	Active Cases	*Case Type* / Statutes
E.D. Tex.	**United States v. John Mazoch et al.** **United States v. William Stoner**	***Gas Cylinder Storage/* Conspiracy to violate RCRA** ***Harmful Fish Importation/* Lacey Act**
D. Utah	[redacted] **United States v. Johnson Matthey, Inc., et al.**	[redacted] ***Gold and Silver Refinery/* CWA, False Statement**
W.D. Wash.	**United States v. Craig James et al.**	***Tree Destruction/* Conspiracy to commit depredation against Forest Service property**
S.D. W. Va.	**United States v. Michael Joe Clark**	***Methamphetamine Lab/* CAA Negligent Endangerment, Controlled Substances Act**

Additional Quick Links

Trials

United States v. Randall Reis et al., No. 2:07-CR-00009 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] and AUSA Kris McLean [redacted]

On September 17, 2008, after a two-day jury trial, Randall Reis was found guilty of two RCRA counts for the illegal storage of hazardous lead waste.

Reis, the CEO of MR3 Systems, Inc. ("MR3"), and the company were charged in 2007 in a three-count indictment with illegal storage of hazardous waste. The defendants operated a chemical manufacturing facility in Butte, Montana, from 1999 through December of 2001. During the operation of the facility, they both used and generated hazardous wastes, including toxic lead filter cake and corrosive liquids. Inspections conducted by the Montana Department of Environmental Quality ("MDEQ") revealed that the defendants were illegally storing hazardous wastes on site. They failed to take corrective action despite being warned by MDEQ. The defendants eventually stopped paying

their local employees, causing them to close down the facility in 2001, and left hazardous wastes behind.

In June 2002, the owner of portable storage units rented by MR3 repossessed his storage units. He then emptied the contents, which included hazardous waste, onto MR3's parking lot. This prompted MDEQ to respond to an emergency situation in order to contain these wastes. During this process, officials discovered additional hazardous wastes stored at the defendants' facility, including approximately 5,000 gallons of corrosive and cadmium toxic liquid in approximately ten storage vessels.

The company is scheduled for a change of plea hearing on October 30, 2008, and Reis is scheduled to be sentenced on January 16, 2009. This case was investigated by Montana Department of Environmental Quality.

Back to Top

United States v. Mark Desnoyers, No. 1:06-CR-00494 (N.D.N.Y.), ECS Trial Attorney Colin Black and AUSA Craig Benedict

On September 18, 2008, a jury convicted Mark Desnoyers on five of the six counts charged: conspiring to violate the mail fraud statute and the Clean Air Act, aiding and abetting CAA violations, mail fraud, and two false statement violations. He was acquitted of the remaining false statement charge.

Desnoyers, owner of Adirondack Environmental Associates, was an air monitor who took samples required to document the purported full and safe removal of asbestos from numerous commercial buildings and private homes. Evidence at trial established that Desnoyers secretly entered into agreements with the owners of asbestos removal companies to falsify his results.

Desnoyers and co-defendants John Wood and Curt Collins were charged in March 2007 for their involvement in a scheme where they performed illegal "rip and run" asbestos abatements and covered it up by falsifying the air monitoring results. Wood and Collins previously pleaded guilty.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Indictments

United States v. Daniel Cason, No. 1:08-CR-00099 (S.D. Ga.), AUSAs David Stewart and Charlie Bourne

On September 17, 2008, Daniel Cason, public works director for the City of Harlem, Georgia, was charged with 11 counts of violating the Clean Water Act and making false statements in records and reports. Cason is responsible for operating the city's POTW. According to the indictment, in January 2004 Cason used a hose to pump wastewater directly from the oxidation pond into the Uchee Creek tributary, located adjacent to the plant, without a permit. Cason is further charged with making CWA false statements for submitting discharge monitoring reports between 2003 and 2005 that contained false readings for levels of fecal coliform and biochemical oxygen demand from the city's POTW.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. John Richards, No. 6:08-CR-03098 (W.D. Mo.), ECS Trial Attorney Georgiann Cerese [redacted].

Western chicken turtle

On September 16, 2008, John Richards was charged in an indictment with four Lacey Act false labeling violations. Richards, using the name of Loggerhead Acres Turtle Farm, was in the business of buying and selling reptiles in Missouri and via the Internet. Between 2003 and 2004, Richards is alleged to have exported endangered species of turtles, including Blandings and the western chicken species to Japan. Specifically, he is charged with providing documentation with four different shipments falsely indicating that there had been no charge for the turtles despite Richards' having received payment for them.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Parkway Village Equity Corporation et al., No.1:08-mj-00669 (E.D.N.Y.), AUSA Taryn Merkl [redacted]

On August 18, 208, Parkway Village Equity Corporation ("Parkway Village"), a residential cooperative located in Queens, New York, and George Halpin, its former property manager, were charged with conspiring to violate the Comprehensive Environmental Response, Compensation, and Liability Act for their involvement in the illegal removal and disposal of asbestos at the property from approximately 2002 through 2006. Another employee, former superintendent Layton Cervantes, has been charged with violating the Toxic Substances Control Act.

Parkway Village employees allegedly were not licensed to conduct asbestos abatements nor were they provided with protective equipment. In fact it is alleged that employees periodically removed asbestos from residential units with their bare hands and buried it on the grounds.

A deferred prosecution agreement has been submitted on behalf of Parkway Village. Pursuant to that agreement, the company accepted a number of conditions, including removal of asbestos from multiple areas within the cooperative, future compliance with all relevant environmental laws, and the payment of $490,612 to EPA to cover the cost of the agency's environmental remediation work in 2006. If Parkway Village complies with the terms and provisions of the deferred prosecution agreement, the government has agreed to move to dismiss the criminal complaint in three years.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center.

Back to Top

Pleas

United States v. Matthew Burghoff, No. 4:08-CR-00199 (E.D. Mo.) SAUSA Anne Rauch (and AUSA Michael Reap

On October 1, 2008, Matthew Burghoff pleaded guilty to one Clean Air Act violation and one bank fraud violation. Burghoff previously was charged with multiple counts of bank fraud, money laundering, false statements, and violations of the CAA stemming from his renovation of a building in St. Louis, Missouri, and numerous other buildings and businesses in the St. Louis area.

In September 2007, the City of St. Louis Air Pollution Control Division received an anonymous tip stating that unqualified personnel were removing asbestos-insulated piping at the Ford Building. On October 1, 2007, an inspector with the Missouri Department of Natural Resources conducted an inspection and observed asbestos debris swept into piles and approximately 60 black bags containing dry asbestos material. Burghoff as the owner and operator of the building was present during this inspection.

The indictment also had alleged that Burghoff falsely told an EPA agent that he had employed an environmental company to inspect the Ford Building for the presence of asbestos before commencing any demolition work and that none had been found.

The bank fraud and money laundering charges stem from a loan the defendant made from the Montgomery Bank in order to purchase and renovate the Ford Building. The indictment states that Burghoff had a subcontractor inflate a bill by approximately $133,000 that was then forwarded to the bank, which subsequently paid the extra money to the subcontractor. The subcontractor then kicked back the money to Burghoff. Finally, the defendant was charged with diverting money from bank loans on other buildings he renovated, representing the money as funds to be paid to subcontractors.

Sentencing is scheduled for December 19, 2008. This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Robert Webb, No. 2:08-CR-00216 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe and AUSA Nancy Cook .

Drums stored behind garage

On September 29, 2008, Robert Webb pleaded guilty to two RCRA storage counts and is scheduled to be sentenced on December 15, 2008. Webb is the owner of Alliance Environmental Inc., which performed methamphetamine laboratory cleanups throughout the Pacific Northwest under various DEA contracts. Webb failed to properly store the wastes accumulated from the lab cleanups, instead storing them at the Little Tree Storage, an unpermitted facility. DEA alerted the EPA after discovering the illegal storage as a result of an audit of their cleanup contracts.

A subsequent EPA investigation led to the additional discovery of 71 containers of hazardous waste inside Webb's mother's garage in Spokane, Washington. The waste had been stored at the property for at least three years. No security measures were taken to reduce the risk that the stored containers of hazardous waste could be accessed by the general public and neighboring property owners. The garage door was left open at various times during storage of the hazardous waste.

The ensuing cleanup has cost the EPA approximately $67,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Drug Enforcement Administration.

Back to Top

United States v. Hershey Creamery Company, No. 1:08-CR-00353 (M.D. Pa.), AUSA Bruce Brandler (and SAUSA Martin Harrell (

On September 24, 2008, Hershey Creamery Co., the manufacturer of Hershey ice cream (not the chocolate company), agreed to plead guilty to an information charging it with knowingly violating the Clean Air Act for failing to develop and implement a Risk Management Plan ("RMP" and "Plan") at two of its facilities in Pennsylvania despite providing false prior certification that it had done so. This is only the second prosecution involving an RMPs in the country.

The CAA charge concerns the company's failure to develop and implement a RMP concerning the storage and use of a regulated substance, anhydrous ammonia, between September 30, 2004, and April, 2007. Hershey uses refrigeration systems to manufacture and store ice cream at its plants in Harrisburg and Middletown, Pennsylvania. It used approximately 42,000 pounds of anhydrous ammonia at its plant in downtown Harrisburg and approximately 23,000 pounds at the Middletown facility.

Despite providing EPA with certification in 1999 and in 2004 that it had a Plan in place for both plants, a subsequent inspection concluded that the company actually lacked viable RMPs at either of the facilities. After repeated information requests and inadequate company responses, EPA issued Hershey a detailed CAA civil compliance order in December 2006, identifying specific areas where the company had failed to comply with RMP requirements. EPA ordered Hershey to develop and implement Plans for both plants, with specific dates identified for compliance with major tasks. Hershey submitted RMPs in April, 2007 and, after inspecting both facilities, EPA found that the company was executing the Plans satisfactorily. The company came into compliance after a criminal investigation had commenced, which was based on Hershey's failure to produce the actual Risk Management Plans after certifying their existence.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cypress Bayou Industrial Painting, Inc., No. 2:08-CR-00211 (E.D. La.), ECS Senior Trial Attorney David Kehoe ECS Senior Counsel Rocky Piaggione and AUSA Dorothy Manning Taylor

On September 24, 2008, Cypress Bayou Industrial Painting, Inc. ("Cypress Bayou"), an industrial painting company, pleaded guilty to a misdemeanor violation of the Clean Water Act.

Cypress Bayou was hired to clean and remove rust and paint from an oil drilling rig owned by Rowan Companies, Inc. The company provided the materials and its own employees for the cleaning operation, which was performed in March and April, 2004, by sand blasting the rig off the Gulf of

Mexico at Port Fourchon, Louisiana. During the sand blasting process, Cypress Bayou failed to install tarps to prevent the over spray of sand blasting debris into the water. Its employees also failed to notify the government that the sand blasting operations resulted in the discharge of pollutants into U.S. waters off the Gulf of Mexico.

The plea agreement requires Cypress Bayou to implement an environmental compliance plan and to pay a $60,000 fine. Sentencing is scheduled for December 17, 2008.

This case was investigated by the Environmental Protection Agency and the United States Coast Guard.

Back to Top

United States v. Craig James et al., No. 3:07- CR-05642 (W.D. Wash.), AUSA Jim Oesterle ([redacted]

On September 19 and 22, 2008, guilty pleas were taken in this case stemming from the destruction of old growth trees in the Olympic National Forest. Craig James and Bruce Brown pleaded guilty to conspiracy to commit depredation against Forest Service property. A third co-defendant, Floyd Stutesman, previously pleaded guilty to the same charge.

For the period between November 2006 and February 2007, the defendants were charged with having damaged and stolen a variety of trees including 31 old growth western red cedar trees, some of which were more than six hundred years old, to sell to timber mills for processing. They also were alleged to have obtained legitimate forest harvesting permits and then used those permits to illegally transport this old growth wood. The three were initially charged with conspiracy to commit depredation against Forest Service property, one count of damage to United States property, and one count of theft of government property.

Stutesman is scheduled to be sentenced November 7, 2008, and Brown and James are scheduled for sentencing on December 19, 2008.

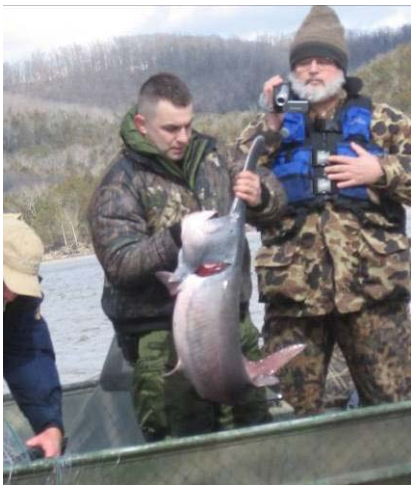
This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

Back to Top

United States v. Thomas Jerry Nix, Jr., No. 3:08-CR-05015 (W.D. Mo.), AUSA Steven M. Mohlhenrich [redacted]**.**

September 10, 2008, Thomas Jerry Nix, Jr., pleaded guilty to conspiracy to violate the Lacey Act. Nix originally was charged in a seven-count indictment with violations stemming from using illegal nets to harvest the roe (eggs) from paddlefish that subsequently was processed into caviar and sold to a Tennessee company. Between January 11 and February 11, 2008, Nix is alleged to have sold approximately 387 pounds of paddlefish caviar out of state for $35,820.

The indictment states that from December 31, 2007, to February 17, 2008, Nix and an unindicted co-conspirator participated in a conspiracy to transport and sell paddlefish roe that was taken in violation of state and federal laws. Nix set gill nets (a commercial fishing net set vertically in the water so that fish swimming into it are entangled by the gills in its mesh) in Table



Live paddlefish returned to lake

Rock Lake ("the Lake"). Nix returned to check the nets every one to three days, removing the fish that were caught, and relocating the nets on the Lake as the paddlefish moved upstream to spawn.

After removing and packaging the roe from the fish he had caught, and in order to conceal his illegal activities, Nix weighted the dead fish with rocks so that they would sink in the lake. The defendant processed the roe into caviar, which was weighed, packaged, transported and sold in Tennessee. According to the indictment, Nix represented that the caviar had been lawfully taken in Arkansas, which was untrue since he did not possess a fishing license from the state, nor did he possess the required permits and documents from the state of Missouri, where he resides.

In February 2008, Nix and his co-conspirator were apprehended by Missouri Department of Conservation agents with approximately 78 pounds of unprocessed paddlefish roe. A search of the defendant's residence revealed approximately 91 pounds of paddlefish roe that had been processed into caviar and packaged in containers labeled for sale to a company located in Tennessee.

In addition to conspiracy, Nix was charged with one Lacey Act violation for possessing and transporting unprocessed paddlefish roe taken in violation of federal regulations and five Lacey Act counts for transporting and selling paddlefish caviar across state lines. A forfeiture allegation will require Nix to forfeit equipment and vehicles, including a 20-foot Bumblebee 200 Pro boat and trailer.

The American paddlefish is native to the Mississippi River drainage system and is taken for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines. The paddlefish is a close relative of the sturgeon from which most commonly known caviars are obtained. With diminishing worldwide sturgeon populations and increased international protection for declining stocks, American paddlefish has become an increasingly popular and valuable substitute for sturgeon caviar. Female paddlefish reach reproductive maturity at nine to 11 years of age, producing up to 10 pounds of roe, and can weigh 100 pounds or more.

This case was investigated by the United States Fish and Wildlife Service and the Missouri Department of Conservation.

Back to Top

Back to Top

[redacted]

Back to Top

United States v. CESI et al., Nos. 2:07-CR-20037 and 20030 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted] AUSA Mark Chutkow [redacted] and SAUS Dave Mucha [redacted]

On September 4, 2008, Comprehensive Environmental Solutions, Inc. ("CESI"), a business which operates an industrial waste treatment and disposal facility in Dearborn, Mich., pleaded guilty to violating the Clean Water Act and making false statements in connection with illegal discharges of untreated liquid wastes from the facility.

According to court documents, CESI took over ownership and operations in 2002 at a plant that had a permit to treat liquid wastes and then discharge them to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the facility's storage tanks were at or near capacity, the company continued to accept millions of gallons of liquid wastes that it could not adequately treat or store. Furthermore, in order to reduce costs and maintain storage space at the facility for additional wastes, the defendant often bypassed treatment processes and discharged untreated wastes directly to the sewer, made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

As part of its guilty plea, CESI has agreed to pay a fine of $600,000, plus an additional $150,000 to fund a community service project for the benefit, preservation and restoration of the environment and ecosystems in the waters adjoining the Rouge River and the Detroit River. In addition to accepting responsibility today for its past misconduct, CESI, which is under new management, has taken a number of steps during the last several years to install new equipment and systems to treat liquid industrial waste before it is discharged to the sewer.

As a condition of probation, CESI has further agreed to abide by the terms of a consent order with the Michigan Department of Environmental Quality for the cleanup of the facility, at an estimated cost of about $1.5 million, which includes the proper disposal of the liquid waste previously stored in the facility's tank farm. CESI has further agreed to develop, adopt, implement and fund an environmental management system/compliance plan at its facility, which will include an annual

program to train employees on environmental compliance and ethics to ensure that all CESI employees understand the requirements imposed by the facility's discharge permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

Back to Top

United States v. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS SeniorTrial Attorney Ron Sutcliffe [redacted], AUSAs Richard Lambert ([redacted]) Jarred Bennett [redacted] and Aunnie Steward ([redacted]), and former ECS Senior Trial Attorney Richard Poole.

On September 3, 2008, Johnson Matthey Inc., ("JMI") the owner and operator of a gold and silver refining facility, pleaded guilty to a felony violation of the Clean Water Act for failing to properly report wastewater discharges at the facility. The former plant manager and former general manager both pleaded guilty to making false statements and were previously sentenced.

The Salt Lake City facility opened in 1982 and refines both gold and silver from a semi-refined product called Dore. As part of the refining process, pollutants such as selenium, among other materials, accumulated in the wastewater. JMI's wastewater was treated at several stages in order to remove selenium before it was discharged to a sewer leading to Central Valley Water Reclamation Facility ("Central Valley"), where it was subsequently treated and discharged to the Jordan River.

From approximately 1996 through 2002, JMI had difficulty consistently limiting selenium discharges to meet its permit limit. An internal audit conducted by the company's auditor in 1999 discovered that the facility had exceeded its permit limit for selenium and that employees had screened samples before submitting them to an outside laboratory for analysis. The auditor warned the general manager that this violated the terms of JMI's industrial discharge permit, which required that representative samples be provided.

In January 2000, to avoid disclosing true concentrations of the selenium-contaminated wastewater discharged from the facility, employees again screened the samples they reported in their discharge monitoring reports provided to Central Valley by analyzing in-house the selenium concentrations and then submitting samples with low selenium concentrations to an outside laboratory for eventual reporting to Central Valley.

Former plant manager Paul Greaves and former general manager John McKelvie previously pleaded guilty to making false statements on the discharge monitoring reports. Both were sentenced to complete a one-year term of probation as well as to perform 20 hours' community service. Greaves was ordered to pay a $500 fine and McKelvie was ordered to pay a $1,000 fine. The company is scheduled to be sentenced on December 2, 2008.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Utah Attorney General's Office.

Back to Top

United States v. John Wood, et al. No. 1:06-CR-00494 (N.D.N.Y.), ECS Trial Attorney Colin Black ([redacted]) and AUSA Craig Benedict ([redacted])

On September 2, 2008, John Wood pleaded guilty to conspiracy to violate the Clean Air Act and the mail fraud statute. He further pleaded guilty to violating several conditions of his pretrial release. His guilty plea was entered one week prior to the start of the trial against Wood and co-

defendant Mark Desnoyers. Wood, the owner of asbestos removal company J & W Construction, Inc., admitted to his role in directing the illegal removal of asbestos from numerous commercial facilities and private homes and in utilizing Desnoyers' false air reports to fool clients into believing all the asbestos had been safely removed. He also pleaded guilty to contempt of court for violating numerous conditions of pretrial release, including committing additional illegal asbestos abatements after he already had been indicted for such conduct. Desnoyers was convicted at trial on September 18th.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Gerald Lakota, No. 3:07-CR-00163 (E.D. Tenn.), ECS Assistant Chief Joseph Poux (and AUSA Matthew Morris

On October 2, 2008, Gerald Lakota was sentenced to complete a two-year term of probation. A fine was not assessed due to an inability to pay. Lakota, a former employee of Fujicolor Processing, pleaded guilty earlier this year to a Clean Water Act violation for falsifying discharge monitoring reports ("DMRs").

As an employee at Fujicolor's film developing facility in Terrell, Texas, Lakota was responsible for environmental compliance at the plant, which included preparing and submitting the plant's wastewater DMRs. In order to ensure compliance, from January 1999 through May 2002, Lakota selectively screened samples of the facility's wastewater effluent and did not report those results that contained unpermitted levels of silver.

Because of the defendant's health problems, he agreed to waive venue and agreed to plead guilty in the Eastern District of Tennessee, where he now resides.

In a related matter, after disclosing the findings of an internal investigation to federal and state officials, Fujicolor pleaded guilty in September 2007 to negligently operating a source in violation of a pretreatment permit at its facility in Terrell and was sentenced to pay a $200,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Texas Commission on Environmental Quality.

Back to Top

United States v. Keith Rosenblum et al., No. 2:07-CR-00294 (D. Minn.), AUSA David Genrich

Inside metal finishing plant

On October 1, 2008, Keith Rosenblum was sentenced to serve 15 months' incarceration and was ordered to pay a $250,000 fine. Rosenblum, president and CEO of the Eco Finishing Company ("EFC"), a metal finishing business, was convicted earlier this year, along with plant manager Martin Meister, following a nine-day trial. Rosenblum was convicted of a Clean Water Act conspiracy, two felony CWA violations and 10 negligent CWA

counts. Meister was convicted on eight negligent CWA violations.

The charges arose from several violations of CWA permit conditions related to, among other things, violations of limits on EFC's discharge of metals and cyanide in its industrial wastewater. The metal finisher, which operates around the clock, typically discharges approximately 60,000 gallons of industrial wastewater per day. Investigation began after the Metropolitan Council Environmental Services ("MCES") was contacted in January 2005 by an ECF environmental manager who was concerned about the company's wastewater treatment practices. The manager reported that violations documented during internal wastewater monitoring were not reported to MCES and that the facility's cyanide destruction system was not working properly. Internal documents revealed that the company was discharging levels of metals and cyanide that were well above the permitted limits.

Investigation further revealed that ECF on several occasions changed its production and wastewater treatment practices when regulators were conducting on-site compliance testing and limited the company's discharge of pollutants when it was being monitored. When regulators ended compliance testing, the company would resume normal operations, often resulting in violations.

ECF pleaded guilty to one knowing CWA violation and was sentenced in February 2007 to pay a $225,000 fine, plus $25,000 in restitution to the Federal Transport Program, and is completing a three-year term of probation. Ted Gibbons, a former chemist for ECF, was sentenced in May 2006 to serve 18 months' incarceration followed by one year of supervised release. Gibbons previously pleaded guilty to one felony CWA pretreatment violation and two felony CWA tampering violations.

Meister is scheduled to be sentenced on October 6, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Federal Bureau of Investigation, the Minnesota Pollution Control Agency, and the Metropolitan Council Environmental Services.

Back to Top

United States v. Pacific Operators Offshore, No. 2:08-CR-00189 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] and AUSA Joe Johns [redacted].

On September 23, 2008, Pacific Operators Offshore was sentenced to pay a $450,000 fine, complete a five-year term of probation, and implement an environmental compliance plan.

The company pleaded guilty to a one-count information charging a violation of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1350(c)(1), for illegally storing natural gas in a degraded pipeline in January 2002.

The company operates an oil and natural gas drilling station with two platforms a few miles off Santa Barbara. The illegal conduct involved storing or "stacking" natural gas from 2000 to 2002 in deteriorating underground pipes after the pipes had been found by the Minerals Management Service ("MMS") to be unfit for service and then attempting to hide this illegal conduct from the MMS. Although there was no actual leak into the environment, the risk to human health, to the workers on the platforms, and to the environment from a potential leak or explosion of natural gas from the pipeline, which ran underneath Coastal Highway 101, was significant.

This case was investigated by the United States Department of Interior.

Back to Top

United States v. Kent Dahle et al., 4:08-CR-00055 (D. Idaho), ECS Trial Attorney Jim Nelson [redacted] and AUSA Michael Fica [redacted]

Dredging with backhoe

On September 23, 2008, Kent Dahle and Dahle Construction each was sentenced to pay a $15,000 fine and to complete a one-year term of unsupervised probation. The defendants pleaded guilty earlier this year to misdemeanor Clean Water Act violations for their involvement in an unlawful dredge and fill project in the Salmon River and a related tributary. Co-defendant Abner Shultz was sentenced September 8th to pay a $30,000 fine and will serve three years' probation including six months' home detention. Schultz also was ordered to remove all fill material from the Salmon River and the tributary subject to approval by the Army Corps of Engineers ("Corps").

Schultz pleaded guilty to a felony CWA violation for the dredge and fill operation, which occurred in 2005 on the Wagonhammer Campground property he owned in North Fork, Idaho. A spring-fed tributary to the Salmon River flows across the Wagonhammer Campground and into the Salmon River.

Schultz discharged dredge and fill material below the ordinary high water mark of both the Salmon River and the tributary. He directed employees of Dahle Construction, L.L.C., to place more than 400 linear feet of perforated irrigation pipe into the tributary and to cover the pipe with approximately 300 cubic yards of rock and topsoil. Schultz later directed Dahle employees to dredge approximately 500 cubic yards of dirt and rock from the tributary and place that dredged material along the bank of the Salmon River, below the ordinary high water mark, and in low-lying wetland areas connected to the tributary. The dredge and fill work was in violation of a permit issued by the Corps.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and National Oceanic and Atmospheric Administration.

Back to Top

United States v. Citgo Petroleum Group, No. 2:08-CR-00077 (W.D. La.), ECS Senior Counsel Rocky Piaggione [redacted] ECS Trial Attorney Eric Heimann [redacted] and AUSA Stephanie Finley [redacted].

On September 17, 2008, Citgo Petroleum Group ("CITGO") pleaded guilty to a negligent violation of the Clean Water Act for illegally discharging petroleum after a heavy rainfall overran the company's stormwater system in June of 2006. The company was sentenced to pay a $13 million fine, which is the largest fine thus far for a misdemeanor CWA violation.

In 1994, the CITGO Refinery in Sulphur, Louisiana, converted its previous lagoon system to a tank system for handling its wastewater and storm water

View of spill area

operations. The original plans called for three storm water tanks and one "Equalization" tank. The system was designed to address a "once-in-a-25-year-storm" which would amount to 10.25 inches of rain in 24 hours. CITGO decided for economic reasons to build only two storm water tanks. The two storm water tanks were fitted with "skimmers" that were supposed to remove any waste oil that would be diverted to the storm water tanks during heavy rainfalls. It became evident early on in the operations of the tank system that there was a need for a third tank despite initial engineering assurances that two tanks would be adequate. Finally in 2006, CITGO approved the building of this third tank. On June 19, 2006, however, before construction could be completed, a storm developed that turned out to be the equivalent of a "once-in-a-25-year" storm.

When the rain began, the storm water tank levels were at 17 feet despite requirements that the levels were to be maintained between five and six feet. Within a few hours the storm water tanks began to overflow. Because the skimmers had not been adequately maintained, large quantities of waste oil from the tanks flowed into the containment area. By the morning of June 20th it was evident that significant quantities of oil were being released through the surface run-off channel to the Clacasieu Estuary. It was estimated that 53,000 barrels of oil were released to United States waters, and the local water ways were limited in navigation for approximately 10 days.

In addition to the fine, CITGO will implement an environmental compliance plan ("ECP") to ensure that a spill of this type will not occur in the future. The ECP includes new reporting requirements within the corporate structure regarding environmental issues and tank maintenance, the completion of the third storage tank and the installation of new and more effective oil removal equipment for the storm water tanks.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the United States Coast Guard.

Back to Top

United States v. Charles Victoria et al., No. 2:06-CR-00230 (W.D. Pa.), AUSA Brendan Conway [redacted]

On September 16, 2008, Charles Victoria was sentenced to complete a three-year term of probation. A fine was not imposed.

Victoria pleaded guilty earlier this year to conspiracy to violate the Clean Air Act. Victoria was a foreman for Industrial Commercial Consulting International, Inc. ("ICCI"), which had been hired to remove asbestos-containing material from a portion of the decommissioned Woodville State Hospital in 1998.

During several inspections by U.S. Environmental Protection Agency and the Allegheny County Health Department a variety of violations were found, including the dry removal of asbestos and failure to properly contain the asbestos-containing material. One inspection revealed that insulation-containing asbestos that had been ripped from a steam pipe was allowed to sit on the ground for nearly a year. Some of this asbestos eventually made its way into a nearby creek. ICCI previously was sentenced to pay a $300,000 fine and complete a three-year term of probation. The company may offset $25,000 of the fine by implementing an environmental compliance plan designed to prevent further violations. Up to $150,000 of the fine additionally may be offset through payments to support environmental projects in the vicinity of the former hospital.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the EPA National Enforcement Investigations Center and the Allegheny County Health Department.

Back to Top

United States v. Michael Joe Clark, No. 2:08-CR-00063 (S.D.W.V.), SAUSA Perry McDaniel [redacted]

On September 3, 2008, Michael Joe Clark was sentenced to serve 37 months' incarceration followed by three years' supervised release. He also will pay $8,816.48 in restitution to emergency responders. Clark pleaded guilty this past May to violating the negligent endangerment provision of the Clean Air Act and also to a violation of the Controlled Substances Act for the theft of anhydrous ammonia and for causing the release of this extremely hazardous substance.

On February 27, 2008, Clark broke into a 1,000 gallon tank of anhydrous ammonia that was used to treat acidic water at a former coal mining site, with the intent to steal ammonia to manufacture methamphetamine. As Clark was siphoning the ammonia into a propane tank, the valve broke and caused a release of anhydrous ammonia. The release burned Clark's hands and lungs, resulting in his being hospitalized. Several emergency responders also required medical attention. The chemical release further resulted in a voluntary shelter-in-place for residents adjacent to the site. The release lasted for several hours and required numerous attempts by emergency personnel to stop the leak.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Steven Taylor, No. 0:07-mj-00339 (D. Minn.), AUSA LeAnn Bell [redacted].

On September 3, 2008, Steven Taylor was sentenced to pay a $2,500 fine and complete a two-year term of probation after being found guilty this summer, following a bench trial, of killing an endangered species during a hunting trip in November 2002. The killing of a gray wolf occurred during a hunting trip, during which, according to witnesses, Taylor admitted to shooting two of them.

On December 12, 2002, a Department of Natural Resources warden found a dead gray wolf lying next to a deer stand. A necropsy of the wolf determined it could have been shot by someone in the stand, which had been used by Taylor's hunting party. Two spent shell casings from a semi-automatic rifle also were found near the stand.

Witnesses testified at trial that Taylor was using a semi-automatic rifle over the weekend. The weapon later was allegedly destroyed in 2003 when the defendant determined that he was under investigation.

This case was investigated by the United States Fish and Wildlife Service and the Minnesota Department of Natural Resources.

Back to Top

United States v. John Mazoch et al., No. 1:07-CR-00086 (E.D. Tex.), AUSA James Noble ([redacted])

Compressed gas cylinders

On August 29, 2008, John Mazoch was sentenced to serve eight months' incarceration followed by eight months' home confinement and three years of supervised release. He also must pay a $500,000 fine and approximately $700,000 in restitution to the United States Environmental Protection Agency and the Louisiana Department of Environmental Quality ("LDEQ"). Mazoch, the vice president of Coastal Welding Supply ("CWS"), located in Texas, previously pleaded guilty to a RCRA conspiracy violation stemming from the unlawful storage of compressed gas cylinders.

In January 2006, state and federal investigators discovered 555 compressed gas cylinders, containing various types of industrial gases, in a self storage facility in Sulphur, Louisiana.

Investigators determined that Mazoch had directed the transportation of the cylinders, first from one CWS site to another in Louisiana. Then he directed James Hebert, a contractor working for CWS, to remove them from a second site. In March 2005, Mazoch paid Hebert $30,000 to take possession of the cylinders, and in April 2005 Hebert rented the storage unit where the cylinders were discovered.

Hebert and Mark Sample, a CWS employee who supervised Hebert and assisted with transporting the cylinders, both previously pleaded guilty to a RCRA conspiracy violation. Each of the defendants was sentenced to serve six months' home confinement and will perform 200 hours of community service. Hebert further will pay a $10,000 fine and complete a five-year term of probation. Sample will pay a $5,000 fine and complete a three-year term of probation. Both Sample and Hebert were also held jointly and severably liable for the entire restitution; however, it is anticipated that Mazoch will pay the sum in full pursuant to his plea agreement. Hebert and Sample received reduced sentences for assisting with the government's investigation.

The court further ordered that $100,000 of the restitution will be paid as follows: $40,000 to a Calcasieu Parish, Louisiana, environmental project; $25,000 to the LDEQ Criminal Investigations Contingency Account; $25,000 to the Louisiana State Police Emergency Response Program; and $10,000 to the Southern Environmental Enforcement Network.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana Department of Environmental Quality Criminal Investigation Division.

Back to Top

United States v. Wassim Mohammad Azizi, No. 3:06-CR-00548 (N.D. Calif.), AUSA Stacey Geis

On August 28, 2008, Wassim Mohammad Azizi was sentenced to serve ten months' incarceration followed by two years' supervised release. Azizi was convicted by a jury in May of this year after a seven-day jury trial of three felony counts for violating the Clean Air Act stemming from the illegal demolition of a building that contained significant amounts of asbestos.

Demolished building

Azizi purchased a commercial building with the intent to demolish it and construct a new building. Following the purchase and the discovery that the building contained asbestos, the defendant hired an unlicensed handyman to commence with the demolition.

Between December 1, 2002, and February 1, 2003, Azizi illegally demolished the building and placed workers and the public at risk. He was convicted of violating several work practice standards, including the failure to properly notify the Air District, failure to wet the asbestos-containing material, failure to keep it in leak-tight containers, and failure to dispose of it at an authorized location.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Tania Siyam, No.1:04-CR-00098 (N.D. Ohio), AUSA Phillip Tripi

On August 7, 2008, Tania Siyam, a Canadian citizen, was sentenced to serve 60 months' imprisonment and will pay a $100,000 fine for illegally smuggling ivory from the West African country of Cameroon into the United States.

Siyam was charged in 2004 with two felony Lacey Act violations and two felony smuggling counts for the illegal commercial trafficking of raw African elephant tusks (ivory) from Cameroon to the United States. At the time of the indictment Siyam was held by Canadian officials pending extradition to the United States. She finally was extradited in December 2007 and pleaded guilty in March of this year to all four charges.

Siyam originally operated art import and export businesses in Montréal, Canada, and Cameroon that were fronts for smuggling products from endangered and protected wildlife species, including raw elephant ivory.

In the summer of 2002, after moving her base of operation from Canada to Cameroon, Siyam orchestrated a sophisticated scheme to smuggle illegal wildlife products by soliciting the cooperation of local artists and craftsmen, operatives within international commercial shipping companies, contacts in the illegal ivory trade, a partner in Canada, a partner in the United States, and her father, Alphonse Siyam Siwe, who was the General Manager of Ports in Cameroon from 1998-2005. As part of the scheme, Siyam operated numerous Internet-based art businesses and also used other telecommunications to advertise and to sell regulated and protected wildlife products to customers throughout the world.

In the fall of 2002, officials were alerted by concerned citizens that endangered species products, including raw elephant ivory, were being advertised for sale on the Internet. In November 2002, with the assistance of a local Ohio business owner, United States Fish and Wildlife agents purchased a shipment of illegal raw elephant ivory from the defendant. The raw ivory tusks were concealed inside pottery, labeled as art, and sent by international courier from Cameroon, to Montréal, Canada. Once in Canada, the goods were repackaged and shipped by Siyam's Canadian partner, via the Canadian and United States Postal Service, to the Ohio business address.

In December 2003, a second purchase was arranged from the defendant and this shipment was sent directly from Cameroon to the local Ohio business owner, acting on behalf of the agents. The shipment consisted of three wooden crates, with the 125 pounds of raw ivory concealed inside terra cotta flower pots packaged within each crate. In addition, other shipments of ivory were sent in 2003 to other customers, including wildlife agents in New York. Raw elephant tusks, and elephant ivory carvings, were again concealed inside pottery and declared as art.

The two ivory shipments to Ohio were valued together at more than $158,000 and included parts from at least 21 African elephants.

This case was investigated by the United States Fish and Wildlife Service and Environment Canada.

Back to Top

United States v. William Stoner, No. 5:08-CR-00024 (E.D. Tex.), AUSA Jim Noble [redacted]

On September 9, 2008, William Stoner was sentenced to pay a $2,000 fine, $3,186.56 in restitution to Texas Parks and Wildlife, and $5,000 in restitution to the National Fish and Wildlife Foundation's Native Plant Conservation Initiative. Stoner also will complete a three-year term of probation.

Asian Grass Carp

Stoner pleaded guilty in April of this year to a misdemeanor Lacey Act violation for the importation of harmful fish without a permit across state lines. Stoner admitted that he transported approximately 50 unsterilized Asian Grass Carp from Arkansas into Texas without a permit.

On November 21, 2007, the defendant delivered the carp to the Quail Creek Country Club golf course to put them in the ponds to help keep down the weeds. Stoner would scuba dive in the depths of the six ponds at the club, raking through weeds and algae to find as many as 3,000 balls each time, for which he was paid ten cents a ball. He bought the carp so that he could more easily locate the golf balls.

Acting on a tip from an Arkansas fish farmer, federal agents stopped Stoner in Texarkana and arrested him with a load of unsterilized carp, which devour marine vegetation and other fish so aggressively that they can alter an entire ecosystem. Fish and Wildlife agents ultimately were forced to recover and destroy the carp from five different water hazards at the country club, due to the risk that a flood event on the San Marcos River would allow the fish to escape the golf course and threaten native vegetation, including endangered Texas wild rice.

This case was investigated by Arkansas Game and Fish Commission, Texas Parks and Wildlife, and the United States Fish and Wildlife Service.

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

November 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	**United States v. Mario Rivera et al.**	***Halibut Sales*/ Lacey Act**
C.D. Calif.	**United States v. Peter Xuong Lam et al.**	***Catfish Imports*/ Conspiracy, Lacey Act, Food and Drug Act**
N.D. Calif.	**United States v. James Saunders** **United States v. Casilda Shipping, Ltd. et al.**	***Whale Teeth Sales*/ Lacey Act, Endangered Species Act** ***Vessel*/ Conspiracy, APPS**
D. Colo.	**United States v. Jerry Mason et al.** **United States v. Martin Villegas Terrones**	***Leopard Hunts*/ Endangered Species Act** ***Sea Turtle Products*/ Smuggling**
M.D. Fla.	**United States v. Francisco Bagatela et al**	***Vessel*/ APPS**
S.D. Fla.	**United States v. James Hanson, Jr., et al.**	***Queen Conch and Spiny Lobster Imports*/ Lacey Act, Forfeiture**
D. Hawaii	**United States v. Jerome Anches et al.**	***Freight Transporter*/ RCRA Storage, Mail Fraud**
D. Mass.	**United States v. Carmelo Oria et al.**	***Vessel*/ APPS, Obstruction, Falsifying Records**
D. Md.	**United States v. Joseph Peter Nelson et al.**	***Striped Bass Harvesting*/ Conspiracy, Lacey Act**
E.D. Mich.	**United States v. Bryan Mallindine et al.**	***Waste Disposal Facility*/ CWA, False Statement**
D. Minn.	**United States v. Martin Meister et al.**	***Metal Finisher*/ Conspiracy to violate CWA, CWA misdemeanor**
[redacted]	[redacted]	[redacted]
D. N. J.	**United States v. Holy House Shipping AB**	***Vessel*/ APPS, False Statement**
N.D.N.Y.	**United States v. Paul Mancuso et al.**	***Asbestos Abatements*/ Conspiracy to violate CAA, CERCLA and Mail Fraud; CAA, CERCLA**
[redacted]	[redacted]	[redacted]
D. Ore.	**United States v. Lenar Equipment, Inc.**	***Chinese Tractor Imports*/ CAA**
D. R. I.	**United States v. Southern Union Company**	***Mercury Release*/ RCRA Storage**
D. Utah	**United States v. Jay Atwater et al.**	***Furniture Restorer*/ RCRA, CWA, SDWA**
W.D. Wash.	**United States v. STX Pan Ocean Co. Ltd. et al.**	***Vessel*/ APPS, Misprision of a Felony**

Additional Quick Links

Trials

United States v. Peter Xuong Lam et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] AUSA Joe Johns ([redacted], and ECS Supervisory Paralegal Will Taylor [redacted]

On October 29, 2008, Peter Xuong Lam was found guilty by a jury of conspiring to import mislabeled fish in order to avoid paying federal import tariffs. Lam also was found guilty on three counts of dealing in fish that he knew had been illegally imported. Arthur Yavelberg was found guilty of conspiracy to trade in misbranded food.

To date 12 individuals and companies, including Lam and Yavelberg, have been convicted for criminal offenses related to a scheme to avoid paying tariffs by falsely labeling fish for import and then selling it in the United States at below market price.

According to evidence presented during the two week trial, two Virginia-based companies, Virginia Star Seafood Corporation, of which Lam became president, and International Sea Products Corporation, illegally imported more than ten million pounds, or $15.5 million worth, of frozen fish fillets from Vietnamese companies Binh Dinh, Antesco, and Anhaco between May 2004 and March 2005. These companies were affiliated with Cafatex, one of the largest producers in Vietnam of a fish called *Pangasius hypophthalmus*. Although the fish imported by Virginia Star and International Sea Products was labeled and imported as sole, grouper, flounder, snakehead, channa and conger pike, a type of eel, DNA tests revealed that the frozen fish fillets were in fact *Pangasius hypophthalmus* aka catfish aka basa.

An anti-dumping duty or tariff was placed on *Pangasius hypophthalmus* imports from Vietnam in January 2003, after a petition was filed by the catfish farmers of America. The petition alleged that this fish was being imported from Vietnam at less than fair market value.

Further evidence presented at trial showed that Kich Nguyen, the head of the Vietnamese producer, Cafatex, imported the fish to his son, Henry Nguyen, who oversaw Virginia Star, International Sea Products, and a third company, Silver Seas, of which Yavelberg was president.

Lam then knowingly marketed and sold millions of dollars worth of the falsely labeled and illegally imported fish to seafood buyers in the United States as basa, a trade name for a more expensive type of Vietnamese catfish, *Pangasius bocourti*, and also as sole. All of the fish sold was

invoiced to match the false labels that were still on the boxes. The jury convicted Yavelberg of marketing the fillets, without his necessarily knowing they had been mislabeled.

Many of the purchasers knew or should have known that the fish they were purchasing at less than market value was falsely labeled. Henry Yip, T.P. Company, David Wong, True World Foods, Inc., David Chu, Dakon International, Du Sa Ngo, Southern Bay, Joseph Xie, and Agar Supply all have entered guilty pleas related to their participation in these transactions. Sentencings in all but two of these cases are pending and are scheduled for February 23, 2009.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, Food and Drug Administration Office of Criminal Investigations, and United State Immigration and Customs Enforcement.

Back to Top

United States v. Bryan Mallindine et al., Nos. 2:07-CR-20037 and 20030 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted], AUSA Mark Chutkow [redacted] and RCEC David Mucha [redacted]

On October 21, 2008, after a three-week trial, all three defendants were found guilty. Michael Lanyard, a former president, general manager, and sales manager for Comprehensive Environmental Solutions, Inc. ("CESI"), was convicted on all nine counts in the indictment, including conspiracy, Clean Water Act, and false statement counts in connection with illegal discharges of millions of gallons of untreated liquid wastes from the facility. Bryan Mallindine, another former president and company CEO was convicted of one count of negligently bypassing the facility's required pretreatment system, a misdemeanor violation of the CWA. Charles Long, a former plant and operations manager, was convicted on both counts for which he was charged, which were conspiracy and a CWA violation.

Bypass hose connecting to sewer

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge it to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the facility's storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. Furthermore, in order to reduce costs and maintain storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer, made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

Former plant manager, Donald Kaniowski, previously pleaded guilty to a CWA violation and is scheduled to be sentenced on November 17, 2008. CESI recently pleaded guilty to CWA and false statement violations and all four remaining defendants are to be sentenced in March 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with the assistance of the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

Back to Top

United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.), ECS Senior Trial Attorney Kevin Cassidy [redacted], AUSA Terrence Donnelly [redacted] SAUSA Diane Chabot [redacted] and ECS Paralegal Steve Foster [redacted]

On October 15, 2008, Southern Union Company was convicted by a jury on one RCRA storage violation. The company had been charged with two counts of illegal storage of waste mercury and one count of failing to immediately notify local authorities of a release of mercury from its facility.

During the three-week trial, the government presented evidence that Southern Union began a program in 2001 to remove from customers' homes gas regulators that contained mercury. Southern Union employees brought the regulators to a facility in Pawtucket, on the edge of the Seekonk River. Southern Union initially hired an environmental services company to remove the mercury from the regulators, and then shipped the mercury to a facility in Pennsylvania for further processing.

Mercury on ground

When the removal contract expired, gas company technicians continued to remove the regulators from customers' homes. The defendant stored the mercury-containing regulators, as well as loose liquid mercury, in various containers including plastic kiddie pools in a vacant building at the facility.

The evidence showed that, in 2002, 2003, and 2004, a local gas company official drafted requests for proposals for removal of the mercury that was collecting at the facility. The company, however, never finalized the proposals or put them out to bid. By July 2004, approximately 165 mercury-containing regulators were stored at the site, as were various other containers, such as glass jars and a plastic jug, containing a total of more than a gallon of mercury.

In September 2004, vandals broke into the mercury storage building and took several containers of liquid mercury. Some of the containers were shattered causing mercury to be spilled around the facility's grounds. They also took some of the mercury to a nearby apartment complex. For about three weeks, puddles of mercury remained on the ground at the site, and more mercury lay spilled at the apartment complex. On October 19, 2004, a gas company employee discovered mercury on the ground of the facility and evidence that there had been a break-in.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Indictments

United States v. Paul Mancuso et al., Nos. 5:08-CR-00548 and 00611 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted]

On October 16, 2008, Paul Mancuso, Lester Mancuso, and Steven Mancuso were charged with conspiracy to defraud the United States, violate the Clean Air Act, violate CERCLA, and commit mail fraud, in connection with the illegal removal of asbestos from numerous locations throughout central and upstate New York. Paul and Lester Mancuso also were charged with substantive CAA and CERCLA violations.

In 2003, Paul Mancuso was convicted of CAA violations related to illegal asbestos removal and disposal activities and in 2004 he was convicted of insurance fraud related to his prior asbestos business. As a result of those prior convictions he was prohibited from either directly or indirectly engaging in any asbestos abatement activities or associating with anyone who was violating any laws.

Paul and Steven Mancuso are brothers, and Lester Mancuso is their father. The present indictment charges that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities that contaminated various businesses and homes and, on multiple occasions he dumped asbestos from his removal jobs on roadsides and in the woods.

Steven Mancuso, an attorney, is charged in the conspiracy count with aiding his family in its illegal asbestos enterprise by preparing false and fraudulent documents to make it appear that their activities were legal and that they were entitled to payment for their work. Paul Mancuso and his family ran their illegal asbestos business from the offices of Steven Mancuso's law firm.

Ronald Mancuso, another brother of Paul and Steven Mancuso, pleaded guilty on October 2, 2008, to a conspiracy to violate CERCLA. Ronald admitted to participating in dumping asbestos in the woods in September and October 2005.

Paul, Steven and Lester Mancuso are scheduled for trial to begin on December 22, 2008, and Ronald Mancuso is scheduled to be sentenced on February 4, 2009. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State ("NYS") Department of Environmental Conservation. Assistance was provided by the NYS Department of Labor, Asbestos Control Bureau; the NYS Worker's Compensation Board, Office of Fraud Inspector General; and the NYS Insurance Fund, Division of Confidential Investigations.

Back to Top

United States v. Joseph Peter Nelson, et al., No.8:08-CR-00482 (D. Md.), ECS Trial Attorneys Wayne Hettenbach [redacted] Madison Sewell [redacted] and Jeremy Peterson ([redacted] and AUSA Stacy Belf ([redacted].

On October 15, 2008, a seven count indictment was returned against commercial fishermen Joseph Peter Nelson and Joseph Peter Nelson, Jr., alleging conspiracy and Lacey Act violations for their role in illegally harvesting and systemically under-reporting their catch of striped bass from the Potomac River. In 2003 the men engaged in unlawful sales of striped bass with undercover officers posing as fish wholesalers who were part of the Interstate Watershed Task Force ("IWTF"). The

IWTF was a joint task force involving agents from Maryland, Virginia, and the U.S. Fish and Wildlife Service. The investigation subsequently revealed that in addition to these transactions, the fishermen had been catching more fish than allowed under their Maryland quota and under-reporting their catch to Maryland Department of Natural Resources since approximately 2003 or longer.

This case was investigated by the United States Fish and Wildlife Service, the Maryland Department of Natural Resources, and the Virginia Marine Police.

Back to Top

United States v. Carmelo Oria et al., No. 08-CR-10274 (D. Mass.), AUSA Linda Ricci [redacted] and SAUSA Christopher Jones.

On October 2, 2008, two foreign firms that own and operate the *M/T Nautilus*, an oceangoing chemical tanker, were charged along with the ship's chief engineer for covering up discharges of oil-contaminated waste at sea.

Consultores de Navegacion S.A. ("Consultores") of Spain, Iceport Shipping Co. Ltd., ("Iceport") of Cyprus, and chief engineer Carmelo Oria of Spain were variously charged in a five-count superseding indictment with one count of conspiracy and one APPS violation for failing to maintain an accurate oil record book ("ORB") concerning the disposal of oil-contaminated waste. The three defendants also were charged with one count of making false statements to the Coast Guard regarding the overboard dumping of this waste. Additionally, Consultores and Iceport were charged with falsifying records with the intent to impede an investigation and with obstruction of justice.

The indictment charges that between June 2007 and March 2008, Consultores and Iceport, acting through Oria and senior engineers on the *Nautilus*, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and instead discharged the oil-contaminated waste directly overboard.

It is further alleged that during a port call in Boston in March 2008, the defendants presented a false ORB that did not disclose these illegal overboard discharges and that the defendants falsely stated to inspectors, among other things, that Oria never ordered the pumping of oil-contaminated waste overboard.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Jay Atwater et al., No. 1:08-CR-00114 (D. Utah), AUSA Jared Bennett [redacted]

On October 1, 2008, a furniture restoration business and its owner were charged with violations stemming from the dumping of hazardous solvents into a public sewer system. Jay Atwater and Heritage Restoration were charged with RCRA, CWA and SDWA violations.

Sub-surface piping system

The indictment states that, during the furniture restoration process, Atwater and others acting under his control used a solution containing between 70 and 76 percent methylene chloride to strip the paint. The rinse water generated during this process allegedly was dumped into sub-surface soil on numerous occasions between approximately 2000 and April 2007 in violation of RCRA. After April 2007, Atwater modified the process for disposing of the rinsewater by discharging it down

a sink that led into a POTW, in violation of the CWA, resulting in toxic fumes and vapors with the potential to cause acute worker health or safety problems.

Finally, the indictment alleges that the defendants violated the Safe Drinking Water Act and the state of Utah's Underground Injection Control Plan by performing numerous underground injections from 2001 to 2007 without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Jerome Anches et al., No.1:08-CR-00577 (D. Hawaii) AUSA Marshall Silverberg [redacted]

Corroded drum and battery

On September 24, 2008, a five-count indictment was returned variously charging Jerome Anches and Stephen Swift with RCRA violations and mail fraud.

Anches was the president of Martin Warehousing and Distribution ("MWD"). MWD was in the business of transporting and distributing freight. On or about August 14, 2001, there was a hazardous waste spill involving the puncture of a 55-gallon drum of tetrachloroethylene by a MWD forklift driver. MWD contacted the Honolulu Fire Department, which arrived and contained the spill. MWD also contacted Pacific Environmental Company ("PENCO"), which specialized in the clean-up of hazardous wastes sites and the disposal of

hazardous waste. Shortly thereafter, PENCO employees arrived to clean-up the site. After providing samples of this material to be tested by a lab, PENCO verified that the waste must be treated as hazardous and placed the material in a container on MWD's property.

PENCO then prepared manifests and hazardous waste labels for Anches and informed him that the company could transport the waste for proper disposal for a fee of $16,534. Anches declined the offer due to the cost and let the waste sit without proper permitting until February 2005.

In February 2005, Anches agreed to sell the WMD property to RRL, Inc., and to Stephen Swift, the *de facto* "responsible corporate officer" for RRL. The contract required that the hazardous waste be manifested and properly removed from the property. Swift or one of his employees, however, simply moved the container where it sat on the street near the RRL offices. The waste was moved again about a week later, from the street to property owned by Swift, without a manifest. Swift continued to unlawfully store this waste from February 2005 to May 2008.

In a letter dated January 4, 2008, the Department of Health for the State of Hawaii wrote to Swift's attorney and asked a number of questions, including whether Swift had taken care of a container with the hazardous waste located on his property. Swift responded in a letter dated January 21, 2008, with a number of false statements, including the representation that the container located on the Haleahi property did not contain waste but rather "damaged freight."

Trial is scheduled for November 25, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Pleas

United States v. Holy House Shipping AB, No. 1:08-CR-00782 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] and AUSA Ron Chillemi ([redacted].

On October 17, 2008, Holy House Shipping AB ("Holy House"), the operator of the *M/V Snow Flower*, pleaded guilty to one APPS violation and one 18 U.S.C. §1001 false statement violation.

Court documents state that crewmembers on the *Snow Flower* alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port call in New Jersey, inspectors were presented with an oil record book containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which then was pumped overboard.

As part of the plea, Holy House has agreed to pay a $1 million fine plus a $400,000 community service payment to the National Fish and Wildlife Fund. The company has further agreed to complete a three-year term of probation and to implement an environmental compliance plan. Sentencing is scheduled for February 6, 2009.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation.

Back to Top

United States v. James Saunders, No.3:08-CR-00724 (N.D. Calif.), AUSA Stacey Geis [redacted]

On October 16, 2008, James Saunders pleaded guilty to three Lacey Act and three Endangered Species Act violations for selling Sperm Whale teeth without a valid permit, teeth that then were used for scrimshaw, the art of the engraving or carving figures on ivory pieces.

From 2002 to 2006, Saunders, along with a supplier from the Ukraine, arranged for the importation of large quantities of Sperm Whale teeth into the United States. Once the teeth were imported, Saunders then helped to get them sold to merchants who specialized in scrimshaw. On three specific dates between August 2003 and February 2004, Saunders admitted to participating in the importation of well over 600 Sperm Whale teeth from the Ukraine. The defendant was involved in sales valued at more than $200,000.

Sentencing is scheduled for April 30, 2009. This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Francisco Bagatela et al., No. 8:08-CR-00424 (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [redacted] AUSA Cherie Krigsman ([redacted], and SAUSA Lt. William George.

On October 14, 2008, Francisco Bagatela and Robert Racho, two Phillipine citizens who served as chief engineers aboard a cargo ship operated by Hiong Guan Navegacion Japan Co. Ltd., pleaded guilty to falsifying and failing to properly maintain the oil record book for the commercial vessel *M/V Balsa-62*.

Bypass hose

From June 2007 through February 2008, chief engineer Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass, as well.

In February 2008, Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the Coast Guard by not recording them in the ORB. In December 2007 and May 2008, during port calls in Tampa, the ORB with the false entries and omissions was presented to inspectors. Based in part on information from crew members, the Coast Guard subsequently located evidence onboard corroborating allegations that the ship had been unlawfully discharging oily waste.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. STX Pan Ocean Co., Ltd. et al., No. 3:08-CR-05653 (W.D. Wash.), AUSA Jim Oesterle ([redacted]) and SAUSA LCDR Mark Zlomek.

Plastic bags on deck

On October 3, 2008, STX Pan Ocean Co., Ltd., ("STX") pleaded guilty to an APPS violation for failing to maintain an accurate Garbage Record Book. Two senior officers, Emilio Canillo and Bong Jun Gang, have pleaded guilty to misprision of a felony for failing to notify Coast Guard inspectors of the false book. STX was sentenced to pay a $500,000 fine, and will make a $250,000 community service payment to the National Fish and Wildlife Foundation for use in projects to restore Puget Sound.

The dumping occurred from the *M/V Pan Voyager*, a South Korean-flagged 17,000 ton ocean going bulk carrier. In July 2008, the ship was in South Korea unloading grain when crew members discovered a hole in one of the vents leading to a fuel oil tank. A substantial amount of grain spilled into the hole, entered the tank, and contaminated the fuel oil. Senior officers subsequently ordered lower level crew members into the tank to remove the contaminated grain. Crew members used buckets and dust pans to remove the grain/fuel oil waste and dumped it into drums, plastic lined rice sacks, and large plastic garbage bags. The crew used one of the vessel's cargo cranes to lift the grain/fuel oil waste onto the main deck and dumped the bags of waste overboard at night. The plastic bags and rice sacks were punctured in hopes that they would sink and further reduce the risk of detection. Coast Guard inspectors further discovered that a section of the deck railing had been cut away and then welded back into place to facilitate the illegal dumping.

Captain, Hae Wan Yang, who was on the bridge and wing of the ship during the dumping and observed the activity, also pleaded guilty to making a false statement and will be sentenced on December 8, 2008.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Casilda Shipping, Ltd. et al., No. 4:08-CR-00448 (N.D. Calif.), AUSAs Stephen Corrigan [redacted] and Wade Rhyne [redacted] and SAUSA Lt. Jeffrey King.

On October 22, 2008, Casilda Shipping, Ltd., a Greek company that owns the *Rio Gold*, a 23,000 ton ocean-going cargo ship flagged in Malta; Genesis Seatrading Corporation, the Greek operator; and Pantelis Thomas, the Greek chief engineer, all pleaded guilty to and were sentenced for conspiring to violate APPS and for falsifying the oil record book to cover up illegal discharges.

All three defendants were sentenced to complete a three-year term of probation. Casilda Shipping also will pay a $750,000 fine, $250,000 of which will be paid to the National Fish and Wildlife Foundation for use in projects to restore the Northern California coast. Additionally, a

portion of the fine will be paid to the crew members who brought the violations to the attention of the Coast Guard. Genesis Seatrading was ordered to implement an extensive three-year environmental compliance plan during the term of probation. Thomas will pay a $5,000 fine and complete an unsupervised term of probation.

Between July 2007 and May 2008, Thomas ordered the crew to use a bypass to illegally discharge oily waste overboard, as well as to discharge two large plastic barrels, one filled with oil sludge and the other filled with hydrochloric acid. The oil record book was falsified to conceal these activities as well.

Coast Guard officials were approached by four crew members while the ship was being inspected in Oakland on May 26, 2008. Subsequent investigation revealed the bypass pipe and the omissions and false entries made in the ORB.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Jerry Mason et al., No. 1:08-CR-00318 (D. Colo.), ECS Trial Attorney Jim Nelson ([redacted]) and AUSA Greg Holloway [redacted]

On October 17, 2008, Jerry Mason pleaded guilty to and was sentenced for an Endangered Species Act violation for smuggling a leopard hide into the United States. He was sentenced to pay a $10,000 fine plus a $10,000 community service payment to the National Fish and Wildlife Fund. Mason will further complete a four-year term of probation during which he will be prohibited from hunting anywhere in the world. Trial is pending against co-defendant Wayne Breitag.

Defendant Mason with leopard

According to the indictment, both Breitag and Mason traveled to South Africa in August 2002 to hunt leopards while guided by a South African outfitter named Jan Swart d/b/a "Trophy Hunting Safaris." Swart arranged to have the hides smuggled from South Africa into Zimbabwe, where he purchased the fraudulent export permits. Breitag and Mason then submitted applications to the U.S. Fish and Wildlife Service claiming to have hunted the leopards in Zimbabwe. In November 2004, inspectors seized animal parts at the Denver International Airport including those from the leopards killed by the defendants.

Leopards are listed on Appendix I of CITES. CITES requires that prior to the transport of any part of an Appendix I species from one country to another, an export permit from the country of origin (or a re-export certificate) and an import permit from the country to which the specimen will be shipped, must be obtained and accompany the shipment. The CITES authorities in South Africa set a yearly quota on the number of export permits issued by that country for Appendix I species, such as leopards. These permits are only issued for leopards that have been killed with a valid hunting permit.

Swart previously pleaded guilty to smuggling violations and is currently serving an eighteen-month prison sentence. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Lenar Equipment Inc., No. 3:08-CR-00281 (D. Ore.), AUSA Scott Kerin ([redacted]

On October 9, 2008, Lenar Equipment, Inc., pleaded guilty to and was sentenced for violating a little-used provision of the Clean Air Act for importing 10 Chinese-made tractors in 2005 that were not in compliance with U.S. emission standards.

This case is the first known criminal prosecution in the nation of a company violating the Clear Air Act's Transition Program for Equipment Manufacturers. That program restricts the manufacture and importation of non-road compression-ignited engines that do not comply with the CAA current emission standards, while allowing manufacturers to delay compliance for a limited period of time. It also imposes reporting and record-keeping requirements.

The company was sentenced to pay a $ 20,000 fine, to complete a three-year term of probation, and will forfeit the tractors.

This case was investigated by the United States Environmental Protection Agency, United States Customs and Border Protection, and United States Immigration and Customs Enforcement.

Back to Top

United States v. Martin Villegas Terrones, No. 1:07-CR-00358 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] **ECS Trial Attorney Colin Black** [redacted]**, and AUSA Linda McMahan** [redacted]**.**

On October 8, 2008, Martin Villegas Terrones, a Mexican national, was sentenced to serve 24 months' incarceration followed by three years' supervised release. Villegas Terrones pleaded guilty earlier this year to federal smuggling charges in connection with the sale and shipment of endangered sea turtle skins and skin products from Mexico to the United States.

A total of 11 people were charged in Denver in August 2007 following "Operation Central," a multi-year undercover United States Fish and Wildlife investigation. Villegas and six other defendants were arrested the following month. The seven defendants who were arrested in this case now have pleaded guilty: Chinese nationals Fu Yiner and Wang Hong; Mexican nationals Carlos Leal Barragan and Esteban Lopez Estrada; and Oscar Cueva and Jorge Caraveo from Texas.

There are seven known species of sea turtles. Five of the seven species are listed as endangered under the Endangered Species Act and all seven species are protected by CITES. Sea turtles are frequently killed illegally for their meat, skins, eggs and shell, all of which have commercial value.

Operation Central, a three-year undercover operation conducted by the United States Fish and Wildlife Service, has resulted in the arrests and guilty pleas of seven individuals from the United States, Mexico and China. Four of the indicted defendants remain at large.

Back to Top

United States v. Martin Meister et al., No. 2:07-CR-00294 (D. Minn.), AUSA David Genrich ([redacted]

On October 6, 2008, Martin Meister was sentenced to complete a two-year term of probation, complete 150 hours of community service, and make a community service payment of $2,500 to the Mississippi River Fund in St. Paul. Meister, a plant manager for Eco Finishing Company ("ECF"), a metal finishing business, was convicted earlier this year, following a nine-day jury trial. He was convicted on eight negligent CWA violations along with the president of the company, Keith Rosenblum, who was convicted of a CWA conspiracy, two felony CWA violations, and 10 negligent CWA counts.

A superseding indictment was filed in January 2008 charging the defendants with conspiracy and several violations of CWA permit conditions related to, among other things, violations of limits on the company's discharge of metals and cyanide in its industrial wastewater. ECF, which operates around the clock, typically discharges approximately 60,000 gallons of industrial wastewater per day. Investigation began after the Metropolitan Council Environmental Services ("MCES") was contacted in January 2005 by an ECF environmental manager who was concerned about the company's wastewater treatment practices. The manager reported that violations documented during internal wastewater monitoring were not reported to MCES and that the facility's cyanide destruction system was not working properly. Internal documents revealed that the company was discharging levels of metals and cyanide that were well above the permitted limits.

Investigation further revealed that ECF on several occasions changed its production and wastewater treatment practices when regulators were conducting on-site compliance testing, by limiting its discharge of pollutants while it was being monitored. When regulators ended compliance testing, the company would resume normal operations, often resulting in violations.

Rosenblum recently was sentenced to serve 15 months' incarceration and was ordered to pay a $250,000 fine. ECF pleaded guilty to one knowing CWA violation and previously was sentenced to pay a $225,000 fine, $25,000 in restitution to the Federal Transport Program, and is completing a three-year term of probation. Ted Gibbons, a former chemist for ECF, was sentenced in May 2006 to serve 18 months' incarceration followed by one year of supervised release. Gibbons pleaded guilty to one felony CWA pretreatment violation and two felony CWA tampering violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Federal Bureau of Investigation, the Minnesota Pollution Control Agency, and the Metropolitan Council Environmental Services.

Back to Top

[redacted]

Back to Top

United States v. James Hanson, Jr., et al., No. 1:08-CR-20627 (S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted]

Defendant (foreground) on forfeited vessel

On September 22, 2008, James Hanson, Jr., Hanson Seafood, Inc., and J.R.J.T., Inc., pleaded guilty to and were sentenced for Lacey Act violations for the illegal import of queen conch and spiny lobster from the Bahamas into the United States.

In December 2005, James Hanson was intercepted by a Coast Guard patrol vessel and taken to the Coast Guard Base at Miami Beach. During a boarding and inspection of his vessel, officers discovered more than 1,000 pounds of undeclared spiny lobster and approximately 340 pounds of queen conch, which had been purchased in the Bahamas. Hanson's intention was to land the seafood in the United States and market it through Hanson Seafood, Inc., a company he owned.

Hanson, who received a lesser sentence for cooperating with the government's investigation, was sentenced to pay a $75,000 fine, ordered to perform 300 hours of community service, and will complete a three-year term of probation. He further was ordered to relinquish any claim to the proceeds of the seized product, which was valued at $13,930. J.R.J.T., Inc., which is wholly owned by Hanson, was ordered to forfeit the boat used in the commission of the offense, a 37.8-foot sport fishing vessel, valued at approximately $750,000. Hanson Seafood, Inc. is no longer an active business entity.

In imposing sentence, the court also took into consideration the pending donation by Hanson of approximately 223 acres of undeveloped property on Windley Key near Tavernier, Florida, to the State of Florida for preservation as a part of the Windley Key Fossil Reef Geological State Park. That property, which is comprised of mixed hammock, wetlands, and mangrove, and the surrounding shallows, are prime breeding and nursery habitat for queen conch and spiny lobster. Although not a condition of the resolution of the case, Hanson proposed the donation to state authorities to offset the consequences of his criminal offense.

Queen conch is a protected species under the Endangered Species Act and has been listed for protection under CITES Appendix II since 1992. To engage in trade in queen conch, all imports or exports must be accompanied by a CITES export certificate from the country of origin, or a re-export permit from a country of re-export.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement, the United States Fish and Wildlife Service, and United States Immigration and Customs Enforcement.

Back to Top

United States v. Mario Rivera et al., No. 1:07-CR-00006 (D. Alaska), AUSA Steven Skrocki ([redacted]

On September 16, 2008, Mario Rivera was sentenced to pay a $10,000 fine and will complete a three-year term of probation. Mario Rivera, along with co-defendants Jesse and Artimeo Rivera, pleaded guilty to misdemeanor Lacey Act violations stemming from their involvement in illegally selling and shipping halibut caught under the Sitka Sound Subsistence Halibut program.

The two brothers (Jesse and Mario) and their cousin (Artimeo) initially were charged in a seven-count indictment with conspiracy to violate the Lacey Act and substantive Lacey Act violations. They each were licensed as subsistence fisherman, which meant that they were only permitted to catch halibut for consumption purposes, and then only allowed to sell $400 worth of fish in any given year.

In 2004, evidence obtained from fisheries observers provided grounds for the execution of search warrants on a Seattle seafood wholesaler. As a result of that search, investigators found checks and other records which established that, during the summer of 2003, the Riveras shipped more than 10,000 pounds of subsistence-caught halibut to the wholesaler. In exchange for the halibut, the Riveras were paid more than $50,000.

Jesse Rivera was sentenced this summer to serve six months' imprisonment and will pay a $40,000 fine. Artimeo Rivera was sentenced to serve one month in a half-way house and to pay a $5,000 fine. Both also will complete a three-year term of supervised release with a special condition that prohibits them from engaging in any commercial or subsistence fishing.

This case was investigated by the National Marine Fisheries Service, Division of Law Enforcement.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

December 2008

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the **ctrl key** while clicking on the link.)

AT A GLANCE

- **United States v. Hagerman, 2008 WL 5120116, (7th Cir. Dec. 5, 2008) (slip op.)**
- [redacted]
- **United States v. San Diego Gas & Electric Co., ___ F. Supp. 2d ___, 2007 WL 4326773 (S.D. Cal. Dec. 7, 2007).**
- [redacted]

[redacted]

Districts	Active Cases	*Case Type* / Statutes
S.D. Calif.	United States v. Ivan Garcia Oliver	*Paint Dumping* /RCRA Disposal, CWA Misdemeanor
N.D. Calif.	United States v. Benefit Cosmetics	*Beauty Products*/ HMTA
M.D. Fla.	United States v. Hiong Guan Navegacion Japan Co. Ltd.	*Vessel*/ Conspiracy, APPS
S.D. Fla.	United States v. Max Moghaddam et al.	*Caviar Export*/ Lacey Act, Endangered Species Act
D. Mass.	United States v. Albania Deleon et al.	*Asbestos Certificates*/ Conspiracy, False Statement, Mail Fraud, False Payroll Tax Returns
D. Md.	United States v. Scott Reiter et al.	*Asbestos Abatement*/ Conspiracy to Defraud the Small Business Admin., Money Laundering Conspiracy
E.D. Mich.	United States v. HSKM, Inc.	*Nickle-Chrome Alloy Manufacturer*/ TSCA
E.D. Mo.	United States v. Paul Fredericks United States v. James Raulerson	*Metal Plater*/ RCRA Storage, CWA *Biodiesel Plant* CWA
W.D. Mo.	United States v. Greenleaf, L.L.C.	*Pesticide Sales*/ FIFRA
[redacted]	[redacted]	[redacted]
D.N.J.	United States v. Igor Krajacic et al.	*Vessel*/ APPS
N.D.N.Y.	United States v. Paragon Environmental Construction, Inc.	*Asbestos Abatement*/ Clean Air Act Conspiracy
E.D.N.C.	United States v. Daniel Smith et al.	*Public Works Director*/ SDWA, CWA
W.D.N.C.	United States v. George W. Hughes, III	*POTW Supervisor*/ CWA misdemeanor
M. D. Pa.	United States v. Hershey Creamer Company	*Ice Cream Manufacturer*/ CAA Failure to Implement Risk Management Plan
[redacted]	[redacted]	[redacted]
E.D. Tex.	United States v. Dile Kent McNair	*Metal Plater*/ RCRA Storage
S.D. Tex.	United States v. General Maritime Management (Portugal), L.D.A. et al	*Vessel*/ APPS, False Statement
D. Utah	United States v. Jay Atwater [redacted] United States v. Johnson Matthey, Inc. et al.	*Furniture Restorer*/ RCRA, CWA, SDWA [redacted] *Gold and Silver Refinery*/ CWA Pretreatment
W.D. Wash.	United States v. Kevin Steele	*Seafood Broker*/ Lacey Act

Additional Quick Links

Significant Environmental Decisions

Seventh Circuit

United States v. Hagerman, 2008 WL 5120116 (7th Cir. Dec. 5, 2008) (slip op.)

On December 5, 2008, the Seventh Circuit affirmed the criminal conviction and sentence of Derrik Hagerman and Wabash Environmental Technologies, LLC ("Wabash"). Hagerman and Wabash were convicted of ten felonies for making false statements under the Clean Water Act in a scheme to disguise ongoing discharge violations from regulators at its centralized waste treatment facility directly into the Wabash River. The district court sentenced Hagerman to serve 60 months' incarceration and ordered Hagerman and Wabash to pay $237,680.74 in restitution to the EPA Superfund. In its sentencing order the district court recognized that "managers of those businesses need to understand that if they make the choice that the [defendant] made – to lie and cover up the violations on this scale – they face more than fines and civil penalties as a cost of doing business. They face prison." *U.S. v Hagerman*, 525 F. Supp 2d 1058, 1067 (S.D. Ind., 2007). On appeal, the Seventh Circuit held in relevant part that electronic spreadsheets introduced at trial corroborating Hagerman's false statements were not prohibited 404(b) evidence even if they included data supporting uncharged false statements, nor did this evidence constructively amend the indictment by expanding the number of crimes charged. Also, the Court found that the jury instruction given at trial, which interpreted the certification language found on state and federal reports consistent with the permit and regulations, was a proper interpretation of the law. Finally, the Court held that the sentence was lawful and appropriate as the district court took into consideration all of the relevant factors under 18 U.S.C. § 3553(a), including the federal sentencing guidelines.

Back to Top

Second Circuit

Back to Top

District Courts

United States v. San Diego Gas & Electric Co., ___ F. Supp. 2d ___, 2007 WL 4326773 (S.D. Cal. Dec. 7, 2007).

Defendant public utility and three employee defendants were indicted on five counts of violation of the Clean Air Act with respect to the removal of more than nine miles of gas pipeline that was wrapped in asbestos-containing material. Three counts of the indictment charged the individual

defendants with various violations of NESHAP work practice standards for asbestos (failure to give prior written notice of the removal of "regulated asbestos containing material" or "RACM", failure to wet RACM, and failure to contain RACM in leak tight containers). One count charged the company and one of the employees with making a false statement under 18 U.S.C. §1001. A fifth count (conspiracy) was dismissed at trial after the government rested.

A jury found the company guilty on all remaining counts, found two of the employee defendants guilty on the third of the work practice counts, acquitted all defendants on the other work practice counts in which they were charged, and deadlocked as to the employee defendant who was charged in the false statement count. Following the verdict, all convicted defendants filed motions for acquittal and (in the alternative) for a new trial.

Held: The court *inter alia* granted the defendants' motion for a new trial on the NESHAP work practice counts. Under the NESHAP regulations, in order to qualify as RACM, a material must contain more than 1% asbestos and be "friable" (or highly likely to become friable during demolition operations.) Certain test procedures are specified in the NESHAP regulations for determining whether a material contains more than 1% asbestos.

Prior to trial, the court (rejecting a USEPA interpretation of the NESHAP regulations contained in two "clarification notices") ruled that, where a material is multi-layered, each layer had to be analyzed and the results then combined to determine an "average" (based upon volume) asbestos content for the whole sample. The court further ruled that, while the NESHAP regulations did not require that a sample be intact, it had to be "whole" and must contain all layers of the material.

In ruling upon the defendants' post-trial motions, the court found that the NESHAP regulations require testing of not only a "whole" sample, but also a "representative" sample. The court further noted that due process required that such samples must be representative of the pipe wrap that existed along the entire length of the pipe from which it was removed, not just of the portion of wrap that was found after the removal operation. It rejected the government's argument that a "whole" sample meant simply a whole sample of the material that was found and collected. The court also rejected the government's claim that "representative" sampling applied only to friable asbestos material, not to all of the asbestos containing material, present. It then found that the samples collected from debris from the stripping activities found at the site had been heterogeneous, rather than homogeneous, in nature, and thus had not been representative of the original wrap material on the pipe.

The court concluded that test results for all 12 of the government's samples taken from the debris at the site should not have been admitted into evidence. Furthermore, of the six remaining samples taken directly from wrap material while it was still on the pipe, the court determined that two might not have been representative and four might have been tested using an impermissible method. Although one of the samples clearly had been both representative and tested in a proper manner, the court found that admitting all six samples at trial (subject to defense cross-examination as to relevance and weight) had been "confusing, misleading and prejudicial". Moreover, it found that admission of the non-representative debris samples (relevant as to the issue of friability) had compounded the confusion and prejudice. The court set aside the convictions on the NESHAP counts and granted a new trial.

Back to Top

Other Significant Decisions

Ninth Circuit

Back to Top

Seventh Circuit

Back to Top

Trials

United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Falsely labeled paddlefish (on left)

On December 4, 2008, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were convicted by a jury on charges of conspiring to violate the Lacey Act, a Lacey Act false labeling violation, and an Endangered Species Act violation for the illegal export of internationally protected fish roe (eggs) between July 2005 through April 2007.

The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars. Over a 21-month period, the defendants exported numerous shipments labeled as containing bowfin roe, which is often used as a caviar substitute, when in fact they contained paddlefish roe.

Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and the American Paddlefish is now listed as an Endangered Species. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish has become a substitute for sturgeon caviar and, as such, has become quite valuable.

The defendants are scheduled to be sentenced on February 12, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. General Maritime Management (Portugal), L.D.A. et al., No. 2:08-CR-00393 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted] SAUSA Ken Nelson [redacted] and ECS Paralegal Jean Bouet [redacted]

On November 26, 2008, General Maritime Management (Portugal), L.D.A., the operator of the *M/T GenMar Defiance*, chief engineer Antonio Rodrigues, and first engineer Jose Cavadas each were convicted by a jury of the two violations charged, specifically, an APPS oil record book violation and a false statement violation for presenting a false ORB to Coast Guard officials during a port inspection.

This case came to the attention of inspectors

Locked overboard discharge valve

after a crewmember/fitter advised the Coast Guard that he had been told by the ship's chief and first engineers to connect a bypass hose to an overboard discharge valve, thereby tricking the oil content meter into allowing oily bilge waste to bypass the ship's oily water separator. Other crewmen later confirmed the fitter's story as well as secretly photographing the illegal bypass and passing the pictures to the Coast Guard. The fitter stated that he observed Cavadas open the overboard discharge valve and pump the bilge into the ocean for approximately three or four hours. He was warned by Cavadas not to talk about this and Rodrigues further threatened to fire the fitter once the ship had reached port.

During the Corpus Christi port inspection in November 2007, the ORB presented to officials omitted the illegal overboard discharges. The defendants are scheduled to be sentenced on February 10, 2009.

This case was investigated by the United States Coast Guard, and the Environmental Crimes Task Force, which includes the United States Environmental Protection Agency, the Texas Commission on Environmental Quality Investigations Division, and the Texas Parks and Wildlife Department.

Back to Top

United States v. Albania Deleon et al., No. 1:07-CR-10277 (D. Mass.), AUSA Jonathan Mitchell [redacted] and SAUSA Peter Kenyon [redacted]

On November 20, 2008, Albania Deleon, owner of the Environmental Compliance Training School ("ECTS"), was convicted by a jury on charges that she sold asbestos-removal training certificates to hundreds of undocumented workers who had not taken the mandatory training course and then sent them out to perform asbestos removal work, for which she paid them without withholding taxes. Deleon was convicted on 22 counts, including conspiracy to make false statements, to encourage undocumented workers to reside in the United States, and to hire them; five false statement violations; 16 counts of procuring false payroll tax returns; and five counts of mail fraud.

ECTS was the largest certified asbestos training school in Massachusetts. Between 2001 and 2006, Deleon routinely issued asbestos certificates to people who did not attend required training courses or pass required tests. Many of those who received fraudulent certificates were illegal immigrants who then worked for a temporary service company, Methuen Staffing, also owned by Deleon, at demolition and construction sites overseeing asbestos removal. She sent these employees to job sites throughout Massachusetts, as well as to other states, including New Hampshire, Maine, and Connecticut.

The tax violations stem from the defendant's concealing the size of her payroll from IRS to avoid paying taxes. She did this, among other ways, by maintaining two payrolls where she deducted the correct amount of tax for some of her employees, but paid the majority of them using a second payroll wherein income taxes were not withheld nor were payroll taxes paid to the IRS. Finally, the mail fraud convictions stem from Deleon's mailing workers compensation insurance documentation to insurance representatives that concealed the existence of those workers who received paychecks without taxes withheld, thereby reducing the amount of workers compensation insurance that she was required to pay. Deleon is scheduled to be sentenced on February 17, 2009.

Co-defendant Jose Francisco Garcia-Garcia previously pleaded guilty to a false statement violation for issuing the false certifications. He is not yet scheduled for sentencing.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement, the Internal Revenue Service Criminal Investigation Office, the Social Security Administration Office of Inspector General, the United States Department of State, the Massachusetts Insurance Fraud Bureau, and the Massachusetts Division of Occupational Safety.

Back to Top

Pleas

United States v. Paul Fredericks, No. 4:08-CR-00565 (E.D. Mo.), AUSA Michael Reap [redacted] and SAUSA Anne Rauch [redacted]

On December 2, 2008, Paul Fredericks, the owner of Usona Metal Finishing Company ("Usona"), a metal-plating business, pleaded guilty to one RCRA violation. He initially was charged with two RCRA violations and one CWA violation stemming from the illegal storage and discharge of hazardous waste.

Usona operates three plants in the St. Louis area, including an anodizing plant in Cuba, Missouri, and a wet-paint plant and a powder-coating plant, both located in St. Louis. After the powder-coating plant ceased operations in April 2007, Fredericks arranged for the transportation of 100 drums of hazardous waste from that facility to the anodizing plant in Cuba. The hazardous wastes were illegally stored at the plant from April 2007 to April 2008, at which point Fredericks directed employees to dump the wastes into the plant's sanitary sewer. Sentencing is scheduled for February 26, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Kevin Steele, No. 2:08-CR-00376 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On November 21, 2008, Kevin Steele, the operator of Mallard Cove Resources, a seafood brokerage business, pleaded guilty to a felony Lacey Act violation for the false labeling of a fish product and to a Lacey Act misdemeanor for introducing misbranded food into interstate commerce.

Steele had been informed by a federal seafood program inspector that fish known as turbot or Greenland halibut could not be labeled or marketed as halibut. Despite that knowledge, between July 2003 and mid-2006, the defendant purchased more than 136,000 pounds of a fish commonly known as Greenland halibut or Greenland turbot from a fish wholesaler in Rhode Island. The fish was labeled as turbot and as a product from China. Steele then had the fish shipped to a cold storage facility where he directed that it be repackaged and relabeled as "Halibut Portions" or "Halibut Pieces," and that it was a "Product of USA."

The defendant sold more than 131,000 pounds of falsely labeled fish to retail stores and restaurants primarily in Utah and Texas.

The plea agreement requires that Steele publish quarter-page advertisements in widely-circulated seafood industry magazines in which he describes his criminal conduct and apologizes for his actions. He will be further required to make a community service payment to the National Fish and Wildlife Foundation equal to the amount he profited by selling the cheaper fish at a higher price. This amount will be determined at sentencing which is scheduled for February 13, 2009. The money will be used to fund projects for species and habitat conservation, protection, restoration and management projects to benefit fish resources and the habitats on which they depend.

This case was investigated by the National Oceanic Atmospheric Administration.

Back to Top

United States v. Hiong Guan Navegacion Japan Co. Ltd., No. 8:08-CR-00494 (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [redacted] and AUSA Cherie Krigsman [redacted]

On November 20, 2008, Hiong Guan Navegacion Japan Co. Ltd. ("Hiong Guan"), the operator of the *M/V Balsa 62*, a commercial cargo ship, pleaded guilty to conspiracy and to falsifying and failing to properly maintain the ship's oil record book.

According to court documents, from June 2007 through February 2008, chief engineer Francisco Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass, as well.

On February 25, 2008, Robert Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the Coast Guard by not recording them in the ORB. During Port calls in Tampa on October 31, 2007, and May 31, 2008, the ORB that contained the false entries and omissions regarding the bypasses was presented to inspectors. Based in part on information from crew members aboard the ship, the Coast Guard subsequently located evidence on the ship corroborating allegations that the ship had been unlawfully discharging oily waste. The two engineers, both Philippine citizens, pleaded guilty in October 2008 to falsifying and failing to properly maintain the ORB.

According to the plea agreement, Hiong Guan has agreed to pay a $1.75 million fine and implement a detailed environmental compliance plan, which requires monitoring of its fleet-wide operations over the course of three years.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Greenleaf, L.L.C., No. 3:08-CR-05033 (W.D. Mo.), AUSA Robyn McKee [redacted]

On November 19, 2008, Greenleaf, L.L.C., a pesticide and rodenticide sales company, pleaded guilty to one FIFRA violation for the illegal sale and distribution of pesticides.

Between January 2007 and January 2008, Greenleaf received damaged and unwanted pesticides from a Wal-Mart distribution center in Arkansas which was where all Wal-Mart stores across the country shipped these materials. Greenleaf admitted that it distributed and sold a large number of the pesticides and rodenticide products after removing or altering the labeling on the package. The defendant distributed more than two million pounds of these chemicals.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Daniel Smith, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley [redacted]

On November 5, 2008, Daniel Smith, the public works director for Mocksville, North Carolina, pleaded guilty to violating the Safe Drinking Water Act and the Clean Water Act.

As the town's public works director, Smith oversaw the town's public drinking water system and was required to submit information about the water's turbidity to the North Carolina Department of Environment and Natural Resources ("DENR"). Smith admitted to knowingly directing employees to send false data that understated drinking water turbidity. Nicholas Slogick, the official in charge of

the town's POTW, pleaded guilty to knowingly submitting false data about the drinking water to the DENR.

Smith also violated the Clean Water Act by using town employees to pour massive amounts of degreaser and caustic into the POTW. Smith, who received a kick-back for having the town purchase these chemicals, dumped them in order to justify purchasing additional quantities.

Smith also conspired to misapply town property after Macksville received more than $10,000 in federal grant money. Smith created a company, Danny Smith Enterprises, that provided maintenance and repair services to other towns and private citizens, employing town equipment and employees (including state inmates) to operate the company for his personal gain. Both defendants are scheduled for sentencing on February 2, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Jay Atwater et al., No. 1:08-CR-00114 (D. Utah), AUSA Jared Bennett ([redacted]

Hole in shop floor leading outside

On November 3, 2008, a furniture restoration business and its owner entered guilty pleas stemming from the dumping of hazardous solvents into a public sewer system. Jay Atwater pleaded guilty to a RCRA disposal violation and Heritage Restoration pleaded guilty to a CWA charge.

During the furniture restoration process, Atwater and others acting under his control used a solution containing between 70 and 76 percent methylene chloride to strip the paint. The rinse water generated during this process allegedly was dumped into sub-surface soil on numerous occasions between approximately 2000 and April 2007 in violation of RCRA. After April 2007, Atwater modified the process for disposing of the rinsewater by discharging it down a sink that led into a POTW, in violation of the CWA, resulting in toxic fumes and vapors with the potential to cause acute worker health or safety problems. Sentencing is scheduled for February 17, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. George W. Hughes III, No. 3:08-CR-00212 (W.D.N.C.), AUSA Steven Kaufman [redacted]

On November 3, 2008, George Hughes pleaded guilty to a misdemeanor CWA violation. Hughes was the supervisor of Kirby Case, the operator of the POTW for the Town of Dallas, who previously pleaded guilty to two CWA violations.

Case admitted to discharging pollutants from the POTW into the Dallas Branch of the Catawba River Basin in violation of the POTW's permit. He also admitted to filing discharge monitoring reports with the North Carolina Department of Environment and Natural Resources between November 2006 and December 2007 that included falsified sample levels for chlorine, ammonia, fecal

coliform, and other materials. Hughes pleaded guilty to failing to supervise Case as he diluted samples with tap water that were taken from the POTW.

On April 14, 2008, the Town of Dallas, North Carolina, was fined more than $140,000 by the state for the improper operation and maintenance of the POTW resulting in discharges of poorly treated or untreated wastewater that blanketed a half-mile of the receiving stream with sludge four to eight inches deep.

The fine, the state's largest for water pollution, was imposed by the North Carolina Division of Water Quality, which found during an inspection in November 2007 that the town's wastewater treatment plant was severely noncompliant, with half of its treatment capacity out of service and the remaining half overloaded with sewage solids. Solids also were present in the chlorine contact chamber. Since the chlorine chamber was not in use, the effluent from the plant was not disinfected. Although solids were being discharged with effluent, the town submitted samples that made it appear that the plant was adhering to the state's permit limits for the discharge.

During the inspection, the Dallas branch (a tributary of Long Creek) was observed to have a several-inch thick layer of partially-treated sewage about half a mile downstream from the plant's discharge point. State inspectors also found evidence of two unreported spills – one of untreated sewage, the other of partially treated wastewater – that reached the Dallas branch, as well. The Town has been fined by the state 27 times since March 2003 for amounts totaling nearly $43,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina Division of Water Quality.

Back to Top

United States v. Igor Krajacic et al., No. 1:08-CR-00824 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] and AUSA Ron Chillemi [redacted]

On November 3, 2008, Igor Krajacic, a chief engineer for the *M/V Snow Flower*, pleaded guilty to one APPS violation for failing to maintain an accurate ORB. Krajacic further admitted to discharging oily waste overboard as well as to ordering crew members to do the same. Holy House Shipping AB ("Holy House"), the operator of the *Snow Flower*, pleaded guilty in October 2008 to one APPS violation and to one 18 U.S.C. §1001 false statement violation.

Oil in pipe

Court documents state that crewmembers on the ship alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port call in New Jersey, inspectors were presented with an ORB containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which then was pumped overboard.

As part of the plea, Holy House has agreed to pay a $1 million fine plus a $400,000 community service payment to the National Fish and Wildlife Fund. The company has further agreed to complete a three-year term of probation and to implement an environmental compliance plan. Krajacic is scheduled to be sentenced on January 16, 2009, and the company is scheduled for sentencing on February 6, 2009.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation.

Back to Top

Sentencings

[redacted]

Back to Top

United States v. HSKM, Inc., No. 1:08-CR-20365 (E.D. Mich.), AUSA Janet Parker [redacted] and SAUSA Dave Mucha [redacted].

On December 2, 2008, a corporation formerly known as Hoskins Manufacturing Company ("Hoskins"), and now known as HSKM, Inc., was sentenced to pay $1.7 million in restitution to partially offset Superfund emergency response costs. The corporation also was ordered to complete a one-year term of probation and must publish an apology in various periodicals, reminding other manufacturers of the obligation to comply with laws designed to protect the environment and, at a minimum, to inform authorities of the existence of a potentially hazardous condition which may be left behind after a business shuts down.

Abandoned drums of hazardous waste

Hoskins was in the business of producing specialty nickel-chrome alloys and once operated several facilities in Michigan. These facilities were abandoned in 2001 when the company went out of

business. The company specifically pleaded guilty to a TSCA violation for abandoning a PCB-containing transformer at one of those facilities.

Hoskins became the focus of a joint criminal investigation by EPA and MDEQ after Superfund emergency response teams responded to the three abandoned manufacturing sites in Michigan in 2003 and 2004. One of these sites was adjacent to an elementary school.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Environmental Quality.

Back to Top

United States v. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS Senior Trial Attorney Ron Sutcliffe (and AUSAs Richard Lambert Jarred Bennett and Aunnie Steward

On December 2, 2008, Johnson Matthey Inc., ("JMI") the owner and operator of a gold and silver refining facility, was sentenced to pay $3 million for violating the Clean Water Act. Of this amount, $750,000 will fund various environmental projects including wildlife habitat acquisition and restoration projects in the vicinity of the Great Salt Lake and its tributaries, and research related to setting selenium standards and limits for the Great Salt Lake and its tributaries.

JMI previously pleaded guilty to failing to properly report wastewater discharges at the facility. Former plant manager Paul Greaves and former general manager John McKelvie both pleaded guilty to making false statements and previously were sentenced.

The Salt Lake City facility opened in 1982 and refines both gold and silver from a semi-refined product called dore. As part of the refining process, pollutants such as selenium, among other materials, accumulated in the wastewater. JMI's wastewater was treated at several stages in order to remove selenium before it was discharged to a sewer leading to Central Valley Water Reclamation Facility ("Central Valley"), where it was subsequently treated and discharged to the Jordan River.

From approximately 1996 through 2002, JMI had difficulty consistently limiting selenium discharges to meet its permit limit. An internal audit conducted in 1999 revealed that the facility had exceeded its permit limit for selenium and that employees had screened samples before submitting them to an outside laboratory for analysis. The auditor warned the general manager that this violated the terms of JMI's industrial discharge permit, which required that representative samples be provided.

In January 2000, to avoid disclosing true concentrations of the selenium-contaminated wastewater discharged from the facility, employees again screened the samples they reported in their discharge monitoring reports provided to Central Valley by analyzing in-house the selenium concentrations and then submitted samples with low selenium concentrations to an outside laboratory for eventual reporting to Central Valley.

Greaves and McKelvie each were sentenced to complete a one-year term of probation as well as to perform 20 hours' community service. Greaves was ordered to pay a $500 fine and McKelvie a $1,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Utah Attorney General's Office.

Back to Top

United States v. James Raulerson, No. 1:08-CR-0019 (E.D. Mo.), SAUSA Ann Rauch and AUSA Michael Reap

On November 24, 2008, James Raulerson, the owner of a farm in southeastern Missouri, was sentenced to pay a $10,000 fine and will complete a two-year term of probation. Raulerson previously

pleaded guilty to violating the Clean Water Act in connection with the dumping of waste products from a biodiesel plant into a canal.

Investigation began after the Missouri Department of Conservation received an anonymous call in October 2007 that a tanker truck had been observed dumping its contents into a canal known as Belle Fountain Ditch. Investigators discovered an undetermined amount of decomposing glycerine in the canal and were able to trace it back to Raulerson, who admitted that he dumped glycerine, methanol, and oil into the canal. Approximately 30,000 fish were killed as a result of the spill.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Missouri Department of Natural Resources, and the Missouri Department of Conservation.

Back to Top

United States v. Benefit Cosmetics, No. 08-CR-00602 (N.D. Calif.), AUSA Stacey Geis [redacted]

On November 14, 2008, Benefit Cosmetics pleaded guilty to one count of violating the Hazardous Materials Transportation Act. The company was sentenced to pay a $350,000 fine and ordered to issue a public apology in a trade journal.

Benefit Cosmetics is a wholesaler and retailer of beauty products. As part of its business, it ships large amounts of product interstate, both by ground and by air. Several of its products contain materials designated as hazardous for air travel, because they are capable of posing a risk to health, safety and property when transported aboard planes. On or about March 23, 2006, a company employee recklessly caused a hazardous material, in this case, isopropyl alcohol, a flammable liquid, to be illegally transported in air commerce.

This case was investigated by the United States Department of Transportation Office of Inspector General, and Federal Aviation Administration Security and Hazardous Materials Branch.

Back to Top

[redacted]

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Ivan Garcia Oliver, et al., Nos. 3:07-CR-03192 and 03343, (S.D. Calif.), AUSA Melanie Pierson [redacted]

On November 10, 2008, Ivan Garcia Oliver was sentenced to serve 15 months' incarceration for a RCRA disposal violation. Oliver, an employee of Wagner Construction JV, admitted to operating a forklift in a manner that caused him to dump a 55-gallon drum of Plasti-Kote (a spray paint product containing toluene) on the ground and into the Slaughterhouse Canyon Creek at night.

Guillermo Garcia, Oliver's supervisor and uncle, pleaded guilty to being an accessory after the fact for placing dirt over the location of the spill, and for providing false information to authorities regarding the disposal. Garcia previously was sentenced to serve four months' home detention and was ordered to pay a $1,000 fine.

Wagner Construction was sentenced to pay a $20,000 fine, plus $7,503 to reimburse the San Diego County Department of Environmental Health Services for cleanup costs. The company also will complete a two-year term of unsupervised probation after pleading guilty to a misdemeanor CWA violation for failing to supervise employees who caused the toluene to be dumped into the Creek. Wagner also entered into a compliance agreement with the U.S. Environmental Protection Agency to prevent future environmental problems.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the San Diego County Department of Environmental Health Hazardous Materials Management Division, the California Department of Fish and Game, and the Lakeside Fire Department.

Back to Top

United States v. Scott Reiter et al., No. 8:08-CR-00345 and 00350 (D. Md.), ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Gina Simms ([redacted]

On November 10, 2008, Scott Reiter was sentenced to serve 18 months' incarceration followed by three years' supervised release. Reiter also will pay a $400,000 fine and will pay an additional $300,000 in restitution. Co-defendant David Muir was previously sentenced to serve 30 days' incarceration. The two pleaded guilty in August of this year to conspiracy to defraud the United States Small Business Administration ("SBA"). Reiter further pleaded guilty to a money laundering conspiracy.

In the fall of 1999, Reiter worked for or was associated with three Maryland companies that performed asbestos and lead abatement and demolition work at federal and private facilities. Between 1998 and 2007, all three companies participated in the SBA's 8(a) program. For one of the companies, Reiter represented himself to different contractors and subcontractors doing business with the company as the division's manager, project manager, and as a company officer. Muir worked for these companies since 1998 and represented himself as operations manager, project manager, quality control manager and vice president.

Unbeknownst to the SBA and in violation of its regulations, Reiter, Muir, and their co-conspirators exerted significant financial and operational control over the three Maryland corporations in a variety of ways, including: personally indemnifying the liabilities of one of the companies, which enabled it to obtain higher bonding and 8(a) contracts of higher value than the company otherwise would have qualified; exercising significant control over the contracts bid upon by all three companies; and exercising control over the selection and payment of subcontractors on behalf of two of the companies.

In addition, Reiter and Muir failed to disclose that approximately $900,000 in bonuses were paid to these defendants and their co-conspirators and that their bonuses and other compensation far exceeded the compensation paid to a non-disadvantaged individual. The defendants knew that they and the co-conspirators provided critical bonding, financial and operational support to the three 8(a) certified companies. Furthermore, during the course of the conspiracy, Muir, as a company president, submitted fraudulent annual updates to the SBA in which he falsely certified that the companies continued to meet the SBA regulations related to eligibility, including those which prohibit financial and operational control of the firm by a non-disadvantaged individual.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the EPA National Enforcement Investigations Center, the SBA Office of Inspector General, and the Naval Criminal Investigative Service.

Back to Top

United States v. Dile Kent McNair, No. 6:08-CR-00027 (E.D Tex.), AUSA Jim Noble [redacted]

On November 6, 2008, Dile Kent McNair, the operator of Extreme Metal Finishing, Inc., a metal plating business, was sentenced to serve 37 months' incarceration and will pay $72,500 in restitution. McNair previously pleaded guilty to a RCRA storage violation for storing spent cyanide plating bath solutions and plating bath residues from the bottoms of plating baths without a permit. He also admitted to attempting to bribe an Assistant District Attorney with $5,000 in an effort to persuade him to dismiss a pending D.W.I. charge.

Solid hazardous wastes

McNair operated the metal plating business from September 2004 through October 2006. On three occasions in 2006, Texas Commission on Environmental Quality inspectors conducted inspections at the facility and observed McNair's storage of thousands of gallons and pounds of both liquid and solid hazardous wastes. In October 2006, after the defendant moved the operations to a new facility, he continued to store the waste at the previous facility without a permit.

McNair and other metal plating companies with which he has been associated have a history of extensive noncompliance, two of them having been the subjects of previous criminal prosecutions. In 1994, McNair pleaded guilty to a felony CWA violation in the case against Crews Plating, Inc., and in August, 2004, Perfection Industries pleaded guilty to one CWA false statement violation for fabricating DMRs. McNair further pleaded guilty to a felony count of Felon in Possession of a Firearm. In January 2008, he was sentenced to serve 18 months' incarceration as a result of a probation violation from his conviction in the Perfection Industries, Inc., case.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality Special Investigation Division, and the Texas Environmental Enforcement Task Force.

Back to Top

United States v. Paragon Environmental Construction, Inc., No. 5:08-CR-00624 (N.D.N.Y.), AUSA Craig Benedict ([redacted].

On November 6, 2008, Paragon Environmental Construction, Inc., ("PEC") pleaded guilty and was sentenced for engaging in a conspiracy to violate the Clean Air Act. The violations related to illegal removal and disposal of asbestos at various locations throughout central New York. The company utilized the services of an air monitoring company and laboratory that falsified its results in order to convince clients that the work had been properly done and that the asbestos had been fully removed, which was false.

PEC was sentenced to pay a fine of $160,000 and will complete a two-year term of probation. As part of the plea agreement, the company immediately surrendered all licenses related in any way to asbestos activities and may never engage in any future asbestos removal activities. It has agreed to cooperate in the on-going investigation of the air monitoring company.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, and the New York State Department of Labor Asbestos Control Bureau.

Back to Top

United States v. Hershey Creamery Company, No. 1:08-CR-00353 (M.D. Pa.), AUSA Bruce Brandler [redacted] and SAUSA Martin Harrell [redacted]

On October 31, 2008, Hershey Creamery Co., the manufacturer of Hershey ice cream (not the chocolate company), was sentenced to pay a $100,000 fine and will complete a one-year term of probation for knowingly violating the Clean Air Act by failing to develop and implement a Risk Management Plan ("RMP") at two of its facilities in Pennsylvania despite certifying to the EPA in 1999 and 2004 that it had done so. This is the first CAA prosecution in the country involving RMPs and only the second involving a prosecution for violating the CAA's Section 112.

The CAA charge concerns the company's failure to develop and implement a RMP concerning the storage and use of a regulated substance, anhydrous ammonia, between September 30, 2004, and April, 2007. Hershey uses refrigeration systems to manufacture and store ice cream at its plants in Harrisburg and Middletown, Pennsylvania. It used approximately 42,000 pounds of anhydrous ammonia at its plant in downtown Harrisburg and approximately 23,000 pounds at the Middletown facility.

Despite providing EPA with certification in 1999 and in 2004 that it had a Plan in place for both plants, a subsequent inspection concluded that the company actually lacked viable RMPs at either of the facilities. After repeated information requests and inadequate company responses, EPA issued Hershey a detailed CAA civil compliance order in December 2006, identifying specific areas where the company had failed to comply with RMP requirements. EPA ordered Hershey to develop and implement Plans for both plants, with specific dates identified for compliance with major tasks. Hershey submitted RMPs in April, 2007 and, after inspecting both facilities, EPA found that the company was executing the Plans satisfactorily. The company came into compliance after a criminal investigation had commenced, which was based on Hershey's failure to produce the actual Risk Management Plans after certifying their existence.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

January/February 2009

EDITOR'S NOTE:

* * * * * * * * * * * * *

We apologize for the delay in distributing the ECS Bulletin to you, as well as for having to combine two months' worth of news. We will be back on schedule beginning with the March 2009 Edition. Please continue to keep us in mind when you have new case developments.

* * * * * * * * * * * * *

AT A GLANCE

- **United States v. McWane 129 S. Ct. 630 (Dec. 1, 2008).**
- **United States v. Ionia Management, __F.3d.__ 2009 WL 116966 (2nd Cir. Jan. 20, 2009).**
- **United States v. Continental Airlines, No. 8:08-MJ-1284 (M.D. Fla.).**
- **United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).**

Districts	Active Cases	*Case Type* / Statutes
D. Ak.	United States v. Christopher Rowland United States v. Larry Hooton et al.	*Otter/Sea Lion Hunting/* Lacey Act, Marine Mammal Protection Act *Illegal Brown Bear Guides/* Lacey Act Conspiracy
D. Ariz.	United States v. Craig Van Sickle	*Tree Destruction on Public Land/* Conspiracy to Destroy Trees
W.D. Ark.	United States v. Tyson Foods, Inc., et al.	*Employee Death/* OSHA
C.D. Calif.	United States v. Joseph Xie et al.	*Mislabled Catfish/* Lacey Act
D. Colo.	United States v. Paul Weyand et al.	*Big Game Guiding/* Lacey Act
D.D.C.	United States v. Cannon Seafood et al.	*Striped Bass Harvesting/* Lacey Act
M.D. Fla.	United States v. Jesse Barresse United States v. Robert Racho et al. United States v. Continental Airlines et al.	*Eagle Shooting/* Bald and Golden Eagle Protection Act *Vessel/* APPS *Wildlife Shipments/* ESA
S.D. Fla.	United States v. Max Moghaddam et al. United States v. David Dreifort et al. United States v. Fresh King Inc., et al.	*Caviar Export/* Lacey Act, Conspiracy, ESA *Lobster Harvesting/* Lacey Act, Conspiracy *Pesticide-Contaminated Produce/* FDA, Conspiracy
D. Idaho	United States v. Robert Webb	*Methamphetamine Lab Waste/* RCRA
E.D. La.	United States v. Cypress Bayou Industrial Painting, Inc.	*Sandblasting Debris/* CWA Misdemeanor
D. Mass.	United States v. ExxonMobil Pipeline Corporation United States v. Consultores De Navegacion et al.	*Diesel Oil Spill/* CWA Misdemeanor *Vessel/* APPS, False Statement, False Records, Obstruction, Conspiracy
D. Md.	United States v. Keith Collins et al.	*Striped Bass Harvesting/* Lacey Act
D. Minn.	United States v. Tia Yang et al.	*Exotic Wildlife Imports/* Smuggling, Conspiracy
E.D. Mo.	United States v. Matthew Burghoff	*Asbestos Removal/* CAA, Bank Fraud
W.D. Mo.	United States v. Oak Mill, Inc. et al. United States v. HPI Products Inc., et al.	*Wastewater Discharges/* CWA *Pesticide/Herbicide Discharges/* CWA, RCRA

Districts	Active Cases	*Case Type* / Statutes
D.N.J.	**United States v. Igor Krajacic et al.**	***Vessel*/ APPS**
E.D.N.Y.	**United States v. Bandjan Sidime et al.**	***Ivory Imports*/ Smuggling, Conspiracy**
D. Ore.	**United States v. Larry Anson**	***Plating Waste*/ RCRA, CWA Misdemeanor**
E.D. Pa.	**United States v. Pendulum Ship Management, Inc., et al.** **United States v. Martin Schneider** **United States v. Moshe Rubashkin et al.**	***Vessel*/ APPS, False Statement, Conspiracy, Obstruction** ***Whale Teeth Imports*/ Marine Mammal Protection Act, Lacey Act, ESA, Smuggling** ***Textile Waste*/ RCRA, False Statement**
E.D. Tenn.	**United States v. Heraeus Metal Processing, Inc.**	***Refinery Emissions*/ CAA False Statement**
E.D. Va.	**United States v. Robert Whiteman**	***Abandoned Plating Waste*/ RCRA**
W. D. Va.	**United States v. KIK (Virginia) LLC** **United States v. Novozymes Biologicals, Inc.**	***Bleach Discharge*/ CWA Misdemeanor** ***Chemical Discharge*/ CWA**
E.D. Wash.	**United States v. Gypsy Lawson et al.**	***Monkey Smuggling*/ ESA, Smuggling Conspiracy**
W.D. Wash.	**United States v. Hae Wan Yang et al.**	***Vessel*/ APPS, Misprision of Felony**
S.D. W.V.	**United States v. David Blevins**	***Paint Waste*/ RCRA**

Additional Quick Links

Significant Environmental Decisions

Supreme Court

United States v. McWane, et al., 129 S. Ct. 630 (Dec. 1, 2008).

On December 2, 2008, the Supreme Court denied the government's petition for certiorari. In October 2008, the government filed its reply in support of its petition and the opposition to respondents' conditional cross-petition in the Supreme Court.

This case involves a criminal prosecution of a corporation and two individuals involved in an extensive history of CWA violations at one of its plants in Birmingham, Alabama. The case was prosecuted and the jury verdict was returned before the *Rapanos* decision was issued. In October 2007, the Eleventh Circuit issued a published decision vacating the CWA convictions and remanding to the district court for a new trial.

Specifically, the panel rejected the government's argument that waters are within the scope of the CWA if they satisfy either (a) the standard articulated in Justice Kennedy's concurring opinion (commonly known as the "significant nexus" standard) or (b) the standard articulated in the plurality opinion. The panel acknowledged that, under the plurality standard, the "error may well have been harmless." But the panel concluded that it was constrained by the Supreme Court's decision in *Marks v. United States*, 430 U.S. 188 (1977), to consider the "significant nexus" standard the sole governing principle from the fractured decision. The panel further stated that, because the government had not presented evidence demonstrating such a nexus and because defendants had lacked any incentive to put on evidence showing the absence of a significant nexus, the error in the jury instruction was not harmless.

Back to Top

Second Circuit

United States v. Ionia Management, __F.3d.__ 2009 WL 116966 (2nd Cir. Jan. 20, 2009.)

On January 20, 2009, the Second Circuit published a *per curiam* opinion, addressing the APPS interpretation question in *U.S. v. Jho, 534 F.3d. 398* (i.e., what "maintaining" an oil record book means), whether there was sufficient evidence to apply *respondeat superior* law, whether a materiality instruction caused a constructive amendment of the indictment, and whether the court erred by grouping under the sentencing guidelines.

In its brief, the defendant raised the issue of whether "maintain" means "maintain a complete and accurate record," as the government consistently argues, or whether it means "preserve with all lies intact." The Court, after interpreting international law and the plain text of the APPS regulation, emphatically held that the government's reading is the accurate one. "We therefore hold that the APPS requirement that subject ships 'maintain' an ORB, 33 C.F.R. § 151.25, mandates that these ships ensure that their ORBs are accurate (or at least not knowingly inaccurate) upon entering the ports or navigable waters of the United States. This requirement is in compliance with international law, supported by the plain text of the regulation, and necessary to advance the aims of the international treaties governing international pollution in marine environments."

Ionia claimed that it was error not to instruct the jury that corporate criminal liability can only stem from the actions of "managerial" employees. The court noted that this claim seemed at odds with Second Circuit precedent, but held that there was "overwhelming evidence" that Ionia's chief engineers specifically directed crew members to use the "magic hose" and that this was certainly enough to hold the corporation accountable.

The second *respondeat superior* argument raised by *amicus* stated that there must be additional proof that a defendant corporation lacked effective policies and procedures to deter and detect criminal actions by its employees. The Second Circuit ruled that this argument is contrary to precedent, citing *United States v. Twentieth Century Fox Film Corp., 882 F. 2d at 660* (holding that a compliance program, "however extensive, does not immunize the corporation from liability when its employees, acting within the scope of their authority, fail to comply with the law"). The court noted that "new Supreme Court cases in other areas of the law" did not affect this precedent. It also noted that a corporate compliance program may be *relevant* to determining an employee's scope of employment, but that it does not rise to the level of an element.

The indictment in this case was quite specific as to how certain false statements were material. The jury instruction, however, followed circuit precedent, which was less specific. The court held that because Ionia was on notice of the "core criminality" at issue in the case, the difference between the indictment and the instruction did not cause a constructive amendment.

Finally, the defendant argued that the district court erred in grouping under the guidelines. The Second Circuit stayed out of the weeds on this issue, and emphasized that it appeared that the district court had determined an appropriate fine "by applying the provisions of 18 U.S.C. §§ 3553 and 3572," in accordance with the Guidelines. Although it was not explicit, the Court seemed to be relying on the idea that the Guidelines are now advisory.

Back to Top

District Courts

United States v. Continental Airlines, No. 8:08-MJ-1284 (M.D. Fla.).

Defendant company was charged with an Endangered Species Act violation (16 U.S.C. §1538 and 50 C.F.R. §14.52) for exporting wildlife without clearance by the United States Fish and Wildlife Service. Specifically, fish/invertebrates were shipped from Tampa to Canada via air shipment in January 2008.

In its motion to dismiss, Continental claimed that a criminal charge was inappropriate given that the wildlife exported was not endangered, interpreting subsections (d-f) of 16 U.S.C. §1538 to be merely civil "record-keeping" provisions. The company further interpreted the legislative intent for criminal sanctions to apply only if endangered species are at issue.

The government stated, and the district court agreed, that a plain reading of the statute *does* indicate congressional intent to criminalize the record-keeping offense charged here. Additionally, given that 50 C.F.R. §14.52 requires that "all wildlife" be cleared by a Fish and Wildlife officer before being exported onto a plane, whether endangered or not, Continental clearly committed a criminal act by not ensuring that the fish/invertebrates were inspected.

Back to Top

United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).

On December 10, 2008, the district court issued an order pursuant to the Ninth Circuit's directive (*U.S. v. Lewis, 518 F.3d 1171*) that the district court examine all periods of delay between the indictment of this case in 1998 and the trial of defendant Lewis in early 2001 and determine whether the indictment should be dismissed with or without prejudice. The court's order addressed the first part of the analysis, concluding that 145 days of non-excludable time occurred between indictment and trial, including the 117-day period previously declared by the appellate court to have been un-excludable because it deemed a government motion pending during this period insufficient to toll the speedy trial clock. ((Judge Hamilton noted that, were she empowered to decide the issue without the prior Ninth Circuit ruling, she would find (as the government argued successfully at the trial court level and unsuccessfully to the Ninth Circuit panel) the 117-day period was properly excluded and that only 28 non-excludable days had elapsed, resulting in no speedy trial violation.)) The parties must now brief the issue of whether the indictment should be dismissed with or without prejudice.

Back to Top

Trials

United States v. Gypsy Lawson et al., No. 2:08-CR-00026 (E.D. Wash.), AUSA Stephanie Van Marter [redacted]

On December 8, 2008, Gypsy Lawson, and her mother Fran Ogren, were convicted by a jury of two Endangered Species Act violations for smuggling and conspiring to smuggle a rhesus macaque monkey into the United States.

The defendants traveled from Thailand to Los Angeles International Airport in November 2007 and did not declare to customs officials that they were bringing any animals into this country. During the execution of a search warrant at Ogren's home in January 2008, several pieces of documentation were seized, including photographs and notes confirming how Ogren and Lawson obtained the monkey in Thailand and smuggled it into the United States. The monkey was later found at Lawson's home and taken into quarantine after the execution of a search warrant at her home.

Among the items seized from Lawson were travel journals detailing the defendants' attempts to acquire a monkey small enough to conceal, as well as photographs of Lawson wearing loose fitting clothes with a bulge around her abdomen. The journals confirm that Lawson and her mother smuggled the monkey into the United States by hiding it under her shirt, pretending she was pregnant in order to get past authorities.

Co-defendant James Pratt previously pleaded guilty to a misdemeanor Lacey Act violation for possession and transportation of prohibited wildlife for his role in the case. All three defendants are scheduled to be sentenced on March 3, 2009.

This case was investigated by the United States Fish and Wildlife Service and Immigration and Customs Enforcement with assistance from the Royal Thai Police and Natural Resources and Environmental Crime Suppression Division, which is based in Bangkok, Thailand.

Back to Top

United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On December 4, 2008, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were convicted by a jury on charges of conspiring to violate the Lacey Act, Lacey Act false labeling violations, and Endangered Species Act violations for the illegal export of internationally protected fish roe (eggs) between July 2005 and April 2007. Specifically, the defendants did not have the necessary permits for these exports and also had falsely stated on shipping invoices and customs documents that the shipment contained bowfin roe, which is sometimes used as a caviar substitute.

The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and it is now listed as an endangered species. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish has become a substitute for sturgeon caviar and, as such, has become quite valuable.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Informations and Indictments

United States. v. Keith Collins et al., No. 8:09-CR-00049 (D. Md.); United States v. Cannon Seafood, Inc. et al., No. 1:09-CR-00023(D.D.C.); ECS Senior Trial Attorney Wayne D. Hettenbach [redacted], ECS Trial Attorneys Madison Sewell ([redacted] and Jeremy Peterson [redacted], and AUSA Stacy Belf [redacted]

On January 27 and January 30, 2009, single count felony informations were filed against Robert Moore, Sr., Robert Moore, Jr., and Cannon Seafood, Inc., in the District of Columbia, and against Keith Collins, Willie Dean, Charles Quade, Thomas Hallock, and Thomas Crowder in the District of Maryland for violations of the Lacey Act stemming from their involvement in the selling, buying, illegal harvesting, and systemic under-reporting of striped bass taken from the Chesapeake Bay and Potomac River between 2003 and 2007. Each of the defendants has entered into an agreement with the government to plead guilty and is cooperating in the on-going investigation into two remaining corporate and four individual defendants for related illegal conduct. In a related case, indictments were previously filed in the District of Maryland against Joseph Nelson and Joseph Nelson, Jr.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit. The Task Force conducted undercover purchases and sales of striped bass in 2003, engaged in covert observation of commercial fishing operations in the Chesapeake Bay and Potomac River area, and conducted detailed analysis of area striped bass catch reporting and commercial business sales records from 2003 through 2007. The investigation is ongoing.

Back to Top

United States v. Jesse Barresse, No. 8:08-CR-00304 (M.D. Fla.), AUSA Cherie Krigsman ([redacted]

On January 16, 2009, an indictment was unsealed charging Jesse Barresse with shooting and killing a bald eagle, in violation of the Bald and Golden Eagle Protection Act. The maximum penalties Barresse faces, if convicted, are one year of imprisonment and a fine of $5,000.

According to the indictment, Barresse knowingly shot the bald eagle in Ruskin, Florida, on January 13, 2008. Trial is scheduled to begin on March 2, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. David Dreifort et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Seized undersized spiny lobster tails

On December 4, 2008, an indictment was filed charging David Dreifort, Denise Dreifort, Sean Reyngoudt, Robert Hammer, John Niles, and Michael Delph with conspiracy to illegally harvest lobsters. The six are alleged to be involved in an out-of-season lobstering operation that included the use of illegal artificial habitat placed in the Florida Keys National Marine Sanctuary ("Sanctuary") and the stockpiling of approximately 1,500 pounds of lobster tail for sale after the opening of Florida's commercial lobster season on August 6, 2008. This amount of lobster tail is 1,000 times greater than the legal bag limit for a mini-season sport diver. David and Denise Dreifort are further charged with a Lacey Act violation for transporting the illegally harvested lobster.

As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendants, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

According to court documents, investigators became aware of a group constructing artificial lobster habitats in the lower Keys. Agents then tracked a boat owned by the Dreiforts as it traveled within the Sanctuary, harvesting out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads. A forfeiture count against the Dreiforts will require them to relinquish three trucks, two boats, the harvested lobster, miscellaneous equipment, and all proceeds generated by this activity.

This case was investigated by National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

United States v. Bandjan Sidime et al., No. 1:08-mj-01065 (E.D.N.Y.), AUSA Patrick Sean Sinclair

On December 3, 2008, six individuals were arrested on a complaint filed November 24, 2008, for conspiring to smuggle hundreds of thousands of dollars worth of African elephant ivory into the United States. The ivory was concealed within boxes from Africa marked "African Wooden Handicraft" and "Wooden Statues," which were confiscated at Kennedy Airport. Within the boxes and hidden inside objects such as statues and musical instruments were pieces of elaborately carved ivory tusks, some coated with clay to look like pottery or stone.

Ivory concealed within fake instrument

The defendants are suspected of participating in a trans-Atlantic ring that routinely smuggled ivory out of Uganda, Ivory Coast and Cameroon, which are three African countries that prohibit such exports.

According to the complaint, investigators discovered eight shipments of highly valued ivory sent to the U.S., one of which a trafficker was paid $15,000 to bring from Cameroon. The ivory in just one shipment was worth $165,000. Rather than seize all the illegal shipments when they arrived at Kennedy, investigators allowed some of the hidden ivory, detected by X-rays of the art objects, to go through and then tracked them as they were delivered to various locations in New York.

This two-year investigation culminated in the arrests of Bandjan Sidime, a native of Guinea; Kemo Sylla, a native of Liberia; Seidou Mfomboutmoun from Cameroon; Mamadi Doumbouya, a native of Ivory Coast; and Drissa Diane and Mamadou Kone, both of whom are naturalized United States citizens.

This case was investigated by the United States Fish and Wildlife Service, Immigration and Customs Enforcement, and the Department of Homeland Security.

Back to Top

United States v. Oak Mill, Inc., et al., No. 5:08-CR-06016 (W.D. Mo.), AUSA Jane Brown and SAUSAs Anne Rauch and Kristina Gonzales .

On December 2, 2008, Oak Mill, Inc., a recycler of soybean oil, was charged with eight Clean Water Act violations for discharging pollutants into the City of St. Joseph's POTW. The discharges are alleged to have occurred between August 24, 2005, and October 12, 2006. Robert Arundale, the company vice president, is charged with two of the CWA violations.

According to court documents, Oak Mill discharged wastewater with a pH level below 5.0 into the city's POTW on six occasions in August 2005, in violation of the NPDES permit. The pH level was as low as .5 on one day. In October, 2006, the company and Arundale are alleged to have discharged wastewater containing zinc and nickel above the permitted limits. Specifically, 20.9 and 19.6 milligrams of zinc were discharged above the permitted level of 3.0. Nickel was discharged in amounts of 2.47 and 2.94 milligrams over the permitted level of .99 milligrams.

This case was investigated by the United States Environmental Protection Criminal Investigation Division.

Back to Top

Pleas

United States v. Fresh King Inc., et al., No. 1:08-CR-20416 (S.D. Fla.), AUSAs Jose Bonau ([redacted] Roger Gural [redacted] and Barbara Papademetriou ([redacted]

On January 29, 2008, Rebecca Bazan pleaded guilty to a smuggling conspiracy for her role as a warehouse manager in a scheme to smuggle Guatemalan peas contaminated with pesticide residue. Fresh King, Inc., ("FKI") a South Florida produce company; company owner and president, Denisse Serge; and her husband, Peter Schnebly, a former part owner of FKI and a company salesman, also pleaded guilty in December of last year to conspiracy charges. Schnebly specifically pleaded guilty to a misdemeanor charge of introducing and delivering into interstate commerce snow peas and sugar snap peas that were adulterated and misbranded, a food and drug violation. FKI and Serge pleaded guilty to a conspiracy charge to smuggle snow peas and sugar snap peas that "could be or would be" contaminated with pesticide residues.

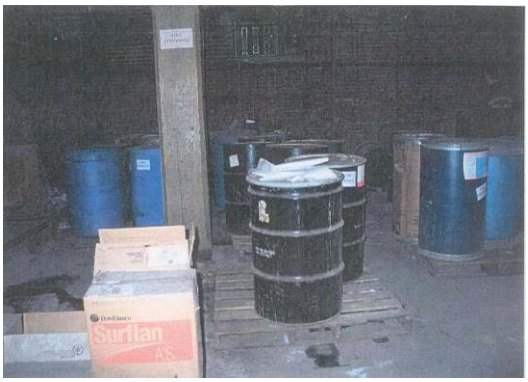
The 15-count indictment states that, from approximately June 2000 through May 2004, defendants sought to circumvent automatic testing by the Food and Drug Administration by supplying the FDA with "biased" and "rigged" samples of the produce that were pesticide-free rather than supplying random samples for testing. Additionally, false invoices, declarations, and other documents were filed to obscure the fact that peas contaminated with methamidophos and chlorothalonil were being brought into this country.

There are four remaining defendants charged. Sentencing for FKI, Serge, and Schnebly is scheduled for March 27, 2009 and Bazan is scheduled to be sentenced on April 10, 2009.

Back to Top

United States v. HPI Products Inc., et al., No. 4:09-CR-00024 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [redacted] with assistance from AUSA William Miners [redacted]

On January 27, 2009, HPI Products Inc., ("HPI") a producer of pesticides and herbicides, pleaded guilty to a felony CWA and a RCRA violation stemming from dumping wastes and spilled product into floor drains and illegally storing these wastes. William Garvey, the company president and majority owner, pleaded guilty to a felony CWA violation.



Drums containing hazardous waste

From approximately 2003 through 2006, HPI through its employees, washed wastes, spills and equipment rinses into floor drains, which connected to the City of St. Joseph POTW without a NPDES permit.

The company also stored hazardous waste with characteristics of ignitability, toxicity and/or corrosivity well over 90 days without a permit. Several 55-gallon drums were found variously to be dated from November 1994 through April 2005 and contained, among other things, chlordane, selenium or heptachlor.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Consultores De Navegacion et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted], AUSA Linda Ricco [redacted] and SAUSA Christopher Jones.

On January 22, 2009, a plea agreement was filed wherein Consultores De Navegacion ("Consultores") and Iceport Shipping Co. Ltd. ("Iceport") agreed to plead guilty to a six-count superseding indictment charging them with conspiracy, falsification of records, false statements, obstruction, and an APPS violation for failing to maintain an accurate ORB. The change of plea hearing has not yet been scheduled.

Consultores and Iceport are the owner and operator of the *M/T Nautilus*, an ocean-going chemical and petroleum products tanker flagged in Cyprus. Between June 2007 and March 2008, the companies, acting through chief engineer Carmelo Oria and other employees, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and instead discharged the oil-contaminated waste directly overboard. The charges stem from a Coast Guard inspection that began in the port of St. Croix and continued in the port of Boston. Inspection and subsequent investigation revealed the ORB failed to accurately reflect the overboard discharge of oily waste water.

Oria, who also was charged in the superseding indictment remains charged with conspiracy, APPS and false statement violations. This case was investigated by the United States Coast Guard.
Back to Top

United States v. Robert Whiteman, No. 4:08-CR-00111 (E.D. Va.), AUSA Brian Samuels [redacted]

Abandoned plating bath

On January 16, 2009, Robert Whiteman pleaded guilty to a RCRA storage violation in connection with the storage and abandonment of approximately 40 55-gallon drums containing toxic and corrosive waste at a property he owned in Gloucester, Virginia.

From 1998 through 2005, Whiteman operated Control Products, USA, which was an on-site metal plating operation. The operation required the use of large nickel and tin plating tanks or "baths" and generated sulfuric acid and nickel sulfamate which were stored in 55-gallon drums at a property in Hayes, Virginia.

In May 2006, Whiteman transported numerous 55-gallon drums with plating waste and one plating bath to his residence in Gloucester. In March 2007, after the property was foreclosed upon, the abandoned drums and plating bath containing hundreds of pounds of corrosive and toxic liquids were discovered and subsequently determined to be hazardous waste.

Disposal of the drums and a large quantity of contaminated soil resulted in approximately $128,000 in cleanup costs. Whiteman is scheduled to be sentenced on April 17, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center, with assistance from the

Federal Bureau of Investigation, the Virginia Department of Environmental Quality, the Department of Housing and Urban Development, the Gloucester County Sheriff's Office, the Virginia State Police, and police departments in Memphis, Tennessee, and Walls, Mississippi.
Back to Top

United States v. KIK (Virginia) LLC No. 7:09-CR-00001 (W.D. Va.), ECS Trial Attorney Lana Pettus [redacted] AUSA Jennie Waering [redacted] and SAUSA David Lastra ([redacted]

On January 13, 2009, KIK (Virginia) LLC ("KIK"), pleaded guilty to a one-count misdemeanor Clean Water Act violation for negligently discharging bleach into the sanitary sewer system in Salem, Virginia.

KIK operated a facility that manufactured bleach and other household products. On September 4, 2003, local authorities discovered elevated concentrations of bleach in the sanitary sewer lines servicing the KIK Virginia facility. Investigation revealed that, from approximately November 2001 through September 2003, employees washed spilled and "off-spec" bleach into the plant's floor drains, which led to the City of Salem's POTW. The plant did not have a permit to discharge bleach to the sewer system and it was not monitoring its discharges. Sentencing has been scheduled for April 24, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the United States Fish and Wildlife Service and other members of the Blue Ridge Environmental Task Force.
Back to Top

United States v. Tyson Foods, Inc., et al., No. 4:09-mj-04001(W.D. Ark.), ECS Assistant Chief Deborah Harris ([redacted] and AUSA Katrina Spencer [redacted]

On January 6, 2009, Tyson Foods, Inc., pleaded guilty to a willful OSHA violation, which resulted in the death of an employee.

Tyson operated several plants that recycled poultry products into protein and fats for the animal food industry. As part of the rendering process in four of the plants, the company used high-pressure steam processors called hydrolyzers to convert the poultry feather into feather meal. Decomposition of biological material such as poultry feathers produces hydrogen sulfide gas, an acute-acting toxic substance. Employees at the Tyson facilities often were exposed to the toxic gas when working on or near the hydrolyzers, which required frequent adjustment and replacement.

This case arose out of the death of Jason Kelley, who was exposed to this gas while repairing a leak from a hydrolyzer in October 2003. Another employee and two emergency responders were hospitalized due to exposure during the rescue attempt, and two employees were treated at the scene.

Although well aware of the presence of this deadly gas, Tyson Foods had neither taken sufficient steps to alleviate the problem nor informed employees of its presence. As part of the plea agreement, the company has agreed to pay the maximum fine of $500,000. Sentencing is to be scheduled for April.

This case was investigated by the United States Occupational Safety and Health Administration.
Back to Top

United States v. David Blevins, No. 5:08-CR-00107 (S.D.W.V.), SAUSA Perry McDaniel [redacted]

On January 6, 2009, David Blevins, the former president and owner of Clearfork Coatings, Inc, a commercial painting operation, pleaded guilty to a RCRA storage violation.

From February 2001 through May 2003, Blevins stored paint waste without a permit at the company's facility in Mullens, West Virginia, some of which was classified as hazardous for ignitability. The defendant's failure to properly treat or dispose of the waste resulted in significant cost to the property owner, Norfolk Southern Railroad, which had to pay for proper removal and disposal of the hazardous waste and other materials left at the site.

Sentencing is scheduled for May 4, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the West Virginia Department of Environmental Protection.

Back to Top

United States v. Christopher Rowland, No. 5:08-CR-00001 (D. Alaska.), AUSAs Aunnie Steward and Steve Skrocki [redacted], and USCG SAUSA John Reardon [redacted].

On December 22, 2008, Christopher Rowland pleaded guilty to a four-count information charging him with violations of the Lacey Act and the Marine Mammal Protection Act for the illegal hunting, killing, and export of sea otters, sea lions and harbor seals, and the illegal sale of their pelts.

Otter pelt

The investigation began as a response to a concerned citizen's tip that evolved into a two-year undercover operation, which is still ongoing, into the illegal commercialization of sea otters, seals, and sea lions. At various times in 2007, Rowland and other individuals shot approximately 60 sea otters and sold several of the pelts and skulls, some of them to undercover agents. Whole tanned sea otter pelts were illegally sold for $1,000 and raw, unprocessed pelts were sold for $100 per foot.

Rowland is scheduled to be sentenced on March 9, 2009. This case was investigated by the United States Fish and Wildlife Service with assistance from Alaska Wildlife Troopers, National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the United States Forest Service, Immigration and Customs Enforcement, the United States Marshals Service, the State of Alaska Attorney General's Office, and the Alaska Bureau of Alcohol and Drug Enforcement.

Back to Top

United States v. ExxonMobil Corporation, No. 1:08-CR-10404 (D. Mass.), ECS Trial Attorney Gary Donner [redacted] AUSA Jonathan Mitchell [redacted] RCEC Andrew Lauterback [redacted] and SAUSA LCDR Russell Bowman.

On December 23, 2008, an information and plea agreement were filed against ExxonMobil Pipeline Company, a wholly-owned subsidiary of ExxonMobil Corporation. The company pleaded guilty to a misdemeanor CWA violation in connection with a spill in January 2006 of approximately 15,000 gallons of diesel oil into the Mystic River from ExxonMobil's oil terminal in Everett, Massachusetts.

The Everett Terminal includes an inland "tank farm," which is comprised of a tank loading rack and 29 large-scale oil storage tanks in which oil products were stored. Various above-ground pipes and valves connected those tanks to the Terminal's marine transfer area located at the confluence of the Mystic and Island End Rivers. The Island End River flows into the Mystic River, which flows into Boston Harbor. Three berths were available for barges and ships to offload petroleum products that were piped to and stored in the tanks within the tank farm.

On January 9, 2006, the oil tanker *M/V Nara* docked at Berth 3 to unload petroleum products, including approximately 3.1 million gallons of low sulfur diesel ("LSD") fuel. Later that morning, hoses running from the *Nara*'s tanks were attached to a product intake manifold on Berth 3. By mid-afternoon, pumps aboard the *Nara* began to pump LSD fuel from the vessel through the manifold into a product receipt line that was connected to storage tanks on the tank farm. As it was being pumped from the *Nara*, the LSD flowed past a 10-inch seal valve located on Berth 3, which closed off a product receipt line from Berth 1. As a result of wear and tear, the valve did not close completely and leaked oil into the Berth 1 product receipt line.

ExxonMobil was aware of this defective valve after a contractor pressure-tested the valve in September 2005 and informed ExxonMobil that it leaked. Nevertheless, the company had failed to replace the valve by the time the *Nara* arrived in January 2006. As a result, LSD pumped from the *Nara* leaked through the defective valve into the Berth 1 product receipt line. At the other end of the line was a pressure relief valve capped by a 3/4-inch coupling, which had not been replaced in more than 30 years and was badly corroded.

As the fuel continued to pump, this coupling burst causing the fuel to leak into a line that already contained 2,500 gallons of low sulfur kerosene which spilled along with 12,700 gallons of diesel fuel into the Mystic River over a 24-hour period. A visible blue-green sheen on the Mystic River eventually spread up the Island End River and down to Boston Harbor, prompting several reports to the Coast Guard. ExxonMobil personnel did not discover the ruptured coupling and the full containment pan on Berth 1 until approximately 11:00 A.M. on January 11th, when the Coast Guard arrived at the facility to ask questions.

As part of the plea agreement, ExxonMobil has agreed to pay a total of $6.1 million. This includes paying the maximum possible fine of $359,018 (twice the cost of the clean up), $179,634 in clean-up costs, and a community service payment of $5,640,982 to the North American Wetlands Conservation Act fund to be used to restore wetlands in Massachusetts. The defendant further agreed that for the next three years, the Everett facility will be monitored by a court-appointed official and will be subject to a rigorous environmental compliance program.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Joseph Xie et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted], ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Joe Johns [redacted]

On January 30, 2009, Joseph Xie was sentenced to pay a $3,000 fine and will complete a six-month term of probation. Xie previously pleaded guilty to a Lacey Act violation for purchasing and re-selling frozen fillets of *Pangasius hypophthalmus*, a member of the catfish family, marketed by trade names of swai or tra, also referred to in some seafood markets as basa, when he should have know that the fish had been illegally imported.

Thus far 12 individuals and companies, including Xie, have been convicted for criminal offenses related to a scheme to avoid paying tariffs by falsely labeling fish for import and then selling it in the United States at below-market price.

Between December 2004 and June 2005, in three separate transactions, Xie purchased, on behalf of his employer, Agar Supply Co., Inc., approximately $15,000 worth of frozen fish fillets from Blue Ocean Seafood Corporation, Virginia Star Seafood Company, and the Silver Seas Company. The fish Xie ordered and received was *Pangasius hypophthalmus* but it was labeled as sole, thus avoiding payment of the anti-dumping import duty.

An anti-dumping duty or tariff was placed on *Pangasius hypophthalmus* imports from Vietnam in January 2003, after a petition was filed by the catfish farmers of America. The petition alleged that this fish was being imported from Vietnam at less than fair market value.

According to evidence presented during the October 2008 trial of co-defendants Peter Lam and Arthur Yavelberg, between July 2004 and June 2005, Virginia Star and International Sea Products Corporation illegally imported from Vietnamese companies Binh Dinh, Antesco, and Anhaco, over ten million pounds of Vietnamese catfish by identifying the fish to customs officials as other species of fish, including but not limited to sole, grouper, flounder, and conger pike. Evidence further proved that after the Vietnamese catfish was imported into the United States, salesman for the Virginia companies marketed and sold the illegally imported catfish to seafood buyers including Xie, Henry Yip of T.P. Company, David Wong of True World Foods, Inc., and David Chu of Dakon International.

Sentencings in all but three of these cases are pending and are scheduled for February 23, 2009.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the Food and Drug Administration Office of Criminal Investigations, and the United States Immigration and Customs Enforcement.

Back to Top

United States v. Heraeus Metal Processing Inc., No. 3:08-CR-00159 (E.D. Tenn.), former ECS Trial Attorney David Joyce [redacted] and AUSA Matthew Morris [redacted]

On January 21, 2009, Heraeus Metal Processing, Inc. ("Heraeus"), a precious metals refinery, pleaded guilty to a one-count information charging a Clean Air Act false statement violation. Specifically, Heraeus admitted to falsifying its baghouse pressure logs and scrubber logs at its Wartburg, Tennessee, facility. The company was sentenced to pay a $350,000 fine and will complete an 18-month term of probation. Heraeus cooperated with the government's investigation once it was informed of the violation.

The scrubber and baghouse systems are air pollution control devices that require the maintenance of emissions logs and the submission of annual reports to state regulators. Between October 2004 and at least February 2005, neither baghouse nor scrubber system logs were maintained at this facility. In late February 2005, the facility's operations manager, acting on behalf of Heraeus, created a false baghouse pressure drop log and further directed an employee to retroactively create a log for the scrubber system. The manager subsequently submitted these falsified logs with its 2005 annual report to the Tennessee Department of Environment and Conservation.

This case was investigated by the East Tennessee Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the United States Environmental Protection Agency Office of Inspector General, and the Tennessee Valley Authority Office of Inspector General.

Back to Top

United States v. Larry Anson (D. Ore.), ECS Senior Trial Attorney Kevin Cassidy [redacted] and AUSA Scott Kerin [redacted]

Drums containing plating waste

On January 15, 2009, Larry Anson, the former president and owner of the Columbia American Plating Company, was sentenced to serve 12 months and one day of imprisonment, followed by two years' supervised release for RCRA and CWA violations. Anson also must pay a $3,000 fine.

Anson pleaded guilty in March of last year to a RCRA violation for storing spent cyanide plating bath solutions generated from electroplating operations between March 2001 and May 9, 2003, without a valid permit. He also pleaded guilty to a misdemeanor violation of the CWA for negligently discharging wastewater into the POTW without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Oregon Department of Environmental Quality, and the Portland Fire Bureau.

Back to Top

United States v. Tia Yang et al., No. 0:08-CR-00150 (D. Minn.), AUSA LeeAnn Bell [redacted]

On January 14, 2009, Tia Yang was sentenced to pay a $9,000 fine and will complete a two-year term of probation. Co-defendant Pa Lor was sentenced to complete two year's probation. The mother and daughter team pleaded guilty last year to one count of conspiracy to smuggle wildlife.

Between October 2005 and August 2006, the two women brought exotic wildlife into the U.S. and offered it for sale at a booth at the International Marketplace in St. Paul, Minnesota. On October 23, 2005, Lor arrived at the Minneapolis-St. Paul International Airport from Laos and did not declare any animal or wildlife items on her Customs and Border Protection declaration form. During an inspection of her baggage, inspectors discovered approximately 1,388 individual pieces of undeclared wildlife,

Exotic wildlife parts

including two Asian elephant teeth, 17 serow horns, 51 pieces of douc langur (a primate), mongoose, slow loris and leopard cat.

A search warrant was executed in August 2006 at the Marketplace booth, with several wildlife items recovered including: black-striped weasel, gibbon, leaf monkey, monitor lizard, tapir, slider turtles, reticulated python and small-clawed otter.

Back to Top

United States v. Larry Hooton et al., No. 1:08-CR-00002 (D. Ak.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Steven Skrocki [redacted]

On January 14, 2009, big-game outfitter Larry Hooton and his two outfitter sons, Shawn and Shane Hooton, pleaded guilty to conspiring to violate the Lacey Act for illegally guiding clients on brown bear hunts on federal property in Alaska, in violation of Forest Service regulations.

Shawn Hooton was sentenced to serve three months' home confinement as a condition of two years' probation. He also must pay a $30,000 fine, forfeit his hunting equipment and is barred from any commercial guiding or hunting while on probation. Shane Hooton was sentenced to serve a one-year term of probation, pay a $20,000 fine and is subject to the same forfeiture and hunting/guiding restrictions as his brother.

Larry Hooton is scheduled to be sentenced on March 24, 2009.

This case was investigated by the United States Department of Agriculture, the United States Forest Service, and the United States Fish and Wildlife Service.

Back to Top

United States v. Pendulum Ship Management, Inc., et al., No. 2:08-CR-00765 (E.D. Pa.), AUSA Jonathan Shapiro [redacted] and SAUSA Joseph Lisa [redacted]

Oil contaminated ballast tank

On January 13, 2009, Pendulum Shipmanagement Inc., ("Pendulum"), a ship management company headquartered in Greece, pleaded guilty to a four-count information charging conspiracy, APPS, false statement and obstruction violations for actions taken by the master and chief engineer for the *M/V Quantum*, a commercial cargo ship. The company was sentenced to pay a $1.3 million fine, to complete a three-year term of probation, and to implement an environmental compliance plan. Ship's master Nestor Alcantara and chief engineer Alfredo Onita, both of the Philippines, were sentenced on February 6, 2009, to complete three-year terms of probation. Alcantara also will pay a $1,000 fine and Onita will pay a $500 fine.

On July 3, 2008, the *Quantum* was inspected by Coast Guard personnel in the Port of Philadelphia. Evidence that the oily water separator was not working properly was uncovered, indicating that oily waste had been discharged directly overboard since at least May of 2008. At the time of the inspection the oil record book was presented to investigators with false entries as to the treatment of the oily waste as well as omissions regarding the bypasses.

In February of 2008, the vessel's ballast system became contaminated with oil. Efforts by the company to clean the ballast system resulted in the further discharge of oil-contaminated ballast water directly into the ocean. This event was not noted in the ORB. To further the effort to hide the ballast system's contamination, the crew installed a false hose into a ballast tank sounding tube that was closed at one end and filled with sea water to make it appear that the tank contained clean water.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Craig Van Sickle, No. 4:06-CR-00112 (D. Ariz.), AUSA Robert Miskell ([redacted]

On January 22, 2009, Craig Van Sickle was sentenced to serve a three-year term of unsupervised probation. Charges against co-defendant Wilbur Wax were dismissed.

Van Sickle was found guilty after a bench trial in May of last year of 20 counts of unlawfully destroying trees on the Tohono O'odham Nation, in violation of 18 USC § 1853, and one count of conspiracy to unlawfully destroy trees that have been purchased by the U.S. for public use or are on lands occupied by any Indian tribe. Van Sickle owned the Vekol Mine, which was an old silver mine of approximately 100 acres that was completely surrounded by Indian Reservation land. Numerous trees and other vegetation were destroyed when a roadway was bulldozed to gain access to the mine. The evidence at trial showed that Van Sickle was responsible for causing a roadway of about 16 miles to be bulldozed onto the Nation's land without permission. Approximately 80 palo verde trees, 45 ironwood trees, 29 mesquite trees and 11 Saguaro cactuses were destroyed.

In addition to the criminal prosecution, the Tohono O'odham Nation civilly sued Van Sickle for these damages. The Nation settled that suit by obtaining title to the Vekol Mine and a cash payment of $23,967.41. They agreed that the mine and the money was adequate restitution for the damage.

This case was investigated by the Tohono O'odham Police Department, the Natural Resource Department of the Tohono O'odham Nation, and the United States Fish and Wildlife Service.
Back to Top

United States v. Martin Schneider, No. 2:06-CR-00456 (E.D. Pa.), AUSA Maureen McCartney [redacted]

On January 6, 2009, Martin Schneider was sentenced to complete a two-year term of probation and will pay a $5,000 fine stemming from his importing hundreds of Sperm whale teeth from England into the United States. Schneider previously pleaded guilty to Lacey Act, Endangered Species Act, and Marine Mammal Protection Act violations, as well as to two smuggling charges. The teeth had been extracted from Sperm whales illegally hunted and killed by fishing fleets.

Investigation revealed that Schneider had been illegally smuggling the whale teeth into this country and re-selling them to merchants who specialize in scrimshaw etchings from at least 2002. Former school teacher John Levasseur was recently sentenced in the District of Massachusetts to complete a five-year term of probation, with the first six months under home confinement. He was further ordered to pay a $40,000 fine and will also publish an apology in the *Newton Bee*, an antiques periodical, and the *Cape Cod Times*. Levasseur pleaded guilty to two ESA violations and one MMPA violation.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, and the Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

Back to Top

United States v. Paul Weyand et al., No. 1:07-CR-00331 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] ECS Trial Attorney Jim Nelson [redacted] and AUSA Linda McMahan [redacted]

On December 30, 2008, Paul Weyand was sentenced to serve six months' home confinement as a condition of three years' probation. He also will pay a $2,000 fine and complete 50 hours of community service.

Weyand pleaded guilty last year to three misdemeanor Lacey Act violations stemming from the interstate sale and transport of deer, elk and black bear killed unlawfully in Colorado between 2002 and 2005. Weyand d/b/a *Memories on the Wall Taxidermy*, provided taxidermy and shipment services to hunting clients of defendant Eric Butt, *d/b/a Outdoor Adventures*.

Butt, who was recently sentenced to serve a one-year term of incarceration, was a registered outfitter who provided guided hunts for big game animals in Colorado. Butt encouraged hunters who did not possess the appropriate big-game license to kill animals that Butt later falsely tagged using his license or another hunter's. Butt referred clients to Weyand who was aware that the carcasses he received for mounting had been illegally killed.

Weyand is the seventh and final defendant (including five client-hunters) convicted and sentenced in this investigation. Butt faces additional felony state charges in Utah.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Hae Wan Yang, et al., No.'s 3:08-CR-05653 and 5686 (W.D. Wash.), AUSA Jim Oesterle [redacted] and SAUSA LCDR Mark Zlomek.

On December 30, 2008, Hae Wan Yang was sentenced to serve two months of home confinement followed by two years' supervised release for an APPS violation for knowingly failing to maintain an accurate garbage record book. Yang was the captain of the *M/V Pan Voyager*, a South Korean-flagged 17,000 ton ocean-going bulk carrier owned by STX Pan Ocean Co., Ltd., ("STX"), a South Korean Shipping Company.

In July 2008, the ship was in South Korea unloading grain when crew members discovered a hole in one of the vents leading to a fuel oil tank. A substantial amount of grain spilled into the hole, entered the tank, and contaminated the fuel oil. Senior officers subsequently ordered lower level crew members into the tank to remove the contaminated grain. Crew members used buckets and dust pans to remove the grain/fuel oil waste and dumped it into several drums, 30 plastic lined rice sacks, and approximately 200 large plastic garbage bags. The crew used one of the vessel's cargo cranes to lift the grain/fuel oil waste onto the main deck and dumped the bags of waste overboard at night during the voyage from Korea to Longview, Washington. The plastic bags and rice sacks were punctured in hopes that they would sink and reduce the risk of detection. Upon inspection, Coast Guard personnel further discovered that a section of the deck railing had been cut away and then welded back into place to facilitate the illegal dumping.

STX pleaded guilty and was sentenced in October 2008 to pay a $500,000 fine, and made a $250,000 community service payment to the National Fish and Wildlife Foundation for use in projects to restore Puget Sound. The company also implemented an environmental compliance plan with outside auditing. Two senior officers, Emilio Canillo and Bong Jun Gang, pleaded guilty to misprision of a felony for failing to notify Coast Guard inspectors of the false book. Canillo and Gang were each sentenced to serve a one-year term of probation and must pay a $2,500 fine.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Moshe Rubashkin et al., No. 2:07-CR-00498 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Michelle Morgan-Kelly [redacted]

On December 29, 2008, Moshe Rubashkin was sentenced to serve 16 months' incarceration, followed by three years' supervised release. He was further ordered to pay a $7,500 fine and a total of $450,000 in restitution, with $396,728 to be paid to the United States Environmental Protection Agency and $53,271 to the City of Allentown, Pennsylvania.

Moshe Rubashkin and his son Sholom operated the Montex Textile plant. Moshe previously pleaded guilty to illegally storing hazardous waste generated from the plant. Sholom pleaded guilty to a false statement related to the ownership and operation of the family's textile dyeing, bleaching and weaving business when it was declared a superfund site.

After being in operation for 12 years, the plant closed in 2002 with numerous containers of hazardous waste left behind. After local authorities responded to two fires at the plant, EPA and the City of Allentown initiated a clean-up of the property in October 2005. In responding to a CERCLA 104(e) letter sent in February 2006 regarding the parties responsible for cleanup at the site, Sholom denied that his family had owned and operated the plant.

Sholom Rubashkin is scheduled to be sentenced on March 29, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, and the Environmental Protection Agency Office of Inspector General.

Back to Top

United States v. Robert Racho et al. (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [redacted] AUSA Cherie Krigsman [redacted], and SAUSA Lt. William George.

On December 19, 2008, Robert Racho was sentenced to serve a one-year term of probation and will pay a $1,000 fine. Racho, along with Francisco Bagetela, both Phillipine citizens who served as chief engineers aboard a cargo ship operated by Hiong Guan Navegacion Japan Co. Ltd., previously pleaded guilty to falsifying and failing to properly maintain the ORB for the commercial vessel *M/V Balsa-62*. Bagetela recently was sentenced to serve three years' probation and will pay a $1,500 fine.

From June 2007 through February 2008, chief engineer Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass as well. On February 25, 2008, Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the Coast Guard by not recording them in the ORB. During Port calls in Tampa on December 31, 2007, and May 31, 2008, the ORB that contained the false entries and omissions regarding the bypasses was presented to inspectors. Based in part on information from crew members aboard the ship, the Coast Guard subsequently located evidence on the ship corroborating allegations that the ship had been unlawfully discharging oily waste.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Novozymes Biologicals, Inc., No. 7:08-CR-00056 (W.D. Va.), AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On December 19, 2008, Novozymes Biologicals, Inc., ("Novozymes") an international bio-technology firm with a manufacturing plant in Salem, Virginia, pleaded guilty to a felony violation of the Clean Water Act and was sentenced to serve a five-year term of probation, complete a $250,000 community service project, and initiate an environmental management system with annual inspections conducted by an independent auditor. This case came to the attention of authorities after three children who were playing in Mason's Creek were exposed to foaming agent and suffered skin and eye irritation. The company was further ordered to pay a $275,000 fine plus a $20 co-pay to the mother of one child who received medical care.

In October 2004 and again in April 2005, company employees dumped a total of approximately 4,015 gallons of "off specification" material down a floor drain that went to Mason's Creek, a tributary to the Roanoke River, killing nearly 7,000 fish. Novozymes already has paid $375,000 in various cleanup costs, as well as $3,178 to local law enforcement agencies for investigation costs, $3,864 to the state to replace the fish and about $750 to Salem as a penalty for permit violations. Another $16,300 civil penalty for a state permit violation is pending.

This case was investigated by members of the Blue Ridge Task Force, which include the United States Environmental Protection Agency Criminal Investigation Division, the Roanoke City Police Department, the Salem Police Department, the City of Salem Fire and Emergency Management System Department, the Virginia Department of Environmental Quality, the Western Virginia Water Authority, the Virginia Department of Game and Inland Fisheries and the Salem Water and Sewer Department.

Back to Top

United States v. Matthew Burghoff, No. 4:08-CR-00199 (E.D. Mo.) SAUSA Anne Rauch ([redacted] and AUSA Michael Reap ([redacted]

On December 18, 2008, Matthew Burghoff was sentenced to serve 24 months' incarceration followed by five years' supervised release. He was further ordered to pay $524,548 in restitution as the result of pleading guilty to one Clean Air Act violation and one bank fraud violation. Burghoff was previously charged with multiple counts of bank fraud, money laundering, false statements, and violations of the CAA stemming from his renovation of a building in St. Louis, Missouri, and numerous other buildings and businesses in the St. Louis area.

In September 2007, the City of St. Louis Air Pollution Control Division received an anonymous tip stating that unqualified personnel were removing asbestos-insulated piping at the Ford Building. An inspector with the Missouri Department of Natural Resources conducted an inspection in October 2007 and observed asbestos debris swept into piles and approximately 60 black bags containing dry asbestos material. As the owner and operator of the building, Burghoff was present during this inspection.

The bank fraud violation stems from a loan the defendant obtained from the Great Southern Bank, stating that he needed the loan to purchase a building he had said he was going to develop into a restaurant. After obtaining a $273,000 loan for this project, however Burghoff kept the money instead.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Cypress Bayou Industrial Painting, Inc., No. 2:08-CR-00211 (E.D. La.), ECS Senior Trial Attorney David Kehoe [redacted] ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Dorothy Manning Taylor [redacted]

On December 17, 2008, Cypress Bayou Industrial Painting, Inc. ("Cypress Bayou"), an industrial painting company, was sentenced to serve a three-year term of probation to include implementation of an employee training program targeting the containment of sandblasting debris. The company was further ordered to pay a $60,000 fine as the result of pleading guilty to a misdemeanor violation of the Clean Water Act.

Cypress Bayou was hired to clean and remove rust and paint from an oil drilling rig owned by Rowan Companies, Inc. The company provided the materials and its own employees for the cleaning operation, which was performed in March and April, 2004, by sandblasting the rig off the Gulf of Mexico at Port Fourchon, Louisiana. During the sand blasting process, Cypress Bayou failed to install tarps to prevent the overspray of sandblasting debris into the water. Its employees also failed to notify the government that the sand blasting operations resulted in the discharge of pollutants into U.S. waters off the Gulf of Mexico.

This case was investigated by the Environmental Protection Agency and the United States Coast Guard.

Back to Top

United States v. Robert Webb, No. 2:08-CR-00216 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Nancy Cook [redacted].

Drums of hazardous waste

On December 16, 2008, Robert Webb was sentenced to serve one year and one day in prison followed by three years' supervised release after previously pleading guilty to two RCRA storage counts. Webb also will pay $71,246.79 in restitution and perform 120 hours of community service.

Webb is the owner of Alliance Environmental Inc., which performed methamphetamine laboratory cleanups throughout the Pacific Northwest under various DEA contracts. Webb failed to properly store the wastes accumulated from the lab cleanups, instead storing them at the Little Tree Storage, an unpermitted facility. DEA alerted the EPA after discovering the illegal storage as a result of an audit of their cleanup contracts.

A subsequent EPA investigation led to the additional discovery of 71 containers of hazardous waste inside Webb's mother's garage in Spokane, Washington, which had been stored for approximately three years. No security measures were taken to ensure that general public and neighboring property owners were not exposed to this waste. The garage door was left open at various times during storage of the hazardous waste.

The ensuing cleanup has cost the EPA approximately $67,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Drug Enforcement Administration.

Back to Top

United States v. Igor Krajacic, et al. No. 1:08-CR-00824 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] and AUSA Ron Chillemi [redacted]

On December 16, 2008, Igor Krajacic, a chief engineer for the *M/V Snow Flower*, was sentenced to pay an $18,000 fine and will complete a one-year term of probation. Krajacic previously pleaded guilty to one APPS violation for failing to maintain an accurate ORB. Krajacic further admitted to discharging oily waste overboard as well as to ordering crew members to do the same. Holy House Shipping AB ("Holy House"), the operator of the *Snow Flower*, pleaded guilty in November 2008 to one APPS violation and to one 18 U.S.C. §1001 false statement violation.

Court documents state that crewmembers on the ship alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port call in New Jersey, inspectors were presented with an ORB containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which was then pumped overboard.

As part of the plea, Holy House has agreed to pay a $1 million fine plus a $400,000 community service payment to the National Fish and Wildlife Fund. The company has further agreed to complete a three-year term of probation and to implement an environmental compliance plan.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation.

Back to Top

United States v. Continental Airlines and Northwest Airlines, No. 8:08-mj-1284 (M.D. Fla.), AUSAs Stacie Harris and Cherie Krigsman [redacted]

On December 9, 2008, Continental Airlines was found guilty of an Endangered Species Act violation after a one-day bench trial. The court sentenced Continental to pay a $2,500 fine.

According to court documents and evidence presented at trial, on January 7, 2008, Continental knowingly exported a commercial fish and wildlife shipment from Tampa International Airport to Canada without the proper United States Fish and Wildlife Service clearance.

Also on December 9th, Northwest Airlines pleaded guilty to exporting three commercial fish and wildlife shipments to Canada in 2005, without the proper clearance, in violation of the ESA. Northwest was sentenced to pay a $750 for the three citations.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

March 2009

EDITOR'S NOTE:

* * * * * * * * * * * * *

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

AT A GLANCE

- **United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).**

Districts	Active Cases	*Case Type* / Statutes
E.D. Calif.	United States v. Garrett Smith	*Turtle Imports/* Smuggling
S.D. Calif.	United States v. David Grummer	*Pesticide and Refrigerant Sales/* FIFRA, CAA, HMTA
D.D.C.	United States v. Cannon Seafood Inc. et al.	*Striped Bass Harvesting/* Lacey Act
M.D. Fla.	United States v. Hiong Guan Navegacion Japan Co. Ltd. et al.	*Vessel/* APPS, Conspiracy
S.D. Fla.	United States v. Max Moghaddam et al.	*Caviar Export/* Lacey Act, Conspiracy, ESA
N.D. Ga.	United States v. Fred Hand III et al.	*Deer Hunting/* Lacey Act
D. Idaho	United States v. Jack Barron	*Wetlands Dredge and Fill/* CWA
N.D. Ill.	[redacted] United States v. Crown Chemical Inc. et al.	[redacted] *Cleaning Products Manufacturer/* CWA Pretreatment, Conspiracy
N.D. Ind.	United States v. Alan Hersh	*Barrel Recycler/* RCRA
[redacted]	[redacted]	[redacted]
E.D. La.	United States v. Texas Petroleum Investment Co.	*Oil Production Company/* Negligent CWA
D. Md.	United States v. Willie Dean et al.	*Striped Bass Harvesting/* Lacey Act
E.D. Mo.	United States v. Usona Metal Finishing Co.	*Metal Plater/* RCRA
W.D. Mo.	United States v. Thomas Jerry Nix, Jr.	*Paddlefish Roe/* Lacey Act, Conspiracy
D. Mont.	United States v. Leo Bergtoll et al.	*Unlicensed Big Game Hunting/* Lacey Act
D.N.J.	United States v. Dalnave Navigation, Inc. et al.	*Vessel/* APPS, Conspiracy, False Statement, Obstruction
E.D.N.Y.	United States v. William Rubenstein	*ODS Smuggling/* Conspiracy, Tax Evasion
N.D.N.Y.	United States v. John Wood et al.	*Asbestos Abatement/ Conspiracy, Mail Fraud, CAA*
N.D. Ohio	United States v. Andrew Siemaszko	*Nuclear Plant/* Concealment of Material Fact, False Writings
D. Ore.	United States v. Gunther Wenzek	*Coral Shipments/* Lacey Act, ESA, Smuggling
S.D. Tex.	United States v. Antonio Rodrigues et al.	*Vessel/ APPS,* False Statement
E.D. Va.	United States v. Robert Whiteman	*Abandoned Plating Waste/* RCRA
W.D. Wash.	United States v. Craig Magnusson	*Pier Construction/* Rivers and Harbors Act

Additional Quick Links

Significant Environmental Decisions

District Courts

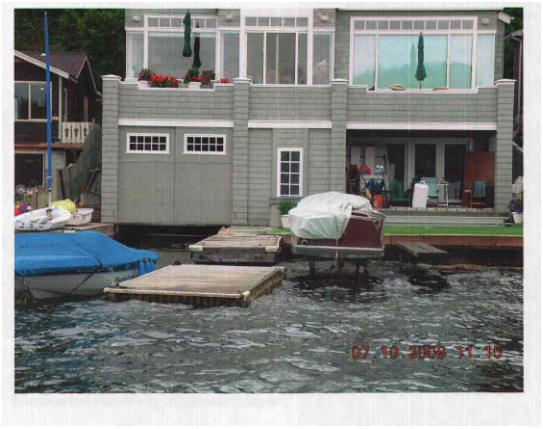
United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).

On February 3, 2008, Judge Phyllis Hamilton issued an order agreeing with the government's position that the indictment in this case should be dismissed without prejudice. Pursuant to the Ninth Circuit's directive that the district court re-examine all periods of delay between the indictment of this case in 1998 and the trial of defendant Lewis in early 2001, Judge Hamilton had previously concluded that 145 days of non-excludable time occurred between indictment and trial, including the 117-day period previously declared by the appellate court to have been un-excludable because it deemed a government motion pending during this period insufficient to toll the speedy trial clock. (Judge Hamilton noted in the order that, were she empowered to decide the issue without the prior Ninth Circuit ruling, she would find, as the government argued successfully at the trial-court-level and unsuccessfully to the Ninth Circuit panel, that the 117-day period was properly excluded and that only 28 non-excludable days had elapsed, resulting in no speedy trial violation.) The matter now returns to the Ninth Circuit for decision on the remaining appellate issues.

Back to Top

Trials

United States v. Craig Magnusson, No. 2:08-CR-00215 (W.D. Wash.), AUSA Jim Oesterle ([redacted]



Illegal pier and boatlift

On February 17, 2009, Craig Magnusson was convicted in a bench trial of violating the Rivers and Harbors Act. Sentencing is scheduled for May 11, 2009.

Magnusson, an attorney, constructed and maintained a pier, float, boatlift, and catwalk at his home on Lake Washington without obtaining a permit. The Army Corps of Engineers ("Corps") first issued a notice of violation to Magnusson for this activity in July 2001. After the Corps received a new complaint from county officials in June 2002, and with photos of the work in April 2003, the Corps issued a second letter directing Magnusson to cease any further work, remove the existing work, or apply for an after-the-fact permit. The defendant was charged by indictment in June 2008 after he continued to ignore regulatory officials.

This case was investigated by the Army Corps of Engineers.

Back to Top

Informations and Indictments

United States v. Dalnave Navigation, Inc., et al., No. 2:09-CR-00130 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] **AUSA Kathleen O'Leary** [redacted]**, and SAUSA Christopher Mooradian.**

On February 19, 2009, an eight-count indictment was returned charging a Liberian ship management company, along with the ship's chief engineer and second engineer for covering up discharges of oil-contaminated waste at sea.

Dalnave Navigation Inc., ("Dalnave"), Panagiotis Stamatakis, the chief engineer for the *M/V Myron N*, an oceangoing bulk carrier vessel, and the ship's second engineer Dimitrios Papadakis, both of Greece, each were charged with conspiracy and APPS violations for failing to maintain the ORB. They also were charged with making false statements to the Coast Guard regarding overboard discharges of oily waste, and obstruction of justice concerning statements made to the Coast Guard.

The indictment alleges that, between 2004 and September 2008, Dalnave, Stamatakis and Papadakis directed subordinate crew members to bypass the ship's oil water separator and to discharge oil-contaminated waste directly overboard. In September 2008, the ORB was presented to inspectors

at the port of Newark, which omitted the overboard discharges. Defendants also told the Coast Guard that, among other things, that they never ordered the pumping of oil-contaminated waste overboard.

This case was investigated by the United States Coast Guard, and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jack Barron, No. 2:09-CR-00043 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted].

On February 18, 2009, Jack Barron was charged with three Clean Water Act violations and with obstruction of justice stemming from the illegal dredge and fill of a wetlands on property he owned. Despite being advised by the Army Corps of Engineers on several occasions that he would need a permit to fill or alter these wetlands, the indictment states that Barron proceeded to place a culvert, fill, and concrete footings for a residence on the property in 2007. Barron is further alleged to have sent a letter to the Corps claiming to have obtained a permit for the excavation of a pond on the property, which was untrue.

This case was investigated by United States Environmental Crimes Investigation Division with assistance from the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Gunther Wenzek, No. 3:08-CR-00377 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted]

On February 11, 2009, Gunther Wenzek, a German national, was arrested on a nine-count indictment charging him with three felony violations of smuggling protected coral into the United States via the port of Portland, Oregon. He was further charged with three felony Lacey Act and three misdemeanor violations of the Endangered Species Act.

A grand jury in Portland indicted Wenzek in July 2008. The indictment had been sealed pending Wenzek's scheduled appearance at the Global Pet Exposition in Orlando, Florida. Law enforcement officials arrested Wenzek as he entered the United States at Dulles Airport en route to the exposition.

According to the indictment, Wenzek owns a company named CoraPet, based in Essen, Germany, and has sold various coral products to retailers in the United States. An investigation was launched in 2007 after Wenzek attempted to ship a container loaded with fragments of endangered coral from reefs off the Philippine coast to Portland. After this initial shipment, agents subsequently seized two full containers of endangered coral shipped by Wenzek to a customer in Portland. These two shipments made up a total of over 40 tons of coral.

The seized corals have been identified as belonging to the scientific order *Scleractinia*, *genera Porites*, *Acropora*, and *Pocillopora*, which is common to Philippine reefs. Due to the threat of extinction, stony corals, such as those seized in this case are protected by international law. Philippine law specifically forbids exports of all coral. CITES further prohibits importation of this coral to customers in the United States, without a permit.

This case was investigated by the United States Fish and Wildlife Service, United States Immigration and Customs Enforcement, and the National Marine Fisheries Service.

Back to Top

Pleas

United States v. William Rubenstein, No. 03-CR-723 (E.D.N.Y.), ECS Trial Attorney James Nelson [redacted] and DOJ Tax Attorney Mark Kotila [redacted]

On February 17, 2009, William Rubenstein pleaded guilty to conspiracy to defraud the IRS for evading the payment of excise taxes on ozone-depleting chemicals.

Co-defendant Dov Shellef, doing business as Poly Systems, Inc., and Polytuff, USA, Inc., and Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., were each convicted by a jury in July 2005 on all 130 counts, which included conspiracy to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud and a variety of tax violations. These convictions, however, were reversed on misjoinder grounds. The defendants did not pay approximately $1.9 million in tax due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes. This was the first criminal case involving CFC-113.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, causing the manufacturers to sell it to them tax-free. The defendants then sold the product tax-free in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Shellef was also convicted of personal income tax evasion, subscribing to false corporate tax returns, wire fraud and money laundering. The convictions were overturned last year.

This case was investigated by the Internal Revenue Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Willie Dean et al., No. 8:09-CR-00049 (D. Md.); United States v. Cannon Seafood, Inc., et al., No. 1:09-CR-00023(D.D.C.); ECS Senior Trial Attorney Wayne D. Hettenbach [redacted] ECS Trial Attorneys Madison Sewell [redacted] and Jeremy Peterson [redacted], and AUSA Stacy Belf [redacted]

On February 12 and 19, 2009, guilty pleas were taken from several commercial fishermen and a seafood business operating out of Maryland and the District of Columbia. Each pleaded guilty to one felony violation of the Lacey Act for their involvement in the selling, buying, illegal harvesting, and systemic under-reporting of striped bass (also known as rockfish) taken from the Chesapeake Bay and Potomac River between 2003 and 2007.

Thomas Crowder Jr., John Dean, Charles Quade, Thomas Hallock, and Keith Collins are all commercial fisherman operating out of the Chesapeake Bay area. Each were subject to a maximum yearly quota of striped bass and also were required to record each day's harvest on a permit allocation card issued by the state of Maryland. Each day's harvest and its corresponding entry on the permit allocation were required to be verified by a Maryland designated check-in station. All harvested striped bass were further required to be labeled with a plastic tag issued by the state.

From 2003 to 2007, with the assistance of a check-in station employee, the defendants both under and over reported the amount (in pounds) and the number of actual striped bass that they each had caught. These numbers were then certified at the check-in station on their Maryland permit allocation cards. By under-reporting the weight of fish harvested, and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to fish over their quota but not require them to report the additional catch.

Finally, Hallock, Quade, Dean and Collins falsely tagged the fish as to where they had been caught. Quade and Hallock also had seafood wholesalers provide false receipts for their striped bass sales, claiming that the sales involved different species of fish. The combined estimated fair market value of the fish caught by these defendants was more than $2.5 million.

In the related case, Cannon Seafood Inc., its owner and president Robert Moore Sr., and Robert Moore Jr., bought striped bass from Thomas Hallock, a commercial fisherman from Maryland, and Jerry Decatur, Sr., and Jerry Decatur, Jr., two Virginia fisherman. The Moores knew that striped bass was regulated by size limits and only available for harvest during specific months. They were further aware that Virginia and Maryland required all commercially harvested striped bass to have plastic tags placed on them when they were caught.

During this time period, Hallock harvested more striped bass than allowed under his Maryland limit, and he did not report the striped bass that he was selling to Cannon. He also caught the fish during the spawning season, when commercial harvest is prohibited, and sold this fish to Cannon. In turn, Moore, Jr., and other Cannon employees, on behalf of Cannon, generated and provided Hallock false receipts for the Maryland-caught striped bass that had been transported from Maryland into the District of Columbia. These receipts falsely reflected that Cannon had purchased another species of fish from Hallock, and they also altered the weight and price of the fish in order to conceal the striped bass purchase. During this time period, Cannon generated 168 false receipts for more than 62,000 pounds of Maryland striped bass and paid Hallock more than $139,000 for this fish.

Further, Moore, Sr., and other Cannon employees, on behalf of Cannon, arranged for and purchased striped bass from the Decaturs that had been transported from Virginia into the District of Columbia, and which did not have the required tags. Moore, Jr., regularly saw striped bass that had been purchased from the Decaturs without these tags and knew that Cannon was buying the bass illegally. The majority of untagged fish that Cannon bought from the Decaturs was caught and bought during the prohibited spring striped bass spawning seasons. During this time period, Cannon purchased more than 30,000 pounds of untagged striped bass from the Decaturs and paid more than $87,000 for the fish.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit. The Task Force conducted undercover purchases and sales of striped bass in 2003, engaged in covert observation of commercial fishing operations in the Chesapeake Bay and Potomac River area, and conducted detailed analysis of area striped bass catch reporting and commercial business sales records from 2003 through 2007.

Back to Top

United States v. Garrett Smith, No. 2:07-CR-00573 (E.D. Calif.), AUSA Robert Tice-Raskin [redacted]

Burmese Star Tortoises

On February 10, 2009, Garrett Smith pleaded guilty to conspiracy to smuggle wildlife. Smith originally was charged along with an unknown international co-conspirator, known as "Turtle Man," with a variety of wildlife smuggling violations. The 21-count indictment charged both defendants with conspiracy, smuggling protected tortoises, false labeling of wildlife, unlawful sale of wildlife, and money laundering. Smith was further charged with one count of destruction or removal of property to prevent seizure during execution of a search warrant.

According to the indictment, Smith, working with the "Turtle Man" (who is believed to reside in Singapore), engaged in a conspiracy to illegally smuggle wild tortoises into the United States for sale. The overseas conspirator and others acting at his direction obtained Burmese Star Tortoises and Indian Star Tortoises in Asia and sold them to Smith via e-mail transactions. The tortoises, illegally imported into this country using misleading labels and without proper documentation, then were sold to distributors and customers across the United States. Approximately 30 protected Indian Star Tortoises and five protected Burmese Star Tortoises were imported illegally. Burmese Star adults can sell on the black market for up to $7,000 each, with juveniles and sub-adults selling for approximately $3,750. Sentencing is scheduled for April 21, 2009.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Leo Bergtoll et al., No. 1:09-CR-00002 (D. Mont.) ECS Senior Trial Attorney Robert Anderson ([redacted]

On February 5, 2009, Leo Bergtoll, his wife Anna Lou, and their son Darrel, pleaded guilty to Lacey Act violations stemming from allowing unlicensed big game hunters onto their property between 1999 and 2003. Leo Bergtoll pleaded guilty to a felony Lacey Act conspiracy count, and Anna Lou and Darrel Bergtoll pleaded guilty to a misdemeanor Lacey Act trafficking count. The defendants are landowners who allowed out-of-state clients to hunt big game on their property in Montana without being licensed, after which they then sold licenses to their clients that had been issued to legitimate Montana residents. The Bergtolls are scheduled for sentencing on May 6, 2009.

The government may seek a cooperation reduction, depending on the defendants' conduct between now and resolution of a related case against an (unlicensed) outfitter, Anthony Bazile, who currently faces felony Lacey Act charges.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Robert Whiteman, No. 4:08-CR-00111 (E.D. Va.), AUSA Brian Samuels ([redacted]

On January 16, 2009, Robert Whiteman pleaded guilty to a RCRA storage violation in connection with the storage and abandonment of numerous 55-gallon drums containing toxic and corrosive waste at a property he owned in Gloucester, Virginia.

From 1998 through 2005, Whiteman operated Control Products, USA, which was an on-site metal plating operation. The operation required the use of large nickel and tin plating tanks or "baths" and generated sulfuric acid and nickel sulfamate, which were stored in 55-gallon drums at a property in Hayes, Virginia.

Abandoned waste drums

In May 2006, Whiteman transported several 55-gallon drums of this waste and one plating bath to his residence in Gloucester. In March 2007, after the property was foreclosed upon, the abandoned drums and plating bath, containing hundreds of pounds of corrosive and toxic liquids, were discovered and subsequently determined to be hazardous waste.

Disposal of the drums and a large quantity of contaminated soil cost approximately $128,000 in cleanup costs. Whiteman is scheduled to be sentenced on April 17, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center, with assistance from the Federal Bureau of Investigation, the Virginia Department of Environmental Quality, the Department of Housing and Urban Development, the Gloucester County Sheriff's Office, the Virginia State Police, and police departments in Memphis, Tennessee, and Walls, Mississippi.

Back to Top

Sentencings

United States v. Alan Hersh, No. 1:07-CR-00060 (N.D. Ind.), AUSA Lovita Morris King ([redacted]**and SAUSA Dave Mucha** [redacted]

Abandoned drums

On March 2, 2009, Alan Hersh was sentenced to serve 15 months' incarceration followed by three years' supervised release. He was further ordered to pay $1.7 million to EPA for superfund cleanup costs.

Hersh, the president and owner of Hassan Barrel Company, Inc., a barrel recycling company, previously pleaded guilty to a RCRA violation for unlawfully storing and disposing of hazardous waste. The company cleaned used industrial barrels, repainted them and sold them. When the cost of disposing the waste that came in the barrels became too high, employees

began storing barrels of it in sheds, in semi-trailers, and finally just dumped the waste into huge trash bins and open pits. The paint waste contained volatile chemicals such as butanone, ethyl benzene and toluene and heavy metals like cadmium, chromium, lead and mercury. The defendants accumulated and stored drums of waste on site without a permit until approximately October 2003, when the company went out of business and the facility was abandoned. Thousands of rusting and leaking drums were found scattered over the seven-acre site, some dating back to 1993, just a few blocks from an elementary school.

In about October 2004, EPA began an emergency removal at the facility which continues to address necessary remedial measures. Approximately 10,000 barrels have been removed from the site, and contaminated soil is expected to be removed this summer. The companies that sent waste to Hassan Barrel are now paying for that cleanup.

As part of the plea agreement, charges against the company, which had no assets, were dropped.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center and the Indiana Department of Environmental Management Office of Criminal Investigation.

Back to Top

United States v. Usona Metal Finishing Company, No. 4:08-CR-00565 (E.D. Mo.), AUSA Michael Reap ([redacted]) and SAUSA Anne Rauch ([redacted])

On February 26, 2009, Usona Metal Finishing Company ("Usona"), a metal-plating business, and Paul Fredericks, the company owner, were each sentenced to complete three-year terms of probation and were held jointly and severally liable for $9,363 in restitution to be paid to the Missouri Department of Natural Resources Hazardous Waste Program. The defendants pleaded guilty in December 2008 to one RCRA violation stemming from the illegal storage and discharge of hazardous waste.

Usona operates three plants in the St. Louis area, including an anodizing plant in Cuba, Missouri, and a wet-paint plant and a powder-coating plant, both located in St. Louis. After the powder-coating plant ceased operations in April 2007, Fredericks arranged for the transportation of 100 drums of hazardous waste from that facility to the anodizing plant in Cuba. The hazardous wastes were illegally stored at the plant from April 2007 to April 2008, at which point Fredericks directed employees to dump the wastes into the plant's sanitary sewer.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Hiong Guan Navegacion Japan Co. Ltd., et al., No. 8:08-CR-00494 (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [redacted] and AUSA Cherie Krigsman [redacted]

On February 24, 2009, Japanese corporation Hiong Guan Navegacion Japan Co. Ltd., the operator of the *M/V Balsa 62*, a commercial cargo ship, was sentenced to pay $1.75 million for pleading guilty to conspiracy and for falsifying and failing to properly maintain the ship's oil record book. From June 2007 through February 2008, chief engineer Francisco Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass, as well.

In February 2008, Robert Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the

Coast Guard by not recording them in the ORB. During port calls in Tampa in October 2007, and May 2008, the ORB that contained the false entries and omissions regarding the bypasses was presented to inspectors. Based in part on information from crew members aboard the ship, the Coast Guard subsequently located evidence on board that corroborated allegations that the ship had been unlawfully discharging oily waste.

Of the $1.75 million, $400,000 will be paid to the Pinellas County, Florida, Environmental Fund (PCEF). The PCEF has funded numerous wide-ranging projects related to the protection, restoration and enhancement of fish and wildlife habitat in the Tampa Bay area. The court also ordered Hiong Guan to implement a detailed environmental compliance plan, including monitoring of its fleet-wide operations for the next three-year probationary term, training for crew members, and engineering alterations to protect gulf and ocean waters. At a later date, the court is expected to award $337,500 of the remaining fine to be divided among two or three whistleblower crew members.

The two engineers, both Philippine citizens, pleaded guilty in October 2008 to falsifying and failing to properly maintain the ORB. Bagatela was sentenced to pay a $1,500 fine and complete three years' probation, and Racho will pay a $1,000 fine and complete a one-year term of probation.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted]

On February 24, 2009, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were sentenced for their involvement in the illegal export of internationally protected fish roe (eggs) from July 2005 through April 2007.

Moghaddam, who was remanded into custody, was sentenced to serve 18 months' incarceration followed by three years' of supervised release. He was further ordered to pay a $100,000 fine. Bemka was sentenced to pay a $200,000 fine and will serve a four year term of probation. The roe, valued at approximately $122,000 was forfeited to the government in connection with this matter.

The defendants were convicted by a jury in December of last year of conspiring to violate the Lacey Act, a Lacey Act false labeling violation, and an Endangered Species Act export violation. Over a 21-month period, the defendants exported numerous shipments labeled as containing bowfin roe, which is often used as a caviar substitute, when in fact they contained paddlefish roe. The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars.

Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and the American Paddlefish is now listed as an endangered species. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish roe has become a substitute for sturgeon caviar and, as such, has become quite valuable.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. David Grummer, No. 08-CR-01140 (S.D. Calif.), AUSA Melanie Pierson ([redacted]

On February 23, 2009, David Grummer was sentenced to serve eighteen months' incarceration after pleading guilty to distributing unregistered pesticides, the unlawful sale of refrigerants, and the

unlawful transportation of hazardous substances. Grummer also will pay a $3,000 fine and $92,410 in restitution.

Between April 2005 and January 14, 2008, Grummer sold unregistered pesticides, such as DDT and Chlordane, in violation of FIFRA, over the internet to people throughout the country. During this time he also sold ozone-depleting substances over the internet including CFC-12 in containers of less than 20 pounds. Grummer sold them to people whom he knew did not possess the required EPA certification to purchase them, in violation of the Clean Air Act.

The pesticides and ozone-depleting substances were shipped in the form of compressed gases to people outside of California via a private commercial interstate carrier. The Hazardous Materials Transportation Act requires that products such as these be clearly declared and classified as hazardous substances on their shipping papers. Grummer was fully aware of these requirements because he was employed as a manager at a household hazardous waste turn-in facility, and was responsible for shipping such materials. Grummer also possessed a hazardous materials transport endorsement on his California driver's license, which requires an individual to pass a test to receive this endorsement.

The defendant obtained these chemicals and electronic wastes by diverting them from the household hazardous waste turn-in facility where he worked. The lost recycling re-sale revenue to his employer and various municipalities totaled $92,410. Grummer will pay $18,111 to the City of Vista, $6,644 to the City of Poway, $6,047 to the City of Escondido, and $61,607 to his former employer Clean Harbors Environmental Services.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Department of Transportation Office of the Inspector General, and the Federal Bureau of Investigation.

Back to Top

[redacted]

Back to Top

United States v. Antonio Rodrigues et al., No. 2:08-CR-00393 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted], SAUSA Ken Nelson [redacted] and ECS Paralegal Jean Bouet [redacted]

On February 10, 2009, chief engineer Antonio Rodrigues, and first engineer Jose Cavadas, each were sentenced after being convicted by a jury last year, along with operator General Maritime Management (Portugal), L.D.A., of an APPS oil record book violation and a false statement violation for presenting a false ORB to Coast Guard officials during a port inspection. Each was sentenced to complete five-years' probation and must pay a $500 fine, half of which will be paid to whistleblowers.

Rodrigues also will serve three months' incarceration in a halfway house and Cavadas will spend six months in a halfway house.

This case came to the attention of inspectors after a crewmember/fitter onboard the *M/T GenMar Defiance* advised the Coast Guard that he had been told by the ship's chief and first engineers to connect a bypass hose to an overboard discharge valve, thereby tricking the oil content meter into allowing oily bilge waste to bypass the ship's oily water separator. Other crewmen later confirmed the fitter's story as well as secretly photographing the illegal bypass and passing the pictures to the Coast Guard. The fitter stated that he observed Cavadas open the overboard discharge valve and pump the bilge into the ocean for approximately three or four hours. He was warned by Cavadas not to talk about this and Rodrigues further threatened to fire the fitter once the ship had reached port.

During the Corpus Christi port inspection in November 2007, the ORB presented to officials omitted the illegal overboard discharges.

This case was investigated by the United States Coast Guard, and the Environmental Crimes Task Force, which includes the United States Environmental Protection Agency, the Texas Commission on Environmental Quality Investigations Division, and the Texas Parks and Wildlife Department.

Back to Top

United States v. John Wood et al., No. 5:06-CR-00494 (N.D.N.Y.), ECS Trial Attorney Colin Black [redacted] and AUSA Craig Benedict ([redacted]

On February 6, 2009, John Wood was sentenced to serve 48 months' incarceration and was ordered to pay approximately $800,000 in restitution. Wood pleaded guilty in September of last year to conspiracy to violate the CAA and to commit mail fraud related to illegal asbestos removal activities at numerous locations in New York State. He also pleaded guilty to a contempt charge for violating his pre-trial release conditions including engaging in additional asbestos violations. Co-defendant Curt Collins was sentenced to serve 24 months' incarceration and was ordered to pay $100,000 in restitution. Collins pleaded guilty in 2007 to a conspiracy charge.

Wood is the owner of J&W Construction, an asbestos removal company. On various dates in 2005 and 2006, Wood supervised individuals who were engaged in renovation or removal projects, instructing workers to remove asbestos-laden material from businesses and residences in an illegal and unsafe manner. Co-defendant Mark Desnoyers was convicted by a jury on five counts last September for his role as an air monitor who falsified test results taken from a number of structures where asbestos was removed. He is scheduled to be sentenced on April 24, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Andrew Siemaszko et al., No. 3:06-CR-00712 (N.D. Ohio), ECS Counsel Tom Ballantine [redacted], AUSA Christian Stickan [redacted] and ECS Paralegal Lois Tuttle ([redacted]

Davis Besse Plant

On February 6, 2009, Andrew Siemaszko was sentenced to pay a $4,500 fine and will complete a three-year term of probation as the result of being convicted by a jury of providing false and misleading information to the Nuclear Regulatory Commission.

In January 2006, a five-count indictment was returned charging Siemaszko, a systems engineer, and engineering manager David Geisen, both former employees of FirstEnergy Nuclear Operating Company ("FENOC"), and consultant Rodney Cook with a scheme to conceal information from the Nuclear Regulatory Commission ("NRC") and with making false statements to the NRC. Cook was acquitted on all counts at trial.

FENOC owns and operates the Davis-Besse plant near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant's safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.

Geisen was sentenced in May 2008 to serve four months' home detention as a condition of three years' probation. He also was required to complete 200 hours of community service and pay a $7,500 fine.

FENOC previously entered into a deferred prosecution agreement in this case. This case was investigated by the NRC Office of Investigations.

Back to Top

United States v. Crown Chemical, Inc., et al., No. 1:06-CR-00545 (N.D. Ill.), AUSA Tim Chapman [redacted].

On February 4, 2009, Crown Chemical, Inc. ("Crown") and company president and owner James Spain, were sentenced for conspiring to violate the Clean Water Act between approximately November 1985 and November 2001 by discharging untreated wastewater in violation of an approved pretreatment program. Spain was sentenced to complete three years' probation, with one year to be spent under home confinement, and he was further ordered to pay a $30,000 fine. Crown was sentenced to pay a $100,000 fine, make a public apology, and complete a one-year term of probation. A third defendant, Catalino Uy, was sentenced on February 5th to pay a $5,000 fine and must complete two years' probation after previously pleading guilty to a CWA conspiracy violation.

Crown manufactured cleaning products for residential, commercial and industrial use. Many of the products exhibited a pH higher and lower than the local ordinance limit of 5-10. Wastewater exhibiting unlawfully high and low pH (some of which qualified as hazardous waste under RCRA) was generated during the cleaning of Crown's process tanks. Despite knowledge of the pH limits, Spain directed employees to discharge all of the untreated wastewater to the Crestwood, Illinois, POTW.

During the execution of a search warrant in November 2001, Spain falsely told the agents that the company's wastewater was neutralized before discharge. Spain also instructed other Crown employees to tell the agents the same lie. On various occasions during this period, Spain falsely informed the POTW that Crown did not discharge industrial waste to the sewer system. As Crown's plant manager for many years, Uy directed much of the unlawful discharges. All three defendants pleaded guilty to

The court cited Spain's advanced age and his health conditions as primary factors in the Court's decision not to impose a term of incarceration.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Fred Hand III, et al., No. 1:09-mj-00118 and 119 (N.D. Ga.), AUSA Mary Roemer ([redacted].

On February 3, 2009, Fred Hand III, and Fred Hand IV, were sentenced for transporting a whitetail deer from Colorado to Georgia, a misdemeanor violation of the Lacey Act.

In November 2007, Fred Hand, III and his son, Fred Hand, IV, used a rifle to shoot and kill a whitetail deer during Colorado's archery-only season, a violation of state law. The Hands then transported the antlers of the seven-point buck to Georgia, in interstate commerce. The defendants were each sentenced to complete a two-year term of probation, pay a $10,000 fine to the Lacey Act Reward Account, and will pay $5,000 in restitution to the State of Colorado's Division of Wildlife. They further forfeited their right to hunt in 22 western states.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Thomas Jerry Nix, Jr., No. 3:08-CR-05015 (W.D. Mo.), AUSA Steven M. Mohlhenrich ([redacted].

Live paddlefish

On February 2, 2009, Thomas Jerry Nix, Jr., was sentenced to serve one year and one day of incarceration and will pay $30,000 in restitution to the Missouri Department of Conservation. Nix also will forfeit a 20-foot Bumblebee 200 Pro boat and trailer and other miscellaneous equipment used to commit the offense.

The defendant pleaded guilty in September of last year to conspiracy to violate the Lacey Act. He originally was charged in a seven-count indictment with violations stemming from using illegal nets to harvest the roe (eggs) from paddlefish that subsequently was processed into caviar and sold to a Tennessee company. During a 30-day period in 2008, Nix sold approximately 387 pounds of paddlefish caviar out of state for $35,820.

From December 2007 to February 2008, Nix and an unindicted co-conspirator participated in a conspiracy to transport and sell paddlefish roe that was taken in violation of state and federal laws.

Nix set gill nets in Table Rock Lake. Nix returned to check the nets every one to three days, removing the fish that were caught, and relocating the nets on the Lake as the paddlefish moved upstream to spawn.

After removing and packaging the roe from the fish he had caught, and in order to conceal his illegal activities, Nix weighted the dead fish with rocks so that they would sink in the lake. The roe was processed into caviar, then packaged, transported and sold in Tennessee. Nix represented that the caviar had been lawfully taken in Arkansas, which was untrue since he did not possess a fishing license from the state, nor did he possess the required permits and documents from the state of Missouri, where he resides.

In February 2008, the defendant and his co-conspirator were apprehended by Missouri Department of Conservation agents with approximately 78 pounds of unprocessed paddlefish roe. A search of the defendant's residence revealed approximately 91 pounds of paddlefish roe that had been processed into caviar and packaged in containers labeled for sale to a company located in Tennessee.

The American paddlefish is native to the Mississippi River drainage system and is taken for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines. The paddlefish is a close relative of the sturgeon from which most commonly known caviars are obtained. With diminishing worldwide sturgeon populations and increased international protection for declining stocks, American paddlefish has become an increasingly popular and valuable substitute for sturgeon caviar. Female paddlefish reach reproductive maturity at nine to 11 years of age, producing up to 10 pounds of roe, and can weigh 100 pounds or more.

This case was investigated by the United States Fish and Wildlife Service and the Missouri Department of Conservation.

Back to Top

United States v. Bruce Brown et al., No. 3:07-CR-05642 (W.D. Wash.), AUSA Jim Oesterle ([redacted]

On January 23, 2009, Bruce Brown was sentenced to serve five months' incarceration followed by three years supervise release for conspiring to steal and damage old growth trees on the Olympic National Forest. Some of the trees were nearly 600 years old.

Brown and co-defendant Craig James pleaded guilty last year to conspiracy to commit depredation against Forest Service property. A third co-defendant, Floyd Stutesman, previously pleaded guilty to the same charge.

Between November 2006 and February 2007, the defendants damaged and removed a variety of trees including 31 old growth western red cedar trees. United States Forest Service officers located the theft site after approximately thirty cords of cedar had been removed and sold to local mills. The defendants provided false documentation indicating the wood had been harvested from private property. A substantial quantity of the wood was considered "music wood," highly valued by manufacturers of musical instruments and only found in older trees.

Stutesman was previously sentenced to serve five years' probation with a special condition of four months' home confinement. James remains scheduled for sentencing on April 10, 2009, and a hearing regarding restitution to be made jointly and severally to the Forest Service is scheduled for May 12, 2009.

This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

Back to Top

United States v. Texas Petroleum Investment Company, No. 2:08-CR-00215 (E.D. La.), AUSA Dorothy Taylor [redacted]

On January 21, 2009, Texas Petroleum Investment Company ("TPIC"), an oil production company, was sentenced to pay a $50,000 fine and complete a two-year term of probation for causing a negligent spill of processed brine water into waters of the United States on a federal wildlife refuge.

TPIC operated the Romere Pass oil production facility located on federal lands within the Delta National Wildlife Refuge. The Romere Pass Facility was used for the collection, separation and treatment of oil and gas produced from nearby TPIC wells located in the Romere Pass Field. On or around March 17, 2005, a storage tank alarm sounded due to high water levels in the tank, and oil and water began to spill over the top of the tank. Company employees, aware that a salt water injection well was not working and that the pumps could not keep up, used a bypass valve to release processed brine water over the side of a barge until the pumps were functioning properly.

The company also will pay $425,000 to the United State Fish and Wildlife Service, $25,000 to the Louisiana State Police Right to Know Fund, and $25,000 to the Southern Environmental Enforcement Network Enforcement Training Fund. TPIC pleaded guilty to a misdemeanor CWA violation in October of last year.

Back to Top

[redacted]

[redacted]

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

April 2009

EDITOR'S NOTE:

* * * * * * * * * * * * *

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

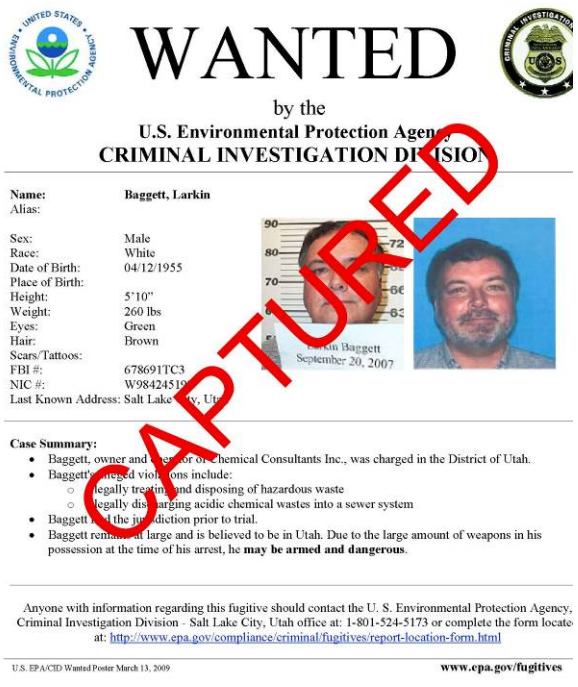
SEE BELOW FOR OUR FIRST ENVIRONMENTAL FUGITIVE UPDATE.

If you have other significant updates and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted] Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

ENVIRONMENTAL FUGITIVE ALERT UPDATE:

On March 10, 2009, Larkin Baggett, the Environmental Protection Agency's third most wanted fugitive, was discovered to be residing in trailer park located in the Florida Keys. EPA-CID and the Monroe County Sheriff's Office were first on the scene. When Baggett saw the officers approaching, he aimed an assault rifle at them, causing the agents to open fire. Baggett was shot in the face and buttocks and airlifted to a hospital in Miami where he remains in critical condition under the custody of the U.S. Marshals.


WANTED

by the

U.S. Environmental Protection Agency

CRIMINAL INVESTIGATION DIVISION

CAPTURED

Name: **Baggett, Larkin**
Alias:

Sex: Male
Race: White
Date of Birth: 04/12/1955
Place of Birth:
Height: 5'10"
Weight: 260 lbs
Eyes: Green
Hair: Brown
Scars/Tattoos:
FBI #: 678691TC3
NIC #: W98424519
Last Known Address: Salt Lake City, Ut

Larkin Baggett
September 20, 2007

Case Summary:

- Baggett, owner and operator of Chemical Consultants Inc., was charged in the District of Utah.
- Baggett's alleged violations include:
  - illegally treating and disposing of hazardous waste
  - illegally discharging acidic chemical wastes into a sewer system
- Baggett fled the jurisdiction prior to trial.
- Baggett remains at large and is believed to be in Utah. Due to the large amount of weapons in his possession at the time of his arrest, he **may be armed and dangerous**.

Anyone with information regarding this fugitive should contact the U. S. Environmental Protection Agency, Criminal Investigation Division - Salt Lake City, Utah office at: 1-801-524-5173 or complete the form located at: http://www.epa.gov/compliance/criminal/fugitives/report-location-form.html

U.S. EPA/CID Wanted Poster March 13, 2009 **www.epa.gov/fugitives**

He was indicted in September 2007 in the District of Utah on two CWA violations and two RCRA counts for discharging wastes generated from his chemical distribution business with a pH of less than 5.0 into the local POTW. Additionally, between 2003 and 2005, he treated and disposed of hazardous wastes by, among other things, dumping them on the ground behind the plant and by allowing them to evaporate.

He fled Utah in April 2008, which was two months before his trial was scheduled to begin in June 2008. The District of Utah thanks the USAO in the Southern District of Florida, EPA-CID Region 4, the United States Marshal's Office, and the Monroe County Sheriff's Office for their diligent efforts.

AT A GLANCE

☞ **United States v. San Diego Gas and Electric, 2009 WL 689627 (9th Cir. Mar. 17, 2009).**

Districts	Active Cases	*Case Type* / Statutes
D. Ak.	**United States v. Larry Hooton, et al.**	***Brown Bear Hunts*/ Lacey Act Conspiracy**
M.D. Fla.	**United States v. Graham Brothers Construction Company, Inc.**	***Eagle Nest Destruction*/ Bald and Golden Eagle Protection Act**
S.D. Fla.	**United States v. Edward Saul Arias Ducker**	***Queen Conch Smuggling*/ Lacey Act Conspiracy**
S.D. Ga.	**United States v. Toru Shimoji**	***Endangered Wildlife Sales*/ ESA, Lacey Act, MBTA**
W.D. Ky.	**United States v. Game Trails, LLC, et al.**	***Deer Hunting*/ Lacey Act**
D. Mass.	**United States v. Carmelo Oria et al.**	***Vessel*/ APPS ORB**
E.D. Mich.	**United States v. Bryan Mallindine, et al.**	***Wastewater Treatment Facility*/ CWA, False Statement, Obstruction, Conspiracy**
D.N.J.	**United States v. Holy House Shipping, et al.**	***Vessel*/ APPS, False Statement**
D. Ore.	**United States v. Reginald Akeen et al.**	***Eagle Feathers*/ Bald and Golden Eagle Protection Act**
E.D. Pa.	**United States v. Moshe Rubashkin et al.**	***Textile Mill*/ RCRA, False Statement**
S.D. Tex.	**United States v. BP Products North America, Inc.**	***Oil Refinery Explosion*/ CAA**
D. Utah	**United States v. Jay Atwater et al.**	***Furniture Restorer*/ RCRA, CWA Pretreatment**
E.D. Wash.	**United States v. Reginald Akeen et al.**	***Eagle Feathers*/ Bald and Golden Eagle Protection Act**

Additional Quick Links

Significant Environmental Decisions

Ninth Circuit

United States v. San Diego Gas and Electric, 2009 WL 689627 (9th Cir., Mar. 17, 2009).

The Ninth Circuit has affirmed the district court's decision granting San Diego Gas & Electric Co. ("SDG&E") and two employees a new trial for violating asbestos work practice standards and for making a false statement stemming from the illegal removal of regulated asbestos-containing materials at SDG&E's gas holding facility. The circuit court agreed with the trial judge that the government's technical evidence on the asbestos content of pipe-covering created a fundamentally unfair outcome.

In July 2007, a jury convicted SDG&E on three CAA NESHAP violations and one false statement count. The court dismissed a conspiracy charge pursuant to a Rule 29 motion. Environmental specialist David Williamson and contractor Kyle Rhuebottom each were convicted of one CAA NESHAP violation, and environmental supervisor Jacquelyn McHugh was acquitted on the one CAA NESHAP count charged. Williamson was charged with a false statement violation for informing authorities that he was a certified asbestos consultant, which was untrue. The jury was unable to reach a verdict, however, and the court declared a mistrial on that count.

A sample of suspected asbestos was taken from the facility prior to commencing the asbestos removal. Analysis of the sample, which came from the coating of the facility's underground piping, indicated that the coating was regulated asbestos. SDG&E subsequently entered into a tentative agreement to sell the facility and was required to remove the underground piping. The company made statements that the coating removed from the underground piping was not regulated asbestos, in order to avoid the additional cost and time required to properly remove it.

The district court overturned the conviction after it became concerned about the admission of nonrepresentative samples collected at the site and that the samples were tested using questionable methods.

On appeal, the Ninth Circuit held that, given the complexity of the issues, the trial judge's familiarity with the evidence, and the ability of the trial judge to evaluate the witnesses, the district court did not abuse its discretion in coming to a different conclusion than the jury did. The circuit

court further rejected a government argument that, even if the samples were obtained in violation of the regulations, they still were admissible as circumstantial evidence.
Back to Top

Informations and Indictments

United States v. Reginald Akeen, et al., 3:09-CR-00103; 2:09-mj-00073-75 (D. Ore., E.D. Wash.), ECS Senior Trial Attorney Elinor Colbourn [redacted] AUSAs Stacie Beckerman [redacted] and Timothy Ohms [redacted]

On March 12, 2009, four men were arrested as the result of an undercover investigation into the illegal killing of and trade in bald and golden eagles and other protected birds.

The charging documents, unsealed in the Eastern District of Washington and the District of Oregon, collectively allege Ricky Wahchumwah, Alfred L. Hawk Jr., William Wahsise, and Reginald Akeen, aka J.J. Lonelodge, with violations of the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and the Lacey Act.

According to court documents, an undercover operation was initiated whereby agents interacted with individuals who were in the business of selling protected migratory bird parts. One complaint alleges that a single covert purchase from Hawk yielded a bald eagle tail, two golden eagle tails, one set of golden eagle wings, four red-shafted northern flicker tails, four rough-legged hawk tails, and two northern harrier tails for a total of $3,000. According to the documents, Hawk and Wahsise allegedly hunted and killed three bald eagles the morning of the sale by sitting near some wild horses killed to bait and attract eagles. A third complaint alleges that Wahchumwah sold one golden eagle tail to an undercover agent for $500.

A fourth complaint, filed in the District of Oregon, alleges that Akeen made several sales to an undercover agent, including two fans worth more than $3,000, which were made from juvenile golden eagle feathers.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures, and the feathers of the birds are central to religious and spiritual Native American customs. By law, enrolled members of federally-recognized Native American tribes are entitled to obtain permits to possess eagle parts for religious purposes, but federal law strictly prohibits selling eagle parts under any circumstances. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally or by accident, to supply tribal members with eagle parts for religious use.

The arrests are part of an on-going investigation into the illegal killing of bald and golden eagles and other protected birds and the sale of their feathers and parts. The United States Fish and Wildlife Service is conducting the investigation with the help and cooperation of state, federal, and tribal law enforcement agencies.
Back to Top

Pleas

United States v. Carmelo Oria et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted] AUSA Linda Ricci ([redacted] and SAUSA Christopher Jones [redacted]

On March 9, 2009, Carmelo Oria, chief engineer for the *M/T Nautilus*, pleaded guilty to an APPS violation for falsifying the oil record book.

Oria, who served as a chief engineer between January and March 2008, was responsible for all engine room operations. During that time, Oria ordered engine room crew members to discharge oil-contaminated bilge waste from the ship's bilges directly into the ocean. When the ship entered the port of Boston on March 22, 2008, the ORB failed to disclose these overboard discharges.

Consultores De Navegacion ("Consultores") and Iceport Shipping Co. Ltd. ("Iceport") the ship's owner and operator were previously charge in a six-count superseding indictment with conspiracy, falsification of records, false statements, obstruction, and an APPS violation for failing to maintain an accurate ORB.

Between June 2007 and March 2008, the companies, acting through Oria and other employees, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and instead discharged the oil-contaminated waste directly overboard. The charges stem from a Coast Guard inspection that began in the port of St. Croix and continued in the port of Boston. Subsequent investigation revealed that the ORB failed to accurately reflect the overboard discharge of oily waste water.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Edward Saul Arias Ducker, No. 1:08-CR-20035 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On March 5, 2009, Edward Saul Arias Ducker, a Honduran national, pleaded guilty to a Lacey Act conspiracy violation for his involvement in the smuggling of large quantities of queen conch taken from Honduran waters that was then laundered through Columbia to customers throughout Canada and the United States.

From approximately May 2004 through November 2006, Arias and other co-conspirators, including the owners of Caribbean Conch, Inc., and Placeres & Sons Seafood, Inc., companies located in Hialeah, Florida, engaged in the business of selling seafood products, causing the shipment of more than 115,000 pounds of queen conch from Honduras and Columbia to Canada and the United States without proper permits. Arias' role included arranging for vessels on two separate occasions, to transfer queen conch, harvested in Honduran waters, to Colombian vessels at sea for landing and processing in Columbia.

Queen conch is protected under CITES, but it is not listed under the ESA as a protected species. In September 2003, an embargo was enacted by the CITES parties for queen conch and conch products that originated from many of the conch-producing countries of the Caribbean to help stem the significant declines in the species due in large part to rampant illegal harvesting. The embargo banned all imports of queen conch to any nation that was a signatory to CITES.

In March 2006, a shipment of 2,100 pounds of falsely-labeled conch was intercepted by a United States Fish and Wildlife Service inspector in Buffalo, New York. The Fish and Wildlife Service's National Forensic Laboratory in Ashland, Oregon, conducted DNA analysis of the seafood product and confirmed it was queen conch and not whelk, which sometimes is used as a cheap substitute.

The 18-month investigation by Canadian and American enforcement authorities led to the simultaneous execution of search warrants in both countries and the seizure of more than 63,000 pounds of illegally traded queen conch, all of which had originated with Arias. The retail value of the smuggled queen conch was more than $1.725 million. Three other individuals have been prosecuted in this matter. Arias is scheduled to be sentenced on May 15, 2009.

This case was investigated by the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration Office for Law Enforcement, and the Wildlife Officers of Environment Canada's Wildlife Enforcement Branch, Wildlife Enforcement Division, in Halifax, Montreal, Toronto, and Vancouver. The United States National Marine Fisheries Service and Canadian and American border officials also contributed to this investigation.

Back to Top

Sentencings

United States v. Moshe Rubashkin et al., No. 2:07-CR-00498 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Michelle Morgan-Kelly[redacted].

On March 24, 2009, Sholom Rubashkin was sentenced to serve four months' incarceration, followed by three years' supervised release. He was further ordered to pay a $5,000 fine, complete 250 hours' community service and was held jointly and severally liable for $450,000 in restitution to be paid to USEPA and the City of Allentown, Pennsylvania, in cleanup costs.

Abandoned waste

Sholom and his father Moshe Rubashkin operated the Montex Textile plant, a textile dyeing, bleaching and weaving business that was subsequently declared a superfund site. After being in operation for 12 years, the plant closed in 2002 with numerous containers of hazardous waste left behind. After local authorities responded to two fires at the plant, EPA and the City of Allentown initiated a clean-up of the property in October 2005. In responding to a CERCLA 104(e) letter sent in February 2006 regarding the parties responsible for cleanup at the site, Sholom denied that his family had owned and operated the plant. Moshe previously pleaded guilty to a RCRA storage violation and Sholom pleaded guilty to a false statement violation.

Moshe Rubashkin was sentenced last December to serve 16 months' incarceration, followed by three years' supervised release. He was further ordered to pay a $7,500 fine and is liable for the

$450,000 in restitution, with $396,728 to be paid to the United States Environmental Protection Agency and $53,271 to the City of Allentown.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, and the Environmental Protection Agency Office of Inspector General.

Back to Top

United States v. Larry Hooton et al., No. 1:08-CR-00002 (D. Ak.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Steven Skrocki [redacted]

On March 24, 2009, Larry Hooton was sentenced to serve three months' imprisonment, pay a $41,000 fine and $30,000 in restitution to the State of Alaska and the United States Forest Service for illegally guiding brown bear hunts and taking brown bears on Admiralty Island, in the Tongass National Forest.

Big-game outfitter Larry Hooton and his two outfitter sons, Shawn and Shane Hooton, pleaded guilty earlier this year to conspiring to violate the Lacey Act for illegally guiding clients on brown bear hunts on federal property. Shawn was previously sentenced to serve three months' home confinement as a condition of two years' probation, and also must pay a $30,000 fine. Shane Hooton was sentenced to serve a one-year term of probation and pay a $20,000 fine. All three defendants must forfeit their hunting equipment and are subject hunting/guiding restrictions.

This case was investigated by the United States Forest Service, Alaska Wildlife Troopers, and the United States Fish and Wildlife Service.

Back to Top

United States v. Game Trails, LLC., et al. , No. 4:09-mj-00004 (W.D. Ky.), AUSA Randy Ream [redacted]

Game Trails

On March 19, 2009, Game Trails, LLC., and William Dirk MacTavish, Jr., the site manager for Game Trails Lodge, were sentenced for misdemeanor violations of the Lacey Act stemming from illegal deer hunting. The company was sentenced to pay a $35,000 fine and MacTavish was ordered to pay a $15,000 fine.

The charges arose out of Game Trails' practice of killing female deer over limit at its lodge between June 2006 and November 2007, and shipping parts of the wildlife in interstate commerce. Game Trails and its agents used the social security numbers of hunters at the lodge without their permission to falsely report to the Kentucky Fish and Wildlife's telecheck program that the deer were legally taken.

This case was investigated by the Kentucky Department of Fish and Wildlife Resources and the United States Fish and Wildlife Service.

Back to Top

United States v. Jay Atwater et al., No. 1:08-CR-00114 (D. Utah), AUSA Jared Bennett ([redacted]

On March 16, 2009, Jay Atwater was sentenced to serve five months' incarceration, followed by five months' home confinement, and two years of supervised release. Atwater was further ordered to pay a $10,000 fine for unlawfully disposing of hazardous waste at his furniture restoration company. Heritage Restoration, Inc. was ordered to pay a $25,000 fine.

Excavated underground pipe

During the furniture restoration process, Atwater and others acting under his control used a solution containing between 70 and 76 percent methylene chloride to strip the paint. The rinse water generated during this process was dumped into sub-surface soil on numerous occasions between approximately 2000 and April 2007 in violation of RCRA. After April 2007, Atwater modified the process for disposing of the rinsewater by discharging it down a sink that led into a POTW, in violation of the CWA, resulting in toxic fumes and vapors with the potential to cause acute worker health or safety problems. Atwater previously pleaded guilty to one RCRA disposal violation and the company pleaded guilty to one CWA charge.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. BP Products North America et al., No. 4:07-CR-00434 (S.D. Tex.), ECS Senior Trial Attorney Dan Dooher [redacted] **and AUSA Mark McIntyre** [redacted]

Refinery explosion

On March 12, 2009, the district court accepted BP Products North America's ("BP Products") guilty plea to a felony violation of section 112(r)(7) of the Clean Air Act. The prosecution stems from the March 23, 2005, explosion at BP's Texas City refinery that killed 15 people and caused serious injuries to at least 170 employees. The court sentenced BP Products consistent with the terms of the plea agreement, ordering that it pay a $50 million criminal fine and that it complete a three-year term of probation. Conditions of probation include the company's compliance with two civil agreements to remediate safety and environmental deficiencies that caused the explosion at the refinery. The explosion resulted from the ignition of hydrocarbon vapor released from a "blowdown stack" during the startup of equipment that was used to increase octane content in unleaded gasoline. The unit had been shut down for nearly a month for maintenance and repairs. BP admitted that, for many years preceding the blast, procedures required by the CAA for ensuring the mechanical integrity and safe startup of the equipment had either not been established or were ignored. This is the first prosecution under a section of the CAA specifically enacted to prevent accidental releases that may result in death or serious injury.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Federal Bureau of Investigation, in cooperation with the Texas Commission on Environmental Quality.

Back to Top

United States v. Holy House Shipping, et al. No. 1:08-CR-00824 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] and AUSA Ron Chillemi [redacted].

Oil-contaminated ballast tank

On March 10, 2009, Holy House Shipping ("Holy House") was sentenced to pay a $1 million fine with an additional $400,000 to be paid as community service into the National Fish and Wildlife Fund to support projects to restore marine habitats in New Jersey. The company also will complete a three-year term of probation, implement an environmental compliance plan, and hire a third-party auditor.

Crewmembers aboard the *M/V Snow Flower*, a 568-foot Cook Island-flagged ocean-going ship, alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port inspection of the ship in New Jersey, inspectors were presented with an ORB containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which was then pumped overboard.

The company previously pleaded guilty to one APPS violation and to one 18 U.S.C. §1001 false statement violation. Two whistleblower crewmembers were awarded $375,000 that will be divided between them based upon their level of cooperation. Chief engineer Igor Krajacic was sentenced last December to pay an $18,000 fine and will complete a one-year term of probation. He pleaded guilty to one APPS ORB violation.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation.

Back to Top

United States v. Bryan Mallindine et al., Nos. 2:07-CR-20037 and 20030 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted] AUSA Mark Chutkow [redacted] and RCEC David Mucha ([redacted]

Aerial view of tank farm

On March 5, 2009, Bryan Mallindine, a former CEO for Comprehensive Environmental Solutions, Inc., ("CESI") was sentenced to serve a three-year term of probation to include 90 days' home confinement. Mallindine, along with two co-defendants, was convicted by a jury last October of violations stemming from the illegal discharge of millions of gallons of untreated liquid wastes from the CESI facility. Specifically, Mallindine was convicted of a CWA misdemeanor for negligently bypassing the facility's required pretreatment system. Michael Panyard, a former president, general manager, and company sales manager was convicted on all nine counts in the indictment, including conspiracy, Clean Water Act, and false statement counts. Charles Long, a former plant and operations manager, was convicted on both counts for which he was charged, which were conspiracy and a CWA violation.

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge it to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the facility's storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. In order to reduce costs and create storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer. They also made false statements and engaged in other surreptitious activities in order to conceal their misconduct.

Former plant manager Donald Kaniowski previously pleaded guilty to a CWA violation and was sentenced on March 4th to complete a three-year term of probation. Kaniowski provided substantial assistance to the government and testified at trial. CESI previously pleaded guilty to CWA and false statement violations and will be sentenced in May. Panyard and Long will be sentenced next month.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

Back to Top

United States v. Graham Brothers Construction Company, Inc., et al., 6:08-CR-00267 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Bruce Ambrose [redacted]

On March 4, 2009, Graham Brothers Construction Company ("Graham Bros.") and Specialized Services, Inc., pleaded guilty to, and were sentenced for, a violation of the Bald and Golden Eagle Protection Act for assisting in the destruction of a bald eagle's nest.

Graham Bros. and Specialized Services were involved in land clearing and other construction work at a residential housing development site, and were employed as contractors for the developer that owned this property. As early as November 2003, a subcontractor observed a bald eagles' nest on the property. In late December 2004 and early January 2005, as work on the project progressed, other members of the construction crew, including the defendant corporations' employees, observed the nest as well as at least two bald eagles. At least one employee talked to an on-site supervisor about the nest and was told to stay clear of it.

In January 2005, the defendant companies, after initially refusing to tamper with the nest, eventually allowed the developer's employees to use their heavy equipment to tear down the tree containing the nest.

Graham Bros. and Specialized Services were held jointly and severally liable to pay a $75,000 fine, and will each complete a one-year term of probation, during which they will be subject to a focused environmental compliance plan that requires them to develop procedures to prevent the recurrence of the criminal conduct and to provide training about endangered species to their officers and employees.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Toru Shimoji, No. 1:09-mj-00250(N.D. Ga.), AUSA Mary Roemer [redacted]

On February 24, 2009, collector Toru Shimoji was ordered to pay a $15,000 fine for buying the carcass of an endangered snow leopard and possessing more than 45 skulls of protected wildlife.

Shimoji bought the leopard carcass over the Internet in December 2007, from an undercover federal agent. A search of the defendant's home revealed skulls of other endangered species including sea turtles, tigers, grizzly bears, apes, and protected migratory birds. Shimoji pleaded guilty to multiple misdemeanor violations of the Endangered Species Act, the Lacey Act, and the Migratory Bird Treaty Act.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Georgia Department of Natural Resources Office of Law Enforcement.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

Back to Top

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

May 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

A special thanks to Herb Johnson for this month's summaries of Significant Decisions.

Also, an article written by David Kehoe entitled "*United States v. Abrogar*, Did the Third Circuit Miss the Boat?" has been published in Vol. 39, Issue No. 1 of *Environmental Law* published by Lewis and Clark Law School [http://www.lclark.edu/org/envtl/]. The article addresses charging and sentencing issues that have arisen in the prosecution of chief engineers in vessel cases. It analyzes the Third Circuit's holding that the sentencing guideline enhancement for discharges into the environment does not apply to chief engineers convicted of violating the Act to Prevent Pollution from Ships by maintaining a false Oil Record Book that conceals the discharges of oily wastes into the ocean in violation of MARPOL.

If you have other significant updates and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

AT A GLANCE

- **United States v. Evertson, 2009 WL 728391 (9th Cir. Mar. 20, 2009).**
- **United States v. Hagerman, 555 F.3d 553 (7th Cir. 2009).**
- **United States v. Holden, 557 F.3d 698 (6th Cir. 2009).**
- **United States v. Cundiff, 555 F.3d 200 (6th Cir. 2009), aff'g 480 F. Supp. 2d 940 (W.D. Ky. 2007).**
- **Ohio Valley Environmental Coalition v. Aracoma Coal Co., ___ F.3d ___, 2009 WL 350899 (4th Cir. Feb. 13, 2009), rev'g 479 F. Supp. 2d 607 (S.D. W. Va. 2007) and 2007 WL 2200686 (S.D. W. Va. June 13, 2007).**
- **United States v. Vankesteren, 553 F.3d 286 (4th Cir. 2009).**
- [redacted]
- **United States v. Apollo Energies, Inc., 2009 WL 211580 (D. Kan. 2009).**
- **United States v. King, 2008 WL 4055816 (D. Idaho 2008).**
- **In re Grand Jury Empanelled April 24, 2008, ___ F. Supp. 2d ___, 2008 WL 5712649 (D.N.J. Dec. 15, 2008).**

Districts	Active Cases	*Case Type* / Statutes
D. Ak.	**United States v. Douglas Smith** [redacted] **United States v. Christopher Rowland**	***Sea Otter and Sea Lion Hides*/ Lacey Act, Conspiracy** [redacted] ***Sea Otter and Sea Lion Hides*/ Lacey Act, MMPA**
C.D. Calif.	**United States v. T.P. Seafood and Meat Company, Inc. et al.**	***Mislabled Catfish*/ Lacey Act**
N.D. Calif.	[redacted] **United States v. John Cota**	[redacted] ***Vessel*/ MBTA, OPA**
M.D. Fla.	**United States v. Jeong Gyu Lee** **United States v. Jesse Barresse**	***Vessel*/ APPS, False Statement** ***Eagle Shooting*/ BGEPA**
S.D. Fla.	**United States v. David Dreifort et al.** **United States v. Larkin Baggett**	***Lobster Harvesting*/ Smuggling, Conspiracy** ***Fugitive*/ Assault, Firearms Possession**
S.D. Ga.	**United States v. Daniel Cason**	***POTW Operator*/ CWA, False Statement**
D. Idaho	**United States Paul Arnold**	***Elk Hunt*/ Lacey Act**
D. Kan.	**United States v. MagnaGro Int'l Inc., et al.**	***Fertilizer Manufacturer*/ CWA**
D. Md.	**United States v. John Evans** **United States v. Golden Eye Seafood et al.** **United States v. Jerry Decatur, Sr., et al.** **United States v. Thomas Hallock**	***Striped Bass Poaching*/ Lacey Act**
D. Mass.	**United States v. Consultores De Navegacion et al.**	***Vessel*/ APPS, Conspiracy, Falsification of Records, Obstruction, False Statement**
E.D. Mich.	**United States v. Michael Panyard et al.**	***Wastewater Treatment Facility*/ CWA, False Statement, Obstruction, Conspiracy**
E.D. Mo.	**United States v. American Rivers Transportation Company, et al.**	***River Terminal Operator*/ CWA**
D.N.J.	**United States v. Atlantic States Cast Iron Pipe Company et al.**	***Iron Pipe Manufacturer*/ CWA, CAA, Conspiracy, OSHA, False Statement, CERCLA, Obstruction**
E.D.N.C.	**United States v. Daniel Smith, et al.**	***POTW Operator*/ SDWA, CWA**

Districts	Active Cases	*Case Type* / Statutes
W.D.N.C.	**United States v. Daniel Still, Jr.**	***Fuel Spill*/ CWA**
S.D. Ohio	**United States v. Danny Parrott**	***Deer Hunt*/ Lacey Act, Conspiracy, Wire Fraud**
D. Ore.	**United States v. California Shellfish Company Inc., et al**	***Chicken Waste*/ CWA**
E.D. Tenn.	**United States v. Brent Anderson et al.**	***Precious Metals Refinery*/ CAA False Statement**
S.D. Tex.	**United States v. Texas Oil and Gathering** **United States v. Rene Soliz** **United States v. General Maritime Management (Portugal), L.D.A., et al.**	***Oil Refinery*/ SDWA, Conspiracy** ***Tortoise Smuggling*/ Lacey Act** ***Vessel*/ APPS, False Statement**
E.D. Va.	**United States v. Robert Whiteman**	***Metal Plating*/ RCRA**

Additional Quick Links

Significant Environmental Decisions

Second Circuit

[redacted]

[redacted]

Back to Top

Fourth Circuit

Ohio Valley Environmental Coalition v. Aracoma Coal Co., ___ F.3d ___, 2009 WL 350899 (4th Cir. Feb. 13, 2009), rev'g 479 F. Supp. 2d 607 (S.D. W. Va. 2007) and 2007 WL 2200686 (S.D. W. Va. June 13, 2007).

Under "mountaintop removal" coal mining, mining companies in southern West Virginia blast soil and rock atop mountains to expose coal deposits below. They then excavate mountaintop rock and soil located above the coal seams (overburden) and haul or push the excavated overburden ("spoil") into adjacent valleys. The exposed coal is extracted and the excavated rock and soil are then replaced in an effort to restore the original mountain contour. Stability concerns limit the amount of spoil that can be returned to its original location, however, and substantial amounts of excess overburden remain in the valley, resulting in "valley fills" that permanently bury pre-existing intermittent and perennial streams and drainage areas. In order to move water that collects in the valley fills, an underdrain system is constructed and collected water is channeled into a treatment pond, where sediment is allowed to settle. After sediments have settled out, the treated water is discharged back into existing streams. Once a valley fill has been stabilized, embankments of sediment ponds are removed and the ponds and streams are restored to their original condition.

Under the federal Surface Mining Control and Reclamation Act (SMCRA), those engaging in surface coal mining must first obtain a permit from the state regulatory agency whose program has been approved by the Secretary of the Interior, which in West Virginia is the Department of Environmental Protection (WVDEP). Since the overburden is "fill material" under the Clean Water Act, coal companies must also obtain section 404 permits from the U.S. Army Corps of Engineers ("Corps") for such discharges into the streams, which are waters of the United States. After extensive review of voluminous application materials, preparation of an environmental assessment concluding that the permitted activity (given planned mitigation measures) would have no significant environmental impacts, and issuance of a "finding of no significant impact," the Corps issued such a permit to defendant Aracoma Coal Company, and similarly thereafter to many other coal companies with respect to several mining locations. A group of environmental organizations then filed consolidated suits against the Corps claiming that the permits had been issued in violation of substantive and procedural provisions of the National Environmental Policy Act ("NEPA") and the CWA, frequently amending the complaint to include newly-issued permits. Plaintiffs claimed that the Corps had been required under NEPA to prepare an Environmental Impact Statement for each project before issuing a permit, and that the Corps had failed properly to determine the adverse individual and cumulative impacts upon the affected aquatic ecosystems.

The district court, after a six-day bench trial, entered judgment for plaintiffs, rescinded the permits, enjoined further activities authorized by the permits, and remanded the matter to the Corps for

further proceedings. It found that the Corps had failed to comply with NEPA and the CWA in issuing the permits, including not adequately addressing impacts of the mining activities upon the environment, and improperly evaluating mitigation plans for each permit. It found that the Corps had limited its scope of review to the impact only on jurisdictional waters rather than to the broader impact of the entire valley fill project, and it had inadequately evaluated cumulative impacts of the projects. *See 479 F. Supp. 2d 607* (S.D. W. Va. 2007). The court later granted summary judgment to plaintiffs on a separate claim that stream segments running from the valley fill "toes" to the sediment ponds were "waters of the United States," and thus the Corps did not have authority to allow discharge of pollutants into those segments by means of a section 404 permit. Such discharges would require a section 402 permit from U.S. EPA or from an appropriate state authority. *See 2007 WL 2200686* (S.D. W. Va. June 13, 2007).

Held: The Fourth Circuit (in a divided decision in which one judge joined in the majority opinion and a third judge dissented in part and concurred in part with respect to that opinion) *inter alia* (1) reversed and vacated the district court's opinion and order rescinding the challenged permits, (2) vacated that court's injunction regarding those permits, (3) reversed the district court's finding that the stream segments were "waters of the United States," and (4) remanded for further proceedings. The court held that responsibility for evaluating the impact of the entire valley fill project lay with the WVDEP under SMCRA rather than with the Corps. It rejected the district court's findings that (1) the Corps analysis of the impact of the permitted fills on the structure and function of affected streams had been lacking, (2) the proposed mitigation measures had been insufficient, and (3) the Corps' assessment of cumulative impacts of the fills had been inadequate. It also found that the Corps (contrary to the plaintiffs' view) had not been required to conduct a "full functional assessment" of both the structural and functional effects of fill permits on affected streams, but merely to use its "best professional judgment." The Corps also was not required to ensure compensatory mitigation measures that precisely replicated the functions of the impacted streams, or to require only in-kind, on-site measures. The finding by the Corps that no cumulatively significant impacts would occur under the permits was not arbitrary or capricious. Finally, the court reversed the district court's holding that the stream segments were "waters of the United States" requiring a permit to discharge under section 402 rather than under section 404. It agreed with the Corps that the segments were "waste treatment systems" excluded from the CWA definition of "waters of the United States."

The judge whose opinion dissented in part and concurred in part refused to join in the view of the majority that the Corps' assessment of the impact of the valley fills upon the aquatic ecosystem and of the mitigation measures imposed had been adequate. Thus, he would have affirmed the district court's judgment rescinding the permits and directed the district court to remand them to the Corps for further consideration. However, he concurred in the majority's view that responsibility for evaluating the impact of the entire valley fill project had rested with WVDEP rather than with the Corps. He also concurred in the majority's upholding of the Corps' interpretation of the regulatory definition of "waters of the United States" regarding the stream segments.

Back to Top

United States v. Vankesteren, 553 F.3d 286 (4th Cir. 2009).

The Virginia Department of Game and Inland Fisheries (VDGIF) received a telephone call reporting that a protected bird was trapped in a cage in defendant farmer's fields. An agent responded and observed a trap of a type previously advertised on the internet for the purpose of hawk trapping. Without a warrant agents then installed a video camera on the property, from which surveillance footage was obtained showing birds being trapped and killed by the defendant. An agent then went to the area and found carcasses of red-tailed hawks just outside the camera's viewing range. Agents from

VDGIF and the U.S. Fish and Wildlife Service interviewed the defendant at his residence, where he admitted to catching the birds and placing their carcasses on the site.

The defendant was charged in district court with two counts of taking or possessing a migratory bird without a permit in violation of the Migratory Bird Treaty Act. A magistrate judge denied the defendant's motion to suppress the video surveillance footage and found him guilty on both counts. The defendant appealed the magistrate judge's evidentiary ruling to the district court, which denied that appeal and entered judgment against him. The defendant appealed in turn to the Fourth Circuit.

Held: The Fourth Circuit affirmed the decision of the district court. The court observed that video surveillance in and of itself does not violate a reasonable expectation of privacy and found under *Hester*, *Oliver* and *Dunn* that the camera, while installed on private property, had been placed in a constitutionally unprotected open field used for farming, well away from the curtilege of the defendant's home. Citing *Dow Chemical Co*. and distinguishing *Kyllo*, the court further found that use of the video camera was simply a more resource-efficient method than direct observation by agents in the same location.

Back to Top

Sixth Circuit

United States v. Holden, 557 F.3d 698 (6th Cir. 2009).

Defendant Mike Holden was the operator of a municipal wastewater treatment facility in Tennessee, and his father, defendant Larry Holden, was the Superintendent of Public Works for the municipality. Mike was responsible for testing pollutant levels, keeping records, reporting results to the Tennessee Department of Environment and Conservation ("TDEC"), and certifying the accuracy of those reports. Larry administratively supervised the plant and monitored its operation.

Because of compliance problems at the facility, TDEC conducted an investigation and found that the plant's testing laboratory was in disrepair and that testing records were blank. Spot testing indicated that actual fecal coliform discharge levels were from approximately 500 to 2200 times higher than levels reported to TDEC. As a result, large amounts of untreated wastewater were being released from the facility. Subsequent execution of a search warrant at the facility revealed that testing records previously found to have been blank subsequently had been filled in.

Both defendants were convicted by a jury of knowingly falsifying and concealing material facts in a matter within the jurisdiction of the U.S. EPA, and Mike also was convicted of falsifying documents with intent to impede an investigation within that agency's jurisdiction. An assistant to Mike, who collected samples and data for him and was instructed by Larry on filling in test result records, cooperated with the government, pleaded guilty to falsely reporting test results to the TDEC, and testified at trial as to the defendants' complicity and direction in the false reporting.

Held: On appeal, the Sixth Circuit affirmed the convictions of both defendants. It held *inter alia* that evidence of an evaluation of the facility conducted eight years before the TDEC investigation that led to the criminal charges had properly been admitted at trial. It rejected the defense claim that the evaluation (which showed reporting inaccuracies similar to those found in the later TDEC investigation) constituted "propensity" evidence, but rather that it was relevant to rebut the defendants' theory that the assistant (who had not been substantially involved in testing at the earlier time) had fabricated the more recent test results without the defendants' knowledge.

Finally, the court found that the disparities between the fecal coliform test results and the levels reported to the TDEC supported an inference that the reported results were false or fraudulent. It

further found that, because the tested amounts were greater than the permit limits, while the reported amounts were less than those limits, the misrepresentations were material.
Back to Top

United States v. Cundiff, 555 F.3d 200 (6th Cir. 2009), aff'g 480 F. Supp. 2d 940 (W.D. Ky. 2007).

Defendants owned two adjoining parcels of land situated adjacent to two creeks that are tributaries of the Ohio River via the intervening Green River. After purchasing one of the parcels, which included about 85 acres of wetlands (impacted by highly acidic water that had drained out of a nearby abandoned coal mine), one of the defendants began excavating drainage ditches and clearing trees (without a Section 404 permit) in order to render the wetlands suitable for farming. Upon learning of this, the Army Corps of Engineers sent him a cease and desist letter, met with him, and referred the matter to the U.S. EPA. Over several years the defendant continued his draining and excavation activities, despite the EPA's directing him to stop. The second defendant purchased the other parcel, which included about 100 acres of wetlands, and leased it back to the first defendant, who began excavating and clearing that area as well. State officials also notified the first defendant that he was violating state law, which he ignored.

The federal government finally sued both defendants and was granted summary judgment. After a bench trial, the district court permanently enjoined the defendants from their dredging and filling activities and imposed civil penalties. The defendants appealed, but while that appeal was pending the U.S. Supreme Court decided *Rapanos*. The Sixth Circuit remanded the matter for reconsideration whether jurisdiction over the wetlands was proper. The district court concluded that the wetlands on the properties were "waters of the United States" and granted summary judgment to the government. Defendants again appealed.

Held: The Sixth Circuit affirmed the judgment of the district court and the assessment of civil penalties on the defendants. The court analyzed the Supreme Court's decision in *Rapanos* in detail and found that regulatory jurisdiction over the wetlands here was supported under the approaches outlined by the plurality, Justice Kennedy and the dissenting justices. The court found that the defendants' sidecasting of dredged and excavated material from dug ditches constituted an "addition" that was the "discharge of pollutants" and went far beyond "incidental fallback" with "de minimis effect on the area." Furthermore, the defendants' activities did not qualify for either the "farming" or "drainage ditch maintenance" exceptions to the permit requirement. Finally, the court denied as "specious" the defendants' counterclaim alleging that the government had owed them a mandatory duty to prevent and mitigate damage to their property caused by the acid water runoff from the nearby abandoned coal mine that the government never owned or operated.
Back to Top

Seventh Circuit

United States v. Hagerman, 555 F.3d 553 (7th Cir. 2009).

A corporation operated a facility that treated industrial liquid waste and then discharged the treated waste into a river. An NPDES permit issued by the Indiana Department of Environmental Management limited the type and amount of pollutants in the discharges and required the company to file monthly Discharge Monitoring Reports disclosing the results of discharge tests. The company and

its president were convicted by a jury on ten counts of making materially false statements in monitoring reports that the company was required to file under the Clean Water Act.

Held: The Seventh Circuit affirmed the defendants' convictions. The court rejected their argument that the district court had erred in admitting into evidence copies of electronic spreadsheets that recorded test results. Those sheets recorded results that were not charged in the indictment, but were in conflict with what the company had reported. Those results were not inadmissible as "prior bad acts," and this evidence of simultaneous criminal acts necessarily was so entangled that evidence of the uncharged crime unavoidably would be revealed in the course of presentation of the evidence to the court. The fact that the spreadsheets had been found in the individual defendant's office was relevant to his state of knowledge when he completed the submitted reports and undercut his claim that he had never seen them.

Back to Top

Ninth Circuit

United States v. Evertson, 2009 WL 728391 (9th Cir. Mar. 20, 2009).

On March 20, 2009, the Ninth Circuit upheld the 21-month prison sentence handed down to an amateur chemist for transporting and abandoning hazardous materials after his failed attempt to develop a cheaper way of making a chemical compound used in the production of hydrogen fuel cells. The case was remanded, however, for a second look at the restitution ordered to reimburse the U.S. EPA for cleanup costs.

Krister Evertson, a.k.a. "Krister Ericksson", the owner and president of SBH Corporation, was convicted by a jury of two RCRA storage and disposal violations and with violating the Hazardous Materials Transportation Safety Act.

Evertson transported 10 metric tons of sodium metal from Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant arranged for the transportation of sodium metal not used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transportation, despite the fact that sodium metal and the materials in the tanks were highly reactive with water. The material subsequently was abandoned.

In remanding the restitution award, the circuit court said that at the time Evertson committed the violations, the federal sentencing guidelines did not allow a court to order such a payment to be made while a defendant was in prison. Instead, the Ninth Circuit said, restitution could only be ordered as a condition of supervised release, payable after the defendant's release from prison.

Back to Top

District Courts

United States v. Apollo Energies, Inc., 2009 WL 211580 (D. Kan. 2009).

A landowner telephoned the U.S. Fish and Wildlife Service (the Service) to report discovering dead birds in a "heater-treater" (a device used to process crude oil) owned by the defendant company. An agent who went to the facility found no birds in the heater-treater in question, but did find numerous birds in several other such devices at the facility, including ten birds protected under the MBTA. The Service subsequently undertook an educational campaign and gave the industry more than a year to implement corrective action regarding heater-treater dangers to migratory birds.

Four months after the deadline for corrective action had passed, the Service executed a search warrant on a heater-treater at a facility owned by the defendant company, discovering two dead birds (one of which was protected under the MBTA). At approximately the same time, agents executed other warrants on heater-treaters at two facilities owned by a different (individual) defendant, discovering a total of four dead protected birds. The defendants were charged with one and two counts, respectively, of violating the MBTA and were convicted on all counts before a magistrate judge.

Held: On appeal to the district court, the judgments of the magistrate judge were affirmed. Following Tenth Circuit precedents, the court held that the misdemeanor violations of the MBTA are strict liability crimes not requiring proof of specific intent or guilty knowledge. It rejected the defendants' arguments that (1) the Tenth Circuit precedent and the other cases it cited involved some threshold awareness by the defendants of engaging in activity affecting birds, implying mental awareness on the part of the defendants, and (2) applying criminal liability without proof of scienter was impermissibly vague. It distinguished a single case in which a court refused on due process grounds to convict a farmer when migrating geese accidentally had been killed by eating crops sprayed with pesticides, noting that here, the defendants had clear notice of the dangers posed by heater-treaters and easily could have avoided them by use of a grill over the exhaust stack and other entrances to the devices. Finally, the court noted that "the MBTA is a regulatory act, and regulatory acts presumptively are considered strict liability crimes."

Back to Top

United States v. King, 2008 WL 4055816 (D. Idaho 2008).

The defendant manager of a farm and feedlot was indicted on four counts of willfully failing to comply with the Safe Drinking Water Act ("SDWA") and with corresponding Idaho law by injecting water into waste disposal and injection wells without a permit and on one count of making a false statement to an investigator. He filed a motion to dismiss on various grounds.

Held: The district court denied the motion. The court rejected the defendant's argument that the government had been required to allege and prove that the fluid or liquid injected contained a contaminant and endangered a source of drinking water, noting that the defendant could assert those points as affirmative defenses. It also rejected his argument that the definition of a drinking water source under Idaho law was broader in scope than the parallel definition under the federal SDWA and thus that the federal government could not rely upon that definition in its prosecution here. While state protections that are broader in scope than the SDWA lie outside the federal program and cannot be prosecuted federally, here the definition in question is relevant only to defendant's affirmative defense

(that his injection did not endanger a drinking water source) and thus was not relevant to the federal government's case. Furthermore, the federal government here was relying only upon the SDWA definition, not on the state definition. In any event, it is unclear whether the U.S. EPA-approved state program for the protection of drinking water sources in Idaho protects a broader scope of aquifers or that the defendant was being prosecuted for injecting into a state-only protected aquifer.

The court also rejected the defendant's claim that the SDWA required U.S. EPA to give 30 days' notice to the state prior to bringing a criminal action, which EPA had failed to do, and prohibited any suit unless the state was failing to enforce its own program. It held that the notice requirement applied only to civil suits, not criminal actions. The court also rejected the defendant's argument that the federal government could not prosecute conduct that was the subject of a prior state action. Double jeopardy does not apply to prosecutions brought by separate sovereigns pursuant to different statutory provisions, and Congress provided only that states would have *primary* enforcement authority under the Act (with the federal government retaining shared *secondary* authority), not that states would have *exclusive* authority. Finally, the court held that the Act does not preclude the federal government from prosecuting past, as well as current, violations thereof.

NOTE: In a subsequent decision in the same case, the court reaffirmed these holdings, but found that its ruling that the defendant could establish an affirmative defense if he could prove a lack of a contaminant or a lack of endangerment had been in error. The statute does not provide for such an affirmative defense. In fact, U.S. EPA-approved Underground Injection Control programs in states such as Idaho must not allow movement of fluid containing any contaminant into underground sources of drinking water. The prohibited act under Idaho law is to inject a fluid down a well without a permit. Whether a contaminant will be injected or whether an injection will endanger an underground source of drinking water are issues to be addressed by an applicant for a permit and determined (with the setting of permit conditions) by the permitting agency. Unpermitted injection is a crime regardless of whether the fluid is a contaminant or whether the injection actually endangers or contaminates an underground source of drinking water. *United States* v. *King*, 2008 WL 5070329 (D. Idaho 2008).

Back to Top

In re Grand Jury Empanelled April 24, 2008, ___ F. Supp. 2d ___, 2008 WL 5712649 (D.N.J. Dec. 15, 2008).

The federal government opened a grand jury investigation of a marine vessel docked at Port Newark for violations of the Act to Prevent Pollution from Ships. In exchange for departure clearance for the vessel, the owner and operator agreed to post surety bonds and to leave nine crew members in the United States for questioning. (None of the crew members were party to that agreement or gave consent to the travel restrictions.)

A law firm subsequently filed a motion in district court seeking to compel return of the passports of four of the crew members so that they could leave the United States. A magistrate judge granted an application by the government to designate those crew members as material witnesses and issued material witness arrest warrants for them. At a bail hearing, the magistrate judge expressed concern about the law firm's multiple representations due to possible testimony by some of the material witnesses that might implicate the others. Despite waivers of conflict-free representation executed by each material witness, the court appointed an individual conflict counsel for each material witness to report to the court regarding any potential or actual conflicts of interest. She did not purport, however, to disqualify the law firm from representing the material witnesses. Before a hearing could be held, the law firm appealed the decision of the magistrate judge to the district court.

Held: The district court affirmed *inter alia* the magistrate judge's decision appointing conflict counsel for the purpose of advising the Magistrate Judge and the court regarding any potential or actual conflicts and of aiding them in evaluating the propriety of waivers of conflict-free representation. The court reviewed in detail the applicable caselaw and noted that "[T]he public has an interest in a truth-seeking grand jury investigation unhindered by the obstacles that arise from multiple representations" and that "[A] court is not obligated to accept a witness's waiver of conflict-free representation".

TRIALS

United States v. David Dreifort et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On April 1, 2009, a jury convicted Michael Delph, the last remaining defendant in this case involving the illegal harvest of spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary. Delph was convicted of conspiring to smuggle lobster. According to evidence presented at trial, Delph was directly involved in the harvest of 922 whole lobsters, as part of a conspiracy wherein 1,197 lobsters were taken on the opening day of Florida's commercial lobster season in August 2008. Additionally stockpiled were approximately 1,700 pounds of wrung lobster tail (where the edible tail is separated from the discarded body) which was harvested during the closed season and intended for sale after opening day.

Five other co-conspirators, David Dreifort, Denise Dreifort, Sean Reyngoudt, Robert Hammer, and John Niles previously pleaded guilty to conspiracy to illegally harvesting lobsters. Niles was sentenced to serve a one-year term of probation after providing substantial assistance in the investigation and after testifying during the trial.

As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendants, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

According to court documents, investigators became aware of a group constructing artificial lobster habitats in the lower Keys. Agents then tracked a boat owned by the Dreiforts as it traveled within the Sanctuary, harvesting out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads. A forfeiture count against the Dreiforts will require them to relinquish three trucks, two boats, the harvested lobster, miscellaneous equipment, and all proceeds generated by this activity.

Hammer and Reyngoudt are scheduled to be sentenced on June 1, 2009, the Dreiforts are both scheduled to be sentenced on June 2nd, and Delph is scheduled to be sentenced on June 10th.

This case was investigated by National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

Informations and Indictments

United States v. Douglas Smith, No. 5:09-CR-0003 (D. Alaska), AUSAs Steven Skrocki [redacted] and Aunnie Steward [redacted]

On April 22, 2009, Douglas Smith was charged in a three-count indictment with violations stemming from the illegal killing and attempted illegal sale of sea otters and the illegal sale of a Steller Sea Lion hide in 2007. Smith is specifically charged with a Lacey Act conspiracy and two Lacey Act violations.

The Steller Sea Lion is an endangered species in Southeast Alaska and currently is listed as a threatened species. The indictment alleges that, beginning in July 2007 and continuing through October 2008, Smith conspired with an unnamed co-conspirator in an illegal scheme to unlawfully harvest sea otters in order to sell their hides. It is alleged that Smith agreed to permit the unnamed co-conspirator to use his boat for the illegal killing of sea otters. In exchange for permitting the use of his boat, Smith received a percentage of profits from the subsequent sale of their hides by his co-conspirator. Neither Smith nor the co-conspirator were Alaskan Natives and they are prohibited from hunting or killing sea otters. The Marine Mammal Protection Act further bars non-Alaskan Natives from possessing any non-authentic Native handicraft made from marine mammals or their parts.

In 2007, Smith is also alleged to have sold part of the hide of a Steller Sea Lion to an undercover agent for $2,600, and in December 2007, of attempting to sell two sea otter hides for $750 apiece to an undercover agent.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. John Evans, 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach ([redacted]) and AUSA Stacy Belf [redacted]

On April 20, 2009, commercial fisherman John Evans was charged with a one felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, he falsely recorded the amount of striped bass that he harvested with the assistance of a Maryland-designated fish check-in station. Within each year, he failed to record some of the striped bass that was caught, or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested, and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On April 20, 2009, fish wholesaler Golden Eye Seafood, LLC, and its owner Robert Lumpkin, were charged with four felony counts including conspiracy to violate the Lacey Act and three substantive Lacey Act violations.

According to the indictment, Golden Eye Seafood and Lumpkin operated the check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Golden Eye and Lumpkin also purchased fish that were outside the legal size limit from an undercover agent and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than were actually being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

To date, a total of 14 individuals and two fish wholesale companies have been charged. The investigation is ongoing.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit. The Task Force conducted undercover purchases and sales of striped bass in 2003, engaged in covert observation of commercial fishing operations in the Chesapeake Bay and Potomac River area, and conducted detailed analysis of area striped bass catch reporting and commercial business sales records from 2003 through 2007.

Back to Top

United States v. Larkin Baggett, No. 4:09-CR-10016 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted] and SAUSA Jody Mazer [redacted].

On April 16, 2009, Larkin Baggett was charged with assaulting law enforcement officers and illegally possessing eight firearms. Larkin, who was found to be residing in Marathon, Florida, is a fugitive from the District of Utah where he remains charged with RCRA and CWA violations. Baggett now stands charged in the Southern District of Florida in a five-count indictment with using a deadly weapon against three Environmental Protection Agency agents and a sergeant with the Monroe County Sheriff's Office.

According to the indictment, Baggett violated the conditions of his pre-trial release in Utah when he became a fugitive and obtained firearms. On March10, 2009, the defendant is alleged to have had in his possession four rifles and four pistols of various calibers when he was confronted by law enforcement. During the course of his arrest, he allegedly used a .308 caliber semi-automatic assault rifle to threaten the officers. Baggett was wounded, but now is in custody without bond pending his ability to appear in court on the charges in Utah. Trial is scheduled for the new case on July 6, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the Bureau of Alcohol, Tobacco, and Firearms; and the Monroe County Sheriff's Office.

Back to Top

[redacted]

Back to Top

United States v. Danny Parrott, 2:09-CR-00045 (S.D. Ohio), AUSA Mike Marous [redacted] and SAUSA Heather Robinson [redacted]

On February 26, 2009, Danny Parrott was charged in a 15-count indictment with conspiracy, Lacey Act, and wire fraud violations stemming from his involvement in an illegal deer hunting operation.

Parrot owned the River Ridge Ranch which operated as a wild animal hunting reserve in Ohio and catered to hunters from states such as South Carolina, Florida and Georgia. Between August and November 2005, Parrot is alleged to have conspired with James Schaffer in South Carolina to transport 54 white tail deer from Ohio to South Carolina, without the proper paperwork and without required testing.

Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. The required documentation, including state permits allowing transport of the deer into South Carolina, was not obtained. Without this paperwork and proper testing for diseases, the imported deer could potentially infect the local deer population in South Carolina.

Parrot is further charged with wire fraud for arranging for co-defendant Schaffer to wire transfer $66,250 from South Carolina to a bank in Ohio to pay Parrot for the deer that were being shipped to South Carolina. Schaffer previously pleaded guilty to a Lacey Act conspiracy and two Lacey Act violations.

Trial is scheduled for June 22, 2009. This case was investigated by the Department of Natural Resources for the States of Florida, Ohio and South Carolina.

Back to Top

United States v. Daniel Still, Jr., No. 3:09-CR-00042 (W.D. N.C.), AUSA Steve Kaufman (

On February 27, 2009, Daniel Still, Jr., was charged in a one-count information with a misdemeanor Clean Water Act violation for allegedly causing the spill of more than 1,000 gallons of fuel into the Catawba River in February 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

Pleas

United States v. Texas Oil and Gathering et al., No. 4:07-CR-00466 (S.D. Tex.), ECS Senior Counsel Rocky Piaggione ECS Trial Attorney Leslie Lehnhert (and SAUSA William Miller.

Texas Oil and Gathering facility

On April 16, 2009, Texas Oil and Gathering, Inc. ("TOG"), the company owner, John Kessel, and Edgar Pettijohn, the operations manager, pleaded guilty to violations related to the disposal of refinery wastes at an underground injection well. Specifically, the two corporate officers pleaded guilty to conspiracy and to violating the Safe Drinking Water Act for disposing of oil-contaminated waste water from its refinery process at an underground injection well permitted to accept wastes only from oil and gas production wastes. The company pleaded guilty to conspiracy and to a RCRA violation for illegally disposing of hazardous waste.

Texas Oil and Gathering was a registered hazardous waste transporter and a used oil handler, but was not permitted to treat, store and/or dispose of hazardous waste. As a result of its refinery operations, TOG generated wastewater which was trucked to a class II injection well for disposal. A class II injection well is only authorized to dispose of oil production waste and it is illegal to dispose of industrial process waste or hazardous waste in such a well.

From January 2000 through January 2003, tens of thousands of gallons of waste, often including ignitable waste, were hauled to the injection well. Many of these loads were not accompanied by hazardous waste manifests, and the defendants instructed the truck drivers to falsify bills of lading to conceal the waste shipments. The government's investigation began in January 2003, when the injection well exploded and killed three workers. Although the explosion was not caused by the defendants, a closer look at the plastics manufacturing facilities and other chemical manufacturing plants who sold them their waste streams led to this prosecution.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Texas Environmental Crimes Task Force.

Back to Top

United States v. Rene Soliz, No. 2:09-CR-00282 (S.D. Tex.), ECS Senior Trial Attorney Claire Whitney [redacted]

On April 14, 2009, Rene Soliz pleaded guilty to a violation of the Lacey Act for attempting to receive 15 Tanzanian Leopard Tortoises that were transported into the United States in violation of CITES. In March 2006, Soliz, a U.S. Border Patrol agent, contacted an individual in Dar-Es Salaam, Tanzania, who was selling leopard tortoises. Soliz asked to buy eight of the tortoises and indicated an interest in buying more at a later date as part of a long-term business relationship. On April 7, 2006, a U.S. Customs inspector at John F. Kennedy International Airport intercepted the package containing the tortoises being sent to Soliz. The package was labeled as containing 50 live scorpions. When a U.S. Fish and Wildlife inspector opened the package, he found 14 live and one dead leopard tortoise.

Tanzanian Leopard tortoises

Leopard tortoises are listed in Appendix II of CITES. The CITES Appendices list species afforded different levels or types of protection from over-exploitation. Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. International trade in specimens of Appendix II species may be authorized by the granting of an export permit from the exporting country. No export permit accompanied the tortoises bought by Soliz.

Sentencing is scheduled for June 23, 2009. This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Jerry Decatur, Sr., et al., 8:09-CR-00163 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach [redacted], ECS Trial Attorneys Madison Sewell [redacted] and Jeremy Peterson [redacted].

On April 10, 2009, Jerry Decatur, Sr., pleaded guilty to a Lacey Act violation for illegally taking and over-harvesting striped bass. Kenneth Dent pleaded guilty to a trafficking illegally taken striped bass in violation of the Lacey Act.

On approximately 13 occasions between 2004 through 2007, Decatur illegally harvested more than 10,000 pounds of striped bass from the Potomac River. The commercial fisherman fished out of season, kept over-sized fish, or used nets that violated applicable regulations. He then sold the catch to two fish wholesalers in Washington, D.C. Additionally, he failed to affix tags to the majority of the striped bass that he caught thereby exceeding his limit by thousands of pounds. In 2003 through 2007, Decatur harvested more than 65,000 pounds over his limit. The fair market retail value of this rockfish was in excess of $329,000.

On multiple occasions, Dent sold hundreds of pounds of rockfish that were illegally harvested or tagged to an undercover special agent with the Virginia Marine Police, who told Dent that the fish were being transported to Pennsylvania. On one occasion, Dent illegally harvested 400 pounds of fish from Virginia tributaries of the Potomac River and sold it to the undercover agent for $990. He knowingly tagged much of the fish with incorrect tags to exceed his limit of Virginia-caught fish. The majority of these fish were also not within the legal size limit. On a second occasion, Dent sold the

undercover agent for $1,000 430 pounds of rockfish that were larger than the legal size limit. On a third occasion, he sold the agent 480 pounds of fish for $1,375. All of these fish were more than the legal size limit, with the fair market retail value of the transactions in excess of $5,000. Dent also illegally sold the undercover agent 100 striped bass tags despite a prohibition against private sales.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Consultores De Navegacion et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted], AUSA Linda Ricco [redacted] and SAUSA Christopher Jones.

On April 6, 2009, Consultores De Navegacion, ("Consultores") a Spanish company that operates the *M/T Nautilus*, an ocean-going chemical tanker ship, pleaded guilty to conspiracy, falsification of records, false statements, obstruction, and an APPS violation related to the overboard discharge of oil-contaminated bilge waste on the high seas. The company has agreed to pay a $2.5 million fine, complete a three-year term of probation, and implement a comprehensive environmental compliance plan. Charges against Cyprus-based Iceport Shipping Co., the owner of the ship, have been dismissed.

Between 2007 and 2008, ship operator Consultores, acting through chief engineer Carmelo Oria and other employees, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and discharge oil-contaminated waste directly overboard. The charges stem from a Coast Guard inspection that began in the port of St. Croix and continued in the port of Boston. Inspection and subsequent investigation revealed that the oil record book failed to accurately reflect the overboard discharge of oily waste water.

Oria, who was the chief engineer on the *M/T Nautilus* between January and March 2008, recently pleaded guilty March 9, 2009, to an APPS ORB violation. Vadym Tumakov, who was the *Nautilus* chief engineer in August 2007, pleaded guilty to using falsified records that concealed improper discharges of oil-contaminated bilge waste from the ship.

Back to Top

United States v. American Rivers Transportation Company, et al., No. 4:09-CR-00253 (E.D. Mo.), AUSA Michael Reap [redacted] and SAUSA Anne Rauch [redacted]

Grate from pump station

On April 3, 2009, American River Transportation Company ("ARTCO"), the operator of a river terminal in the St. Louis area, pleaded guilty to discharging oil into the Mississippi River in violation of the Clean Water Act. The company was sentenced to pay a $3 million fine. In addition, two ARTCO employees, Justin Baker and Steve Keilwitz, each pleaded guilty to a CWA felony false statement violation. Baker, who has since retired, was the terminal manager at the time of the violations, and Keilwitz was the maintenance superintendent.

ARTCO owns and operates several terminals in the St. Louis area and also operates line boat vessels, hopper barges, harbor and fleeting services, and a fueling terminal. At one of its facilities,

ARTCO cleans barges of residue, including grain, fertilizer, oil, and oil-based products.

In June 2007, a release of oil was discovered in the river near an ARTCO facility. Baker reported the oil to the National Response Center and to other emergency responders, but he and Keilwitz denied knowing the source of the oil. Baker and Keilwitz knew that the ARTCO facility was the source of the oil, due in part to past events at the facility.

Between April 2004 and June 2007, ARTCO had discharged wastewater with oil and grease above permit limits into the St. Louis POTW and thereby into the Mississippi River. The company also directly discharged other pollutants into the Mississippi River during this period. Baker and Keilwitz remain scheduled for sentencing on June 19, 2009.

This case was investigated by the United States Environmental Protection Agency Emergency Response Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Daniel Cason, No. 1:08-CR-00099 (S.D. Ga.), AUSAs David Stewart [redacted] and Charlie Bourne [redacted]

On March 31, 2009, Daniel Cason, the public works director for the City of Harlem, Georgia, pleaded guilty to three CWA false statement violations. Cason originally was charged with 11 counts of violating the Clean Water Act and with making false statements in records and reports.

Cason is responsible for operating the city's POTW. He admitted to submitting discharge monitoring reports between 2003 and 2005 that contained false readings for levels of fecal coliform and biochemical oxygen demand from the POTW.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Jeong Gyu Lee, No. 8:09-CR-00053 (M.D. Fla.), ECS Trial Attorney Leslie Lehnhert [redacted] and AUSA Cherie Krigsman [redacted]

On March 10, 2009, Jeong Gyu Lee, a Korean national who served as the chief officer aboard the *M/V Ocean Jade*, pleaded guilty to an APPS violation and to an 18 U.S.C. § 1001 false statement violation for not recording an overboard discharge in the oil record book and for making false statements to Coast Guard personnel.

From approximately November 30, 2007, to October 9, 2008, as the chief officer, Lee was in charge of all deck operations and supervised subordinate crew members. On the morning of September 27, 2008, while the *Ocean Jade* was underway, Lee instructed crew members to use a flexible hose to dump oily waste from the vessel's crane houses directly overboard without processing it through the proper equipment. This disposal was not noted in the ORB. When the ship reached the port of Tampa on October 8th, Lee instructed the crew not to tell the Coast Guard about the discharge. Lee and three crew members subsequently made false statements to the inspectors.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. John Joseph Cota et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSAs Stacey Geis [redacted] and Jonathan Schmidt ([redacted].

On March 6, 2009, John Joseph Cota, a California ship pilot, pleaded guilty to negligently causing the discharge of approximately 50,000 gallons of heavy fuel oil into San Francisco Bay in violation of the Oil Pollution Act. Cota, who piloted the *M/V Cosco Busan* when it hit the San Francisco Bay Bridge in November 2007, also pleaded guilty to a violation of the Migratory Bird Treaty Act for causing the death of protected migratory birds.

Damage to Bay Bridge

In the plea agreement, Cota admitted that he failed to pilot a collision-free course and failed to adequately review the proposed course with the crew on official navigational charts. Further, he admitted that he failed to use the ship's radar as he approached the Bay Bridge, failed to use positional fixes, and failed to verify the ship's position using official aids of navigation throughout the voyage. These failures led to the ship's striking the bridge and discharging the oil. As a result, approximately 2,000 birds died, including brown pelicans, marbled murrelets, and western grebes. The brown pelican is a federally designated endangered species and the marbled murrelet is a federally designated threatened species and an endangered species under California law.

Co-defendant Fleet Management Limited, a Hong Kong ship management company, remains scheduled for trial to begin on September 14, 2009, for acting negligently and being a proximate cause of the oil discharge from the *Cosco Busan* and for the killing of the migratory birds. Fleet further is charged with obstructing justice and with making false statements by falsifying ship records after the incident.

As part of the plea agreement with Cota, the government dismissed additional charges of false statements made to the Coast Guard in 2006 and 2007 concerning his medications and medical conditions. Coast Guard regulations require that pilots have an annual physical examination that results in the completion of a medical evaluation form. The form must be completed by a licensed physician or physician's assistant, signed by the pilot, and then submitted to the Coast Guard. Cota admitted in the factual statement to have knowingly and willfully made false statements on the forms when he certified that all the information he provided was complete and true to the best of his knowledge. In fact, Cota knew that the information he provided was neither complete nor true, including information regarding his current medications, the dosage, possible side effects and medical conditions for which the medications were taken.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. Jesse Barresse, No. 8:08-CR-00304 (M.D. Fla.), AUSA Cherie Krigsman

On March 5, 2009, Jesse Barresse pleaded guilty to an indictment charging one violation of the Bald and Golden Eagle Protection Act. Barresse admitted to knowingly shooting a bald eagle in Ruskin, Florida, on January 13, 2008. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. MagnaGro International, Inc. , et al., No. 5:08-CR-40045 (D. Kans.), AUSA Christine Kenney and SAUSA Ray Bosch

Hose discharging to sewer

On February 24, 2009, MagnaGro International, Inc., a fertilizer manufacturer, and company owner Raymond Sawyer, pleaded guilty to a CWA felony violation for illegally discharging manufacturing waste into the city's sewer system.

According to court documents, Sawyer and the company admitted to discharging a large amount of industrial waste in March 2001 from fertilizer production into the city's POTW. The Kansas Department of Health and Environment and the city of Lawrence ordered Sawyer and the company to stop the discharges at that time. Later, in September 2007, EPA agents found that the company was discharging waste into the POTW via a hose inserted into a toilet. Subsequent investigation determined that Sawyer and the company had been discharging waste through the hose for 10 years and that the hose was used to pump material into the toilet from a waste pit surrounding a mixing vat.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States Michael Panyard et al., Nos. 2:07-CR-20037 and 20030 (E.D. Mich.), ECS Senior Counsel James Morgulec AUSA Mark Chutkow and RCEC David Mucha

On April 22, 2009, Michael Panyard, a former president, general manager, and sales manager for Comprehensive Environmental Solutions Inc. ("CESI"), was sentenced to serve 15 months' incarceration. Panyard, along with two co-defendants, was convicted by a jury last October of violations stemming from the illegal discharge of millions of gallons of untreated liquid wastes from the CESI facility. Specifically, Panyard was convicted on all nine counts in the indictment, including conspiracy, Clean Water Act, and false statement counts. Former CEO Bryan Mallindine was convicted of a CWA misdemeanor for negligently bypassing the facility's required pretreatment

system, and Charles Long, a former plant and operations manager, was convicted on both counts for which he was charged, which were conspiracy and a felony CWA violation.

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge it to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the facility's storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. In order to create storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer. Employees also made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

Former plant manager Donald Kaniowski previously pleaded guilty to a CWA violation and was sentenced to complete a three-year term of probation. Kaniowski provided substantial assistance to the government and testified at trial. CESI previously pleaded guilty to CWA and false statement violations and will be sentenced in May. Mallindine previously was sentenced to serve a three-year term of probation, to include 90 days' home confinement, and Long was recently sentenced to serve 24 months' incarceration.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

Back to Top

United States v. Thomas Hallock, 8:09-CR-00049 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On April 22, 2009, Thomas Hallock, a Virginia fisherman, was sentenced to serve one year and one day of incarceration. He further was ordered to pay a $4,000 fine plus $40,000 in restitution for his part in the largest striped bass poaching case in the history of the Chesapeake Bay. Hallock provided substantial assistance early in the five-year investigation, supplying information about the seafood dealers and other watermen.

Seized rockfish

Hallock pleaded guilty in 2009 to falsely recording the amount of striped bass that he harvested from 2003 to 2007 with the assistance of a Maryland-designated fish check-in station. Within each year, he failed to record some of the striped bass that were caught or recorded a lower weight of striped bass than actually were caught. Hallock and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but nonetheless had run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount. Hallock admitted to overfishing 68,442 pounds of rockfish that had a fair market retail value of $342,210.

Overfishing by poachers like Hallock has harmed the striped bass population, undercut the market for other watermen, and skewed the quota system used by the 12 Eastern Seaboard states to prevent overharvesting. Overfishing caused the species to crash, forcing regulators to impose a five-year moratorium that ended in 1990.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS First Assistant Chief Andrew Goldsmith (ECS Assistant Chief Deborah Harris First AUSA Ralph Marra (and AUSA James Kitchen ( )

Paint wastes illegally burned in cupola

During the week of April 20, 2009, John Prisque, Scott Faubert, Craig Davidson, and Jeffrey Maury each were sentenced to serve lengthy terms of incarceration. Plant manager Prisque was sentenced to serve 70 months; Maury, a former maintenance supervisor was sentenced to serve 30 months; former human resources manager Faubert was sentenced to serve 41 months; and superintendant Davidson was sentenced to serve six months of incarceration. The company was sentenced to pay an $8 million fine, complete a four-year term of probation, and will be subject to oversight by a court-appointed monitor. The court further required as a condition of probation that specific top managers at the Phillipsburg, New Jersey, plant and at McWane headquarters in Birmingham, Alabama, including the chairman and president, will read the entire transcripts from the sentencings of the four managers who were convicted along with the company.

The defendants all were found guilty by a jury three years ago last month of conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. These five defendants also were variously found guilty of substantive CWA, CAA, CERCLA, false statement, and obstruction violations charged in a 34-count superseding indictment.

Atlantic States, a division of McWane, Inc., manufactures iron pipes, which involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit. Evidence at trial proved a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. In addition to the fatality involving a forklift, a worker lost three fingers in a cement mixer, and another worker lost an eye when a saw blade broke.

Evidence further showed that the defendants routinely violated the facility's CWA permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River; repeatedly violated the facility's CAA permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola; systematically altered accident scenes; and routinely

lied to federal, state, and local officials who were investigating environmental and worker safety violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, United States Department of Labor Occupational Safety and Health Administration; the New Jersey Department of Environmental Protection, the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the Phillipsburg Police Department.

Back to Top

United States v. Robert Whiteman, No. 4:08-CR-00111 (E.D. Va.), AUSA Brian Samuels ([redacted])

Abandoned drums

On April 17, 2009, Robert Whiteman was sentenced to serve one year and a day of incarceration, followed by three years' supervised release in connection with the storage and abandonment of approximately 40 55-gallon drums containing toxic and corrosive waste at a property he owned in Gloucester, Virginia. Whiteman was remanded into custody and further ordered to pay $128,217 in restitution for cleanup costs. He previously pleaded guilty to a single RCRA storage violation.

From 1998 through 2005, Whiteman operated Control Products, USA, which was an on-site metal plating operation. The operation required the use of large nickel and tin plating tanks or "baths" and generated sulfuric acid and nickel sulfamate which were stored in 55-gallon drums at a property in Hayes, Virginia.

In May 2006, Whiteman transported numerous 55-gallon drums with plating waste and one plating bath to his residence in Gloucester. In March 2007, after the property was foreclosed upon, the abandoned drums and plating bath containing hundreds of pounds of corrosive and toxic liquids were discovered and subsequently determined to be hazardous waste. The new owner of the property was left with responsibility for the cleanup.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center, with assistance from the Federal Bureau of Investigation, the Virginia Department of Environmental Quality, the Department of Housing and Urban Development, the Gloucester County Sheriff's Office, the Virginia State Police, and police departments in Memphis, Tennessee, and Walls, Mississippi.

Back to Top

United States v. Brent Anderson et al., No. 3:08-CR-00158 and 159 (E.D. Tenn.), former ECS Trial Attorney David Joyce [redacted] and AUSA Matthew Morris [redacted]

On April 15, 2009, Brent Anderson, the operations manager for Heraeus Metal Processing, Inc. ("Heraeus"), a precious metals refinery, pleaded guilty to a one-count information charging a Clean Air Act false statement violation. Specifically, Anderson admitted to falsifying baghouse pressure logs and scrubber logs at the Heraeus facility located in Wartburg, Tennessee. He was sentenced to serve a one-year term of probation and must complete 50 hours of community service.

The scrubber and baghouse systems are air pollution control devices that require the maintenance of emissions logs and the submission of annual reports to state regulators. Between approximately October 2004 and February 2005, neither baghouse nor scrubber system logs were

maintained at this facility. In late February 2005, Anderson, acting on behalf of Heraeus, created a false baghouse pressure drop log and further directed an employee to retroactively create a log for the scrubber system. He subsequently submitted these falsified logs with the plant's 2005 annual report to the Tennessee Department of Environment and Conservation.

Heraeus previously pleaded guilty to and was sentenced for a CAA false statement violation. The company was ordered to pay a $350,000 fine and will complete an 18-month term of probation. Heraeus cooperated with the government's investigation once it was informed of the violation.

This case was investigated by the East Tennessee Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the United States Environmental Protection Agency Office of Inspector General, and the Tennessee Valley Authority Office of Inspector General.

Back to Top

United States v. California Shellfish Company Inc., et al., No. 3:08-CR-00060 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted]

On April 13, 2009, California Shellfish Company Inc., doing business as Point Adams Packing Co. ("PAPCO"), was sentenced to pay $75,000 for a felony Clean Water Act violation for unpermitted discharges of wastewater into the Columbia River. As part of the fine, $26,250 will be paid into the National Fish and Wildlife Fund, which helps to support various environmental projects in the state through the Oregon Governor's Fund for the Environment. The former manager of the facility, Thomas Libby, previously was sentenced for a misdemeanor CWA violation. Modesto Tallow Co., doing business as California Spray Dry ("CSD"), which operated PAPCO's plant, also has pleaded guilty and been sentenced for a felony CWA violation.

Hole in pipe near outfall

PAPCO had a NPDES permit to discharge *fish* processing wastewater from its facility. In June 2003, PAPCO leased a portion of its facility to CSD. CSD intended to process *chicken* carcasses at the PAPCO facility for the production of various by-products, including flavoring for pet foods. Neither company obtained a modification to the permit to allow the discharge of chicken processing wastewater into the Columbia River. As a result, there were unpermitted discharges beginning in December of 2003 until approximately June of 2004. Several neighbors of the facility complained about odors from the discharges, and further investigation revealed the existence of a hole in a pipe upstream from the outfall helping to verify the origins of the chicken waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Oregon State Police.

Back to Top

United States v. T.P. Seafood and Meat Company, Inc. et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] ECS Trial Attorney Mary Dee Caraway [redacted], and AUSA Joe Johns [redacted]

On April 3, 2009, T.P. Seafood and Meat Company, Inc., and company president Henry Yip, each were sentenced for their role in purchasing and re-selling frozen *Pangasius hypophthalmus* fillets, a type of catfish that was mislabeled to avoid paying the required anti-dumping duty. Yip previously

pleaded guilty to receipt of misbranded food in interstate commerce and was sentenced to pay a $40,000 fine to be paid into the Magnuson-Stevenson NOAA Fisheries Enforcement Fund ("Fund"). He also will complete a one-year term of probation. The company pleaded guilty to trafficking in illegally imported merchandise and was sentenced to pay $150,000 into the Fund and also will complete a one-year term of probation.

In May 2007, 18 companies and individuals were variously charged in this conspiracy to violate the Lacey Act, the Food, Drug, and Cosmetics Act, and customs laws, specifically for knowingly entering goods by payment of duty less than owed, entry of goods by means of false statements, and trafficking in illegally imported merchandise. Several defendants were further charged with substantive violations of the Lacey Act, entry of goods by means of false statements, importation contrary to law, and trafficking in illegally imported merchandise.

The defendants' illegally imported from Vietnam millions of pounds of Vietnamese catfish by identifying and labeling the fish as other species in an effort to avoid a 64% anti-dumping duty that was imposed on Vietnamese catfish in January of 2003. The tariff was imposed after a petition was filed by the catfish farmers of America, alleging that this fish was being imported from Vietnam at less than fair market value.

On March 16, 2009, David Wong was sentenced to serve 12 months' incarceration followed by one year of supervised release. He further was ordered to pay a $25,000 fine. Wong pleaded guilty last year to violating the Lacey Act for purchasing and re-selling the catfish, marketed by the trade names of "swai" or "tra," but referred to in some seafood markets as "basa." The fish that Wong purchased was labeled as "sole" and imported without the duty payment.

Between November 2005 and May 2006, in a series of six transactions, Wong purchased on behalf of his employer, more than $197,000 worth of frozen fish fillets from Virginia Star Seafood Corporation ("Virginia Star"). In each of these transactions, the fish ordered and received was labeled as "sole." Wong knew, however, that the fish he purchased was in fact *Pangasius hypophthalmus,* and was properly subject to both an import and anti-dumping duty.

To date 12 individuals and companies (including Peter Xuong Lam and Arthur Yavelberg who were convicted by a jury last year) have been prosecuted in this matter.

This case was investigated by Immigration and Customs Enforcement, the National Marine Fisheries Service, and the Food and Drug Administration.

Back to Top

United States v. Paul Arnold, No. 4:08-CR-00238 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Michael Fica [redacted]

On April 2, 2009, Paul Arnold was sentenced to pay a $2,500 fine, serve two years' probation, complete 50 hours' community service, and pay $2,500 in restitution to the Idaho State Fish and Game Department. Arnold pleaded guilty for two violations of the Lacey Act. Arnold additionally lost his hunting privileges for two years and forfeited two elk mounts and a bow. The court also ordered him to write a letter to *Eastman's Bowhunting Journal* explaining the circumstances of his conviction.

The case arose out of a United States Fish and Wildlife Service investigation of several hunts Arnold undertook in 2002 and 2003. In September 2002, Arnold participated in a hunt while based at a lodge outside of Soda Springs, Idaho. Arnold shot a trophy class elk with a distinct commercially available bow. At the time Arnold shot the elk the bow had an illegal electronic sight mounted on it. The legal tension requirement on the bow also exceeded the 65 percent limit allowed under Idaho Fish and Game regulations at the time. Arnold transported the elk from Idaho to the Commonwealth of Virginia where he resides. An article by Arnold with accompanying photographs appeared in *Eastman's Bow Hunting Journal* and alerted investigators to the illegal sight on the bow.

In September 2003, Arnold again participated in a hunt while based at the same lodge. Despite not possessing a valid Idaho elk tag, Arnold shot an elk with a bow from a tree stand around dusk, but was unable to track it because of darkness. The next day, he tracked the elk and found the animal dead. After dressing the animal and bringing it to the lodge, Arnold drove to Soda Springs and purchased an elk tag. A search by FWS agents prevented Arnold from transporting the elk to Virginia.

A search warrant was obtained for the defendant's home in Virginia for the purpose of seizing the elk illegally shot by Arnold in Idaho in 2002 and transported to Virginia, where it was made into a mount. Upon questioning by agents Arnold tried to mislead agents by stating he no longer had the mount, when, in fact he did.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Back to Top

United States v. General Maritime Management (Portugal), L.D.A., et al., No. 2:08-CR-00393 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted] SAUSA Ken Nelson [redacted] and ECS Paralegal Jean Bouet [redacted]

On March 13, 2009, General Maritime Management (Portugal) LDA ("General Maritime"), was sentenced to pay a $1 million fine and will complete a five-year term of probation. An environmental compliance plan was ordered to be implemented and audited by a court appointed monitor.

General Maritime, chief engineer Antonio Rodrigues, and first engineer Jose Cavadas were convicted by a jury last year of an APPS oil record book violation and a false statement violation for presenting a false ORB to Coast Guard officials during a port inspection.

This case came to the attention of inspectors after a crewmember/fitter onboard the *M/T GenMar Defiance* advised the Coast Guard that he had been told by the ship's chief and first engineers to connect a bypass hose to an overboard discharge valve, thereby tricking the oil content meter into allowing oily bilge waste to bypass the ship's oily water separator. Other crewmen later confirmed the fitter's story. They secretly photographed the illegal bypass and gave the pictures to the Coast Guard. The fitter stated that he observed Cavadas open the overboard discharge valve and pump the bilge into the ocean for approximately three or four hours. He was warned by Cavadas not to talk about this and Rodrigues further threatened to fire the fitter once the ship had reached port. During the Corpus Christi port inspection in November 2007, the ORB presented to officials omitted the illegal overboard discharges.

Both engineers were recently sentenced to complete five-year terms' of probation and must each pay a $500 fine. Rodrigues also will serve three months' incarceration in a halfway house and Cavadas will spend six months in a halfway house. The court awarded $250,000 of the million dollar fine to be divided proportionally among five whistleblowers.

This case was investigated by the United States Coast Guard, and the Environmental Crimes Task Force, which includes the United States Environmental Protection Agency, the Texas Commission on Environmental Quality Investigations Division, and the Texas Parks and Wildlife Department.

Back to Top

United States v. Daniel Smith, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley ([redacted]

On March 11, 2009, Daniel Smith, the public works director for Mocksville, North Carolina, was sentenced to serve one year and day incarceration and was ordered to pay $56,625 in restitution to the Town of Mocksville.

Smith pleaded guilty last November to violating the Safe Drinking Water Act and the Clean Water Act. As the town's public works director, Smith oversaw the town's public drinking water system and was required to submit information about the water's turbidity to the North Carolina Department of Environment and Natural Resources ("DENR"). Smith admitted to knowingly directing employees to send false data that understated drinking water turbidity. Nicholas Slogick, the official in charge of the town's POTW, previously pleaded guilty to knowingly submitting false data about the drinking water to the DENR.

Smith violated the CWA by using town employees to pour massive amounts of degreaser and caustic into the POTW. Smith, who received a kick-back for having the town purchase these chemicals, caused them to be dumped in order to justify purchasing additional quantities. He further conspired to misapply town property after Macksville received more than $10,000 in federal grant

money. Smith created a company, Danny Smith Enterprises that provided maintenance and repair services to other towns and private citizens, employing town equipment and employees (including state inmates) to operate the company for his personal gain.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Christopher Rowland, No. 5:08-CR-00001 (D. Alaska.), AUSAs Aunnie Steward and Steve Skrocki [redacted], and USCG SAUSA John Reardon [redacted].

On March 9, 2009, Christopher Rowland was sentenced to serve 37 months' incarceration, followed by three years' supervised release, and was ordered to pay a $5,000 fine.

Rowland pleaded guilty last December to a four-count information charging him with violations of the Lacey Act and the Marine Mammal Protection Act for the illegal hunting, killing, and export of sea otters, sea lions and harbor seals, and the illegal sale of their pelts.

The investigation began as a response to a concerned citizen's tip that evolved into a two-year undercover operation, which still is ongoing, into the illegal commercialization of sea otters, seals, and sea lions. At various times in 2007, Rowland and other individuals shot approximately 60 sea otters, including pups, and sold several of the pelts and skulls, some of them to undercover agents. Whole tanned sea otter pelts were illegally sold for $1,000 and raw, unprocessed pelts were sold for $100 per foot.

This case was investigated by the United States Fish and Wildlife Service with assistance from the Alaska Wildlife Troopers, the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the United States Forest Service, Immigration and Customs Enforcement, the United States Marshals Service, the State of Alaska Attorney General's Office, and the Alaska Bureau of Alcohol and Drug Enforcement.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]

Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

June 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

AT A GLANCE

- **United States v. Fleet Management Ltd., 2009 WL 148313 (3rd Cir. May 28, 2009).**

Districts	Active Cases	*Case Type* / Statutes
D. Ariz.	United States v. Cedric Salabye	*Eagle Feathers*/ Bald and Golden Eagle Protection Act
C.D. Calif.	United States v. Peter Xuong Lam et al.	*Mislabled Catfish*/ Lacey Act
E.D. Calif.	United States v. Garrett Smith	*Tortoise Smuggling*/ Smuggling Conspiracy
N.D. Calif.	United States v. Fleet Management Limited et al.	*Vessel*/ MBTA, OPA, CWA
D.D.C.	[redacted] United States v. Cannon Seafood Inc., et al.	[redacted] *Striped Bass Poaching*/ Lacey Act
M.D. Fla.	United States v. STX Pan Ocean Co. Ltd., et al.	*Vessel*/ APPS, Conspiracy, False Statement
S.D. Fla.	United States v. Edward Saul Aria Ducker United States v. Ruzial Ltd.	*Queen Conch Smuggling*/ Lacey Act Conspiracy *Endangered Wildlife Items*/ Lacey Act
N.D. Ga.	United States v. Qi Gui Nie	*Fish Imports*/ Lacey Act
D. Hawaii	United States v. Jerome Anches et al.	*Freight Distributor*/ RCRA Storage
D. Idaho	United States v. Cory King	*Farm Manager*/ SDWA, False Statement
D. Md.	United States v. Jerry Decatur Jr., et al. United States v. Keith Collins et al. United States v. John W. Dean et al.	*Striped Bass Poaching*/ Lacey Act
D. Mass.	United States v. Carmelo Oria et al. United States v. ExxonMobil Corporation	*Vessel*/ APPS *Oil Terminal*/ CWA Misdemeanor

Districts	Active Cases	*Case Type* / Statutes
E.D. Mich.	**United States v. Wayne Duffiney**	***Intentional Vessel Sinking/* CWA**
D. Mont.	**United States v. WR Grace et al.** **United States v. Randall Reis**	***Vermiculite Mine Operator/* CAA, Conspiracy** ***Chemical Manufacturer/* RCRA Storage**
W.D. Mo.	**United States v. John Richards**	***Turtle Exports/* Lacey Act false labeling**
D.N.J.	**United States v. Style Craft Furniture Co., Ltd., et al**	***Furniture Manufacturer/* Protected Wood Smuggling**
N.D.N.Y.	**United States v. Certified Environmental Services, Inc. et al.**	***Asbestos Air Monitor/* CAA, Conspiracy, Mail Fraud, TSCA, False Statement**
W.D.N.C.	**United States v. Kirby Case et al.**	***Treatment Plant Operator/* CWA, CWA Misdemeanor**
D. Ok.	**United States v. Christopher Gauntt**	***Treatment Plant Operator/* False Statement**
E.D. Tex.	**United States v. Lyle Hester et al.** [redacted]	***Water Treatment Systems/* RCRA Storage** [redacted]
W.D. Va.	**United States v. KIK (Virginia) LLC**	***Household Chemical Manufacturer/* CWA Misdemeanor**
S.D.W.V.	**United States v. David Blevins**	***Painting Company/* RCRA Storage**
E.D. Wash.	**United States v. Gypsy Lawson, et al.**	***Monkey Smuggling/* ESA**
W.D. Wash.	**United States v. Craig Magnusson** **United States v. Kevin Steele** **United States v. Craig James et al.**	***Illegal Pier Construction/* Rivers and Harbors Act** ***Seafood Broker/* Lacey Act** ***Old Growth Tree Damage/* Conspiracy to Commit Depredation against Forest Service Property**

Additional Quick Links

Significant Environmental Decisions

Third Circuit

United States v. Fleet Management Ltd., 2009 WL 148313 (3rd Cir. May 28, 2009).

Last year, in the month before trial was scheduled, the government filed an interlocutory appeal seeking to overturn a trial court ruling that a government inspector could not offer expert opinion testimony about whether a vessel had discharged oily waste at sea. On May 28, 2009, in a 2-1 split, the Third Circuit upheld the trial court decision, holding that the trial court had not abused its discretion in finding that the inspector's methodology was unreliable.

This is a prosecution against a shipping company and two individuals for (among other offenses) allegedly failing to maintain an oil record book documenting certain discharges of oil-contaminated sludge waste and bilge water from a cargo ship into the ocean while the ship was en route from Chile to Philadelphia. The alleged violation was discovered during a Coast Guard inspection of the ship in the port of Philadelphia in 2007.

Back to Top

TRIALS

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.), ECS Senior Trial Attorney Kevin Cassidy [redacted] ECS Trial Attorney Jeremy Peterson [redacted] and AUSA Kris McLean [redacted]

On May 8, 2009, after hearing 11 weeks of testimony, the jury acquitted all defendants on all counts largely as the result of the court's excluding significant pieces of evidence from the jury's consideration. Defendants originally were charged with conspiracy to defraud government agencies, including the EPA, knowing endangerment under the CAA, and obstruction of justice. Grace owned and operated a vermiculite mine in Libby, Montana, from 1963 through 1990. Vermiculite was used in the production of many consumer products such as attic insulation and potting soils, as well as spray-on fireproofing for steel beams. The vermiculite from the Libby Mine was contaminated with a particularly friable and toxic form of tremolite asbestos. In the late 1970s, the company confirmed the toxicity and friability of its vermiculite through internal studies, which it failed to disclose to the EPA. Despite knowledge of the hazardous asbestos contamination, Grace continued to mine, manufacture, process, and sell its vermiculite and vermiculite-containing products, thereby endangering its workers, the community of Libby, its industrial customers, and consumers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cory King, No. 4:08-CR-0002 (D. Idaho), AUSA George Breitsameter [redacted] and SAUSA Dean Ingemanson [redacted]

Bypass pipe

On April 30, 2009, a jury convicted Cory King on all four counts of violating the Safe Drinking Water Act and one count of making false statements. During the three-day trial, the jury heard evidence that King, the farm manager of the Double C Farms in Burley, Idaho, had willfully injected water from the feedlot into a waste disposal and injection well without having obtained a permit. The investigation also discovered two buried by-pass lines that allowed King to inject surface water without reversing the backflow prevention valves. These buried by-pass lines could not be observed from the surface.

In May 2005, an Idaho State Agriculture inspector found that an earthen berm had collapsed and wastewater from the beef cattle feedlot was overflowing and running into a ditch that emptied into an irrigation pond. The inspector also discovered that two irrigation wells had their backflow prevention valves installed backwards, which allowed water in above-ground irrigation pipes to flow backwards down into the wells and into the subsurface. Later that day, the inspector returned and discovered the valves had been removed and reinstalled properly. Investigation revealed that King had submitted an application in 1987 to operate a deep underground injection well at the facility but had never been issued a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Idaho State Agriculture Department, with assistance from the Idaho State Department of Water Resources.
Back to Top

United States v. Wayne Duffiney, No. 1:07-CR-20501 (E.D. Mich.), AUSA Janet Parker ([redacted]

On April 28, 2009, Wayne Duffiney was convicted by a jury on three of the four charges stemming from the intentional sinking of his boat in waters connected to Lake Huron.


Partially submerged power boat

Duffiney specifically was convicted of violating the Clean Water Act by discharging pollutants into the navigable waters of the United States; sinking or causing the sinking of the *Misty Morning* in the navigable channels of Lake Huron; and of failing to mark the sunken vessel with navigation aids after it was sunk in the Lake Huron navigation channel. He was acquitted on the charge of willfully causing and permitting destruction and injury to the boat in the territorial waters of the United States

In May 2007, Duffiney hauled his 44-foot boat, the *Misty Morning*, through the town of Cheboygan, Michigan, to the Cheboygan River without a trailer and dumped the boat into the navigable river. Duffiney then towed the damaged boat out into Lake Huron under cover of darkness and left it in the navigation channel. The next day, when Coast Guard officials discovered it, the boat was nearly vertical in the lake, with the bow at or near the surface and the stern toward the bottom. Duffiney was forced to tow it back into the Cheboygan River where he left it mostly submerged for a day or so before he pulled it from the water.

This case was investigated by the United States Coast Guard Investigative Service, and the Michigan Department of Environmental Quality.
Back to Top

Informations and Indictments

United States v. Fleet Management Limited et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] AUSA Jonathan Schmidt [redacted] and SAUSA Christopher Tribolet.

On May 26, 2009, the grand jury returned a third superseding indictment charging Fleet Management Limited ("Fleet"), a Hong Kong corporation, with the same CWA, MBTA, false statement, and obstruction counts relating to the discharge of oil from the *M/V Cosco Busan*, which crashed into the San Francisco Bay Bridge in November 2007, but added an amount of gross loss to persons that included at least $20 million. The spill of more than 50,000 gallons of heavy fuel oil caused the deaths of approximately 2,000 migratory birds.

The company had announced its intent to enter an unconditional plea to the second superseding indictment and contested the applicability of the Alternative Fines Act. On May 27th, the court conducted a hearing at which Fleet requested that it be allowed to plead to the prior indictment. The court requested briefing on whether Fleet's announcement of its intent to plead guilty to the second superseding indictment precluded the government from seeking a third superseding indictment, as well as other issues. The ship's pilot, John Cota, pleaded guilty in March 2009 to CWA/OPA and MBTA counts and has been scheduled for sentencing on July 17, 2009.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. Certified Environmental Services, Inc., et al., No. 09-CR-00319 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted]

On May 28, 2009, Certified Environmental Services, Inc. ("CES"), an asbestos air monitoring company and laboratory, was indicted along with the company owner, six present and former employees, and a supervisor of an asbestos abatement company. The indictment describes a decade-long scheme in which asbestos was illegally removed, scattered, and left behind in numerous buildings and homes in Syracuse and other upstate New York locations, while the air monitoring company and laboratory gave the abatement contractors false air results to use to prove to building owners that the asbestos had been properly removed. In other instances where asbestos was properly removed, fraudulent air monitoring still occurred.

The 17-count indictment charges CES, owner Barbara Duchene, supervisor Nicole Copeland, former supervisor Elisa Dunn, air monitors Sandy Allen and Thomas Juliano, and Frank Onoff, a supervisor for Paragon Environmental Construction, Inc., with conspiracy to defraud the United States; to violate the Clean Air Act; to violate the Toxic Substances Control Act, and; to commit mail fraud. The defendants are also charged with substantive Clean Air Act, mail fraud and false statements violations.

Paragon Environmental Construction, Inc., and another of its supervisors have previously pleaded guilty to felonies related to illegal asbestos abatement in violation of the Clean Air Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the New York State Department of Environmental Conservation.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Qi Gui Nie, No. 1:09-CR-00218 (N.D. Ga.), AUSA Mary Roemer [redacted]

On April 28, 2009, Qi Gui Nie was indicted on smuggling and Lacey Act charges for illegally importing and attempting to import endangered and prohibited wildlife into the United States through the port of Atlanta.

In October 2008, Nie, doing business as Lucky Fin, Inc., a North Carolina-based wildlife importer, imported and attempted to import into the United States from Vietnam ten live endangered Asian Bonytongue fish. During an inspection of Nie's shipments into the United States, false bottoms were discovered hidden in boxes containing legally-imported fish and coral. The fish were located in the hidden compartments. The Asian Bonytongue fish, which is commonly referred to as the Asian Arowana fish, are highly sought after by the Asian community because it is believed that the fish will bring good fortune and protection to the owner. Asian Arowana fish are protected under the Endangered Species Act through CITES.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas

United States v. John Richards, No. 6:08-CR-03098 (W.D. Mo.), ECS Senior Trial Attorney Georgiann Cerese [redacted]

On May 28, 2009, John Richards pleaded guilty to a two-count information charging him with two Lacey Act false labeling violations. Richards, using the name of Loggerhead Acres Turtle Farm, was in the business of buying and selling reptiles in Missouri and via the Internet. Between 2003 and 2004, Richards exported endangered species of turtles, including Blandings and the western chicken species to Japan. Specifically, he admitted to providing documentation with two different shipments falsely indicating that there had been no charge for the turtles despite Richards' having received payment for them.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Jerome Anches et al., No.1:08-CR-00577 (D. Hawaii) AUSA Marshall Silverberg

Stored hazardous waste

On May 26, 2009, Jerome Anches pleaded guilty to a RCRA storage violation. Anches and co-defendant Stephen Swift were variously charged in a five-count indictment with RCRA and mail fraud violations.

Anches was the president of Martin Warehousing and Distribution ("MWD"). MWD was in the business of transporting and distributing freight. In August 2001, there was a hazardous waste spill involving the puncture of a 55-gallon drum of tetrachloroethylene by a MWD forklift driver. MWD contacted the Honolulu Fire Department, which arrived and contained the spill. MWD also contacted Pacific Environmental Company ("PENCO"), which specialized in the clean-up of hazardous wastes sites and the disposal of hazardous waste. Shortly thereafter, PENCO employees arrived to clean-up the site. After providing samples of this material to be tested by a lab, PENCO verified that the waste must be treated as hazardous and placed the material in a container on MWD's property.

PENCO then prepared manifests and hazardous waste labels for Anches and informed him that the company could transport the waste for proper disposal for approximately $16,500. Anches declined the offer due to the cost and let the waste sit without proper permitting until February 2005.

In February 2005, Anches agreed to sell the MWD property to RRL, Inc., and to Swift, the *de facto* "responsible corporate officer" for RRL. The contract required that the hazardous waste be manifested and properly removed from the property. Swift or one of his employees, however, simply moved the container down the street from the RRL offices. The waste was moved again about a week later, from the street to property owned by Swift, without a manifest. Swift continued to unlawfully store this waste from February 2005 to May 2008.

In a letter dated January 4, 2008, the Department of Health for the State of Hawaii wrote to Swift's attorney and asked a number of questions, including whether Swift had taken care of a container with the hazardous waste located on his property. Swift responded in a letter dated January 21, 2008, with a number of false statements, including the representation that the container located on the Haleahi property did not contain waste but rather "damaged freight."

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States. v. Jerry Decatur, Jr., et al., No. 1:09-CR-00055 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach ECS Trial Attorney Jeremy Peterson (AUSA Stacy Belf ,ECS Paralegal Stephen Foster and former ECS Trial Attorney Madison Sewell.

On May 15, 2009, Jerry Decatur, Jr., pleaded guilty to a Lacey Act violation for illegally taking and over-harvesting striped bass. He further pleaded guilty to an MBTA baiting violation for placing corn in an area to attempt to attract and take migratory birds. Co-defendant Jerry Decatur, Sr., pleaded

guilty last month to a similar Lacey Act violation and Kenneth Dent pleaded guilty to trafficking in illegally taken striped bass in violation of the Lacey Act.

On approximately 13 occasions between 2004 through 2007, Decatur illegally harvested more than 10,000 pounds of striped bass from the Potomac River. The defendant fished out of season, kept over-sized fish or used nets that violated applicable regulations. He then sold the catch to two fish wholesalers in Washington, D.C. Additionally, he failed to attach tags to the majority of the striped bass that he caught thereby exceeding his limit by thousands of pounds. In 2003 through 2007, Decatur harvested more than 65,000 pounds over his limit. The fair market retail value of this rockfish was in excess of $329,000.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Christopher Neil Gauntt, No. 6:09-CR-00047 (E.D. Okla.), ECS Senior Trial Attorney Dan Dooher [redacted]

On April 29, 2009, Christopher Neil Gauntt, the former supervisor of the Fort Gibson Water Treatment Plant ("FGWTP") in Fort Gibson, Oklahoma, pleaded guilty to a false statement violation for falsifying a monthly operating report ("MOR") that certified the safety of drinking water from the facility.

Gauntt admitted that, on or about June 12, 2008, he submitted a MOR containing false data for drinking water that is provided to residents who rely upon the FGWTP for their drinking water.

Under the Safe Water Drinking Act, the FGWTP must certify that it is providing drinking water that is safe for human consumption. Gauntt admitted that he falsely recorded the turbidity and chlorine levels in the MOR that was submitted to the Oklahoma DEQ in June 2008. In August 2008, Fort Gibson alerted residents to the turbidity violations. Prior to the plea, the FGWTP indicated that it did not receive information that anyone experienced ill effects from the drinking water during that time period.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

Back to Top

United States v. STX Pan Ocean Co. Ltd., et al., No. 8:09-CR-00163 (M.D. Fla.), ECS Trial Attorney Leslie Lehnhert [redacted], AUSA Cherie Krigsman [redacted], and SAUSA Lt. William George.

On April 24, 2009, STX Pan Ocean Co. Ltd. (STX), headquartered in Seoul, Korea, and the owner of the commercial cargo ship, *M/V Ocean Jade*, pleaded guilty to conspiracy as well as to falsifying and failing to properly maintain records. The ship's chief engineer Hong Hak Kang, a Korean citizen, also pleaded guilty to failing to maintain required ship's records and for making false statements.

According to court documents, in late July 2008, Kang ordered several crew members to dump approximately 10 barrels containing oily waste water directly overboard. Kang also made false entries into the ship's oil record book by applying a pre-established formula, rather than recording the actual amounts of oily waste and sludge transferred, burned or discharged. In September 2008, chief officer Jeong Gyu Lee, a Korean national, instructed several members of the deck department to dispose of oily waste from the crane houses directly into the ocean using a bypass hose that was placed over the

side of the vessel. When the *Ocean Jade* arrived in the Port of Tampa on October 7, 2008, ship's officers presented false oil and garbage record books and several crew members provided Coast Guard investigators with false statements about the prior dumping incidents.

Lee was sentenced on April 23, 2009, to time served followed by three years' supervised release, and will be allowed to immediately leave the country to return to Korea without violating his sentence. He previously pleaded guilty to an APPS and to an 18 U.S.C. §1001 false statement violation. The court declined to sentence Lee to the 20 days jointly recommended by the parties in the plea agreement. Although the court considered the issue of vessel pollution to be extremely serious and thought that everyone on the ship should be incarcerated, he expressed concern about how serving 20 days in jail would affect any future deportation proceedings.

This case was investigated by the United States Coast Guard, and the United States Environmental Protection Agency Criminal Investigative Division.

Back to Top

United States v. Cedric Salabye, No. 3:08-CR-00672 (D. Ariz.), ECS Senior Trial Attorney Georgiann Cerese [redacted] and ECS Trial Attorney Todd Mikolop [redacted].

On April 23, 2009, Cedric Salabye pleaded guilty to one count of violating the Bald and Golden Eagle Protection Act for selling parts from a bald eagle in August 2006.

Salabye was initially charged in a four-count indictment in June 2008, including a forfeiture count for the items he sold. As part of the plea, Salabye also agreed to forfeit all feathers which he sold, some of which actually were abandoned after sale.

Between July 2003 and August 2006, Cedric was charged with selling individual eagle feathers, as well as fans containing feathers, without a permit. The fans sold for as much as $700.

Sentencing is scheduled for July 13, 2009, and this case was investigated by the United States Fish and Wildlife Service.

Back to Top

Sentencings

United States v. Keith Collins et al., No. 8:09-CR-00049 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach [redacted] ECS Trial Attorney Jeremy Peterson [redacted], AUSA Stacy Belf [redacted] and former ECS Trial Attorney Madison Sewell.

On May 28, 2009, Keith Collins was sentenced to serve 13 months' incarceration followed by two years' supervised release. He was further ordered to pay a $4,500 fine, as well as pay $70,569 in restitution to the National Fish and Wildlife Foundation to support the Chesapeake Bay Striped Bass Restoration Account.

Collins is one of several fisherman who recently pleaded guilty to one felony violation of the Lacey Act for his involvement in the selling, buying, illegal harvesting, and systemic under-reporting of striped bass (also known as rockfish) taken from the Chesapeake Bay and Potomac River between 2003 and 2007. Collins was assisted in this scheme by two Maryland-designated fish check-in stations. In each year, he recorded a lower weight of striped bass than he actually caught. Collins and the check-in station operators would also falsely inflate the actual number of fish harvested. By under-

reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount. Collins admitted that the estimated fair market value of the fish involved in the illegal transactions was between $600,000 and $750,000. In addition, Collins falsely tagged many of the striped bass that he caught in pound nets with tags indicating that the fish had been caught using a hook and line.

As a result of these prosecutions, to date a total of 15 individuals and two fish wholesalers have been charged for illegally harvesting and under-reporting their catch of striped bass. Ten individuals and one company have pleaded guilty. Seven individuals including Collins have been sentenced to a total of 46 months in prison plus 13 months' home detention. Approximately $165,500 in fines and $284,800 in restitution have been ordered.

This case was investigated by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Kirby Case, et al., No. 3:08-CR-00212 (W.D.N.C.), AUSA Steven Kaufman ([redacted]

On May 28, 2009, Kirby Case was sentenced to pay a $5,000 fine, complete a two-year term of probation to include two months' home confinement, and perform 400 hours of community service. Case, the operator of the POTW for the Town of Dallas, North Carolina, previously pleaded guilty to two CWA violations. Supervisor George W. Hughes, III, was sentenced on April 30, 2009, to pay a $1,000 fine and will complete a one-year term of probation, stemming from his pleading guilty to a misdemeanor CWA violation.

Case admitted to discharging pollutants from the POTW into the Dallas Branch of the Catawba River Basin in violation of the POTW's permit. He also admitted to filing discharge monitoring reports with the North Carolina Department of Environment and Natural Resources between November 2006 and December 2007 that included falsified sample levels for chlorine, ammonia, fecal coliform, and other materials. Hughes pleaded guilty to failing to supervise Case as he diluted samples with tap water that were taken from the POTW.

In April 2008, the Town of Dallas was fined more than $140,000 by the state for the improper operation and maintenance of the POTW resulting in discharges of poorly treated or untreated wastewater that blanketed a half-mile of the receiving stream with sludge four to eight inches deep.

The fine, the state's largest for water pollution, was imposed by the North Carolina Division of Water Quality, after an inspection in November 2007 revealed that the town's POTW was profoundly noncompliant, with half of its treatment capacity out of service and the remaining half overloaded with sewage solids. Solids also were present in the chlorine contact chamber. Since the chlorine chamber was not in use, the effluent from the plant was not disinfected. Although solids were being discharged with effluent, the town submitted samples that made it appear that the plant was adhering to the state's permit limits for the discharge.

During the inspection, the Dallas branch (a tributary of Long Creek) was observed to have a several-inch thick layer of partially-treated sewage about half a mile downstream from the plant's discharge point. State inspectors also found evidence of two unreported spills – one of untreated sewage, the other of partially treated wastewater – that reached the Dallas branch, as well. The Town has been fined by the state 27 times since March 2003 for amounts totaling nearly $43,000.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina Division of Water Quality.
Back to Top

United States v. Edward Saul Arias Ducker, No. 1:08-CR-20035 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On May 27, 2009, Edward Saul Arias Ducker was sentenced based upon his earlier plea to conspiring to violate the Lacey Act for his involvement in the smuggling of large quantities of queen conch into the United States and Canada for commercial sale without required CITES permits. This is the final case brought under Operation Shell Game, a joint investigation by the U.S. NOAA/FWS and the Environment Canada Division of Wildlife. Ducker, a Honduran national who provided substantial assistance in the matter, was sentenced to five months' time served and a two-year term of supervised release. He will be released to INS for deportation.

The defendant had been the subject of a sealed indictment addressing his involvement from January 2003 through January 2006 in a scheme by which Honduran vessels controlled by Ducker harvested queen conch from Honduran waters and then transferred the product at sea to Columbian-registered vessels for landing and processing in Columbia. The conch was later shipped to Canada and to the United States, without required CITES permits, and in many instances, falsely labeled as Whelk, a cold-water mollusk not protected under CITES. The scheme involved more than 115,000 pounds of conch, with a retail value exceeding $1.7 million.

The 18-month investigation was conducted by the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration Office for Law Enforcement, and Environment Canada's Wildlife Enforcement Branch, Wildlife Enforcement Division, in Halifax, Montreal, Toronto, and Vancouver. The United States National Marine Fisheries Service and Canadian and American border officials also contributed to this investigation.
Back to Top

United States v. Lyle Hester et al., No. 1:08-CR-00067 (E.D. Tex.), AUSA Jim Noble [redacted]

On May 27, 2009, Lyle Hester, a shop foreman, and his son Kevin, the president of Simply Aquatics Inc., each were sentenced after previously pleading guilty to a RCRA violation. Kevin Hester will serve 20 months' incarceration and Lyle Hester will serve 14 months. Each is to be held jointly responsible for $391,442 in restitution to be paid to the USEPA for clean-up costs.

Both originally were charged, along with the company, with conspiracy and four RCRA violations for illegally transporting and disposing of hazardous wastes. The charges against the company were dismissed.

Buried cylinders

Simply Aquatics is in the business of installing and servicing water treatment chemical injection systems for municipalities. In the process they used chemicals such as gaseous chlorine and sodium hydroxide to clean out the systems. In January 2007, investigators executed a search warrant on Kevin Hester's property and discovered that both Kevin and his father Lyle had buried 113 old compressed gas

cylinders in a ten-foot deep hole on the property. The investigators determined that 33 of the cylinders were under high pressure and contained a combined total of 952 pounds of chlorine gas.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Environmental Enforcement Task Force.

Back to Top

United States v. Peter Xuong Lam et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] AUSA Joe Johns [redacted] and Supervisory Paralegal Will Taylor [redacted]

On May 18, 2009, Peter Xuong Lam and Arthur Yavelberg were sentenced after being convicted by a jury last October for their roles in a scheme to import misbranded Vietnamese catfish (*Pangasius hypophthalmus*.) Lam was sentenced to serve 63 months' incarceration and will forfeit more than $12 million. Yavelberg will complete a one-year term of probation. Lam was found guilty of conspiring to import mislabeled fish in order to avoid paying federal import tariffs. He also was found guilty on three counts of dealing in fish that he knew had been illegally imported. Yavelberg was found guilty of a misdemeanor conspiracy for trading in misbranded food.

To date, 12 individuals and companies, including Lam and Yavelberg, have been convicted for criminal offenses related to a scheme to avoid paying an anti-dumping duty or tariff by falsely labeling fish for import and then selling it in the United States at below market price. In January 2003, this tariff was placed on *Pangasius hypophthalmus* imports from Vietnam after a petition was filed by the catfish farmers of America who suspected that their prices were being undercut.

According to evidence presented at trial, two Virginia-based companies, Virginia Star Seafood Corp., of which Lam became president, and International Sea Products Corporation, illegally imported more than ten million pounds, or $15.5 million worth, of frozen fish fillets from Vietnamese companies Binh Dinh, Antesco, and Anhaco between May 2004 and March 2005. These companies were affiliated with Cafatex, one of the largest producers in Vietnam of a fish called *Pangasius hypophthalmus*. Although the fish imported by Virginia Star and International Sea Products was labeled and imported as sole, grouper, flounder, snakehead, channa and conger pike, (a type of eel), DNA tests revealed that the frozen fish fillets were in fact *Pangasius hypophthalmus*, aka catfish.

Further evidence presented at trial showed that Kich Nguyen, the head of Cafatex, imported the fish to his son, Henry Nguyen, who oversaw Virginia Star, International Sea Products, and a third company, Silver Seas, of which Yavelberg was president. Lam then knowingly marketed and sold millions of dollars worth of the falsely labeled and illegally imported fish to seafood buyers in the United States as basa, a trade name for a more expensive type of Vietnamese catfish, *Pangasius bocourti*, and also as sole. All of the fish sold was invoiced to match the false labels that were still on the boxes. The jury convicted Yavelberg of marketing the fillets, without his necessarily knowing they had been mislabeled. The organizer of the smuggling conspiracy, Henry Nguyen, remains a fugitive and is believed to be residing in Vietnam.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the Food and Drug Administration's Office of Criminal Investigations, and the United States Immigration and Customs Enforcement.

Back to Top

United States v. Garrett Smith, No. 2:07-CR-00573 (E.D. Calif.), AUSA Robert Tice-Raskin [redacted]

Recovered Burmese tortoises

On May 12, 2009, Garrett Smith was sentenced to pay a $2,000 fine and will complete a three-year term of probation as the result of previously pleading guilty to conspiracy to smuggle wildlife. Smith originally was charged in a 21-count indictment with a variety of wildlife smuggling violations.

According to the indictment, Smith, working with an unknown international co-conspirator known as "Turtle Man," (believed to reside in Singapore), engaged in a conspiracy to illegally smuggle wild tortoises into the United States for sale. The overseas conspirator and others acting at his direction obtained Burmese Star Tortoises and Indian Star Tortoises in Asia and sold them to Smith via e-mail transactions. The tortoises, which were illegally imported into this country without proper documentation and with misleading labels, were then sold to distributors and customers across the United States. Approximately 30 protected Indian Star Tortoises and five protected Burmese Star Tortoises were imported illegally. Burmese Star adults can sell on the black market for up to $7,000 each, with juveniles and sub-adults selling for approximately $3,750.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Ruzial, Ltd., No. 0:09-CR-60088(S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted]

Zebra skin

On May 11, 2009, Ruzial, Ltd., a Cayman Islands corporation, pleaded guilty to a Lacey Act felony violation after a luxury yacht owned by the corporation was intercepted with 29 wildlife items on board including specimens from protected species such as a reticulated python, lion, zebra and jaguar. Also seized were specimens of elephant ivory, stuffed tigers, wild feline skins and snake skin. Ruzial was sentenced to pay a $50,000 fine which will go into the Lacey Act Reward Fund, and an additional $100,000 to be paid to the National Fish and Wildlife Foundation ("NFWF").

In December 2007, the yacht registered in the Cayman Islands made entry into the United States at Port Everglades Florida. Inspection by customs inspectors and wildlife agents confirmed the presence on board of numerous wildlife items protected under CITES.

Some of the wildlife items were installed as fixtures on the vessel, while others were used as decoration. None of them had been properly declared to customs nor were they accompanied by the required permits and other documentation. The contraband wildlife is conservatively valued at more than $85,000. All items were subsequently forfeited as part of the plea agreement. The $100,000 payment to NFWF will be used to construct and install public information displays in the Southern

District of Florida at selected international airports and international embarkation facilities for passengers departing the U.S., in order to acquaint them with the restrictions placed by domestic and international law on the trade and transportation of protected species.

This case was investigated by United States Immigration and Customs Enforcement's Office of Investigations, the United States Fish and Wildlife Service, and the United States Customs and Border Protection.

Back to Top

United States v. Craig Magnusson, No. 2:08-CR-00215 (W.D. Wash.), AUSA Jim Oesterle (

On May 11, 2009, Craig Magnusson was sentenced to serve a one-year term of probation and a fine was not assessed. Magnusson was convicted in a bench trial earlier this year of violating the Rivers and Harbors Act.

The defendant, an attorney, constructed and maintained a pier, float, boatlift, and catwalk at his home on Lake Washington without obtaining a permit. The Army Corps of Engineers ("Corps") first issued a notice of violation to Magnusson for this activity in July 2001. After the Corps received a new complaint from county officials in June 2002, and photos of the work in April 2003, the Corps issued a second letter directing Magnusson to cease any further work, remove the existing work, or apply for an after-the-fact permit. The defendant was charged by indictment in June 2008 after he continued to ignore regulatory officials.

This case was investigated by the United States Army Corps of Engineers.

Back to Top

United States v. Cannon Seafood, Inc., et al., No. 1:09-CR-00023 (D.D.C.), ECS Senior Trial Attorney Wayne D. Hettenbach ECS Trial Attorney Jeremy Peterson (AUSA Stacy Belf , ECS Paralegal Stephen Foster and former ECS Trial Attorney Madison Sewell.

On May 8, 2009, two commercial fisherman and a seafood business were sentenced for their involvement in the selling, buying, illegal harvesting, and systemic under-reporting of striped bass (also known as rockfish) taken from the Chesapeake Bay and Potomac River between 2003 and 2007. Cannon Seafood Inc., its owner and president, Robert Moore, Sr., and employee, Robert Moore, Jr., each previously pleaded guilty to one felony violation of the Lacey Act.

Cannon Seafood was sentenced to pay an $80,000 fine and $28,000 in restitution. The Moores each were sentenced to complete 120 days of home confinement and complete a three-year term of probation. Robert Moore, Sr., was further ordered to pay a $40,000 fine and $15,000 in restitution, complete 100 hours of community service, and he must remain out of the seafood business. Robert Moore, Jr., will pay a $30,000 fine and $10,000 in restitution. He also must hang a sign outside Cannon Seafood during the period of probation stating: "Striped bass not sold here by order of U.S. District Court."

From April 2003 until June 30, 2007, the Moores bought striped bass from Thomas Hallock, a commercial fisherman from Maryland, and Jerry Decatur, Sr., and Jerry Decatur, Jr., two Virginia fisherman. The Moores knew that striped bass was regulated by size limits and only available for harvest during specific months. They were further aware that Virginia and Maryland required all commercially harvested striped bass to have plastic tags placed on them when they were caught.

According to court documents, during this time period, Hallock harvested more striped bass than allowed under his Maryland limit, and he did not report the striped bass that he was selling to

Cannon Seafood. He also caught the fish during the spawning season, when commercial harvest is prohibited, and sold this fish to the wholesale business. In turn, Moore, Jr., and other Cannon employees, on behalf of the company, generated and provided Hallock with false receipts for the Maryland-caught striped bass that had been transported from Maryland into the District of Columbia. These receipts falsely reflected that Cannon had purchased another species of fish from Hallock, and they also altered the weight and price of the fish in order to conceal the striped bass purchase. During this time period, Cannon Seafood generated 168 false receipts for more than 62,000 pounds of Maryland striped bass and paid Hallock more than $139,000 for this fish.

Further, Moore, Sr., and other company employees arranged for and purchased striped bass from the Decaturs that had been transported from Virginia into the District of Columbia, and which did not have the required tags. Moore, Jr., regularly saw striped bass that had been purchased from the Decaturs without these tags and knew that Cannon was buying the bass illegally. The majority of untagged fish that Cannon bought from the Decaturs was caught and bought during the prohibited spring striped bass spawning seasons. During this time period, Cannon purchased more than 30,000 pounds of untagged striped bass from the Decaturs and paid more than $87,000 for the fish.

This case was investigated by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Carmelo Oria et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted], AUSA Linda Ricci [redacted] and SAUSA Christopher Jones ([redacted]

On May 6, 2009, Carmelo Oria, a citizen of Spain and a chief engineer for the *M/T Nautilus*, was sentenced to serve one month's incarceration, followed by two years' supervised release. He also was ordered to pay a $3,000 fine. The defendant recently pleaded guilty to an APPS violation for falsifying the oil record book.

Oria, who served as a chief engineer between January and March 2008, was responsible for all engine room operations. During that time, Oria ordered engine room crew members to discharge oil-contaminated bilge waste from the ship's bilges directly into the ocean. When the ship entered the port of Boston on March 22, 2008, the ORB failed to note or disclose those overboard discharges.

Consultores De Navegacion ("Consultores") the owner of the *Nautilus* pleaded guilty on April 6, 2009, to conspiracy, falsification of records, false statements, obstruction, and an APPS violation for failing to maintain an accurate ORB.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. David Blevins, No. 5:08-CR-00107 (S.D.W.V.), SAUSA Perry McDaniel ([redacted]

Hazardous waste drums

On May 4, 2009, David Blevins was sentenced to time served and two years' supervised release. He was further ordered to pay $18,755 in restitution.

Blevins, the former president and owner of Clearfork Coatings, Inc, a commercial painting operation, previously pleaded guilty to a RCRA storage violation. From February 2001 through May 2003, the defendant stored paint waste without a permit at the company's facility in Mullens, West Virginia, some of which was classified as hazardous for ignitability. The defendant's failure to properly treat or dispose of the waste resulted in significant cost to the property owner, Norfolk Southern Railroad, which had to pay for proper removal and disposal of the hazardous waste and other materials left at the site.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the West Virginia Department of Environmental Protection.

Back to Top

United States v. Style Craft Furniture Co., Ltd., et al., No.1:08-CR-00279 (D. N. J.), ECS Senior Trial Attorney Elinor Colbourn [redacted] **and AUSA Seth Kosto** [redacted]

On May 1, 2009, Style Craft Furniture Co., Ltd., ("Style Craft") pleaded guilty to one count of smuggling internationally protected wood and was sentenced to pay a $40,000 fine and will complete a three-year term of probation. In addition, the company must pay for an advertisement in a publication in China and a second one in a publication in the United States, advising other members of the industry of its actions and the consequences. Style Craft, a manufacturer of wooden baby furniture located primarily in China, imported approximately $15 million in declared value of wood furniture in 2004-2005.

On approximately May 23, 2005, the company arranged for a container of baby furniture, including cribs and changing tables, to be shipped from China into the United States at Port Elizabeth, New Jersey. The furniture contained ramin wood. According to the factual statement, the invoice that Style Craft initially submitted to federal authorities when the shipment arrived stated that the wood was Brazilian Marupa and New Zealand Raduata Pine. Neither of these wood species is protected by international or U.S. law.

After the shipment was detained for further examination, the defendant company provided a re-export certificate, issued under CITES, for the shipment. The certificate authorized on May 25, 2005, the re-export of 1.08 cubic meters of ramin from China. Sampling of the shipment indicated that the volume of ramin wood contained in the shipment was approximately 6.121 cubic meters.

Company president Danny Chien, who was similarly charged with a smuggling violation, will participate in a pretrial diversion program. Under his agreement, Chien accepts responsibility for his conduct, agrees to comply with specified conditions for a period of six months and, if he successfully completes the program, the charge against him will be dismissed.

Ramin is a light colored tropical hardwood found in tropical forests in parts of Southeast Asia, including Indonesia and Malaysia. These forests also serve in part as habitat for endangered orangutan. Indonesia has one of the highest rates of deforestation of any country, much of it due to

illegal timber harvest. As a result, the Indonesian government is attempting to combat the illegal harvest of timber, including ramin, in part to protect the remaining orangutan habitat.

This case was investigated by the United States Department of Agriculture Office of the Inspector General.

Back to Top

United States v. ExxonMobil Corporation, No. 1:08-CR-10404 (D. Mass.), ECS Trial Attorney Gary Donner [redacted] AUSA Jonathan Mitchell [redacted] RCEC Andrew Lauterback [redacted] and SAUSA LCDR Russell Bowman.

On April 30, 2009, ExxonMobil Pipeline Company, a wholly-owned subsidiary of ExxonMobil Corporation, was sentenced to pay $6.1 million after previously pleading guilty to a misdemeanor CWA violation stemming from the spill of approximately 15,000 gallons of low sulfur diesel oil into the Mystic River in January 2006.

Low-sulfur diesel oil spill

ExxonMobil's oil terminal located in Everett, Massachusetts, includes an inland "tank farm," which is comprised of a tank loading rack and 29 large-scale oil storage tanks in which oil products were stored. Various above-ground pipes and valves connected those tanks to the terminal's marine transfer area located at the confluence of the Mystic and Island End Rivers. The Island End River flows into the Mystic River, which flows into Boston Harbor. Three berths were available for barges and ships to offload petroleum products that were piped to and stored in the tanks within the tank farm.

On January 9, 2006, the oil tanker *M/V Nara* docked at Berth 3 to unload petroleum products, including approximately 3.1 million gallons of low sulfur diesel ("LSD") oil. Later that morning, hoses running from the *Nara*'s tanks were attached to a product intake manifold on Berth 3. By mid-afternoon, pumps aboard the *Nara* began to pump LSD oil from the vessel through the manifold into a product receipt line that was connected to storage tanks on the tank farm. As it was being pumped from the *Nara*, the LSD flowed past a 10-inch seal valve located on Berth 3, which closed off a product receipt line from Berth 1. As a result of wear and tear, the valve did not close completely and leaked oil into the Berth 1 product receipt line.

ExxonMobil was aware of this defective valve after a contractor pressure-tested the valve in September 2005 and informed ExxonMobil that it leaked. Nevertheless, the company had failed to replace the valve by the time the *Nara* arrived in January 2006. As a result, LSD pumped from the vessel leaked through the defective valve into the Berth 1 product receipt line. At the other end of the line was a pressure relief valve capped by a 3/4-inch coupling, which had not been replaced in more than 30 years and was badly corroded.

As the oil continued to pump, this coupling burst causing it to leak into a line that already contained 2,500 gallons of kerosene which spilled along with 12,700 gallons of diesel oil into the Mystic River over a 24-hour period. A visible blue-green sheen on the river eventually spread up the Island End River and down to Boston Harbor, prompting several reports to the Coast Guard. ExxonMobil personnel did not discover the ruptured coupling and the full containment pan on Berth 1 until approximately 11:00 A.M. on January 11th, when the Coast Guard arrived at the facility to ask questions.

As part of its plea agreement, ExxonMobil has agreed to pay the maximum possible fine of $359,018 (twice the cost of the cleanup of the spill) and the cleanup costs of $179,634. It will also make two community service payments. Specifically, it will pay $1 million to the Massachusetts Environmental Trust to improve water quality in the Mystic River. This payment represents the largest settlement it has received since the Trust was founded. The company also will pay $4,640,982 to the North American Wetlands Conservation Act Fund to be used to restore wetlands in Massachusetts. ExxonMobil further agreed that for the next three years, the Everett facility will be monitored by a court-appointed official and will be subject to a rigorous environmental compliance program.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. John Dean, et al., No. 8:09-CR-00049 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach [redacted] ECS Trial Attorney Jeremy Peterson [redacted] AUSA Stacy Belf ([redacted] ECS Paralegal Stephen Foster [redacted], and former ECS Trial Attorney Madison Sewell.

During the week of April 27, 2009, three additional commercial fisherman were sentenced for illegally harvesting and under-reporting their catch of striped bass, also known as rockfish. The sentencings are part of the on-going prosecution of individuals and wholesalers who have participated in a black market to over-fish and under-report rockfish catch from the Chesapeake Bay and surrounding waterways, which is the largest spawning ground for striped bass on the East Coast.

John Dean was sentenced to serve one month of incarceration followed by five months of home detention. He also will pay a $1,000 fine and was ordered to pay $10,000 in restitution. Dean was responsible for overharvesting approximately $100,267 worth of rockfish.

Thomas Crowder Jr., was sentenced to serve 15 months' incarceration followed by three years of supervised release. He also was ordered to pay a $5,000 fine and $96,250 in restitution. Crowder was responsible for overharvesting approximately $956,200 worth of rockfish.

Charles Quade was sentenced to serve five months' incarceration followed by five months of home detention and three years of supervised release. He also was ordered to pay a $1,000 fine and

$15,000 in restitution. Quade was responsible for overharvesting approximately $151,500 worth of rockfish.

The restitution will be paid into the National Fish and Wildlife Foundation Fund, which has established a Chesapeake Bay Rockfish Restoration Account. The fines paid by the defendants will be paid into the Cooperative Endangered Species Conservation Fund, which is maintained by the United States Fish and Wildlife Service.

Dean, Crowder and Quade each previously pleaded guilty to a felony Lacey Act violation, admitting that from 2003 to 2007 they illegally harvested rockfish with the assistance of a Maryland designated fish check-in station. In each year, they failed to record some of the striped bass that was caught or recorded a lower weight of striped bass than was actually caught. The three commercial fishermen and the check-in station operator would also falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested, and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount.

Charges were filed in April 2009 against the fish wholesaler and its owner who operated the check-in station that assisted Dean, Crowder and Quade in violating the law. Golden Eye Seafood LLC and owner, Robert Lumpkins were charged with conspiracy to violate the Lacey Act and three substantive felony Lacey Act violations.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Gypsy Lawson et al., No. 2:08-CR-00026 (E.D. Wash.), AUSA Stephanie Van Marter [redacted]

On April 27, 2009, three defendants were sentenced for their role in smuggling a rhesus macaque monkey into the United States from Thailand. Gypsy Lawson and her mother Fran Ogren each were sentenced to serve 60 days' incarceration followed by three years' supervised release. They also are jointly and severally liable for $4,507.20 in restitution to be evenly divided between the Centers for Disease Control and the United States Fish and Wildlife Fund.

The two were convicted by a jury last year of two Endangered Species Act violations. Lawson and Ogren traveled from Thailand to Los Angeles International Airport in November 2007 and did not declare to customs officials that they were bringing any animals into this country. During the execution of a search warrant at Ogren's home in January 2008, several pieces of documentation were seized, including photographs and notes confirming how Ogren and Lawson obtained the monkey in Thailand and smuggled it into the United States. The monkey was later found at Lawson's home and taken into quarantine after the execution of a search warrant at her home. During the investigation authorities were quite concerned about the threat of a disease having already been transmitted to humans by the monkey. After it was placed in quarantine, it was confirmed that the monkey did not harbor any harmful viruses.

Among the items seized from Lawson were travel journals detailing the defendants' attempts to acquire a monkey small enough to conceal, as well as photographs of Lawson wearing loose fitting clothes with a bulge around her abdomen. The journals confirm that Lawson and her mother smuggled the monkey into the United States by hiding it under her shirt, pretending she was pregnant in order to get past authorities.

Co-defendant James Pratt previously pleaded guilty to a misdemeanor Lacey Act violation for possession and transportation of prohibited wildlife for his role in the case. He was sentenced to serve a one-year term of probation.

This case was investigated by the United States Fish and Wildlife Service and Immigration and Customs Enforcement with assistance from the Royal Thai Police and Natural Resources and Environmental Crime Suppression Division, which is based in Bangkok, Thailand.

Back to Top

United States v. KIK (Virginia) LLC No. 7:09-CR-00001 (W.D. Va.), ECS Trial Attorney Lana Pettus [redacted] AUSA Jennie Waering [redacted], and SAUSA David Lastra ([redacted]

On April 24, 2009, KIK (Virginia) LLC ("KIK") was sentenced to pay a $75,000 fine plus a $25,000 community service payment to be divided equally between the National Fish and Wildlife Foundation Fund and the National Environmental Education Foundation Fund. The company will also complete a one-year term of probation. KIK previously pleaded guilty to a Clean Water Act misdemeanor violation for negligently discharging bleach into the sanitary sewer system in Salem, Virginia.

The company operated a facility that manufactured bleach and other household products. On September 4, 2003, local authorities discovered elevated concentrations of bleach in the sanitary sewer lines servicing the KIK facility. Investigation revealed that, from approximately November 2001 through September 2003, employees washed spilled and "off-spec" bleach into the plant's floor drains, which led to the City of Salem's POTW. The plant did not have a permit to discharge bleach to the sewer system and it was not monitoring its discharges.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the United States Fish and Wildlife Service and other members of the Blue Ridge Environmental Task Force.

Back to Top

United States v. Kevin Steele, No. 2:08-CR-00376 (W.D. Wash.), AUSA Jim Oesterle [redacted]-[redacted]

On April 24, 2009, Kevin Steele, the operator of Mallard Cove Resources, a seafood brokerage business, was sentenced to serve 30 days' incarceration, followed by three years' supervised release. He also will pay a $60,000 fine and $100,000 in restitution to the National Fish and Wildlife Foundation. Steele previously pleaded guilty to a felony Lacey Act violation for the false labeling of a fish product and to a Lacey Act misdemeanor charge for introducing misbranded food into interstate commerce.

Steele was previously informed by a federal seafood program inspector that fish known as turbot or Greenland halibut could not be labeled or marketed as halibut. Despite that knowledge, between July 2003 and mid-2006, the defendant purchased more than 136,000 pounds of a fish commonly known as Greenland halibut or Greenland turbot from a fish wholesaler in Rhode Island. The fish was labeled as turbot and as a product from China. Steele then had the fish shipped to a cold storage facility where he directed that it be repackaged and relabeled as "Halibut Portions" or "Halibut Pieces," and that it was a "Product of USA."

The defendant sold more than 131,000 pounds of falsely labeled fish to retail stores and restaurants primarily in Utah and Texas.

The plea agreement required that Steele publish quarter-page advertisements in widely-circulated seafood industry magazines in which he describes his criminal conduct and apologizes for his actions.

This case was investigated by the National Oceanic Atmospheric Administration.

Back to Top

United States v. Craig James et al., No. 3:07- CR-05642 (W.D. Wash.), AUSA Jim Oesterle ([redacted]

On April 20, 2009, Craig James was sentenced to serve two years' incarceration followed by three years' supervised release for conspiring to steal and damage old growth western cedar trees in the Olympic National Forest. Some of the trees were nearly 600 years old.

Between November 2006 and February 2007, James and co-defendants Bruce Brown and Floyd Stutesman damaged and removed a variety of trees including 31 old growth western red cedar trees. United States Forest Service officers located the theft site after approximately thirty cords of cedar had been removed and sold to local mills. The defendants provided false documentation indicating the wood had been harvested from private property. A substantial quantity of the wood was considered "music wood," highly valued by manufacturers of musical instruments and found only in older trees. Evaluations indicate that the forest parcel damaged by James and his co-conspirators represents one of the last known stands of old growth western red cedar on the coastal plain in southwest Washington.

Brown was sentenced earlier this year to serve five months' incarceration followed by three years' supervised release. Stutesman was previously sentenced to serve five years' probation with a special condition of four months' home confinement. All three pleaded guilty to conspiracy to commit depredation against Forest Service property. On May 13, 2009, all three defendants were held jointly and severally liable for $336,466 in restitution to be paid to the USDA Forest Service.

This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

Back to Top

United States v. Randall Reis, No. 2:07-CR-00009 (D. Mont.), ECS Trial Attorney Kevin Cassidy [redacted] **and AUSA Kris McLean** [redacted]

On April 15, 2009, Randall Reis was sentenced to complete a two-year term of probation and must perform 300 hours of community service. A fine was not assessed. After a two-day trial in September of last year, Reis was found guilty of two RCRA counts for the illegal storage of hazardous lead waste. Charges against the company were dismissed.

Reis was the 68-year-old CEO of MR3 Systems, Inc. ("MR3"), a chemical manufacturing facility, operating out of Butte, Montana, from 1999 through December of 2001. The facility both used and generated hazardous wastes, including toxic lead filter cake and corrosive liquids. Inspections conducted by the Montana Department of Environmental Quality ("MDEQ") confirmed that hazardous wastes were being illegally stored on site. The facility was closed in 2001 with the wastes left behind.

In June 2002, the owner of portable storage units rented by MR3 repossessed the storage units. He then emptied the contents, which included hazardous waste, onto MR3's parking lot. This prompted MDEQ to respond to an emergency situation in order to contain these wastes. During this process, officials discovered additional hazardous wastes stored at the defendants' facility, including

approximately 5,000 gallons of corrosive and cadmium toxic liquid in approximately ten storage vessels.

This case was investigated by Montana Department of Environmental Quality.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]

Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

July 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted] If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

AT A GLANCE

United States v. Timothy Boisture, 536 F.3d 295 (7th Cir. 2009).

United States v. Fleet Management Limited et al., No. 3:08-CR-00160 (N.D. Calif.).

Districts	Active Cases	*Case Type* / Statutes
W.D. Ark.	United States v. Tyson Foods, Inc.	*Employee Death*/ OSHA
C.D. Calif.	United States v. Edward Wyman United States v. Sony Dong et al.	*Shooting Range Wastes*/ RCRA, Knowing Endangerment *Songbird Smuggling*/ Conspiracy, Smuggling, False Statement
M.D. Fla.	United States v. Jesse Barresse	*Eagle Killing*/ BGEPA
S.D. Fla.	United States v. Carlos Seafood, Inc. United States v. Gregory Wagner United States v. Robert Hammer et al.	*Misbranded Seafood*/ FDA *Bribery*/ Misprision of a Felony *Lobster Harvest*/Conspiracy
M.D. Ga.	United States v. Mark Harrison et al. United States v. James L. Stovall III, et al.	*Shark Fin Purchase*/ Lacey Act *Mislabeled Catfish*/ Lacey Act, Conspiracy
D. Kansas	United States v. ExxonMobile Corporation	*Bird Killings*/ MBTA
D. Md.	United States v. John Evans United States v. Golden Eye Seafood et al.	*Striped Bass Poaching*/ Lacey Act
D. Mass.	United States v. David Place	*Sperm Whale Teeth Trafficking*/ Lacey Act, Conspiracy
E.D. Mich.	United States v. Comprehensive Environmental Solutions, Inc. et al.	Wastewater Treatment Facility/ CWA, False Statement
W.D.N.Y.	United States v. Keith Gordon-Smith	*Asbestos Abatements*/ CAA, False Statements, Obstruction
E.D.N.C.	United States v. Nicholas Slogick, et al.	*Falsified Drinking Water Data*/ False Statement
D. Ore.	United States v. Anna Goyda	*Leopard Skin Import*/ ESA
E.D. Pa.	United States v. Joel Udell	*Hazardous Waste Storage*/ RCRA, Crime Victim Rights Act
W.D. Wash.	United States v. Timothy Allen	*Eagle Nest Take*/ BGEPA

Additional Quick Links

Significant Environmental Decisions

Seventh Circuit

United States v. Timothy Boisture, 536 F.3d 295 (7th Cir. 2009).

On April 20, 2009, the Seventh Circuit upheld a five-year prison sentence imposed on the defendant following his jury conviction for mail fraud. Boisture, a former partner in an environmental clean-up firm, was sentenced to incarceration as well as ordered to pay approximately $500,000 in restitution stemming from his fraudulent actions during a well-closure project.

Boisture's firm was hired by the Indiana Department of Environmental Management in 1999 to close 51 abandoned and leaking oil and injection wells in southern Indiana. Leakage from the wells had contaminated a pond and a tributary of the Ohio River. Boisture was convicted of mail fraud in connection with (1) fraudulent charges of $44,824 for nonexistent equipment and services and (2) for obtaining more than $150,000 in kickbacks from subcontractors, which were disguised as project costs to hide them from Boisture's business partner.

A former Indiana Department of Natural Resources ("DNR") well inspector pleaded guilty to making false statements and bank fraud arising from the same matter, and he testified against Boisture at trial. Boisture appealed his sentence, claiming that the mailings of required pipe plugging forms occurred after the work had been paid for; thus they were in not furtherance of the scheme. The Seventh Circuit held, however, that submitting the forms was necessary for the scheme to avoid detection, which demonstrates the "in furtherance" requirement. The court also held that a mailing is sufficient if it is foreseeable by any of the "schemers." The court held that the mailings in question, between DNR offices in Evansville and Indianapolis, were foreseeable by the DNR inspector.

Back to Top

District Court

United States v. Fleet Management Limited et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] AUSAs Stacey Geis ([redacted] and Jonathan Schmidt [redacted], and SAUSA Christopher Tribolet ([redacted]

On June 29, 2009, the Ninth Circuit summarily denied Fleet Management's ("Fleet") petition for a writ of mandamus and emergency stay, which was filed on June 24th. The district court previously issued an order denying Fleet's effort to plead open (without a plea agreement) to the CWA and MBTA counts of the second superseding indictment after the grand jury had returned a third superseding indictment. The new indictment alleges a loss amount of $20 million from the discharge of oil from the *M/V Cosco Busan*, which crashed into the San Francisco Bay Bridge in November 2007. Fleet had argued that fines were limited to $200,000 for the CWA offense unless a loss amount was alleged in the indictment.

Fleet is scheduled for trial to begin on September 14, 2009.

Back to Top

Informations and Indictments

United States v. Keith Gordon-Smith, No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Craig Gestring [redacted]

On June 18, 2009, Keith Gordon-Smith was charged in a 15-count indictment with violations stemming from his alleged involvement in the illegal removal of asbestos from several sites in the Rochester area and for attempting to hide this activity from authorities. Gordon-Smith is specifically charged with 11 Clean Air Act violations, three 18 U.S.C. §1001 false statement violations, and one obstruction violation.

The indictment states that between June 2006 and August 2008, the defendant directed employees of his asbestos abatement company, Gordon-Smith Contracting, Inc., to remove asbestos from schools and a hospital in the Rochester area without ensuring that the asbestos was kept adequately wet or properly disposed. He is further alleged to have taken several steps to hide the abatements from authorities, by, among other things, failing to provide prior notification to EPA before the asbestos was removed from the schools and the hospital, and by giving false statements to an OSHA inspector.

After the defendant is arraigned, and in accordance with the Crimes Victims Rights Act, public notices will be published in the *Rochester Democrat and Chronicle* to notify potential victims who may have been exposed to asbestos at any of the abatement sites. The notice will include information directing potential victims to a website as well as to a contact phone number established by the U.S. Attorney's Office.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Quality.

Back to Top

United States v. ExxonMobile Corporation, No. 09-CR-10073 (D. Kans.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Matthew Treaster [redacted]

On June 18, 2009, ExxonMobile Corporation was charged in a one-count information with an MBTA violation for the killing of at least seven migratory birds plus three owls after they came into contact with open tanks containing oil at facilities in three separate counties in southwest Kansas.

This case is being investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Edward Wyman, No. 09-CR-00577 (C.D. Calif.), AUSA Joseph Johns [redacted]

On June 16, 2009, Edward Wyman was charged with a RCRA violation, including a knowing endangerment allegation for storing toxic waste solvents, corroded ammunition, and lead-contaminated shooting range wastes in his back yard without a permit. The collection of hazardous wastes was discovered on June 1, 2009, by local firefighters who responded to a report of a fire and explosions at the Wyman residence. The indictment charges Wyman with knowingly placing another person in imminent danger of death or serious bodily injuring by his illegal storage conduct.

This case was investigated by the United States Environmental Protection Agency and the Federal Bureau of Investigation.

Back to Top

United States v. David Place, No. 1:09-CR-10152 (D. Mass.), ECS Senior Trial Attorney Cathy Pisaturo ([redacted]

On May 13, 2009, David Place was charged with crimes related to the illegal importation of and illegal trafficking in sperm whale teeth. The indictment, unsealed at the time of his arrest, charges Place with multiple counts of conspiracy and Lacey Act violations for buying and illegally importing sperm whale teeth into the United States, as well as for selling the teeth after their illegal importation.

From 2001 to 2004, Place is alleged to have knowingly purchased and imported sperm whale teeth into the United States without the required documentation and without declaring this merchandise to customs and wildlife inspectors. Sperm whales are classified as "endangered" under the Endangered Species Act, and are listed on CITES Appendix I.

The indictment further alleges that Place conspired with others located in Ukraine to illegally import the protected whale teeth for re-sale in the United States. The defendant is the owner of Manor House Antiques Cooperative in Nantucket. Sperm whale teeth are commonly used for scrimshaw, often sold for large sums of money to collectors and tourists.

This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement; the Fish and Wildlife Service, Office of Law Enforcement; and Immigration and Customs Enforcement.

Back to Top

United States v. Sony Dong et al., No. 2:09-CR-00439 (C.D. Calif.), AUSA Mark Williams ([redacted]

Hidden birds

On May 5, 2009, Sony Dong was charged with smuggling songbirds into the United States by hiding more than a dozen of them in an elaborate, custom-tailored pair of leggings during a flight from Vietnam to Los Angeles. Dong was arrested at Los Angeles International Airport in March after an inspector spotted bird feathers and droppings on his socks and tail feathers peeking out from under his pants.

Authorities later linked Dong to co-defendant Duc Le, who was arrested and charged after investigators searched his home and found 51 songbirds in an outdoor aviary. Both are charged with conspiracy, false statement and smuggling violations in an eight-count indictment.

Fish and Wildlife inspectors flagged Dong for inspection because he had abandoned a suitcase containing 18 birds at the Los Angeles airport in December of last year. Five of the birds died in transit. Dong went back to Vietnam in February to pick up more birds and returned a month later with three red-whiskered bul-buls, four magpie robins and six shama thrushes under his pants. The birds are now in quarantine and the bul-buls are listed as an injurious species, which means they pose a threat to people, native wildlife or the ecosystem and, additionally, could be avian flu carriers. The songbirds sell for $10 to $30 in Vietnam and are sold to collectors in the United States for about $400.

The defendants are scheduled for trial to begin on October 27, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Pleas

United States v. Carlos Seafood, Inc., et al., No. 1:07-CR-20898 (S.D. Fla.), AUSA Norman O. Hemming III ([redacted]**.**

On June 17, 2009, Carlos Seafood, Inc., pleaded guilty to an FDA misdemeanor violation of introducing misbranded seafood into intrastate commerce. The company was sentenced at the time of plea to pay a $1,000 fine.

In February 2001, Carlos Seafood imported approximately 6,240 pounds of frozen fish filets from Nicaragua of the species *Centropomus undecimalis*, also known as snook. When the boxes entered the United States they were labeled as containing Golden Sea Bass and/or Sea Bass. These are not approved market names for this species.

Carlos Seafood was one of four defendants named in a multi-count indictment filed in November 2007 involving a scheme to falsely label and import snook exported from Nicaragua into this country.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Department of State Diplomatic Security Services, the United States Food and Drug Administration, United States Immigration and Customs Enforcement, and the State of Florida Fish and Wildlife Conservation Commission. Nicaraguan law enforcement authorities and the Nicaraguan Attorney General provided substantial assistance in this case.
Back to Top

United States v. John Evans, No. 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On June 16, 2009, commercial fisherman John Evans pleaded guilty to a felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, Evans, with the assistance of a Maryland-designated fish check-in station employee, falsely recorded the amount of striped bass that he harvested. Within each year, he failed to record some of the striped bass that was caught or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendant allowing him to catch striped bass above his maximum poundage quota amount. The fair market retail value of this fish was $23,400. Sentencing is scheduled for September 2, 2009.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.
Back to Top

United States v. Mark Harrison et al., No. 1:09-CR-00278 (M.D. Ga.), ECS Senior Trial Attorney Elinor Colbourn [redacted] and AUSA Mary Roemer [redacted]

On June 12, 2009, Mark Harrison and Harrison International LLC, pleaded guilty to charges stemming from the illegal purchase and export of shark fins. Harrison and the company both pleaded guilty to one Lacey Act trafficking violation for receiving shark fins that had not been properly reported. Harrison also pleaded guilty to an additional Lacey Act violation for attempting to export shark fins from species that are prohibited from harvest under Florida state law and to a Food and Drug Act violation for introducing food into interstate commerce that had been prepared, packed, or held under unsanitary conditions. Shark fins are used to make shark fin soup which is considered to be an Asian delicacy.

According to the indictment, Harrison described himself as the nation's largest shark fin buyer, purchasing "millions" of shark fins since approximately 1989. In February 2005, Harrison purchased shark fins in Florida from an individual fisherman and later resold them in interstate commerce. No report of the landing or sale of those fins was filed with any Florida authorities, as required by law. Accurate reporting statistics of shark harvests are crucial for managing and regulating the populations of the various shark species that inhabit U.S. waters. In August 2007, Harrison attempted to export a shipment of shark fins through Atlanta that included at least 211 fins from Caribbean sharp-nosed sharks, two fins from bignose sharks, and two fins from night sharks, all of which are protected by Florida and/or federal laws due to their low population levels.

Over an approximately four-year period, Harrison processed the fins by drying them on open air racks and/or tarpaulins laid on the ground of his property. The fins were left out at all times until dry and were exposed to bird droppings and insects, with dogs running freely among the drying racks. Harrison subsequently sold and shipped the dried fins in interstate commerce.

Since 1993, the National Oceanic and Atmospheric Administration ("NOAA") Fisheries Service has managed, through federal fishery management plans, the commercial harvest and sale of sharks in or from federal waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. In 1998, the United Nations' Food and Agriculture Organization finalized and adopted an "International Plan of Action for the Conservation and Management of Sharks," recognizing the worldwide pressure being placed on declining shark populations by commercial fishing and the demand for shark fin soup. In the U.S. management of sharks has included prohibitions against keeping and/or selling particular species, some of which have suffered such a severe population decline that further harvesting cannot be sustained. There are currently 19 federally protected species of sharks.

The defendants are scheduled to be sentenced on August 19, 2009. This case was investigated by the NOAA Office for Law Enforcement, the United States Fish and Wildlife Service Office of Law Enforcement, and the Food and Drug Administration Office of Criminal Investigations.

Back to Top

United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] AUSA Stacy Belf [redacted] AUSA Christen Sproule [redacted] and ECS Paralegal Stephen Foster [redacted]

On June 11, 2009, fish wholesaler Golden Eye Seafood, LLC, ("Golden Eye") and its owner Robert Lumpkin pleaded guilty to Lacey Act violations for their operation of a check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Specifically, Golden Eye pleaded guilty to a Lacey Act conspiracy and two Lacey Act false labeling violations. Lumpkin pleaded guilty to a Lacey Act conspiracy and three Lacey Act false labeling and trafficking violations.

In addition to operating the check-in station, Golden Eye and Lumpkin also purchased from an undercover agent fish that were outside the legal size limit and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than actually were being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

Sentencings

United States v. Comprehensive Environmental Solutions, Inc. et al., Nos. 07-CR-20030 and 20037 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted], AUSA Mark Chutkow [redacted] and SAUSA Dave Mucha [redacted].

On June 22, 2009, Comprehensive Environmental Solutions, Inc. ("CESI"), was sentenced to pay $750,000, which included a $600,000 fine. The remaining $150,000 will be paid as a community service payment to the International Wildlife Reserve Alliance, a Michigan non-profit that works with the United States Fish and Wildlife Service in an effort to restore the environment and wildlife habitat along the Detroit River. The company will complete a five-year term of probation that will include cleanup of the remaining waste at the facility as well as the implementation of an environmental compliance program.

Above ground tanks

CESI pleaded guilty in September 2008 to violating the Clean Water Act and to making false statements in connection with illegal discharges of untreated liquid wastes from its facility. Defendants Bryan Mallindine, Charles Long, and Michael Panyard previously were sentenced in March and April 2009, after being convicted at trial.

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge the resulting pre-treated waste to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the plant's storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. In order to create storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer. Employees also made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

Back to Top

United States v. Gregory Wagner, No. 1:08-CR-20913 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On June 18, 2009, Gregory Wagner was sentenced to complete a five-year term of probation, to include a one-year period of home confinement, and will perform 250 hours of community service. The defendant previously pleaded guilty to misprision of a felony.

Wagner was a career employee of the U.S. Army Corps of Engineers ("Corps"), assigned to the Jacksonville Area Engineer's Office. He was a Construction Representative and Construction

Inspection Technician administering contracts in South Florida awarded by the Corps. His duties involved direct supervision and oversight of Corps projects related to the Comprehensive Everglades Restoration Program ("CERP"), which is the multi-agency effort to restore and revitalize the Everglades.

As part of its participation in the CERP restoration effort, the Corps was involved in the acquisition of lands bordering Everglades National Park for conversion from their present uses, including farmland, into restored wetlands and flow-ways.

In June 2008, Wagner was observed on video tape accepting an $11,000 bribe in exchange for allowing private parties to farm on property acquired by the Corps. The payment represented only a portion of the completed deal, which involved 149 acres of land, for which Wagner was to receive $200 per acre in bribe money, and a percentage of the profit once the crops were harvested.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Department of Defense Criminal Investigative Service, the Department of the Army Criminal Investigation Command, Immigration and Customs Enforcement, the Miami-Dade Police Department Environmental Investigations Unit, and the Army Corps of Engineers, Jacksonville Area Engineer's Office.

Back to Top

United States v. Timothy Allen, No. 3:08-CR-05853 (W.D. Wash.), AUSA Jim Oesterle ([redacted]

Egg shells from fallen nest

On June 16, 2009, Timothy Allen was sentenced to serve two months' incarceration, followed by four months' home detention and one year of supervised release in connection with the taking of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act.

Allen is the owner of Allen's Forestry Services, a timber management company. In early 2004, while preparing a client's property in Clallam County for development, the defendant discovered an eagle nest in a tree, for which he paid a subcontractor $500 to cut the tree down. When later interviewed by law enforcement Allen repeatedly denied any involvement in the tree removal. In fact, immediately after the initial interview, he drove two hours to meet with the logger who had removed the tree, to discuss the story they would tell investigators.

Allen's sentence reflects the fact that, as a forestry consultant, he was well aware of state and federal law requiring special protections for eagle nesting sites. It also reflects the effort he made to remove the tree (and the nest) to avoid imposition of a Bald Eagle Management Plan and the associated use restrictions. State management for bald eagle nests requires a permit for activity occurring within 800 feet of a nest in forest land and within 250 feet of shoreline if also within a half mile of a nest.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Tyson Foods, Inc., No. 4:09-mj-04001 (W.D. Ark.), ECS Assistant Chief Deborah Harris [redacted] AUSA Katrina Spencer [redacted] and ECS Paralegal Stephen Foster [redacted]

On June 12, 2009, Tyson Foods, Inc., was sentenced to pay the maximum fine of $500,000 after pleading guilty earlier this year to a willful OSHA violation, which resulted in the death of an employee.

Tyson operated several plants that recycled poultry products into protein and fats for the animal food industry. As part of the rendering process in four of the plants, the company used high-pressure steam processors called hydrolyzers to convert the poultry feather into feather meal. Decomposition of biological material such as poultry feathers produces hydrogen sulfide gas, an acute-acting toxic substance. Employees at the Tyson facilities often were exposed to the toxic gas when working on or near the hydrolyzers, which required frequent adjustment and replacement.

This case arose out of the death of Jason Kelley, who was exposed to this gas while repairing a leak from a hydrolyzer in October 2003. Kelley was employed at the River Valley Animal Foods plant located in Texarkana, Arkansas. Another employee and two emergency responders were hospitalized due to exposure to the gas during the rescue attempt, and two employees were treated at the scene.

Although well aware of the presence of this deadly gas, Tyson Foods did not take sufficient steps to implement controls or protective equipment to reduce worker exposure to this gas nor did it provide effective training to employees despite an *identical* exposure that resulted in hydrogen sulfide poisoning of a Texarkana employee in March 2002.

This case was investigated by the United States Occupational Safety and Health Administration.

Back to Top

United States v. Robert Hammer et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On June 11, 2009, two additional defendants were sentenced in this case involving a multi-defendant illegal lobster harvesting conspiracy. Robert Hammer was sentenced to serve two months' imprisonment followed by two years' supervised release. Sean Reyngoudt was sentenced to complete a four-year term of probation. On June 1st, Michael Delph was sentenced to serve ten months' imprisonment followed by two years' supervised release. A total of six defendants were either convicted at trial or pleaded guilty to conspiracy to harvest spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary.

Frozen lobster tails

As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendants, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

In July 2008, investigators apprehended the defendants as they traveled on a boat within the Sanctuary, having harvested out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

United States v. Jesse Barresse, No. 8:08-CR-00304 (M.D. Fla.), AUSA Cherie Krigsman ([redacted]

On June 6, 2009, Jesse Barresse was sentenced to serve six months' incarceration and was further ordered to pay $500 in restitution to the North American Wetlands Conservation Account. This fund supports projects that protect or restore wetlands as well as the protection of migratory birds that inhabit wetlands.

Bald eagle carcass

Barresse pleaded guilty to an indictment charging one violation of the Bald and Golden Eagle Protection Act. Barresse admitted to knowingly shooting a bald eagle while he was illegally duck hunting in Ruskin, Florida, on January 13, 2008. He bragged about the killing to several individuals. During a subsequent interview with federal agents, he initially claimed that he thought he had shot an osprey, which is another federally protected species

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Florida Fish and Wildlife Conservation Commission; the United States Marshal's Service; the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives; and the Hillsborough County Sheriff's Department.

Back to Top

United States v. Nicholas Slogick, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley [redacted]

On June 4, 2009, Nicholas Slogick was sentenced to serve three years' probation and will complete 50 hours of community service, stemming from his involvement in falsifying drinking water test data.

Co-defendant Daniel Smith, the public works director for Mocksville, North Carolina, was previously sentenced to serve one year and one day of incarceration and ordered to pay $56,625 in restitution to the Town of Mocksville.

Smith previously pleaded guilty to violating the Safe Drinking Water Act and the Clean Water Act. As the town's public works director, Smith oversaw the town's public drinking water system and was required to submit information about the water's turbidity to the North Carolina Department of Environment and Natural Resources ("DENR"). Smith admitted to knowingly directing employees to

send false data that understated drinking water turbidity. Slogick, the official in charge of the town's POTW, previously pleaded guilty to an 18 U.S.C. §1001 violation for knowingly submitting false data about the turbidity levels of drinking water samples provided to the DENR.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. James L. Stovall, III., et al., No. 1:08-CR-00032 (M.D. Ga.), AUSA K. Alan Dasher

On June 2, 2009, James L. Stovall, III, and Guy S. Stovall were sentenced for their involvement in a scheme to obtain fish imported contrary to state law and to import mislabeled Vietnamese catfish. Both were sentenced to serve 60 days' incarceration followed by 60 days of home confinement as a condition of a five-year term of probation. They also each will pay a $7,500 fine. James Stovall pleaded guilty to two felony Lacey Act false labeling violations based upon his falsely labeling and identifying imported Vietnamese catfish as grouper. Guy Stovall pleaded guilty to a Lacey Act conspiracy. Co-defendants Jeffrey Canon, Robbie Jenkins, James Nations, Jr., Gary Brown, and Eric Woods were sentenced previously.

James and Guy Stovall own and operate Road Runner Seafood, Inc., a retail and wholesale seafood business in Georgia. Brown and Jenkins owned and operated seafood businesses in Florida, and Nations, Cannon, and Woods were engaged in commercial fishing in the Gulf of Mexico. Between April 2004 and August 2006, Road Runner made 106 purchases of fish from Nations, Cannon, Brown, Woods, Jenkins and other sellers. These purchases included fish known to have been taken and sold in violation of Florida laws and regulations. Frequent violations included harvesting and selling fish such as red snapper, grouper and speckled trout during closed seasons, and harvesting and selling fish without the required state licenses. Upon each purchase, Guy Stovall would either fail to submit required records to the state of Florida or would submit false records that listed a different species of fish from the actual species that had been illegally sold.

Road Runner also purchased relatively inexpensive imported catfish fillets commonly known as swai, sutchi or sutchi catfish (the scientific name being *pangasius hypothalmus*). James Stovall falsely invoiced the fillets, however, as a different species of fish, primarily grouper. When a search warrant was executed at Road Runner's business, agents discovered what they suspected to be sutchi catfish for sale in the retail section of the business. The fish was advertised for sale as "imported grouper" and "imported grouper *pengoseous*." Samples of the fish were tested at a laboratory and identified as sutchi catfish (pangasius hypothalamus).

Nations, Cannon and Brown each pleaded guilty to a felony Lacey Act conspiracy violation. Nations was sentenced to serve 90 days' incarceration followed by 90 days of home confinement, and two years' supervised release. He also must pay a $2,000 fine. Cannon and Brown each were sentenced to complete two-year terms of probation; Cannon was further ordered to pay a $1,000 fine and Brown was ordered to pay a $5,000 fine. Woods and Jenkins each pleaded guilty to a misdemeanor Lacey Act violation and were sentenced to pay fines of $650 and $1,000, respectively.

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Fish and Wildlife Commission.

Back to Top

United States v. Joel Udell et al., No. 2:05-CR-00402 (E.D. Pa.), SAUSA Martin Harrell ([redacted]) and AUSA Joseph Minni[redacted]

Abandoned containers

On June 1, 2009, after a contentious four-hour hearing about his ability to pay the outstanding $1.1 million balance due, Joel Udell was ordered to pay $450,000 in overdue restitution within ten days and then begin paying $10,000 a month.

Udell and two defunct companies he controlled, Pyramid Chemical Sales Co. and Nittany Warehouse LP, were sentenced in February 2006 to pay approximately $1.8 million in restitution and $200,000 in fines in connection with the mishandling of hazardous wastes in Pottstown, Pa., and in Rotterdam, the Netherlands, between 1998 and 2000. The defendants pleaded guilty to storing hazardous waste without a permit in Pottstown from May 1998 to early 2001, exporting hazardous waste outside the United States without consent of the receiving country on various dates in 2000, and transporting hazardous waste without manifests to unpermitted facilities in 2000.

This case developed out of the defendant's operation of a surplus chemical brokerage business in Pennsylvania. Beginning in May, 1998, Pottstown authorities attempted to get Udell to repair the Nittany Warehouse and to improve the storage of thousands of containers of chemicals, including flammable, corrosive and toxic material stored in deteriorated or broken drums and buckets. Pottstown ultimately sued Udell and Nittany Warehouse in state court in 1999, obtained a state court order in April, 2000, and EPA forced the defendants to perform a Superfund clean-up from July of 2000 to early 2001. During that period, the defendants shipped 29 forty-foot containers of aging chemicals to Rotterdam. The containers stayed at the port for three years when the Dutch refused to permit them to be reshipped because of their poor condition, and the defendants refused to have them repackaged and returned to the United States. Udell also ignored an EPA RCRA administrative order issued in 2003 directing him to return the chemicals to the U.S. The restitution imposed as part of the sentences covers the port operator's costs for storing the chemicals for three years, the Dutch government's costs in incinerating almost 300 tons of chemicals at the end of 2003, and EPA's costs in overseeing the warehouse clean up in Pottstown.

Udell paid $350,000 shortly after sentencing, and another $250,000 in April, 2007. He failed to make his 2008 payment in March, informing the court he could not afford to do so. He had been paying $5,000 monthly since then, pending a financial investigation, for a total outlay of $655,000. Udell, an accountant and a former attorney, testified on his own behalf asking the court to change the amount of restitution that he still owes (which the court has no authority to do), and then asked the court to change the payment schedule based on a material change in his financial condition from the economic downturn.

Pursuant to the Crime Victims' Rights Act, additional testimony was heard from representatives of the Kingdom of the Netherlands (the victim owed the most money) and the company that operates the port of Rotterdam, one of the largest ports in the world. They urged the court to ensure payment of the full restitution amount in a timely manner.

The judge urged the parties to work to reach an agreement, but that failed. The court then rejected Udell's claim that his major asset, a profit-sharing plan he had failed to disclose in 2005 during his sentencing investigation, should not be liquidated in part. While the value of the stock investments in the plan has dropped substantially to around $950,000, the judge found it was proper to force Udell to make catch up payments. He acknowledged the reduced assets, decreasing the post-hearing annual payments from $250,000 to $120,000, but required that they be paid monthly. Udell also will pay taxes on money withdrawn from this asset.

After Udell's attorney protested the court's ruling, the judge stated that the agreement Udell made in 2006 to pay restitution also kept him out of prison and that he had to pay what he agreed to pay. The Dutch representatives were satisfied with the result. This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, with assistance from EPA's National Enforcement Investigations Center, the Netherlands Ministry of the Environment, and the Borough of Pottstown. Assistance was also provided by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement.

Back to Top

United States v. Anna Goyda, No. 08-CR-00364 (D. Ore.), AUSA Stacie Beckerman [redacted]

On May 11, 2009, Anna Goyda was sentenced to complete a two-year term of probation and must perform 250 hours of community service for illegally importing three leopard skins from Africa. Goyda was further ordered to contribute $500 to a fund administered by the Oregon Zoo to support projects that help endangered and threatened species. She previously pleaded guilty to a misdemeanor violation of the Endangered Species Act.

The case came to light in May 2007, when a package containing three pelts was addressed to Goyda from the Democratic Republic of Congo. The shipping label listed the contents as works of art. The package, however, was mistakenly delivered to the Heineken Brewery in The Netherlands. Upon opening the package, brewery employees contacted U.S. authorities. The package containing Heineken bottle caps was delivered to the defendant's Goyda's apartment. When the shipping company received a complaint, federal investigators began investigating Goyda.

In July 2007, Fish and Wildlife Service agents posed as delivery drivers and brought the skins to Goyda's apartment, where her sister accepted them. Goyda, a Ukrainian national, was arrested shortly afterward and admitted she had arranged delivery of the pelts.

This case was investigated by the United States Fish and Wildlife Service and Immigration and Customs Enforcement.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTALCRIMES SECTION

MONTHLY BULLETIN

August 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

* * * * * * * * * * * * *

AT A GLANCE

- **Coeur Alaska, Inc. v. Southeast Alaska Conservation Council, 129 S. Ct. 2458 (2009).**
- **Friends of the Everglades v. South Florida Water Management District, ___ F.3d ___, 2009 WL 1545551 (11th Cir. June 4, 2009).**
- **United States v. Bailey, ___ F.3d ___, 2009 WL 1955608 (8th Cir. July 9, 2009).**
- **United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.).**
- **Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527 (2009).**

Districts	Active Cases	*Case Type* / Statutes
N.D. Calif.	United States v. Mark Guinn United States v. John Joseph Cota	*Dredging Projects*/CWA *Vessel*/ MBTA, OPA
S.D. Fla.	United States v. Larkin Baggett United States v. David Dreifort et al.	*Fugitive*/ Weapons Charges *Lobster Harvest*/ Smuggling Conspiracy
N.D. Ga.	United States v. Qi Gui Nie	*Endangered Fish Import*/ Smuggling
N.D. Ind.	United States v. Herbert Corn	*Municipal Employee*/ CWA
D. Kan.	United States v. MagnaGro International, Inc. et al.	*Fertilizer Manufacturer*/ CWA Misdemeanor
E.D. La.	United States v. Georgios Stamou United States v. Panagiotis Lekkas et al.	*Vessel*/ APPS, False Statement *Vessel*/ APPS, Obstruction, Ports and Waterways Safety Act, Non-indigenous Aquatic Nuisance and Prevention Control Act
W.D. La.	United States v. J. Jeffrey Pruett et al.	*Water Treatment Facilities*/ CWA
D. Md.	United States v. Joseph Peter Nelson Jr. et al. United States v. Kenneth Dent	*Striped Bass Poaching*/ Lacey Act
D. Mass.	United States v. Consultores De Navegacion et al.	*Vessel*/ APPS, False Statement, Obstruction, Falsification of Records, Conspiracy
E.D. Mo.	United States v. American Rivers Transportation Company, et al.	*River Terminal Operator*/ CWA, False Statement

Districts	Active Cases	*Case Type* / Statutes
D.N.J.	**United States v. Panagiotis Stamatakis et al.**	***Vessel*/ APPS**
E.D. Tenn.	**United States v. Kenneth Nelson**	***Improper Pesticide Use*/ MBTA, FIFRA**
D. Ore.	**United States v. Durbin Hartel**	***Waste Recycler*/ CWA Misdemeanor**
D.Utah	**United States v. Larkin Baggett**	***Chemical Distributor*/ CWA, RCRA**
D. Wyo.	**United States v. PacifiCorp**	***Power Company*/ MBTA**

Additional Quick Links

Significant Environmental Decisions

Supreme Court

Coeur Alaska, Inc. v. Southeast Alaska Conservation Council, 129 S. Ct. 2458 (2009).

Coeur Alaska, Inc., planned to reopen the Kensington Gold Mine in Alaska using a technique known as "froth flotation", under which it would churn the mine's crushed rock in tanks of frothing water. Chemicals in the water would cause gold-bearing materials to float to the surface, where they would be skimmed off. Coeur Alaska would dispose of a slurry mixture of rock and water (30% crushed rock "tailings") left in the tanks. Rather than pumping the tailings into a pond for separation, Coeur Alaska proposed to pump 4.5 million tons of them over the life of the mine into a small 50-foot deep nearby lake (a navigable water), thereby raising the lake bed to the current surface level of the lake and almost tripling the area of the lake (which would be contained by construction of a large dam at the downstream shore). The lake water would be treated by reverse osmosis purification systems and would flow from the lake into a stream.

Coeur Alaska applied to the Army Corps of Engineers for a permit under Section 404 of the Clean Water Act. The Corps applied guidelines established by the U.S. EPA to evaluate the environmental consequences of the project and concluded that using the lake was the "least environmentally damaging" method of disposal of the tailings, and that the damage would be "temporary". The Corps issued the permit, under which Coeur Alaska would be required to treat water flowing from the lake to downstream waters by purification systems, and would then be required to help "reclaim" the lake after completion of mining operations by capping the tailings. The EPA had statutory authority to veto the Corps permit, but declined to do so. It did issue a second permit, under Section 402 of the CWA applying "new source performance standards" promulgated under Section 306(b) that strictly limit discharges from froth-floatation gold mines. Under that permit, Coeur Alaska was authorized to discharge treated water, subject to water-quality limits, downstream from the lake.

A group of environmental organizations (collectively known as "SEACC") filed suit challenging the Corps permit. SEACC claimed that, rather than obtaining a Section 404 permit from the Corps for the discharge of the slurry tailings into the lake, Coeur Alaska should have been required to obtain a Section 402 permit from EPA for those discharges, just as it had for the subsequent downstream discharges from the lake. It also contended that, whichever agency issued that permit, the

tailings discharges into the lake were unlawful because they violated the Section 306(b) new performance standards for froth-floatation gold mines.

Coeur Alaska and the State of Alaska intervened as defendants in the action. The district court granted summary judgment to the defendants, but the Ninth Circuit reversed and ordered the district court to vacate the Corps permit, finding that EPA's new source performance standards applied the discharges from the froth-floatation mill. The U.S. Supreme Court subsequently granted certiorari.

Held: The Supreme Court (in a 6-3 decision) reversed the judgment of the Ninth Circuit and remanded the matter for further proceedings. The Court held that under the CWA, the Corps, not the EPA, had permitting authority under Section 404 for discharges of "fill material." EPA is limited to promulgation of guidelines for the Corps to follow in exercising its permitting function and to the power to veto such permits. EPA's regulations confirm this division of responsibility. Here, the slurry meets the definition of "fill material", and the Court found that even material subject to EPA's new source performance standards was encompassed within this interpretation. Under EPA regulations and pursuant to an interpretive memorandum issued by an appropriate EPA official, discharges of dredged and fill material regulated under Section 404 do not require Section 402 permits, and thus EPA effluent limitations applicable to Section 402 permits (such as new source performance standards) do not apply. Furthermore, EPA has not attempted to apply performance standards to discharges of mining wastes that qualify as fill material. Thus, the Corps is not required to follow or take into account such limitations.

Back to Top

Eleventh Circuit

Friends of the Everglades v. South Florida Water Management District, ___ F.3d ___, 2009 WL 1545551 (11th Cir. June 4, 2009).

After failed attempts to control flooding during rainy seasons along the south shoreline of Lake Okeechobee, Congress authorized a project under which the Army Corps of Engineers expanded an existing dike and built pump stations, creating a complex system of gates, dikes, canals and pump stations to control water flow. South of the shoreline, the Corps dug canals to collect rainwater and runoff from sugar fields and surrounding industrial and residential areas. The canals connect to the lake, containing a "loathsome concoction" of chemical contaminants with a low oxygen content. Three pump stations operated by the defendants pump water from the canals up into the higher lake water; the pumps do not add anything to the water, simply move it through a piping system.

In 2002, two plaintiff environmental organizations brought a citizen suit under the Clean Water Act against the South Florida Water Management District and its executive director, seeking an injunction to force it to get an NPDES permit before pumping polluted canal water into the lake. The Miccosukee Tribe joined with the plaintiffs' side and the U.S. EPA, the Corps and U.S. Sugar Corp joined with the defendants. The district court granted summary judgment to the plaintiffs, and the Eleventh Circuit affirmed. However, the U.S. Supreme Court subsequently vacated the judgment of the Eleventh Circuit and remanded the matter for further proceedings. South Florida Water Management District v. Miccosukee Tribe of Indians, 541 U.S. 95 (2004), vacating and remanding 280 F.3d 1364 (11th Cir. 2002). The Court held nevertheless that the definition of the "discharge of a pollutant" contained in the CWA includes point sources that do not themselves generate pollutants. "[A] point source need not be the original source of the pollutant; it need only convey the pollutant to

'navigable waters' . . . ." The canal and pumping stations constituted a "discrete conveyance" that met the statutory definition of such a point source.

The Court, however, declined to rule upon an argument (raised in an *amicus* brief filed by the federal government) that an NPDES permit is not required when water from one navigable body is discharged, unaltered, into another navigable water body. While questioning this "unitary waters" approach, the Court nevertheless left that issue to be resolved upon remand. Similarly, the Court declined to rule upon the Water District's argument that the canal and a wetland impoundment area actually were not distinct water bodies but rather two hydrologically indistinguishable parts of a single water body.

In 2006, after a two-month bench trial, the district court held that operating the three pump stations without an NPDES permit violated the CWA, and itordered the executive director of the Water District to apply for a permit. See 559 F.3d 1191 (11th Cir. 2009).

Held: On further appeal, the Eleventh Circuit *inter alia* reversed the judgment of the district court that operation of the pumps without NPDES permits violated the Clean Water Act. The court found it "undisputed" that the agricultural and industrial runoff in the canals contained "pollutants", that the lake and the canals were "navigable waters", and that the pump stations were "point sources". The district court had found as a matter of fact, and the Eleventh Circuit agreed, that the canals and the lake were "meaningfully distinct" water bodies to which the NPDES requirement applied. The district court went on to hold that moving the pollutants from one navigable body of water to another (while adding nothing to the water) constituted an "addition" to navigable waters. However, USEPA subsequently had adopted a regulation that (contrary to the holdings in Catskill Mountains and Northern Plains Research Council) accepted the "unitary waters" theory that transferring pollutants between navigable waters did not constitute an "addition to navigable waters". 73 Fed. Reg. 33,697 (June 13, 2008).

After distinguishing decisions of other courts (including Catskill Mountains) and its own earlier decision in this case, the Eleventh Circuit found that the statutory language was ambiguous as to whether "navigable waters" referred to waters "in the individual sense" or "as one unitary whole", and that the context in which the language was used (either in isolation or in context with other provisions of the CWA or even within the broad context of the Act taken as a whole) was not helpful in resolving that ambiguity. The court concluded that the EPA regulation provided a reasonable interpretation of the ambiguous statute and a reasonable construction of one of two possible readings of the provision at issue.

Back to Top

Eighth Circuit

United States v. Bailey, ___ F.3d ___, 2009 WL 1955608 (8th Cir. July 9, 2009).

The defendant owned a 13-acre parcel of land along the shore of a lake in Minnesota that contained approximately 12 acres of wetlands. He unsuccessfully attempted to develop the site by excavation of a harbor, abandoning the project after being advised by the Army Corps of Engineers that the site contained wetlands. He then decided to plat the site for residential development and later sale, and it hired a contractor to build a road through the site to provide access without seeking permits from the Corps. Upon instruction that he cease work on the road, defendant did so. He later, however, had the contractor complete the road. The Corps notified the defendant that the work had been done in violation of the Clean Water Act and denied his after-the fact permit application, and

subsequently ordered him to take specific actions to restore the property. The defendant refused and the government brought an enforcement action Finding that the road had been built on wetlands adjacent to the lake (a navigable-in-fact water), the district court granted summary judgment to the government and ordered defendant to submit a proposed restoration plan. After an unsuccessful appeal to the Eighth Circuit, the district court eventually ordered the defendant to restore the site at his own expense in accordance with the Corps' previous restoration order, and he again appealed.

Held: The Eighth Circuit affirmed the judgments of the district court. The gravel and fill placed on the site to build the road are pollutants discharged from a point source. After analyzing the fractured opinions in Rapanos and their application by various Courts of Appeal in subsequent cases, the court concluded that "the Corps has jurisdiction over wetlands that satisfy either the plurality or Justice Kennedy's test" in Rapanos. Examining in detail the methodology employed by the Corps in evaluating the defendant's site, it then found that the Corps had properly applied the criteria from its 1987 Wetlands Delineation Manual and its interpretive guidance in determining that portions of the site consisted of wetlands hydrology. Finally, the court found no abuse of discretion in the district court's order enjoining the defendant to comply with the restoration order, rejecting his argument that the order had been arbitrary and capricious.

Back to Top

District Courts

United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.).

On July 23, 2009, the district court issued an order denying Southern Union Company's motions for judgment of acquittal and for new trial. The company was convicted by a jury on one RCRA storage violation for the illegal storage of waste mercury.

In its motion for judgment of acquittal, the defendant claimed the court erred by allowing the United States to enforce Rhode Island's regulation of small quantity generators of hazardous waste. While the federal hazardous waste regulatory scheme under RCRA conditionally exempts small quantity generators of hazardous waste from certain permit requirements, Rhode Island's authorized RCRA program did not provide for such an exemption. The corporate defendant was convicted for storing hazardous mercury waste without a permit. The defendant argued that because the state's program did not recognize the federal exemption for small quantity generators it brought many more hazardous waste generators within the regulatory scheme and was therefore broader in scope than the federal program. Accordingly, the defendant argued, the regulation could not be enforced in federal court.

The district court held that Rhode Island's decision not to conditionally exempt small quantity generators from permit requirements made the state's program more stringent than the federal program, not broader in scope. More stringent state regulations may be enforced federally. In reaching its conclusion, the court first noted that there was a question as to whether the court had jurisdiction to consider the argument. RCRA explicitly provides that challenges to state program authorizations must be brought in the Circuit Court of Appeals and that EPA's authorization decisions "shall not be subject to judicial review in civil or criminal proceedings for enforcement." However, the court then went on to address the defendant's claim on the merits, and it found that the EPA had expressly addressed this issue in its final rulemaking that authorized the portion of the state RCRA

program that dealt with small quantity generators. In its final rulemaking, EPA determined that Rhode Island's regulation was more stringent. Although the court noted some inconsistency in the way EPA treated other state programs with respect to the small quantity generator exemption, it concluded that such inconsistency did not rise to the level of arbitrariness on EPA's part so as to require invalidation of EPA's authorization of Rhode Island's regulatory scheme. The district court also was not persuaded by arguably inconsistent EPA informal guidance on the issue. Although the court criticized EPA for failing to formally retract such guidance documents and thus adding to the confusion, it concluded that EPA's final rulemaking in the Federal Register that explicitly determined Rhode Island's program was more stringent deserved more deference than EPA's informal guidance on the issue.

Back to Top

Other Significant Decisions

Supreme Court

Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527 (2009).

Boston police officers conducted surveillance and detained a person who had exited a vehicle. Upon searching him, they found plastic bags containing a substance resembling cocaine. They then arrested the defendant and a third person in the car. The three then were driven in a police cruiser to a nearby police station. A subsequent search of the cruiser revealed additional plastic bags hidden between the front and back seats. All of the evidence was submitted to a state laboratory for analysis.

The defendant was charged in state court with distribution of cocaine and with trafficking in cocaine. At trial, the government placed in evidence the bags seized in the searches together with "certificates of analysis" showing results from forensic analyses, which stated that "[t]he substance was found to contain cocaine". The certificates were sworn to before a notary by analysts at the laboratory, as required under Massachusetts law. The defendant objected to the admission of the certificates, claiming that the Confrontation Clause of the U.S. Constitution required the analysts to testify in person. The trial court overruled that objection and the certificates were admitted (under state law) as "prima facie evidence of the composition, quality and the net weight of the narcotic . . . analyzed".

The defendant was convicted by a jury and an intermediate state appellate court, rejecting his Crawford claim under state law precedents, affirmed the conviction. The Massachusetts Supreme Judicial Court denied review and the U.S. Supreme Court subsequently granted certiorari.

Held: The Supreme Court (in a 5-4 decision) reversed the judgment of the state intermediate appellate court and remanded for further proceedings. Under Crawford, the Confrontation Clause of the Sixth Amendment guarantees a defendant's right to confront those who "bear testimony" against him. A witness's testimony against him (which includes affidavits) thus is inadmissible unless the witness either (1) appears at trial or (2) if the witness is unavailable, the defendant had a prior opportunity for cross-examination. The Court found that the certificates of analysis here were affidavits, which were functionally identical to live, in-court testimony. Furthermore, the analysts were "witnesses" under the Confrontation Clause.

The Court rejected the defendant's argument that the analysts were not "accusatory" witnesses in that they did not directly accuse him of wrongdoing. It found that the analysts provided testimony against the defendant (proving that the possessed substance was cocaine) and thus he had a right to confront them at trial. The Court also rejected the argument that the analysts were not "conventional" or "ordinary" witnesses within the historical context of the Confrontation Clause or because they had neither observed the crime or "any human action related to it". It also rejected the position that their statements had been "voluntary" because they had not been "provided in response to interrogation".

The Court further refused to distinguish the "testimony" here as the "result of neutral, scientific testing". Confrontation is the constitutionally prescribed means for assuring both the accuracy of forensic analysis and the proper training, methodology and judgment of the analyst, as much as for any other forms of testimony. The Court also rejected the defendant's argument that the affidavits were "traditional official or business records", since here the "regularly conducted business activity" was the production of evidence for use at trial. It distinguished "clerk's certificates" affixed to official records, since such certificates merely authenticated an otherwise admissible record rather than creating a record for the sole purpose of providing evidence against a defendant. The Court further noted that business or public records are generally admissible absent confrontation, not because of an exception to the hearsay rule but because they are not "testimonial", having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial. Finally, the Court observed that the defendant's power to subpoena the analysts was irrelevant, since the Confrontation Clause imposes the burden on the prosecution (not the defense) to present its witnesses.

NOTE: Justice Thomas filed a concurring opinion reiterating his position that he would apply the Confrontation Clause to extrajudicial statements contained only in "formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions". The four dissenting Justices asserted that the majority had "swep[t] away an accepted rule governing the admission of scientific evidence", failing to recognize the difference between laboratory analysts who perform scientific tests and "other, more conventional witnesses". They set forth a litany of substantive and procedural difficulties and burdens that they anticipated would or might be created for the criminal justice system under the majority opinion, especially when a particular laboratory technician cannot or does not appear on a specified date at trial.

Back to Top

Informations and Indictments

United States v. Mark Guinn, No. 09-CR-00414 (N.D. Calif.), AUSAs Stacey Geis [redacted] and Tina Hua ([redacted]

On July 8, 2009, Mark Guinn, the general manager of the Northern California operations of Brusco Tug & Barge Incorporated ("Brusco"), was charged with four Clean Water Act violations.

The indictment alleges that, between 2003 and 2007, Guinn discharged and caused other Brusco employees to discharge dredged material without a permit from barges directly into waters surrounding Winter Island.

As part of its operations, Brusco towed and disposed of dredged material generated during various dredging projects. Many of the projects Guinn oversaw involved the transportation and disposal of dredged material by barge onto Winter Island where it was intended for use in levee rehabilitation and maintenance.

Winter Island, a privately owned 453-acre property located on the western edge of the Sacramento-San Joaquin River Delta in Contra Costa County, is managed as a freshwater wetland habitat and duck hunting club. The island is one of the few places in the Bay Area with an identified beneficial use for dredged material and it accepted certain limited types of material pursuant to a permit. The discharge of dredge materials to surface waters or drainage courses surrounding Winter Island is prohibited. At no time did Brusco or Guinn have a permit to discharge this material into these waters.

This case is being investigated by the United States Coast Guard Criminal Investigative Service and the United States Environmental Protection Agency Criminal Investigative Division.

Back to Top

United States v. J. Jeffrey Pruett et al., No. 09-CR-00112 (W.D. La.), AUSA Earl Campbell ([redacted]

On June 4, 2009, a 17-count indictment was unsealed charging an executive and his public water and wastewater treatment businesses with CWA violations for improperly operating and maintaining the treatment facilities and for failing to submit discharge monitoring reports. J. Jeffrey Pruett and his companies, Louisiana Land & Water Co., ("LLWC") and LWC Management Co., allegedly failed to properly operate water and wastewater treatment facilities for seven residential subdivisions in Ouachita Parish from approximately 2004 through 2008.

Pruett is president of LLWC and chief executive of LWC Management Co. The businesses operate more than 30 water and wastewater treatment systems in northeastern Louisiana. The defendants allegedly allowed the wastewater treatment facilities to overflow in several residential subdivisions, discharging effluent on the ground without proper treatment; allowed suspended solids and fecal coliform to exceed effluent limitations in state discharge permits; and discharged raw sewage into several residential neighborhoods.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality and the Louisiana Department of Health and Hospitals.

Back to Top

Pleas

United States v. Georgios Stamou, No. 2:09-CR-00186 (E.D. La.), ECS Trial Attorney Christopher Hale [redacted] **and AUSA Dee Taylor** [redacted].

On July 30, 2009, Georgios Stamou, a Greek citizen and the chief engineer of the bulk cargo ship *M/V Theotokos,* pleaded guilty to an APPS violation and an 18 U.S.C. § 1001 false statement violation. The vessel is owned by Liberia-based Mirage Navigation Corporation and is managed by Polembros Shipping Limited. Stamou is the third crewmember from the ship to plead guilty to crimes related to the discharge of oily wastes while on the high seas. Captain Panagiotis Lekkas and the second ranking officer, Charles Posas, both pleaded guilty to multiple felony counts on July 15, 2009. *[See U.S. v. Lekkas below.]*

As chief engineer, Stamou was in charge of the engineering department and had been made aware that the oily water separator ("OWS") had stopped working. During a voyage from Korea to Panama, the defendant spoke with a company representative and notified him that there was a problem

with the OWS. He then directed crew members to discharge bilge wastes knowing that it would necessarily be discharged directly overboard through the bilge line or sewage discharge valve. None of these discharges were noted in the oil record book, which was presented to Coast Guard inspectors on October 1, 2008.

Stamou is scheduled to be sentenced on November 5, 2009. This case was investigated by the United States Coast Guard.

Back to Top

United States v. Qi Gui Nie, No. 1:09-CR-00218 (N.D. Ga.), AUSA Mary Roemer [redacted]

On July 28, 2009, Qi Gui Nie pleaded guilty to a smuggling violation stemming from importing endangered and prohibited wildlife into the United States through the port of Atlanta.

In October 2008, Nie, doing business as Lucky Fin, Inc., a North Carolina-based wildlife importer, attempted to smuggle ten live endangered Asian Bonytongue fish into the United States from Vietnam. During an inspection of Nie's shipments, false bottoms were discovered hidden in boxes containing legally-imported fish and coral. The smuggled fish were found in the hidden compartments. The Asian Bonytongue fish, which is commonly referred to as the Asian Arowana fish, are highly sought after by the Asian community due to the belief that the fish will bring good fortune and protection to the owner. Asian Arowana fish are protected under the Endangered Species Act through CITES.

Sentencing is scheduled for October 7, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Joseph Peter Nelson Jr., et al., No.8:08-CR-00482 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] ECS Trial Attorney Jeremy Peterson ([redacted] and AUSAs Stacy Belf [redacted] and Christen Sproule ([redacted].

On July 27, 2009, a father and son pleaded guilty to illegally over-fishing striped bass, also known as rockfish, from 2003 through 2006. Joseph Peter Nelson, Jr., a commercial fisherman licensed in Maryland, pleaded guilty to four felony violations of the Lacey Act for participating in a scheme to illegally over harvest and under report the amount of rockfish he took from the Potomac River. His father, Joseph Peter Nelson, Sr., also pleaded guilty to one felony violation of the Lacey Act for assisting in transporting the illegally taken rockfish in interstate commerce.

From 2003 to 2006, Nelson Jr., with the assistance of his father and a Maryland designated check-in station named Golden Eye Seafood, operated by Robert Lumpkin, inflated the number of fish recorded and under reported the weight. By inflating the number of fish caught and under reporting the weight, the records made it appear that Nelson Jr. had not reached the poundage quota for the year. He then requested more tags from the state of Maryland in order to catch more fish above his quota which were never reported by Golden Eye Seafood and were then transported to other states for sale.

In addition, Nelson Jr. admitted to catching rockfish that were below the legal size limit in Maryland, and to using tags that falsely noted the method of catch. The tags indicated that he had caught the fish using a hook and line when in fact they were caught using a net. Nelson Jr. admitted that he used a knife to simulate hook marks on the fish in order to avoid detection. On eight different occasions Nelson Jr. with the assistance of his father sold more than 2,500 pounds of illegally harvested and tagged fish each time to an undercover agent posing as an out-of-state fish buyer. Nelson Jr. also admitted that he falsely and selectively tagged the rockfish in order to conceal where the fish had been caught in order to illegally maximize his catch.

The total amount of rockfish over harvested by Nelson Jr. was approximately 14,500 pounds, in addition to the rockfish that was falsely tagged. The total market value of both the Nelson's over-harvest of rockfish was in excess of $72,000.

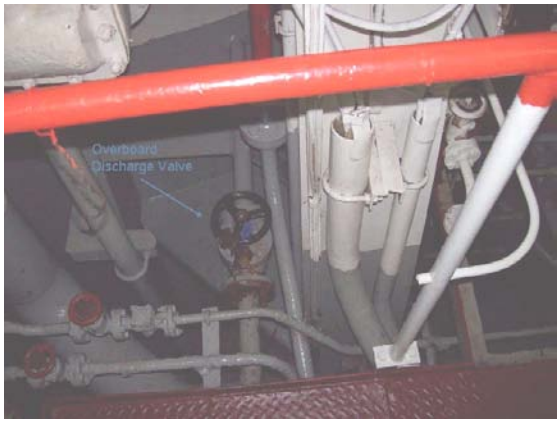
Golden Eye Seafood and its owner, Robert Lumpkin, pleaded guilty last month to conspiracy to violate the Lacey Act and to substantive Lacey Act violations. A total of 14 individuals and two corporations have been convicted in Maryland, Virginia and Washington, D.C., as a result of this investigation.

Sentencing for both Nelsons is scheduled for October 22, 2009, and Lumpkin and Golden Eye are to be sentenced on September 22 and 23, 2009.

Back to Top

United States v. Panagiotis Stamatakis et al., No. 2:09-CR-00130 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] AUSA Kathleen O'Leary [redacted], and SAUSA Christopher Mooradian.

On July 16, 2009, Greek citizens Panagiotis Stamatakis, the chief engineer for the *M/V Myron N*, an oceangoing bulk carrier vessel, and the ship's second engineer Dimitrios Papadakis pleaded guilty to using falsified records that concealed improper discharges of untreated bilge waste.



Overboard discharge valve

The government's investigation began in September 2008, when Coast Guard inspectors examined the ship following its arrival into New York and subsequently into the Port of Newark, New Jersey. The *Myron N* was operated and managed by Dalnave Navigation Inc., which is incorporated in the Republic of Liberia. The inspections uncovered evidence that crewmembers had improperly handled and disposed of the ship's oil-contaminated bilge waste and falsified entries in the ship's oil record book ("ORB").

Stamatakis served as the vessel's chief engineer between November 2007 and September 2008 and was responsible for all engine room operations. Papadakis served as a third engineer between November 2007 and August 2008 and as second engineer from August 2008 to September 2008. Between November 2007 and September 2008, under the supervision of Stamatakis, Papadakis ordered engine room crew members to discharge oil-contaminated bilge wastes from the ship's bilge holding tank directly into the ocean. When the ORB was presented to inspectors in Newark, both defendants had neglected to record these overboard discharges.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Panagiotis Lekkas et al., Nos. 2:09-CR-00182, 185 (E.D. La.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Dee Taylor [redacted].

On July 15, 2009, Panagiotis Lekkas, a Greek citizen and the captain of the bulk cargo ship *M/V Theotokos*, pleaded guilty to a four-count information charging one APPS violation, one count of obstruction of justice, and two counts of violating the Ports and Waterways Safety Act. In a related case, the ship's chief officer and Philippine citizen Charles Posas pleaded guilty to one false statement offense and one count of violating the Non-indigenous Aquatic Nuisance and Prevention Control Act, 16 U.S.C. § 4711, a law designed to mitigate the introduction of marine invasive species into waters of the United States. Posas is the first individual ever charged under the anti-invasive species law.

Investigation revealed problems with the operation and condition of the ship, specifically the discovery of a breach in the outer skin of the vessel located on the rudder stem and fuel oil leaks into the forepeak ballast tank. As captain and chief officer, the defendants monitored the ship's ballast water system and directed the crew to take soundings of the ballast tanks to determine the volume of liquid in particular tanks.

In the summer of 2008, during a passage from the Suez Canal to China, Lekkas and Posas suspected that the aftpeak ballast tank was leaking, but the crew was unable to confirm a leak during an inspection. While offloading cargo in China, the defendants observed an approximately 24-inch crack in the ship's rudder stem. It was evident that water had passed through the crack because water was streaming out from inside of the ship. Lekkas reported the crack to company personnel, but failed to write a written report. He also did not report it to the Coast Guard until confronted by inspectors in New Orleans, at which point they ordered that the crack be repaired.

After the defendants discovered that fuel oil had been leaking into the forepeak ballast tank in September 2008, Lekkas ordered the crew to clean out the ballast tank. They proceeded to pump the oily liquid directly overboard through the ballast pump. None of these discharges were recorded in the oil record book.

As the vessel approached New Orleans, it was clear that oil continued to leak into the forepeak tank. Lekkas ordered two fitters to construct and install an obstruction device onto the forepeak tank's sounding tube so that when inspectors boarded to take a sounding, the results would obscure the presence of any oil in the tank.

During the Coast Guard inspection in October 2008, inspectors were able to see that the forepeak tank contained approximately one meter of oil in the tank. During a delay in the inspection, Lekkas directed crew members to remove the obstruction device before inspectors had a chance to enter the tank and see it. Posas then provided inspectors with a false ballast log, which had omitted the presence of oil in the tank, as well as the effect the crack was having on the volume of liquid contained in the tank.

Maintenance of accurate ballast water records is required under Ballast Water Management for Control of Nonindigenous Species regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act. This case does not present an instance of an invasive species introduction; nevertheless, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

Lekkas and Posas are scheduled to be sentenced on October 14, 2009. The case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Larkin Baggett, No. 4:09-CR-10016, 2:07-CR-00609 (S.D. Fla., D. Utah), AUSA Tom Watts-FitzGerald ([redacted], SAUSA Jody Mazer ([redacted] AUSA Jared Bennett [redacted] and SAUSA Alicia Hoegh [redacted]

Concealed weapon

On July 6, 2009, Larkin Baggett pleaded guilty to assaulting law enforcement officers and to illegally possessing eight firearms while living as a fugitive in Florida from environmental charges lodged against him in Utah. Larkin further pleaded guilty to the pending CWA and RCRA violations in the District of Utah.

Baggett pleaded guilty to using a deadly weapon, including a semi-automatic assault rifle against three agents with the Environmental Protection Agency and a sergeant with the Monroe County Sheriff's Office. As the agents attempted to arrest the defendant on a fugitive warrant in Marathon, Florida, Baggett opened fire and was wounded as a result.

Baggett was the owner and operator of Chemical Consultants, which was in the business of mixing, selling, and distributing various chemicals used in the trucking, construction, and concrete industries in Utah. The chemicals were transported to customers in 55-gallon drums, which then were returned to the business to be cleaned and reused. A variety of techniques were used to illegally clean the drums. Employees would either dump the contents onto the floor or onto a paved alleyway behind the plant, leaving the chemicals there to evaporate. Baggett also instructed employees to wash out the drums directly into a sanitary sewer grate.

After the local sewer authority blocked the company's access to the POTW by plugging its sewer line, Baggett instructed employees to dump the residual and spilled chemicals and the process wastewater into this plugged sewer grate. After the sewer grate spilled over, Baggett and/or his employees would pump the contents of the sewer grate into uncovered 55 gallon drums to allow the dye to evaporate. Once the chemicals in the drum were colorless, they dumped them onto a gravel area outside. Baggett was charged in Utah in September 2007 and fled the state in April 2008, which was two months before his trial was scheduled to begin.

Sewer grate

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the Bureau of Alcohol, Tobacco, and Firearms; and the Monroe County Sheriff's Office.

Back to Top

United States v. Herbert Corn, No. 3:09-CR-00061 (N.D. Ind.), ECS Trial Attorney Gary Donner [redacted] AUSA Toi Houston [redacted] and SAUSA Dave Mucha [redacted]

On June 30, 2009, Herbert Corn, the former Superintendent for the City of Rochester Wastewater Treatment Plant in Rochester, Indiana, pleaded guilty to an information charging five felony Clean Water Act violations. Corn admitted to making false statements in discharge monitoring reports submitted to the Indiana Department of Environmental Management ("IDEM"). From

approximately September 2004 and continuing through approximately May 2007, the defendant submitted at least five reports containing false data for treated water that is discharged from the Rochester Plant into Mill Creek, a tributary of the Tippecanoe River. These reports falsely indicated that the levels of e. coli, ammonia NH3-N, and CBOD-5 were all in compliance with the permit limits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the IDEM Office of Criminal Investigation, which are part of the Northern District of Indiana Environmental Crimes Task Force.

Back to Top

Sentencings

United States v. Consultores De Navegacion et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted], AUSA Linda Ricco [redacted] and SAUSA Christopher Jones.

On July 22, 2009, Consultores De Navegacion ("Consultores") was sentenced to pay a $2.08 million fine, complete a three-year term of probation, and implement an environmental compliance plan. The company previously pleaded guilty to conspiracy, falsification of records, false statements, obstruction, and an APPS violation related to the overboard discharge of oil-contaminated bilge waste on the high seas.

Between 2007 and 2008, Consultores, a Spanish operator of the *M/T Nautilus*, an ocean-going chemical tanker ship, acting through employees, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and discharge oil-contaminated waste directly overboard. The charges stem from a Coast Guard inspection that began in the port of St. Croix and continued in the port of Boston. Inspection and subsequent investigation revealed that the oil record book ("ORB") failed to accurately reflect the overboard discharge of oily waste water.

Chief engineer Carmelo Oria, who pleaded guilty to an APPS ORB violation, previously was sentenced to serve one month of incarceration, followed by two years' supervised release, and paid a $3,000 fine. Another chief engineer Vadym Tumakov pleaded guilty to an APPS violation and was sentenced to serve one week of incarceration, followed by two years' supervised release, and paid a $2,000 fine.

Back to Top

United States v. David Dreifort et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On July 17, 2009, David Dreifort was sentenced to serve 30 months' incarceration followed by three years of supervised release. He is further prohibited from engaging in any fishing activities for a period of five years in the Southern District of Florida and in adjacent waters. His wife, Denise Dreifort, was sentenced to serve seven months' incarceration and seven months' home confinement followed by three years' supervised release. She also is prohibited from engaging in any fishing activities for a period of five years. The two previously pleaded guilty to conspiring to illegally harvest spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary.

A total of six defendants were prosecuted for their involvement in the harvest of 922 whole lobster, as part of a conspiracy that illegally took 1,197 lobster on the opening day of Florida's

commercial lobster season in August 2008 and stockpiled approximately 1,700 pounds of wrung lobster tail (the edible part that is separated from the discarded body) harvested during the closed season, which was intended for sale after opening day.

Investigators became aware of a group constructing artificial lobster habitats in the lower Keys. Agents then tracked a boat owned by the Dreiforts as it traveled within the Sanctuary, harvesting out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads.

Co-defendant Michael Delph was sentenced June 2, 2009, to serve ten months' imprisonment followed by two years' supervised release after being convicted by a jury of illegally conspiring to harvest spiny lobster. John Niles previously was sentenced to serve a one-year term of probation after providing substantial assistance in the investigation and after testifying during the trial. Sean Reyngoudt was sentenced on June 10th to serve four months' home confinement as a condition of four years' probation. He also will complete 300 hours of community service and is prohibited from any fishing activities for four years within the Southern District of Florida and adjacent waters. Robert Hammer was sentenced on June 11th to serve two months' incarceration followed by six months' home confinement. He is prohibited from any fishing activity during the two-year term of supervised release.

In addition to the other terms of their sentence, the Dreiforts were further ordered to forfeit three trucks, three vessels, and other pieces of equipment which were used in the scheme. They also forfeited $37,995 in profits from the sale of the lobster tail.

In a related matter, Hammer also was convicted and sentenced in connection with the sale of fish which had been illegally taken. Hammer formerly held a special use permit to operate a commercial enterprise at Dry Tortugas National Park. The permit authorized him to bring passengers to the Park and to engage in various activities, including recreational angling. He was not permitted, however, to engage in any commercial fishing or the sale of any fish harvested from Park waters.

As the result of a surveillance operation, investigators determined that Hammer was commercially selling fin fish to brokers and retail fish dealers in the Miami area. Between $10,000 and $30,000 in fair market value fish were taken from the federally protected areas and sold commercially. For his role in that case, Hammer was sentenced to serve a term of supervised release of six months to run concurrently with his other sentence. He also must pay $20,000 to the National Fish and Wildlife Foundation, to be used to acquire and distribute sonar and Global Positioning System Tracker equipment to assist in the location, identification, and abatement of resource violations within the National Sanctuaries, Refuges, and Parks of the Florida Keys and adjacent waters, and to assist in the identification and apprehension of violators of the marine resource and wildlife protection laws.

This case was investigated by National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

United States v. John Joseph Cota et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSAs Stacey Geis [redacted] and Jonathan Schmidt [redacted].

On July 17, 2009, John Joseph Cota was sentenced to serve 10 months' incarceration. Cota was the California ship pilot in command of the *M/V Cosco Busan* when it struck the San Francisco

Bay Bridge in November 2007. Cota previously pleaded guilty to negligently causing the discharge of approximately 50,000 gallons of heavy fuel oil into the Bay in violation of the Oil Pollution Act. He also pleaded guilty to a violation of the Migratory Bird Treaty Act for causing the death of approximately 2,000 protected migratory birds. As part of the plea agreement, the government dismissed additional charges of false statements made to the Coast Guard in 2006 and 2007 concerning Cota's medications and medical conditions.

Co-defendant Fleet Management Limited, a Hong Kong ship management company, remains scheduled for trial to begin on September 14, 2009, for acting negligently and being a proximate cause of the oil discharge from the *Cosco Busan* and for the killing of the migratory birds. Fleet further is charged with obstructing justice and with making false statements by falsifying ship records after the incident. A third superseding indictment alleges a loss amount of $20 million from the discharge of oil. Fleet had argued that fines were limited to $200,000 for the CWA offense unless a loss amount was alleged in the indictment.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service, and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. Kenneth Nelson, No. 2:09-CR-0001 (E.D. Tenn.), AUSA Matthew Morris ([redacted]

Defendant with poison in white container

On July 13, 2009, farmer Kenneth Nelson was sentenced to pay a $5,000 fine for improperly using restricted-use pesticide to kill birds in July 2008.

Nelson was charged with an MBTA violation and a FIFRA violation for mixing granular carbofuran, also known as Furadan, a restricted-use insecticide, with bird seed and placing it in meat used for bait. The misuse of the carbofuran resulted in an unlawful taking of a Song Sparrow, a migratory bird. The defendant pleaded guilty to the MBTA offense and, after a subsequent bench trial, was found guilty of violating FIFRA.

Furadan is widely misused in Tennessee and Kentucky to kill birds of prey and carnivores, such as coyotes. State and federal officers initiated the investigation after a neighbor reported that her pet dog had ingested some poison and became gravely ill. Investigators found several dead songbirds and a dead cat in proximity to Nelson's illegal bait stations.

Upon sentencing the magistrate judge remarked that a substantial penalty was warranted to deter others from misusing carbofuran, which is highly toxic and dangerous to wildlife. This case was investigated by the East Tennessee Environmental Crimes Task Force, which includes the United States Fish and Wildlife Service, the United States Environmental Protection Agency Criminal Investigation Division, the Tennessee Wildlife Resources Agency, and the Tennessee Department of Agriculture.

Back to Top

United States v. Durbin Hartel, No. 3:08-CR-00266 (D. Ore.), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted].

On July 13, 2008, Durbin Hartel, a former engineer with Spencer Environmental Inc. ("SEI"), pleaded guilty to a misdemeanor CWA violation for negligently discharging wastewater to the POTW with zinc levels that exceeded permit limitations. He was sentenced to pay a $1,250 fine and must complete a one-year term of probation.

SEI received a variety of waste streams for recycling, including used oil, which was the bulk of its business. It also received wastewater from a leaking underground gasoline storage tank remediation site, which was tested to be ignitable. The company discharged molybdenum, zinc, and grease to Portland's POTW in excess of its permit limitations.

The case arose from an investigation into a fire at SEI's former facility. Following the sale of the plant, a fire broke out when a welding spark touched off used oil residue in a pit and quickly spread to other oil-soaked parts of the building, largely destroying the plant and causing contamination of Johnson Creek, a tributary of the Willamette River, which is known to contain threatened salmonids.

Company president Donald Spencer and SEI previously pleaded guilty to RCRA violations with Spencer sentenced to serve six months' incarceration.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. PacifiCorp, No. 1:09-CR-00174 (D. Wyo.), AUSA David Kubichek ([redacted]

On July 10, 2009, PacifiCorp, doing business as Rocky Mountain Power, pleaded guilty to 34 Migratory Bird Treaty Act violations for the taking (or killing) of eagles and other large birds of prey.

Since 2007, approximately 232 golden eagles, 46 hawks and 59 owls, along with 193 other migratory birds, were electrocuted by electrical distribution and transmission facilities owned and operated by PacifiCorp. The company was sentenced to pay a $510,000 fine and will pay $900,000 in restitution to be used to support research and conservation of golden eagles and other birds of prey in Wyoming, Utah, Idaho and Montana. In addition, while completing a five-year term of probation, PacifiCorp will spend approximately $9.1 million to implement an avian protection plan to substantially reduce eagle electrocution deaths in Wyoming through the retro-fitting and modernizing of PacifiCorp's electrical distribution and transmission system.

Electrocuted bird beneath pole

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States. v. Kenneth Dent, 8:09-CR-00063 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach [redacted], ECS Trial Attorney Jeremy Peterson [redacted] and former Trial Attorney Madison Sewell.

On July 2, 2009, Kenneth Dent was sentenced to pay a $1,000 fine, pay $2,905 in restitution, and complete a three-year term of probation. Dent previously pleaded guilty to a violation of the Lacey Act for trafficking in illegally taken striped bass.

On multiple occasions, Dent sold hundreds of pounds of rockfish that were illegally harvested or tagged to an undercover special agent with the Virginia Marine Police, who told Dent that the fish were being transported to Pennsylvania. On one occasion, Dent illegally harvested 400 pounds of fish from Virginia tributaries of the Potomac River and sold it to the undercover agent for $990. He knowingly tagged much of the fish with incorrect tags to exceed his limit of Virginia-caught fish. The majority of these fish also were not within the legal size limit. On a second occasion, Dent sold the undercover agent for $1,000 430 pounds of rockfish for that was larger than the legal size limit. During a third transaction, he sold the agent 480 pounds of fish for $1,375. All of these fish were more than the legal size limit, with the fair market retail value of the transactions in excess of $5,000. Dent also illegally sold the undercover agent 100 striped bass tags despite a prohibition against private sales.

This case was part of an investigation conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. MagnaGro International, Inc., et al., No. 5:08-CR-40045 (D. Kan.), AUSA Christine Kenney [redacted] and SAUSA Ray Bosch [redacted].

End of sewer discharge hose

On June 29, 2009, MagnaGro International, Inc., ("MagnaGro") and company owner Raymond Sawyer each were sentenced to pay jointly and severally a $240,000 fine. Sawyer also will complete a five-year term of probation. He previously pleaded guilty to a misdemeanor CWA violation for illegally discharging manufacturing waste into the city's sewer system. The company pleaded guilty to a CWA felony violation.

Sawyer and MagnaGro, a fertilizer manufacturer, admitted to discharging a large amount of industrial waste in March 2001 from its fertilizer production into the city's POTW. The Kansas Department of Health and Environment and the City of Lawrence ordered Sawyer and the company to stop the discharges at that time. Later, in September 2007, EPA agents found that the company was discharging waste into the POTW via a hose inserted into a toilet. Subsequent investigation determined that Sawyer and the company had been discharging waste through the hose for 10 years and that the hose was used to pump material into the toilet from a waste pit surrounding a mixing vat.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. American Rivers Transportation Company, et al., No. 4:09-CR-00253 (E.D. Mo.), AUSA Michael Reap [redacted] and SAUSA Anne Rauch [redacted]

On June 19, 2009, Justin Baker and Steve Keilwitz each were sentenced to serve a one-year term of probation and each will perform 25 hours of community service. Both were employees with the American River Transportation Company ("ARTCO"), the operator of a river terminal in the St. Louis area. The company recently pleaded guilty to discharging oil into the Mississippi River in violation of the Clean Water Act and was sentenced to pay a $3 million fine. Baker and Keilwitz pleaded guilty to a CWA felony false statement violation. Baker, who since has retired, was the terminal manager at the time of the violations and Keilwitz was the maintenance superintendent.

Oil spill containment

ARTCO owns and operates several terminals in the St. Louis area and also operates line boat vessels, hopper barges, harbor and fleeting services, and a fueling terminal. At one of its facilities, ARTCO cleans barges of residue, including grain, fertilizer, oil, and oil-based products.

In June 2007, a release of oil was discovered in the river near an ARTCO facility. Baker reported the oil to the National Response Center and to other emergency responders, but he and Keilwitz denied knowing the source of the oil. Baker and Keilwitz knew that the ARTCO facility was the source of the oil due in part to past events at the facility.

Between April 2004 and June 2007, ARTCO had discharged wastewater with oil and grease above permit limits into the St. Louis POTW and thereby into the Mississippi River. The company also directly discharged other pollutants into the Mississippi River during this period.

This case was investigated by the United States Environmental Protection Agency Emergency Response Division and the Missouri Department of Natural Resources.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTALCRIMES SECTION

MONTHLY BULLETIN

September 2009

EDITOR'S NOTE:

CORRECTION: *The write up for United States v. Baggett (the fugitive who was arrested in Florida) that was reported last month erroneously stated that the defendant had opened fire at the arresting agents. In fact at no time did Baggett fire his assault weapon. He only pointed his weapon at the EPA agents, at which point the agents and a Deputy Monroe County Sheriff shot Baggett.*

AT A GLANCE

- **United States v. Alexander Salvagno et al., 2009 WL 2634647 (2nd Cir. Aug. 28, 2009).**

Districts	Active Cases	*Case Type* / Statutes
N.D. Calif.	**United States v. Fleet Management Ltd.**	***Vessel*/ OPA, False Statement, Obstruction**
D. Colo.	**United States v. Wayne Breitag et al.** **United States v. ExxonMobil Corporation**	***Leopard Hunt*/ Smuggling** ***Oil Drilling Facilities*/ MBTA**
D. Conn.	**United States v. Robert Meyer et al.**	***Wire Manufacturer*/ CWA, False Statement**
S.D. Fla.	**United States v. John Buckheim et al.**	***Lobster Harvest*/ Lacey Act, Conspiracy**
M.D. Ga.	**United States v. Mark Harrison et al.**	***Shark Fin Sales*/ Lacey Act, Food and Drug Act**
D. Idaho	**United States v. Krister Evertson**	***Sodium Borohydride Manufacturer* /RCRA, HMTSA**
W.D. Ky.	[redacted]	[redacted]
W.D. Mo.	**United States v. Greenleaf, L.L.C.**	***Pesticide Sales*/ FIFRA**
D. Mont.	**United States v. Leo Bergtoll et al.**	***Big Game Hunt*/ Lacey Act, Conspiracy**
E.D. Tenn.	**United States v. Watkins Street Project, LLC, et al.**	***Demolition and Salvage*/ Conspiracy, CAA, Defraud U.S. Government**
S.D. Tex.	**United States v. Ioannis Mylonakis et al.** **United States v. Rene Soliz**	***Vessel*/ APPS, Obstruction, False Statement** ***Tortoise Smuggling*/ Lacey Act**
D. Ore.	**United States v. Dennis Beetham et al.**	***Formaldehyde and Resin Production*/ RCRA**

Additional Quick Links

Significant Environmental Decisions

Second Circuit

United States v. Alexander Salvagno et al., 2009 WL 2634647 (2nd Cir. Aug. 28, 2009).

On August 28, 2009, the Second Circuit Court of Appeals affirmed the convictions of Alexander and Raul Salvagno for illegal asbestos activities over the course of a decade. The Court previously dismissed the appeal of AAR Contractor, Inc. (AAR), for its failure to prosecute its appeal. In affirming their convictions, the Court upheld the longest terms of incarceration (25 and 19.8 years, respectively) imposed in United States history for environmental crimes.

The Salvagnos and numerous high ranking AAR supervisors were charged with a conspiracy to violate RICO (based upon predicate acts of money laundering, mail fraud, and obstruction of justice); a conspiracy to violate the Clean Air and Toxic Substances Control Acts; numerous substantive Clean Air Act violations; and, as to Alex Salvagno only, tax fraud. The proof presented during the five-month trial demonstrated a wide-spread scheme to perform illegal asbestos "rip and runs" at 1,555 separate locations. With the Salvagnos' encouragement, many of the 500 workers employed by AAR performed the asbestos removals without wearing respirators, and decontamination units were rarely provided. As an integral part of the scheme, Alex Salvagno secretly owned Analytical Laboratories of Albany, Inc. (ALA), a purportedly wholly independent company that performed air monitoring and laboratory analysis. Evidence at trial showed that ALA falsified up to 70,000 samples to fraudulently convince business and home owners that their buildings were safe to re-occupy and that AAR should be paid for its work. Numerous ALA high ranking officials were separately prosecuted and testified at trial. In total, 16 AAR and ALA individuals were sentenced to serve terms of imprisonment for their involvement in the illegal activities.

On appeal, the Salvagnos raised 25 separate issues which the Second Circuit rejected *in toto*, including a challenge to their promotion of money laundering conviction based upon the Supreme Court's fractured decision in *United States v. Santos*, 128 S. Ct. 2020 (2008), decided subsequent to their convictions. The court further rejected numerous challenges to the environmental components of their sentences, including that the offense posed a substantial likelihood of death or serious bodily

injury to workers. Testimony taken at the sentencing hearing established that at least 100 workers with the lengthiest exposure are now substantially likely to contract asbestos-related diseases, including asbestosis, lung cancer, and mesothelioma, the latter being an invariably fatal form of cancer. The court of appeals further upheld sentencing determinations that the offenses should be enhanced because asbestos was dumped into public wastewater systems in violation of the Clean Water Act, and that the Salvagnos engaged in an abuse of trust through their fraudulent ALA laboratory and project monitoring activities.

Back to Top

Trials

United States v. Wayne Breitag et al., No. 1:08-CR-00318 (D. Colo.), ECS Trial Attorney Jim Nelson [redacted], AUSA David Conner [redacted], and ECS Paralegal Jean Bouet [redacted]

On August 24, 2009, after a four-day trial, the court declared a mistrial after a juror violated the court's order by giving the rest of the jury research that she had conducted. Contempt proceedings are likely to be brought against this juror, and the re-trial has been scheduled for September 28, 2009.

Wayne Breitag was indicted, along with co-defendant Jerry Mason, in August 2008, on charges stemming from smuggling into the United States the hides and a skull from two leopards in violation of the Convention on the International Trade of Endangered Species ("CITES"). The leopards are alleged to have been illegally hunted and killed in South Africa and then smuggled into Zimbabwe to enable the hunters to obtain false CITES permits. The defendants also were charged with Lacey Act false labeling violations.

According to the indictment, both Breitag and Mason traveled to South Africa in August 2002 to hunt leopards while guided by a South African outfitter named Jan Swart d/b/a "Trophy Hunting Safaris." Both Breitag and Mason shot and killed leopards even though they did not possess permits. Because the leopards were killed illegally, neither defendant was able to legally obtain a valid CITES export permit from South Africa. In order to import the animal parts into the United States, they obtained fraudulent CITES export permits from Zimbabwe.

Swart arranged to have the hides smuggled from South Africa into Zimbabwe, where he purchased the fake export permits. Breitag and Mason then submitted applications to the U.S. Fish and Wildlife Service claiming to have hunted the leopards in Zimbabwe. In November 2004, inspectors seized animal parts at the Denver International Airport including those from the leopards killed by the defendants.

Swart previously pleaded guilty to smuggling violations and currently is serving an eighteen-month prison sentence. Mason pleaded guilty to an ESA violation and was sentenced to pay a $10,000 fine plus a $10,000 community service payment and will complete a four-year term of probation.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

Informations and Indictments

United States v. Watkins Street Project, LLC, et al., No. 1:09-CR-00144 (E.D. Tenn.), ECS Trial Attorney Todd Gleason ([redacted]), AUSA Matthew Morris [redacted], and ECS Paralegal Kathryn Loomis [redacted]

On August 25, 2009, two demolition and salvage companies and three of their respective owners and supervisors were charged with violations stemming from an illegal asbestos abatement.

The indictment describes a year-long scheme in which the former Standard Coosa Thatcher plant in Chattanooga was illegally demolished while still containing large amounts of asbestos. It further alleges that the asbestos that was removed from the plant prior to demolition was scattered in open debris piles and left exposed to the open air. The indictment also describes the efforts made by

Friable asbestos

owners and supervisors to cover up their illegal activities by falsifying documents and lying to federal authorities.

Specifically, the eleven-count indictment charges the defendants with conspiracy to defraud the United States and to violate the Clean Air Act. The two companies and three individuals also are charged with substantive CAA violations, making false statements, and obstructing justice.

The defendants named in the indictment are Watkins Street Project LLC ("WSP"), a land-holding and salvage company; Mathis Construction, Inc., a demolition company; Donald Fillers, a WSP owner; James Mathis, an owner of Mathis Construction, Inc.; and David Wood, a supervisor for WSP.

This case is being investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Chattanooga-Hamilton County Air Pollution Control Bureau.

Back to Top

United States v. Ioannis Mylonakis et al., No. 4:09-CR-00492 (S.D. Tex.), ECS SAUSA Kenneth Nelson [redacted].

On August 20, 2009, an indictment was returned charging Ioannis Mylonakis and Argyrios Argyropoulos with violating APPS, making false statements, and obstructing justice.

The two chief engineers for the oil tanker *Georgios M* both are charged with maintaining false oil record books that concealed the direct discharges of sludge and oily bilge wastes into the ocean. The course of conduct covers numerous discharges from 2006 through 2009. The case arose from a whistleblower crewmember coming forward while the ship was moored in Texas City, Texas, in February 2009.

This case is being investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Dennis Beetham et al., No. 3:09-CR-00235 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] AUSA Dwight Holton [redacted] and SAUSA Daina Vitolins.

On August 6, 2009, Dennis Beetham and his company, D.B. Western Inc., were indicted on both federal and state charges for illegally dumping hazardous and other industrial wastes. The company designs, fabricates and operates formaldehyde and resin production plants around the world. Beetham also owned a 500-acre ranch with a large cinder cone, which is a small volcano with a bowl-shaped crater at the summit.

Between 2005 and 2007, a large quantity of industrial waste, which included nitric acid and formaldehyde, was shipped from D.B. Western facilities and allegedly dumped into the cinder cone at the ranch. Also during this time period company employees were ordered to ship used components including tanks and piping from various D.B. Western facilities to the ranch. These parts were contaminated with hardened formaldehyde and were stored without a permit.

Formaldehyde is used in a variety of products ranging from textiles to wood products, and when discarded may qualify as a RCRA hazardous waste. Nitric acid is extremely corrosive and also may qualify as a RCRA hazardous waste when discarded.

The state charges filed in Crook County, Oregon, allege that the defendants unlawfully caused air and water pollution, disposed of solid waste without a permit, and failed to complete a site clean-up. These charges stem from the defendants' allegedly burning of vast quantities of non-hazardous industrial and household wastes as well as dumping them into the cinder cone.

This case is being investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oregon Department of Environmental Quality.
Back to Top

United States v. John Buckheim et al., No. 4:09-CR-10026 (S.D. Fla.), AUSA Tom Watts-FitzGerald ([redacted]

Lobsters underneath artificial habitat

On July 31, 2009, John Buckheim and Nick Demauro were charged in a five-count indictment with violations stemming from an anti-poaching investigation. The defendants are charged with a Lacey Act conspiracy and substantive Lacey Act violations for illegally harvesting spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary ("FKNMS") during the summer of 2008 and extending into early 2009. A forfeiture count states that a 16-foot vessel and a GMC pickup truck along with miscellaneous equipment used in acquiring the lobster will be forfeited upon conviction.

Artificial habitats are prohibited from being placed on the seabed in the FKNMS. Buckheim is charged with sinking a vessel in this protected area for the purpose of creating an artificial lobster habitat. Additionally, spiny lobster may be harvested only during the commercial season, which runs from August 6 through March 31 of the following year. The defendants are alleged to have received approximately $11,400 from sales of lobster harvested illegally out of season. The indictment also states that the defendants displayed a commercial dive placard on their vessel during the legitimate dive season although they were not entitled to use the commercial dive endorsement under Florida law.

This case is being investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, with assistance from the Florida Fish and Wildlife Conservation Commission, and the Miami-Dade Police Department Underwater Recovery Unit.
Back to Top

Pleas

United States v. Robert Meyer, et al., No. 3:09-CR-00133 (D. Conn.), AUSA Christopher Schmeisser [redacted] **and SAUSA Anthony Kaplan** [redacted]**.**

On July 21, 2009, Robert Meyer, a former vice president of a now defunct manufacturing company pleaded guilty to two misdemeanor Clean Water Act violations. The charges stem from Meyer's failure to report waste water discharges that violated the company's NPDES permit on two occasions in 2007. He is scheduled to be sentenced on October 9, 2009.

Meyer was hired in May 2005 by Atlantic Wire Company as vice president for finance. Atlantic Wire was engaged in the cleaning and manufacturing of wire, and it used sulfuric and hydrochloric acid and highly alkaline materials as part of the stripping and coating process. The

resultant wastewater was to be collected and treated on-site in the facility's wastewater treatment system before being discharged into the Branford River under the terms of its NPDES permit.

Shortly after being hired by Atlantic Wire, Meyer was asked to assume additional responsibilities for supervising environmental compliance. Court documents state that there were several occasions during which the company's wastewater treatment system did not meet permit limits and these violations were not reported.

The company was prosecuted both federally and on the state level, and it was sentenced in January 2009 to pay the state of Connecticut $1.5 million to settle charges that it repeatedly discharged toxic wastewater into the Branford River during an approximately three-year period. In one instance the pH was allowed to drop to a level of 1.4 for more than a two-hour period. The company also pleaded guilty in federal court in December 2008 to two felony CWA violations and one false statement violation. Atlantic Wire ultimately paid approximately $800,000 for the cleanup of the site and for dismantling of the plant. With no other assets remaining, however, the company was liquidated without paying any fines or penalties, although it did agree that such fines would apply if it had remained in business.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with the cooperation of the Connecticut Department of Environmental Protection and the Connecticut Attorney General's Office.

Back to Top

United States v. Fleet Management Ltd., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] AUSAs Stacey Geis [redacted] and Jonathan Schmidt [redacted], and SAUSA Christopher Tribolet.

On August 13, 2009, Fleet Management Ltd. ("Fleet"), a Hong Kong ship management company, pleaded guilty to a violation of the Clean Water Act (as amended by the Oil Pollution Act) obstruction, and a false statement. The company has agreed to pay a $10 million fine, with an additional $2 million community service payment to be devoted to funding marine environmental projects in San Francisco Bay. Fleet has further agreed to complete a three-year term of probation and to implement an enhanced compliance program.

The company was charged in a third superseding indictment with acting negligently and being a proximate cause of the oil discharge from the *Cosco Busan* and for the killing of migratory birds. It also was charged with obstructing justice and with making false statements by falsifying ship records after the vessel crashed into the San Francisco Bay Bridge in November 2007. The latest indictment alleged a loss amount of $20 million from the discharge of oil. Fleet had argued that fines were limited to $200,000 for the CWA offense unless a loss amount was alleged in the indictment. Sentencing is scheduled for December 11, 2009.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. ExxonMobil Corporation, No. 1:09-mj-01129 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Matthew Treaster [redacted]

On August 12, 2009, ExxonMobil Corporation pleaded guilty in Denver, Colorado, to five Class B misdemeanor violations of the Migratory Bird Treaty Act in connection with the deaths of

approximately 85 protected birds (including waterfowl, hawks and owls) over the past five years at its facilities in Colorado, Wyoming, Kansas, Texas, and Oklahoma. Most of the birds died from exposure to hydrocarbons in uncovered natural gas well reserve pits and waste water storage facilities at Exxon-Mobil sites.

The corporation has agreed to pay a total fine of $400,000 with another $200,000 as a community service payment, all of which will be spent on waterfowl restoration in the affected states. The company will complete a three-year term of probation, during which it will be required to implement an environmental compliance plan ("ECP") employing a variety of tools to prevent avian mortality at its natural gas, oil drilling, and production facilities. During the negotiation of this case, ExxonMobil voluntarily disclosed several sites where mortalities have occurred and already has spent approximately $2.5 million to begin implementation of the ECP in advance of the expected judgment.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Sentencings

United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe ([redacted] and AUSA Michelle Mallard [redacted]

On August 20, 2009, the district court heard argument concerning restitution after the Ninth Circuit upheld Evertson's 21-month prison sentence, but remanded the case on the restitution issue. Judge Winmill re-imposed the restitution order of $421,000 and altered the original judgment to make the restitution a condition of supervised release. The court further reduced the monthly payment of $100 to $10 (or 5% of his gross income) based upon Evertson's inability to pay. The defendant was denied supervision in Alaska by the Division of Probation and Parole making it impossible for him to receive Alaska Permanent Fund Dividends, which are oil revenues paid to all Alaskan citizens. The U.S. EPA further debarred Evertson, which precludes him from leasing a mining claim in Alaska he has held since 1973. The government did not contest Evertson's limited ability to pay and requested token payments.

Tanks containing sodium hydroxide/ignitable sludge

Evertson, the owner and president of SBH Corporation, previously was convicted by a jury of two RCRA storage and disposal violations and with violating the Hazardous Materials Transportation Safety Act. He was sentenced to serve a period of incarceration followed by three years' supervised release for illegally transporting hazardous materials and illegally storing hazardous waste. Evertson also was ordered to pay approximately $420,000 in restitution to the United States Environmental Protection Agency for cleanup costs.

Evertson transported 10 metric tons of sodium metal from its port of entry in Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant arranged for the transportation of sodium metal not

used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transportation, despite the fact that sodium metal and the materials in the tanks are highly reactive with water. The material subsequently was abandoned.

In May 2004, the EPA responded to the storage facility and removed the sodium metal, some of the sludge in the bottom of the tank, and another tank with corrosive liquid in it. Commercial laboratories refused to accept the sludge for testing due to its reactivity with water. When EPA tested the sludge at its own lab, it was classified as a hazardous waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Department of Transportation Office of the Inspector General, and the Federal Bureau of Investigation.

Back to Top

United States v. Greenleaf, L.L.C., No. 3:08-CR-05033 (W.D. Mo.), AUSA Robyn McKee ([redacted]

On August 20, 2009, Greenleaf, L.L.C., a pesticide and rodenticide sales company was sentenced to pay a $200,000 fine due immediately. The company previously pleaded guilty to one FIFRA violation for the illegal sale and distribution of pesticides.

Between January 2007 and January 2008, Greenleaf received damaged and unwanted pesticides from a Wal-Mart distribution center in Arkansas which was where all Wal-Mart stores across the country shipped these materials. Greenleaf admitted that it distributed and sold a large number of the pesticides and rodenticide products after removing or altering the labeling on the package. The company distributed more than two million pounds of these chemicals.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Mark Harrison et al., No. 1:09-CR-00278 (M.D. Ga.), ECS Senior Trial Attorney Elinor Colbourn ([redacted]**and AUSA Mary Roemer** [redacted]

Shark fins spread out on ground

On August 19, 2009, Mark Harrison was sentenced to serve four months' home confinement as a condition of five years' probation. He further was ordered to pay a $5,000 fine and must complete 150 hours of community service. Harrison also will publish an advertisement in a widely-circulating publication within the fish industry regarding compliance with shark fin reporting requirements. Harrison International LLC will pay a $5,000 fine and complete a five-year term of probation.

The defendants pleaded guilty to charges stemming from the illegal purchase and export of shark fins. Harrison and the company both pleaded guilty to one Lacey Act trafficking violation for receiving shark fins that had not been

properly reported. Harrison further pleaded guilty to an additional Lacey Act violation for attempting to export shark fins from species that are prohibited from harvest under Florida state law and to a Food and Drug Act violation for introducing food into interstate commerce that had been prepared, packed, or held under unsanitary conditions. Shark fins are used to make shark fin soup, which is considered to be an Asian delicacy.

Harrison described himself as the nation's largest shark fin buyer, purchasing "millions" of shark fins since approximately 1989. In February 2005, Harrison purchased shark fins in Florida from an individual fisherman and later resold them in interstate commerce. No report of the landing or sale of those fins was filed with any Florida authorities, as required. Accurate reporting statistics of shark harvests are crucial for managing and regulating the populations of the various shark species that inhabit U.S. waters. In August 2007, Harrison attempted to export a shipment of shark fins through Atlanta that included at least 211 fins from Caribbean sharp-nosed sharks, two fins from bignose sharks, and two fins from night sharks, all of which are protected by Florida and/or federal laws due to their low population levels.

Over approximately a four-year period, Harrison processed the fins by drying them on open air racks and/or tarpaulins laid on the ground of his property. The fins were left out at all times until dry and were exposed to bird droppings and insects, with dogs running freely among the drying racks. Harrison subsequently sold and shipped the dried fins in interstate commerce.

Since 1993, the National Oceanic and Atmospheric Administration ("NOAA") Fisheries Service has managed, through federal fishery management plans, the commercial harvest and sale of sharks from federal waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. In 1998, the United Nations' Food and Agriculture Organization finalized and adopted an "International Plan of Action for the Conservation and Management of Sharks," recognizing the worldwide pressure being placed on declining shark populations by commercial fishing and the demand for shark fin soup. In the United States, management of sharks has included prohibitions against keeping and/or selling particular species, some of which have suffered such a severe population decline that further harvesting cannot be sustained. There are currently 19 federally protected species of sharks.

This case was investigated by the NOAA Office for Law Enforcement, the United States Fish and Wildlife Service Office of Law Enforcement, and the Food and Drug Administration Office of Criminal Investigations.

Back to Top

United States v. Leo Bergtoll et al., No. 1:09-CR-00002 (D. Mont.), ECS Senior Trial Attorney Robert Anderson [redacted]

On August 19, 2009, Leo Bergtoll, his wife Anna Lou, and their son Darrel, were sentenced. The three previously pleaded guilty to Lacey Act violations stemming from allowing unlicensed big game hunters onto their property between 1999 and 2003. Leo Bergtoll pleaded guilty to a felony Lacey Act conspiracy count, and Anna Lou and Darrel Bergtoll each pleaded guilty to a misdemeanor Lacey Act trafficking count. The defendants are landowners who allowed unlicensed out-of-state clients to hunt big game on their property in Montana, after which they then sold to their clients licenses that had been issued to legitimate Montana residents.

All three defendants were sentenced to pay $15,000 fines. Leo Bergtoll also will complete three years' probation with special conditions including performing community service in the form of providing big game guide services to members of the Wounded Warrior Project on the family's Frenchman Valley Ranch for the next three hunting seasons, the loss of hunting privileges for five years, and enrollment of the Ranch in the state's Block Management Program (which provides public

access for hunting). Anna Lou Bergtoll will complete two years' probation with similar special conditions. Darrell Bergtoll will complete 40 months of probation with similar special conditions.

Codefendant and unlicensed outfitter, Anthony Bazile, remains scheduled for sentencing on September 9, 2009. Bazile, an outfitter residing in Louisiana, recruited unlicensed clients to participate in big game hunts in Montana. He pleaded guilty earlier this year to conspiracy to violate the Lacey Act.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Rene Soliz, No. 2:09-CR-00282 (S.D. Tex.), ECS Senior Trial Attorney Claire Whitney

On August 5, 2009, Rene Soliz was sentenced to pay a $1,500 fine, complete a three-year term of probation, and perform 250 hours of community service. Soliz recently pleaded guilty to a Lacey Act violation for attempting to receive 15 Tanzanian Leopard Tortoises that were transported into the United States in violation of CITES. Since his guilty plea the defendant has resigned his position as a Border Patrol agent, which was required by the plea agreement.

Tanzanian Leopard Tortoises

In March 2006, Soliz contacted an individual in Dar-Es Salaam, Tanzania, who was selling leopard tortoises. Soliz asked to buy eight of the tortoises and indicated an interest in buying more at a later date as part of a long-term business relationship. In April 2006, a Customs inspector at John F. Kennedy International Airport intercepted the package containing the tortoises sent to Soliz, which had been labeled as containing 50 live scorpions. When a wildlife inspector opened the package, he found 14 live and one dead leopard tortoise.

Leopard tortoises are listed in Appendix II of CITES. The CITES Appendices list species granted different levels of protection from over-exploitation. International trade in specimens of Appendix II species may be authorized by the issuance of an export permit from the exporting country. No export permit accompanied the tortoises bought by Soliz.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTALCRIMES SECTION

MONTHLY BULLETIN

October 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE

- **United States v. Starnes, ___F.3d___, 2009 WL 3030368 (3rd Cir. Sept. 24, 2009).**

Districts	Active Cases	*Case Type* / Statutes
D. Ariz.	**United States v. Cedric Salabye**	***Eagle Feather Sale/*** **BGEPA**
C.D. Calif.	**United States v. Gregg Snapp**	***Elephant Skull Sale/*** **ESA**
S.D. Fla.	**United States v. Bruce Bivins**	***Turtle Egg Possession/*** **Lacey Act**
D. Idaho	**United States v. Barton Wilkinson**	***Habitat Damage/*** **ESA**
N.D. Ind.	**United States v. Herbert Corn**	***POTW Operator/*** **CWA**
E.D. La.	**United States v. Polembros Shipping Ltd.**	***Vessel/*** **APPS, Ports and Waterways Safety Act, Non-Indigenous Aquatic Nuisance Prevention and Control Act**
D. Md.	**United States v. John Evans**	***Striped Bass Labeling/*** **Lacey Act**
D. Minn.	**United States v. Corn Plus, LLLP**	***Ethanol Manufacturer/*** **CWA Misdemeanor**
W.D. Mo.	**United States v. Hans Neilsen** **United States v. Richard Sturgeon**	***Pesticide Disposal/*** **RCRA, CWA** ***Public Works Director/*** **CWA**
D. Mont.	**United States v. Anthony Bazile**	***Big Game Hunt/*** **Conspiracy, Lacey Act**
D.N.J.	**United States v. Dalnave Navigation Inc., et al.**	***Vessel/*** **APPS**
D.N.M.	**United States v. Alan Van Hout**	***Wolf Killing/*** **ESA**
N.D. N.Y.	**United States v. Jonathan Deck**	***Asbestos Dumpsite/*** **Conspiracy, Wire Fraud**
E.D. Okla.	**United States v. Christopher Neil Gauntt**	***POTW Operator/*** **False Statement**
[redacted]	[redacted]	[redacted]
W.D. Wisc.	**United States v. Gollon Brothers Wholesale Live Bait, Inc., et al.**	***Fish Import/*** **Lacey Act**

Additional Quick Links

Significant Environmental Decisions

Third Circuit

United States v. Starnes, ___F.3d___, 2009 WL 3030368 (3rd Cir. Sept. 24, 2009).

On September 24, 2009, the Third Circuit Court of Appeals affirmed the convictions and sentences of both Cleve-Allan George and Dylan Starnes. Both were sentenced to serve 33 months' incarceration followed by three years of supervised release, following a jury trial in June 2005. Both were convicted on all 16 counts, including Clean Air Act and false statement violations, related to a demolition project in a low-income housing neighborhood.

George and Starnes were hired by the Virgin Islands Housing Authority ("VIHA") to remediate asbestos in an old building scheduled for demolition. They filed a work plan with the VIHA which indicated that they would follow all applicable regulations, including EPA and OSHA regulations. The defendants violated the asbestos work practice regulations by, among other things, failing to properly wet the asbestos during removal. The defendants also filed false air monitoring documents with the VIHA and falsely labeled the asbestos as non-friable when it was sent to Florida for disposal.

Back to Top

Trials

United States v. Gerald Snapp, No. 2:09-CR-00122 (C.D. Calif.), AUSA Dennis Mitchell ([redacted]

Elephant skull

On September 18, 2009, after deliberating for 90 minutes, a jury convicted Gerald Snapp of an Endangered Species Act violation for attempting to sell to an undercover agent the skull of an Asian elephant on Craigslist.

According to documents filed in the case, the defendant obtained the skull of a captive Asian elephant, which had lived at the Los Angeles Zoo prior to being euthanized. In December 2008, Snapp posted an advertisement on Craigslist offering to sell the skull for $9,000. After being made aware of the posting, the United States Fish and Wildlife launched an undercover investigation, with an agent engaging in a series of emails, meetings and recorded phone calls with the defendant. In one such call, Snapp described the CITES regulations to the agent. The government is pursuing a forfeiture action to obtain the skull.

Sentencing is scheduled for December 1, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Informations and Indictments

United States v. Gollon Brothers Wholesale Live Bait, Inc., et al., No. 3:09-CR-0013-134 (W.D. Wisc.), AUSA Peter Jarosz ([redacted]**.**

On September 17, 2009, informations were filed against four Wisconsin bait farmers for illegally importing fish from other states. The defendants each have agreed to plead guilty to a single Lacey Act violation, the result of a lengthy investigation that started during an outbreak of a fish-killing virus in 2007. The four businesses charged are Gollon Brothers Wholesale Live Bait, Gollon Enterprises, Hayward Bait and Tackle, and Friesses Minnow Farm.

In total, the businesses are charged with importing more than $2.5 million worth of market value minnows from Minnesota, Arkansas, North Dakota, and South Dakota without valid permits or health certificates certifying that they were free from disease. Investigators did not obtain evidence that these businesses were responsible for importing viral hemorrhagic septicimea (also known as VHS) or other diseases into the Wisconsin fish population. It was impossible to know for certain, however, since the white suckers, shiners and fathead minnows they imported were never tested for disease.

An affidavit for an unsealed search warrant stated that Wisconsin Department of Natural Resources and U.S. Fish and Wildlife Service investigators stopped a truck carrying bait that was entering Wisconsin from Minnesota in May 2007. The investigators wanted to check compliance with emergency state rules that banned importing live bait into the state. The truck driver did not have an import permit for the load, which included 500 gallons of wild minnows caught in Minnesota that were headed for Gollon Brothers in Stevens Point. VHS was discovered in the Lake Winnebago chain about two weeks before the truck was stopped. The virus causes fish to bleed to death and affects a wide range of species.

Plea hearings are scheduled for October 20 and 29, 2009.

Back to Top

United States vs. Polembros Shipping Limited, No. 2:09-CR-00252 (E.D. La.), ECS Trial Attorney Christopher Hale and AUSA Dorothy Taylor

On September 2, 2009, a five-count information was filed charging Polembros Shipping Limited, a Greece-based oceanic vessel management company, with two APPS violations and violations of the Ports and Waterways Safety Act, the Non-Indigenous Aquatic Nuisance Prevention and Control Act, and an 18 U.S.C. § 1001 false statement count. Three crew members previously pleaded guilty to a variety of charges for their involvement in the discharge of oily wastes while on the high seas.

M/V Theotokos

Investigation revealed problems with the operation and condition of the *M/V Theotokos*, specifically the discovery of a breach in the outer skin of the vessel and fuel oil leaks into the forepeak ballast tank. Crew members suspected a leak, which was reported to company personnel, but was not recorded in writing or reported to Coast Guard inspectors until the crew was confronted during an inspection.

After it was discovered that fuel oil had been leaking into the forepeak ballast tank, the crew proceeded to pump the oily liquid directly overboard through the ballast pump. None of these discharges were recorded in the ORB. As the vessel approached New Orleans, it was clear that oil continued to leak into the forepeak tank. The chief engineer ordered two fitters to fabricate and install an obstruction device onto the forepeak tank's sounding tube so that when inspectors boarded to take a sounding, the results would obscure the presence of any oil in the tank.

During the Coast Guard boarding inspectors were able to see that the forepeak tank contained approximately one meter of oil in the tank. During a delay in the inspection, crew members removed the obstruction device before inspectors had a chance to enter the tank and see it. Inspectors also were provided with a false ballast log, which had omitted the presence of oil in the tank, as well as the effect the crack was having on the volume of liquid contained in the tank.

Maintenance of accurate ballast water records is required under Ballast Water Management for Control of Nonindigenous Species regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act. This case does not present an instance of an invasive species introduction; nevertheless, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

This case was investigated by the United States Coast Guard.

Back to Top

Pleas

United States v. Barton Wilkinson, No. 3:09-CR-00203 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe ([redacted] and AUSA Nancy Cook [redacted]

Dredging activity

On September 15, 2009, Barton Wilkinson pleaded guilty to an Endangered Species Act violation for his involvement in damaging habit critical to the survival of Snake River Steelhead trout.

The defendant owns property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises chinook salmon, to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

Wilkinson was approached by neighbors regarding channelization of Clear Creek next to the defendant's Clear Creek property in an effort to prevent flooding during spring runoff. A contractor performed stream reconfiguration work with a bulldozer for the neighbors and the defendant acquiesced to that work on or about August 26, 2007. The contractor dredged rock and soil material from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark affecting an area of approximately .25 acres.

Wilkinson did not have a permit from the Army Corps of Engineers to perform this work in Clear Creek, which produced large amounts of siltation downstream from the site work, causing significant damage to an endangered species habitat.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

Back to Top

[redacted]

[redacted]

[redacted]

Back to Top

United States v. Jonathan Deck, No. 5:09-CR-00469 (N.D.N.Y.), ECS Trial Attorney Todd Gleason ([redacted]) and AUSA Craig Benedict [redacted]

On September 8, 2009, Jonathan Deck pleaded guilty to conspiracy to commit wire fraud for his involvement in a massive, asbestos-contaminated dumpsite that has been designated a Superfund site. This unpermitted dumpsite was located on an open farmer's field, adjacent to the Mohawk River. Approximately 60 million pounds of asbestos-contaminated material was dumped on the field between July and October, 2006.

Pulverized demolition debris

Deck worked as a solid waste management "broker" for more than a decade, facilitating the coordination between solid waste facilities and trucking companies. He was the sole owner and operator of J.A.D., Inc., a company that arranged for independently-owned, tractor-trailer trucks to transport materials to solid waste management facilities. Deck admitted to obtaining a fraudulent New York Department of Environmental Conservation permit that was faxed to prospective solid waste transfer facilities and trucking companies in order to obtain their business. As a result, tons of pulverized demolition debris contaminated with asbestos and other hazardous substances were hauled from New Jersey and New York City to the Frankfort farm field.

Deck is scheduled to be sentenced on January 8, 2010. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the New York State Department of Environmental Conservation, Bureau of Environmental Crimes Investigations, and the New Jersey State Police.

Back to Top

United States v. Alan Van Hout, No. 1:09-po-02365 (D.N.M.), AUSA Andrea Hattan [redacted] with assistance from ECS Assistant Chief John Webb [redacted].

On August 26, 2009, Alan Van Hout pleaded guilty to a misdemeanor charge of unlawfully possessing a Mexican gray wolf, which is protected under the Endangered Species Act. The wolf that Van Hout killed had been released into the wild as part of a reintroduction program.

On August 6, 2008, the defendant shot and killed the wolf and tried to hide the carcass from wildlife agents who were involved in the reintroduction program. The government stated that Van Hout was not charged with shooting the animal because he claimed he did not know it was a Mexican gray wolf at the time he shot it. He will forfeit the shotgun used in the killing.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Bruce Bivins, No. 9:09-CR-80060 (S.D. Fla.), AUSA Lauren Jorgensen [redacted]

Loggerhead sea turtle eggs

On August 25, 2009, Bruce Bivins pleaded guilty to an information charging a Lacey Act violation for unlawfully possessing and transporting sea turtle eggs.

In May 2009, Bivins was stopped by a Town of Palm Beach police after he was seen carrying a bag near the edge of the Intercoastal Waterway. After the police officer identified himself and asked Bivins to stop, Bivins took off running. The officer watched as Bivins ran toward the Intercoastal and saw him toss the bag he was carrying. The defendant then came back toward the officer and surrendered. The bag, which was recovered and searched shortly thereafter contained 119 Loggerhead sea turtle eggs. Officers observed that about half of the eggs were covered in sand, and the other half were not, indicating that they may have been collected from a female sea turtle while she was laying the eggs and before they touched the ground.

Sentencing is scheduled for November 9, 2009. This case was investigated by the United States Fish and Wildlife Service and the Town of Palm Beach Police Department.

Back to Top

United States v. Corn Plus, LLLP, No. 09-mj-00309 (D. Minn.), AUSA David Genrich [redacted]

On August 19, 2009, Corn Plus, LLLP pleaded guilty to one negligent Clean Water Act violation. The company is an ethanol manufacturer, with a production facility near Rice Lake, a water of the United States.

For approximately two years, the company discharged wastewater that violated the biological oxygen demand parameter of its permit. This wastewater flowed into a drain tile system that led to Rice Lake. Sentencing is scheduled for October 27, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Minnesota Pollution Control Agency.

Back to Top

Sentencings

United States v. Christopher Neil Gauntt, No. 6:09-CR-00047 (E.D. Okla.), ECS Senior Trial Attorney Dan Dooher

On September 25, 2009, Christopher Neil Gauntt was sentenced to serve six months' home confinement as a condition of a five-year term of probation. He also will pay a $5,000 fine. Gauntt, the former supervisor of the Fort Gibson Water Treatment Plant ("FGWTP") in Fort Gibson, Oklahoma, pleaded guilty to a false statement violation for falsifying a monthly operating report ("MOR") that certified the safety of drinking water from the facility.

On June 12, 2008, the defendant submitted a MOR containing false data for drinking water that is provided to residents of the Fort Gibson area. Under the Safe Water Drinking Act, the FGWTP must certify that it is providing water that is safe for human consumption. Gauntt admitted that he falsely recorded the turbidity and chlorine levels in the MOR that was submitted to the Oklahoma Department of Environmental Quality in June 2008. In August 2008, Fort Gibson alerted residents to the turbidity violations. Prior to the plea, the FGWTP indicated that it had not received information that anyone experienced ill effects from the drinking water during that time period.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

Back to Top

United States v. Herbert Corn, No. 3:09-CR-00061 (N.D. Ind.), ECS Trial Attorney Gary Donner AUSA Toi Houston and SAUSA Dave Mucha

On September 15, 2009, Herbert Corn was sentenced to serve a one-year term of incarceration, followed by three months' home detention as a condition of a one-year term of supervised release.

Corn, the former Superintendent for the City of Rochester Wastewater Treatment Plant in Rochester, Indiana, previously pleaded guilty to an information charging five felony Clean Water Act violations. He admitted to making false statements in discharge monitoring reports submitted to the Indiana Department of Environmental Management ("IDEM"). From approximately September 2004 and continuing through approximately May 2007, the defendant submitted at least five reports containing false data for treated water that is discharged from the Rochester Plant into Mill Creek, a tributary of the Tippecanoe River. These reports falsely indicated that the levels of E. coli, ammonia NH3-N, and CBOD-5 were all in compliance with the permit limits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the IDEM Office of Criminal Investigation, which are members of the Northern District of Indiana Environmental Crimes Task Force.

Back to Top

United States v. Anthony Bazile, No. 08-CR-124 (D. Mont.), ECS Senior Trial Attorney Robert Anderson

On September 9, 2009, Anthony Bazile was sentenced to serve six months' home detention as a condition of a three-year term of probation. He also will pay a $5,000 fine. Bazile, an outfitter residing in Louisiana, recruited unlicensed clients to participate in big game hunts in Montana between 1998 and 2003. He previously pleaded guilty to a Lacey Act conspiracy and a substantive Lacey Act felony

trafficking violation. The court departed downward, over the government's objection, to a probationary sentence based upon the defendant's age (61) and medical conditions. Co-defendants Leo Bergtoll, his wife Anna Lou, and their son Darrel, recently were sentenced to pay $15,000 fines and will complete varying terms of probation. The three previously pleaded guilty to Lacey Act violations stemming from allowing unlicensed big game hunters onto their property.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Dalnave Navigation Inc., et al., No. 2:09-CR-00130 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] AUSA Kathleen O'Leary [redacted], and SAUSA Christopher Mooradian.

On September 3, 2009, Liberian ship management company Dalnave Navigation Inc., ("Dalnave") was sentenced after previously pleading guilty to one APPS violation for failing to maintain an accurate oil record book and to one 18 U.S.C. § 1001 false statement violation. Dalnave will pay a $1 million fine plus a $350,000 community service payment to the National Fish and Wildlife Foundation to be used for the protection and restoration of marine and aquatic resources in the District of New Jersey or its off-shore coastal region. Panagiotis Stamatakis, the chief engineer for the *M/V Myron N*, an oceangoing bulk carrier vessel, and the ship's second engineer Dimitrios Papadakis, both Greek citizens, were sentenced on September 1st to serve three months' probation with a special condition of one month's home confinement. They both pleaded guilty to using falsified records that concealed improper discharges of untreated bilge waste.

The government's investigation began in September 2008, when Coast Guard inspectors examined the ship following its arrival into New York and subsequently into the Port of Newark, New Jersey. The inspections uncovered evidence that crewmembers had improperly handled and disposed of the ship's oil-contaminated bilge waste and falsified entries in the ship's oil record book ("ORB").

Stamatakis served as the vessel's chief engineer between November 2007 and September 2008 and was responsible for all engine room operations. Papadakis served as a third engineer between November 2007 and August 2008 and as second engineer from August 2008 to September 2008. Between November 2007 and September 2008, under the supervision of Stamatakis, Papadakis ordered engine room crew members to discharge oil-contaminated bilge wastes from the ship's bilge holding tank directly into the ocean. When the ORB was presented to inspectors in Newark, both defendants had failed to record these overboard discharges.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. John Evans, No. 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On September 1, 2009, commercial fisherman John Evans was sentenced to serve three months' incarceration followed by six months' home confinement. He further was ordered to pay a $2,000 fine and $2,230 in restitution after previously pleading guilty to a felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, Evans, with the assistance of a Maryland-designated fish check-in station employee, falsely recorded the amount of striped bass that he harvested. Within each year, he failed to record some of the striped bass that was caught or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also

would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendant allowing him to catch striped bass above his maximum poundage quota amount. The fair market retail value of this fish was $23,400.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

Back to Top

United States v. Hans Neilsen, et al., No. 4:09-CR-00024 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [redacted] with assistance from AUSA William Meiners [redacted].

On August 31, 2009, Hans Neilsen, a vice president with HPI Products Inc., ("HPI"), pleaded guilty to two FIFRA violations for the disposal of pesticide wastes into floor drains at the facility. HPI, a producer of pesticides and herbicides, previously pleaded guilty to a felony CWA violation and a RCRA violation stemming from dumping wastes and spilled product into floor drains and illegally storing these wastes. William Garvey, the company president and majority owner, pleaded guilty to a felony CWA violation and was sentenced on September 1st to serve six months' incarceration followed by six months' home confinement. He was further ordered to pay a $100,000 fine.

HPI began producing pesticides in 1980. It relocated several times as it expanded its operations in the City of St. Joseph. During the entire time it was in operation until 2007, HPI employees washed chemical wastes, spills and equipment rinses into floor drains, which connected to the city's POTW, without a permit.

In addition two former HPI facilities and three other locations in St. Joseph were used as warehouses to store pesticides and process waste it did not dump into sewers. The pesticides and wastes were left for years in unmaintained buildings without the proper notification to state and federal authorities. Many of the containers were found to contain, among other things, chlordane, selenium and heptachlor, with characteristics of ignitability, toxicity and/or corrosivity. Several drums had leaked or spilled onto the warehouse floors and ground underneath the warehouses.

The sentencing for HPI has been continued. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Richard Sturgeon, No. 2:08-CR-04032 (W.D. Mo.), AUSA Lawrence Miller ([redacted] and SAUSA Anne Rauche [redacted].

On August 28, 2009, Richard Sturgeon, a former public works director for the City of Lake Ozark, Missouri, was sentenced to pay a $5,000 fine and will serve a three-year term of probation after pleading guilty to failing to report the discharge of raw sewage into the Lake of the Ozarks.

As the public works director, Sturgeon was responsible for overseeing the city's waste water treatment facility and reporting sewage bypasses. Lake Ozark co-owns and operates the Lake of the Ozarks Regional Waste Water Treatment Facility with the City of Osage Beach.

The City of Lake Ozark has a history of overflows and/or bypass events from the waste water treatment facilities' lift stations into the Lake of the Ozarks. Citizen request forms maintained by the city document numerous incidents of lift station sewage bypasses that were never reported to the

Missouri Department of Natural Resources ("MDNR"). The city routinely has failed to notify MDNR when the bypasses occurred.

On September 11, 2007, MDNR staff observed a bypass at a lift station resulting in the discharge of 10,000 to 15,000 gallons of raw sewage into the lake. DNR officials informed the city about the bypass, and the city took action to stop the flow. The city, however, did not conduct a cleanup and did not provide written notification of the bypass.

Analysis of lake water conducted two days after the event showed elevated levels of ammonia, nitrogen, and fecal coliform that exceeded the criteria deemed safe for recreation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Cedric Salabye, No. 3:08-CR-00672 (D. Ariz.), ECS Senior Trial Attorney Georgiann Cerese ([redacted]) and ECS Trial Attorney Todd Mikolop [redacted].

On August 28, 2009, Cedric Salabye was sentenced to serve six months' home confinement as a condition of a five-year term of probation. He also will complete 150 hours of community service. Salabye pleaded guilty earlier this year to one count of violating the Bald and Golden Eagle Protection Act for selling parts from a bald eagle in August 2006. Salabye initially was charged in a four-count indictment, which included a forfeiture count for the items he sold.

The defendant was charged with selling individual eagle feathers, as well as fans containing feathers, without a permit. The fans sold for as much as $700. As part of the plea, Salabye also agreed to forfeit all feathers which he sold, some of which actually were abandoned after sale.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures and the feathers of the birds are central to religious and spiritual Native American customs. Enrolled members of federally recognized Native American tribes are legally entitled to obtain permits to possess eagle parts for religious purposes, but the sale of bald and golden eagles or their feathers and parts are prohibited under any circumstance. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally, by accident or other means, to supply enrolled members of federally recognized tribes with eagle parts for religious use.

This case was investigated by the United States Fish and Wildlife Service and the Navajo Nation Department of Fish and Wildlife.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

ENVIRONMENTALCRIMES SECTION

MONTHLY BULLETIN

November 2009

EDITOR'S NOTE:

CORRECTION: **The write up for *United States v. Dalnave et al*. that was reported last month erroneously stated that the chief engineer Panagiotis Stamatakis and second engineer Dimitrios Papadakis were each sentenced to serve three months' probation with a special condition of one month's home confinement. They were actually sentenced to serve three months' probation with a special condition of one month's *community* confinement.**

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
S.D. Ala.	**United States v. DHS, Inc., d/b/a Roto Rooter, et al.**	***Waste Grease Disposal/*** **Conspiracy, CWA, Mail Fraud, False Statement**
N.D. Calif.	**United States v. Rogelio Lowe** **United States v. Chuck Sivil**	***Sham Asbestos Training/*** **False Statement, Mail Fraud** ***Fuel Terminal/*** **CAA**
D. Colo.	**United States v. Jeffrey M. Bodner et al.**	***Bobcat Hunting/*** **Conspiracy, Lacey Act, Firearms Possession**
D. Conn.	**United States v. Robert Meyer, et al.**	***Wire Manufacturer/*** **CWA Misdemeanor**
S.D. Fla.	**United States v. John Buckheim et al.** **United States v. Larkin Baggett**	***Spiny Lobster Harvest/*** **Conspiracy, Lacey Act, Forfeiture** ***Fugitive/*** **Weapons Charges**
D. Hawaii	**United States v. Charles Vidniha**	***Monk Seal Killing/*** **ESA**
E.D. La.	**United States v. Polembros Shipping Limited et al.**	***Vessel/*** **APPS, Ports and Waterways Safety Act, Obstruction, Nonindigeneous Aquatic Nuisance Prevention and Control Act**
M.D. La.	**United States v. Travis Dardenne et al.**	***Alligator Hunt/*** **ESA**
D. Md.	**United States v. Joseph Peter Nelson, Jr., et al.** **United States v. Golden Eye Seafood et al.**	***Striped Bass Labeling/*** **Lacey Act**
E.D. Mich.	**United States v. Wayne Duffiney**	***Boat Sinking/*** **CWA, Submerging Vessel in Navigable Waterway**
D. Minn.	**United States v. Corn Plus, LLLP**	***Ethanol Manufacturer/*** **CWA Misdemeanor**
D. Neb.	**United States v. Lamar Bertucci**	***Eagle Kills/*** **BGEPA, MBTA**
N.D. N.Y.	**United States v. Paul Mancuso et al.**	***Asbestos Dumpsite/*** **Conspiracy, Wire Fraud**
W.D.N.Y.	**United States v. Keith Gordon-Smith et al.**	***Asbestos Removal/*** **CAA, False Statement, Obstruction of Justice**
W.D.N.C.	**United States v. Chiu Hong Lo**	***Ginseng/*** **Lacey Act**

	United States v. Daniel Still, Jr.	***Fuel Spill/* CWA Misdemeanor**
S.D. Ohio	**United States v. Danny Parrott**	***Deer Hunting/* Lacey Act**
D. Ore.	**United States v. Gunther Wenzek**	***Coral Smuggling/* Smuggling**
D.R.I.	**United States v. Southern Union Company**	***Natural Gas Supplier/* RCRA**
E.D. Tenn.	**United States v. Watkins Street Project, LLC et al**	***Asbestos Abatement/* Conspiracy, CAA, False Statement, Obstruction of Justice**
S.D. Tex.	**United States v. Styga Compania Naviera S.A.**	***Vessel/* APPS**
D. Utah	**United States v. Larkin Baggett**	***Chemical Distributor/* RCRA, CWA**
W.D. Wash.	**United States v. Philip Smith**	***Wetlands/* CWA**

Additional Quick Links

Trials

United States v. Paul Mancuso, et al., Nos. 5:08-CR-00548 and 00611 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted].

Asbestos debris in open field

On October 28, 2009, a jury returned guilty verdicts on all counts against brothers Paul and Steven Mancuso. They were convicted of conspiracy and substantive CAA and CERCLA violations for the illegal removal of asbestos from numerous locations throughout central and upstate New York.

Lester Mancuso, father of Paul and Steven, pleaded guilty on October 19th, the eve of trial, to conspiracy to defraud the United States, to violate the Clean Air Act, to violate CERCLA, and to commit mail fraud.

Paul Mancuso has a prior record of CAA violations from 2003 and an insurance fraud conviction in 2004, both of which stemmed from asbestos removal and disposal activities. As a result of those prior convictions he was prohibited from becoming either directly or indirectly involved in any asbestos abatement activities or associating with anyone who violated any law. Evidence from the current case proved that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities contaminating multiple businesses and homes, and on several occasions Paul Mancuso dumped asbestos on roadsides and in the woods.

Attorney Steven Mancuso aided his family in its illegal asbestos enterprises by preparing false and fraudulent documents to make it appear that their activities were legal and that they were entitled to payment for their work. Paul Mancuso and his family ran their illegal asbestos business from the offices of Steven Mancuso's law firm.

Ronald Mancuso, another brother, previously pleaded guilty to conspiracy to violate CERCLA. Ronald admitted to participating in dumping asbestos in the woods in September and October 2005. Ronald is scheduled to be sentenced on December 2, 2009, and Paul, Steven and Lester are scheduled for February 24, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State ("NYS") Department of Environmental Conservation. Assistance was provided by the NYS Department of Labor, Asbestos Control Bureau; the NYS Workers' Compensation Board, Office of Fraud Inspector General; and the NYS Insurance Fund, Division of Confidential Investigations.

Back to Top

United States v. Danny Parrott, No. 2:09-CR-00045 (S.D. Ohio), AUSA Mike Marous [redacted] and SAUSA Heather Robinson [redacted]

On October 16, 2009, Danny Parrott was convicted by a jury of 14 of 15 counts charged stemming from his involvement in an illegal deer hunting operation. The jury convicted Parrott of conspiracy and Lacey Act violations for his role in the sale and transport of Ohio whitetail deer to co-defendant James Schaffer of South Carolina. Schaffer owned a hunting preserve in South Carolina and sought to import Ohio deer to the preserve because they are much bigger than South Carolina deer. Parrott owned the River Ridge Ranch which operated as a wild animal hunting reserve in Ohio and catered to hunters from states such as South Carolina, Florida and Georgia. He purchased numerous deer from several Amish residents who raise deer for a living. The 54 white tail deer were shipped to South Carolina from Ohio without being tested for disease, in violation of the Lacey Act. The interstate sale of deer is restricted to prevent the spread of disease which could infect other wildlife or potentially humans. Schaffer previously pleaded guilty to his role in the conspiracy.

This case was investigated by the Departments of Natural Resources for the States of Florida, Ohio and South Carolina.

Back to Top

Informations and Indictments

United States v. DHS, Inc., d/b/a Roto Rooter, et al., No. 1:09-CR-00242 (S.D. Ala.), ECS Senior Trial Attorney Jeremy Korzenik [redacted] and AUSA Michael Anderson ([redacted]

On October 29, 2009, a 43-count indictment was returned charging a waste disposal company, its president and a top manager for offenses involving the illegal disposal of waste into the sewage treatment systems of Mobile and of neighboring municipalities.

DHS Inc., doing business as Roto Rooter; its president, Donald Gregory Smith; and manager William Wilmoth, Sr., were charged with numerous violations of the Clean Water Act, mail fraud and conspiracy for having dumped into local sewers thousands of gallons of waste grease and oil that they had been hired to dispose of safely and legally. The indictment describes a decade-long period wherein the City of Mobile's sewage system experienced overflows including 897 incidents between 1995 and 1998 alone. Most of these overflows were caused by the blockage of sewer lines and treatment works with solidified grease.

In response to lawsuits under the Clean Water Act, the Mobile Area Water and Sewer System ("MAWSS") entered into a consent decree with EPA in 2002 under which it implemented a grease control program requiring restaurants and other food service establishments to install grease traps to prevent cooking oils from entering the sewer system. Roto Rooter and its employees were subsequently hired to appropriately dispose of this waste grease, but they instead discharged it into the public sewer system, causing the violations and creating the harm that their customers had paid them to prevent.

Roto Rooter employee Michael L. Edington pleaded guilty to conspiracy to violate the CWA, to commit mail fraud and to make false statements for having dumped numerous loads of grease into area sewer systems between 2004 and 2006 and for falsifying grease tracking manifests to make it appear that the waste had been disposed of properly.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Keith Gordon-Smith et al., No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Craig Gestring [redacted]

On October 22, 2009, a second superseding indictment was returned charging David Vega and Francis Rowe with Clean Air Act violations while employed as project managers for Gordon-Smith Contracting, Inc., an asbestos removal company owned by Keith Gordon-Smith. The indictment supersedes an earlier indictment returned in June 2009, against Keith Gordon-Smith, charging him with CAA violations, submitting false statements, and obstruction of justice. The superseding indictment further charges Gordon-Smith's company with the same criminal violations. In addition, the superseding indictment charges Francis Rowe with submitting a false statement in an effort to obtain a court-appointed attorney.

The 18-count indictment alleges that at different times between June 2007 and April 2009, Gordon-Smith, Vega, and Rowe directed employees to remove asbestos from the Genesee Hospital complex without ensuring that the asbestos was kept adequately wet or was properly disposed of. The indictment also alleges that Gordon-Smith caused his company's employees to perform illegal asbestos removal at other sites, including schools, and that Gordon-Smith took several steps to hide the illegal asbestos removal from federal agencies. These included failing to provide prior notification to EPA before the asbestos removal projects were performed at the schools and hospital, giving false statements to an inspector from the Occupational Safety and Health Administration, and providing a false notification to the EPA.

The U.S. Attorney's Office for the Western District of New York has established a page on its Web site at http://www.usdoj.gov/usao/nyw to provide information for potential victims who may have been harmed as a result of the alleged crimes. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Conservation.

Back to Top

United States v Rogelio Lowe, No.3:09-CR-01013 (N.D. Calif.), AUSA Stacey Geis [redacted]

On October 21, 2009, Rogelio Lowe was charged with two counts of mail fraud and nine false statement violations for making or using a false document stemming from his alleged involvement in the issuance of sham asbestos training certificates.

The indictment states that Lowe engaged in a scheme to defraud in connection with issuing training certificates to asbestos removal workers despite knowing that he had not provided them with the proper training and subsequently billing those companies that hired these workers the full cost of the training course.

Lowe was the owner and operator of E&D Environmental Safety Training, Inc., a safety consulting company that provided occupational training in asbestos work, lead abatement and mold remediation. According to the indictment, starting at an unknown date, but no later than 2008, the defendant provided asbestos removal courses that were approximately a half-hour long (versus the required eight hours), supplied answers to the closed-book examinations, and forged tests for students who did not attend a test day. Lowe then issued training certificates to students and was paid by the companies that subsequently hired them.

The indictment further states that Lowe submitted class rosters to the California Division of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) falsely reflecting that these students had successfully completed the training. Cal/OSHA used and relied on these rosters to add the names of students to its state-wide list of qualified asbestos workers.

This case was investigated by the Federal Bureau of Investigation and the United States Environmental Protection Agency Criminal Investigative Division, with assistance provided by Cal/OSHA.

Back to Top

United States v. Chiu Hung Lo (aka Sherry Lo), No. 1:09-mj-63 (W.D.N.C.), ECS Trial Attorney Shennie Patel [redacted]

On October 20, 2009, charges were filed against Chiu Hung Lo for violations of the Lacey Act in connection with purchases from an undercover agent of wild ginseng over a period of three years. Lo is charged with purchasing wild ginseng out of season, purchasing ginseng without a dealer's license, and transporting ginseng in interstate commerce without the required export certificates. Lo will be entering a plea of guilty regarding the unlawful purchases of 136.9 pounds of wild ginseng with a fair market value of $54,760.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Jeffrey M. Bodnar et al., No. 1:09-CR-00441 (D. Colo.), ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On October 20, 2009, Jeffrey M. Bodnar and Veronica Anderson-Bodnar were charged with conspiracy, wildlife trafficking and firearms violations stemming from the illegal trapping, killing and selling of bobcats and their pelts. The indictment charges both defendants with conspiracy to violate the Lacey Act, two substantive violations of the Lacey Act, and two violations of the Lacey Act false records provision. Bodnar also was charged with seven firearms violations for possession of a firearm by a felon. Anderson-Bodnar was charged with two violations of transferring firearms to a felon.

The indictment alleges that from November 2006 until March 2008, Bodnar and Anderson-Bodnar conspired to knowingly transport and sell bobcat and bobcat pelts in interstate commerce that were unlawfully trapped and killed without a license and using prohibited leghold traps in violation of state law. The two also conspired to knowingly submit false records and accounts of how the bobcats were trapped for tagging by Colorado wildlife officials. According to the indictment, Bodnar trapped and killed bobcats before, during, and after the legal bobcat hunting season at different locations in and

around Park County, Colorado, including U.S. Forest Service property. He did so without a valid license, used prohibited leghold traps, and then killed the trapped animals with a firearm.

The indictment further alleges that Anderson-Bodnar on more than one occasion took the bobcat pelts to the Colorado Division of Wildlife Office to be tagged. She provided information to complete the required records for the pelts and falsely certified that each had been taken legally in Colorado.

In 2006, Anderson-Bodnar responded to a newspaper advertisement placed in a Colorado paper by a fur-buyer based in Montana. The indictment alleges multiple transactions thereafter were made across state lines with the fur-buyer from Montana and Bodnar and Anderson-Bodnar.

This case is being investigated by the United States Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

United States v. Philip A. Smith, No. 3:09-CR-05590 (W.D. Wash.), AUSA Jim Oesterle ([redacted]

On September 3, 2009, Phillip Smith was charged with four felony Clean Water Act violations. Between August 2005 and February 2008, Smith is alleged to have knowingly dumped fill material into the wetlands that covered property he owned. Approximately 65 percent of the 190 acres Smith owned were covered in wetlands that drain into Lacamas Creek. The creek flows into the Cowlitz River and ultimately empties into the Columbia River. Neither Smith nor anyone associated with the property ever applied for the required permit. Trial is scheduled for May 25, 2010.

Wetlands

This case was investigated by the United States Army Corps of Engineers, the Washington State Department of Ecology, and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Plea Agreements

United States v. Chuck Sivil, No. 3:09-CR-00906 (N.D. Calif.), AUSA Stacey Geis ([redacted]

On October 16, 2009, Chuck Sivil pleaded guilty to violating the Clean Air Act in connection with his supervision of the operations at Shore Terminals LLC's bulk fuel terminal located in Selby, California.

According to the plea agreement, Shore Terminals distributed ethanol and jet fuel products stored at its tank farm by loading fuel trucks with a device known as a truck loading rack. When trucks are loaded with fuel in this manner, significant amounts of volatile organic compounds are

emitted into the ambient air unless the pollutants are captured with a vapor recovery unit ("VRU"). When combined with sunlight, VOCs create ground ozone, which is a major component of smog.

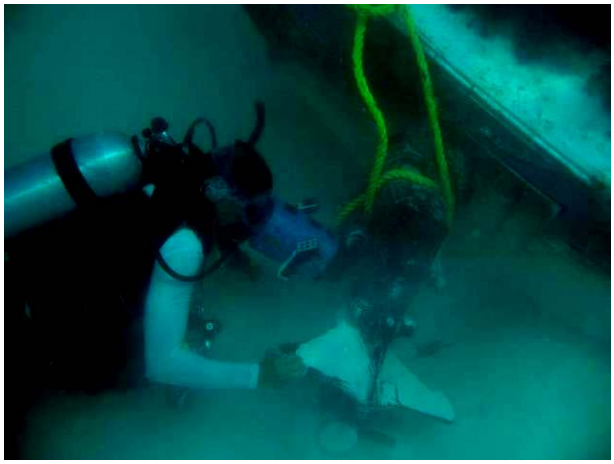
From approximately July 2005 through December 2006, Sivil was the senior manager of operations and compliance at the facility. During this time, Shore Terminals experienced problems with its VRU that caused it to malfunction and shut down. To avoid delays in loading trucks, company employees, under Sivil's supervision, repeatedly used a bypass switch that allowed them to load ethanol using the truck loading rack while the VRU was not operating.

During an inspection in August 2006 by a state air quality inspector, Sivil initially told the inspector that an electrical problem had caused the VRU to cease operating. He later admitted that this was not true and yet continued to direct his employees to use the bypass switch for several more months. Sivil pleaded guilty to a CAA felony count for tampering with a monitoring device. He is scheduled to be sentenced on January 22, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Bay Area Air Quality Management District.

Back to Top

United States v. John Buckheim et al., No. 4:09-CR-10026 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]



Diver investigating sunken vessel

On October 16, 2009, John Buckheim and Nick Demauro pleaded guilty to a Lacey Act conspiracy count for illegally harvesting spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary ("FKNMS") during the summer of 2008 and extending into early 2009. As part of the plea, a 16-foot vessel and a GMC pickup truck along with miscellaneous equipment used in acquiring the lobster will be forfeited.

Artificial habitats are prohibited from being placed on the seabed in the FKNMS. The defendants admitted to sinking a vessel in this protected area for the purpose of creating an artificial lobster habitat. In taped conversations, the defendants further admitted to possessing the GPS coordinates for well over 300 illegal artificial habitat locations. Spiny lobster may only be harvested during the commercial season, which runs from August 6 through March 31 of the following year. The fair market retail value of illegally harvested lobster by the defendants was greater than $155,000. Buckheim and Demauro are scheduled for sentencing on December 9, 2009.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, with assistance from the Florida Fish and Wildlife Conservation Commission, and the Miami-Dade Police Department Underwater Recovery Unit.

Back to Top

United States v. Daniel Still, Jr., No. 3:09-CR-00042 (W.D. N.C.), AUSA Steve Kaufman (

On October 13, 2009, Daniel Still, Jr., pleaded guilty without a written plea agreement to a Clean Water Act misdemeanor. The defendant caused the spill of approximately 3,100 gallons of burner fuel from the Belmont Dyers textile mill site into the Catawba River during his demolition of the facility in 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

Demolition site

United States v. Gunther Wenzek, No. 3:08-CR-00377 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe and AUSA Dwight Holton

Close-up view of coral

On October 14, 2009, Gunther Wenzek pleaded guilty to a smuggling violation for smuggling protected coral into the United States via the port of Portland, Oregon. Wenzek, a German national, originally was charged in a nine-count indictment with three felony violations of smuggling protected coral into the United States, three felony Lacey Act offenses, and three misdemeanor violations of the Endangered Species Act. He is scheduled to be sentenced on January 5, 2010.

Wenzek owns a company named CoraPet, based in Essen, Germany, and sold various coral products to retailers in the United States. An investigation was launched in 2007 after Wenzek attempted to ship a container to Portland loaded with fragments of endangered coral from reefs off the Philippine coast. After this initial shipment, agents subsequently seized two full containers of endangered coral shipped by Wenzek to a customer in Portland. These two shipments weighed in at more than 40 tons of coral.

The seized corals have been identified as belonging to the scientific order *Scleractinia*, *genera Porites*, *Acropora*, and *Pocillopora*, which is common to Philippine reefs. Due to the threat of extinction, stony corals, such as those seized in this case are protected by international law. Philippine law specifically forbids exports of all coral. CITES further prohibits importation of this coral to customers in the United States without a permit.

This case was investigated by the United States Fish and Wildlife Service, United States Immigration and Customs Enforcement, and the National Marine Fisheries Service.

Back to Top

United States v. Watkins Street Project, LLC, et al., No. 1:09-CR-00144 (E.D. Tenn.), ECS Trial Attorney Todd Gleason ([redacted] and AUSA Matthew Morris [redacted].

On September 30, 2009, Gary Fillers pleaded guilty to a Clean Air Act conspiracy violation for his involvement with an illegal asbestos abatement project. Fillers is the owner of Watkins Street Project, LLC, ("WSP") one of two demolition and salvage companies and two other individuals who were charged with violating work practice standards related to the proper stripping, bagging, removal and disposal of asbestos.

Asbestos peeling from pipe

The indictment describes a year-long scheme in which the former Standard Coosa Thatcher plant in Chattanooga was illegally demolished while still containing large amounts of asbestos. It further alleges that the asbestos that was removed from the plant prior to demolition was scattered in piles and left exposed to the open air. The indictment also describes the efforts made by owners and supervisors to cover up their illegal activities by falsifying documents and lying to federal authorities.

The eleven-count indictment charges WSP, Mathis Construction Inc., James Mathis, a Mathis Construction owner; and WSP supervisor David Wood, with conspiracy to defraud the United States and to violate the Clean Air Act and substantive CAA violations, making false statements, and obstructing justice.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Chattanooga-Hamilton County Air Pollution Control Bureau.

Back to Top

United States v. Travis Dardenne et al., Nos. 3:09-CR-00113 and 00114 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted] and AUSA Corey Amundson [redacted]

On October 6, 2009, Travis Dardenne and Jeffery Brown each pleaded guilty to a Lacey Act misdemeanor charge for knowingly attempting to acquire an American alligator in violation of the Endangered Species Act.

In September 2006, Dardenne and Brown, licensed alligator hunters, guided an out-of-state alligator sport hunter to an area for which Dardenne and Brown did not have appropriate state authorization to hunt. The sport hunter killed a trophy-sized alligator in the unapproved area. Louisiana strictly regulates the hunting of alligators in the wild, for the purpose of maintaining a healthy alligator population. Trophy-sized alligators are highly sought after by hunters, and guides frequently take hunters to them regardless of state restrictions.

This case was investigated by the Law Enforcement Division of the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

Sentencings

United States v. Corn Plus, LLLP, No. 09-mj-00309 (D. Minn.), AUSA David Genrich ([redacted]

On October 27, 2009, Corn Plus, LLLP, was sentenced to pay a $100,000 fine and complete a three-year term of probation. The company, an ethanol manufacturer with a production facility near Rice Lake, recently pleaded guilty to one negligent Clean Water Act violation.

For approximately two years, Corn Plus discharged wastewater that violated the biological oxygen demand parameter of its NPDES permit. This wastewater flowed into a drain tile system that led to Rice Lake, a water of the United States.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Minnesota Pollution Control Agency.

Back to Top

United States v. Joseph Peter Nelson Jr., et al., No. 8:08-CR-00482 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] **ECS Trial Attorney Jeremy Peterson** [redacted] **and AUSAs Stacy Belf** [redacted] **and Christen Sproule** [redacted]

On October 22, 2009, a father and son were sentenced for their involvement in illegally over-harvesting and underreporting striped bass, also known as rockfish, from 2003 through 2006. Joseph Peter Nelson, Jr., a commercial fisherman licensed in Maryland, previously pleaded guilty to one Lacey Act conspiracy and three felony Lacey Act violations. His father, Joseph Peter Nelson, Sr., pleaded guilty to one felony violation of the Lacey Act for assisting in transporting in interstate commerce the illegally taken rockfish. Nelson Jr. was sentenced to serve four months' incarceration followed by four months' home detention. He will pay a $3,000 fine plus $7,250 in restitution. The restitution figure was derived from the fact that Nelson Jr. harvested and underreported 14, 500 pounds of striped bass worth $72,500. Nelson Sr. will complete a one-year term of probation.

From 2003 to 2006, Nelson Jr., with the assistance of his father and Golden Eye Seafood, a Maryland-designated check-in station operated by Robert Lumpkin, inflated the number of fish recorded and under reported the weight. By inflating the number of fish caught and under reporting the weight, the records made it appear that Nelson Jr. had not reached the poundage quota for the year. He then requested more tags from the state of Maryland in order to catch more fish above his quota which were never reported by Golden Eye Seafood and were then transported to other states for sale.

In addition, Nelson Jr. admitted to catching rockfish that were below the legal size limit in Maryland, and to using tags that falsely noted the method of catch. The tags indicated that he had caught the fish using a hook and line when in fact they were caught using a net. Nelson Jr. admitted that he used a knife to simulate hook marks on the fish in order to avoid detection. On eight different occasions, Nelson Jr. with the assistance of his father sold more than 2,500 pounds of illegally harvested and tagged fish during each transaction to an undercover agent posing as an out-of-state fish buyer. Nelson Jr. also admitted that he falsely and selectively tagged the rockfish in order to conceal where the fish had been caught in order to illegally maximize his catch.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. Styga Compania Naviera S.A, No. 4:09-CR-00572 (S.D. Tex.), ECS Trial Attorney Kenneth Nelson [redacted].

On October 21, 2009, Styga Compania Naviera S.A., ("Styga") the Panamanian operator of the *M/T Georgios M*, a 40,000-ton oil tanker ship, pleaded guilty to, and was sentenced for, three APPS violations for failing to properly maintain an oil record book ("ORB").

The company will pay a $1 million fine and $250,000 for community service to the National Marine Sanctuary Foundation. The community service payment will be designated for use in the Flower Garden and Stetson Banks National Marine Sanctuary, headquartered in Galveston, Texas, to support the protection and preservation of natural and cultural resources located in and adjacent to the sanctuary.

The *Georgios M* often called on ports in Corpus Christi, Texas City, Freeport, and Houston, Texas while engaging in the international oil trade. From December 2006 until February 2009, senior engineering officers and crewmembers acting on behalf of Styga operated a bypass pipe and deliberately discharged sludge and oily waste directly into the ocean. The engineers knowingly failed to note in the ORB the fact that sludge and oily waste had been discharged directly overboard into the ocean, and they also made fictitious entries to conceal the fact that the pollution control equipment had not been used. During a Coast Guard boarding in February 2009 at the port in Texas City, the ORB containing false entries was provided to inspectors.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Robert Meyer, et al., No. 3:09-CR-00133 (D. Conn.), AUSA Christopher Schmeisser [redacted] and SAUSA Anthony Kaplan [redacted]

On October 15, 2009, Robert Meyer, a former vice president of a now defunct manufacturing company, was sentenced to pay a $1,000 fine and will complete a one-year term of probation. Meyer previously pleaded guilty to two misdemeanor Clean Water Act violations for failing to report waste water discharges that violated the company's NPDES permit on two occasions in 2007.

Atlantic Wire was engaged in the cleaning and manufacturing of wire, and it used sulfuric and hydrochloric acid and highly alkaline materials as part of the stripping and coating process. The resultant wastewater was to be collected and treated on-site in the facility's wastewater treatment system before being discharged into the Branford River under the terms of its NPDES permit.

Meyer was hired in May 2005 by Atlantic Wire Company as vice president for finance. Shortly after the company hired him, he was asked to assume additional responsibilities for supervising environmental compliance. Court documents state that there were several occasions during which the company's wastewater treatment system did not meet permit limits and these violations were not reported.

The company was prosecuted both federally and on the state level, and it was sentenced in January 2009 to pay the state of Connecticut $1.5 million to settle charges that it repeatedly discharged toxic wastewater into the Branford River during an approximately three-year period. In one instance the pH was allowed to drop to a level of 1.4 for more than a two-hour period. The company also pleaded guilty in federal court in December 2008 to two felony CWA violations and one false statement violation. Atlantic Wire ultimately paid approximately $800,000 for the cleanup of the site and for dismantling of the plant. With no other assets remaining, however, the company was liquidated

without paying any fines or penalties, although it did agree that such fines would apply if it had remained in business.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Connecticut Department of Environmental Protection and the Connecticut Attorney General's Office.

Back to Top

United States vs. Polembros Shipping Limited et al., Nos. 2:08-CR-00185, 186 and 2:09-CR-00252 (E.D. La.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Dorothy Taylor [redacted]

On October 15, 2009, Panagiotis Lekkas, the captain of the cargo ship, *M/V Theotokos*, was sentenced to serve six months in prison, followed by four months in a community confinement facility. Lekkas also must pay a $4,000 fine and was banned from entering the United States. Chief officer Charles Posas was sentenced on October 1st to serve a three-year term of probation and also was banned from entering the country. Lekkas previously pleaded guilty to obstruction and APPS violations, plus two counts of violating the Ports and Waterways Safety Act ("PWSA"). Posas pleaded guilty to a false statement count and a violation of the Nonindigenous Aquatic Nuisance Prevention and Control Act.

Investigation revealed problems with the operation and condition of the M/V Theotokos, specifically the discovery of a breach in the outer skin of the vessel and fuel oil leaks into the forepeak ballast tank. Crew members suspected a leak, which was reported to company personnel, but was not recorded in writing or reported to Coast Guard inspectors until the crew was confronted during an inspection. After it was discovered that fuel oil had been leaking into the forepeak ballast tank, the crew proceeded to pump the oily liquid directly overboard through the ballast pump. None of these discharges were recorded in the oil record book. As the vessel approached New Orleans, it was clear that oil continued to leak into the forepeak tank. The chief engineer ordered two fitters to fabricate and install an obstruction device onto the forepeak tank's sounding tube so that when inspectors boarded to take a sounding, the results would obscure the presence of any oil in the tank.

During the Coast Guard boarding inspectors were able to see that the forepeak tank contained approximately one meter of oil in the tank. During a delay in the inspection, crew members removed the obstruction device before inspectors had a chance to enter the tank and see it. Inspectors also were provided with a false ballast log, which had omitted the presence of oil in the tank, as well as the effect the crack was having on the volume of liquid contained in the tank.

Maintenance of accurate ballast water records is required under Ballast Water Management for Control of Nonindigenous Species regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act. This case does not present an instance of an invasive species introduction; nevertheless, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

On September 29, 2009, Polembros Shipping Limited, a Greece-based vessel management company, pleaded guilty to two APPS violations, one false statement, and single violations of the PWSA, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. Chief engineer Georgios Stamou previously pleaded guilty to an APPS and a false statement violation and is scheduled to be sentenced on November 5, 2009. Polembros is set to be sentenced on December 9, 2009.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Larkin Baggett, No. 4:09-CR-10016, 2:07-CR-00609 (S.D. Fla., D. Utah), AUSA Tom Watts-FitzGerald [redacted], SAUSA Jody Mazer ([redacted] AUSA Jared Bennett [redacted] and SAUSA Alicia Hoegh [redacted]

On October 14, 2009, Larkin Baggett was sentenced to serve 240 months' imprisonment, for his armed assault on law enforcement officers, for illegally possessing firearms while he was a fugitive from the District of Utah, and for environmental violations charged in Utah.

Baggett will serve 141 months' imprisonment for the assault and a consecutive term of 84 months for the illegal possession of eight firearms while a fugitive, with an additional 15 months incarceration for committing the crimes in Florida while on bond in the Utah case. With respect to the Utah environmental case, Baggett will serve a concurrent 96-month term which represents the statutory maximum sentence under the CWA and the RCRA. He also will pay $39,000 in restitution to the POTW operator in Utah for harm caused to the system by his company's toxic discharges.

Baggett pleaded guilty to using a deadly weapon, including a semi-automatic assault rifle against three EPA agents and a sergeant with the Monroe County Sheriff's Office. As the agents attempted to arrest the defendant on a fugitive warrant in Marathon, Florida, Baggett aimed his gun at them and was shot and wounded as a result.

Baggett was the owner and operator of Chemical Consultants, which was in the business of mixing, selling, and distributing various chemicals used in the trucking, construction, and concrete industries in Utah. The chemicals were transported to customers in 55-gallon drums, which then were returned to the business to be cleaned and reused. A variety of techniques were used to illegally clean the drums. Employees either dumped the contents onto the floor or onto a paved alleyway behind the plant, leaving the chemicals there to evaporate. They also were instructed to wash out the drums directly into a sanitary sewer grate.

After the local sewer authority blocked the company's access to the POTW by plugging its sewer line, Baggett instructed employees to dump the residual and spilled chemicals and the process wastewater into this plugged sewer grate. When the grate spilled over, Baggett and/or his employees pumped the contents of the sewer grate into uncovered 55 gallon drums to allow the dye to evaporate. Once the chemicals in the drum were colorless, they dumped them onto a gravel area outside.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the Bureau of Alcohol, Tobacco, and Firearms; and the Monroe County Sheriff's Office.

Back to Top

United States v. Lamar Bertucci, No. 8:09-CR-85 (D. Nebraska) AUSA Sandra Denton [redacted]

Red-tail hawks

On October 9, 2009, Lamar Bertucci was sentenced to serve a year and a of day incarceration, followed by one year of supervised release, to include 40 hours' community service. Bertucci pleaded guilty earlier this year to one count of violating the Bald and Golden Eagle Protection Act for shooting, possessing and selling bald and golden eagles in 2006 and 2007. Bertucci initially was charged in a three-count indictment, which included charges under both the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

The defendant was charged with shooting and selling eagles and their parts to other Native Americans, and this included bartering for marijuana. The defendant is an Omaha tribal member and was dealing with other tribal members on both the Omaha and Winnebago Reservations in eastern Nebraska.

Investigation revealed that Bertucci was responsible for shooting as many as thirteen different eagles and other migratory birds, which he baited with deer carcasses into an area near his residence in Macy, Nebraska, so that he could shoot them. It was determined that Bertucci had been shooting eagles for at least the past twelve years. The investigation was initiated after seven eagle carcasses were recovered along the banks of the Missouri River in March 2007. All of the carcasses had been mutilated by having their feet, wings and tails removed.

This case was investigated by the United States Fish and Wildlife Service, the Omaha Nation Department of Fish and Wildlife, the Omaha Nation Tribal Police Department, and the Federal Bureau of Investigation.

Back to Top

United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.), ECS Senior Trial Attorney Kevin Cassidy [redacted], ECS Trial Attorney Colin Black [redacted] AUSA Terrence Donnelly [redacted], and SAUSA Diane Chabot [redacted]

On October 2, 2009, Southern Union Company was sentenced to pay a $6 million criminal fine and $12 million in payments to community initiatives, including the Rhode Island Foundation, the Rhode Island Department of Environmental Management Emergency Response Fund and Hasbro's Children's Hospital. The company also will complete a two-year term of probation.

Aerial view of Seekonk River

Southern Union, which owned several natural gas suppliers, was convicted by a jury in October 2008 on one RCRA storage violation for illegally storing mercury at a company-owned site in Pawtucket. It had been charged with two counts of illegal storage of waste mercury and one count of failing to immediately notify local authorities of a release of mercury from its facility.

During the three-week trial, the government presented evidence that Southern Union began a program in 2001 to remove from customers' homes gas regulators that contained mercury. Southern Union employees brought the regulators to the facility in Pawtucket, on the edge of the Seekonk River. Southern Union initially hired an environmental services company to remove the mercury from the regulators, and then shipped the mercury to a facility in Pennsylvania for further processing.

When the removal contract expired, gas company technicians continued to remove the regulators from customers' homes. Southern Union stored the mercury-containing regulators, as well as loose liquid mercury, in various containers including plastic kiddie pools in a vacant building at the facility.

The evidence showed that, in 2002, 2003, and 2004, a local gas company official drafted requests for proposals for removal of the mercury that was collecting at the facility. The company, however, never finalized the proposals or put them out to bid. By July 2004, approximately 165 mercury-containing regulators were stored at the site, as were various other containers, such as glass jars and plastic jugs, containing a total of more than a gallon of mercury.

In September 2004, vandals broke into the storage building and took several containers of liquid mercury. Some of the containers were shattered causing mercury to be spilled around the facility's grounds. They also took some of the mercury to a nearby apartment complex. For about three weeks, puddles of mercury remained on the ground at the site, and more of it lay spilled at the apartment complex. In October 2004, a gas company employee discovered mercury on the ground of the facility and evidence that there had been a break-in.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division; the Rhode Island Department of Environmental Management ("DEM"), Office of Criminal Investigation; the DEM Office of Emergency Response and the DEM Office of Compliance and Inspection.

Back to Top

United States v. Wayne Duffiney, No. 1:07-CR-20501 (E.D. Mich.), AUSA Janet Parker ([redacted])

Bow of sunken boat

On September 29, 2009, a warrant was issued for Wayne Duffiney's arrest after he failed to appear for sentencing. Duffiney was convicted by a jury in April 2009 on three of the four charges stemming from the intentional sinking of his boat in waters connected to Lake Huron. On October 15, 2009, his wife, Michelle, was arrested on a criminal complaint for allegedly helping her husband avoid the sentencing by among other things, claiming her husband had committed suicide.

Duffiney was convicted of violating the Clean Water Act by discharging pollutants into the navigable waters of the United States; sinking or causing the sinking of the *Misty Morning* in the navigable channels of Lake Huron; and of failing to mark the sunken vessel with navigation aids after it was sunk in the Lake Huron navigation channel. He was acquitted on the charge of willfully causing and permitting destruction and injury to the boat in the territorial waters of the United States.

In May 2007, Duffiney hauled his 44-foot boat, the *Misty Morning*, through the town of Cheboygan, Michigan, to the Cheboygan River without a trailer and dumped the boat into the navigable river. Duffiney then towed the damaged boat out into Lake Huron under cover of darkness and left it in the navigation channel. The next day, when Coast Guard officials discovered it, the boat was nearly vertical in the lake, with the bow at or near the surface and the stern toward the bottom. Duffiney was forced to tow it back into the Cheboygan River where he left it mostly submerged for a day or so before he pulled it from the water.

This case was investigated by the United States Coast Guard and the Michigan Department of Environmental Quality.

Back to Top

United States v. Charles Vidinha, No. 1:09-CR-00311 (D. Hawaii), AUSA Marshall Silverberg [redacted] with assistance from ECS Assistant Chief John Webb [redacted].

On September 25, 2009, Charles Vidinha pleaded guilty to a violation of the Endangered Species Act for the killing of a Hawaiian Monk Seal. Vidinha also was sentenced to serve 90 days' incarceration followed by one year of supervised release.

On May 21, 2009, the defendant observed the seal in water off the north shore of the Island of Kauai. He then used a Browning .22 caliber rifle (which he subsequently destroyed) to fire four rounds at the seal, two of which struck and killed it. Vidinha did not have a permit to shoot the seal and was aware that it was a Hawaiian monk seal at the time he fired his rifle at the animal.

This case was investigated by the National Oceanic and Atmospheric Administration, with assistance from the Kaua'i Police Department; the State of Hawaii Department of Land and Natural Resources; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the United States Fish and Wildlife Service.

Back to Top

United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted], AUSA Stacy Belf [redacted], and AUSA Christen Sproule [redacted].

On September 25, 2009, after a two-day **c**ontested sentencing hearing, Robert Lumpkins the owner of fish wholesaler Golden Eye Seafood, LLC, ("Golden Eye") was sentenced to serve 18 months' incarceration. Golden Eye will complete a three-year term of probation and both were jointly ordered to pay a $36,000 fine and $164,040 in restitution.

The two previously pleaded guilty to Lacey Act violations for their operation of a check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Specifically, Golden Eye pleaded guilty to a Lacey Act conspiracy and two Lacey Act false labeling violations. Lumpkin pleaded guilty to a Lacey Act conspiracy and three Lacey Act false labeling and trafficking violations.

In addition to operating the check-in station, Golden Eye and Lumpkin also purchased from an undercover agent fish that were outside the legal size limit and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than actually were being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]

Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTALCRIMES SECTION

MONTHLY BULLETIN

December 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	**United States v. Douglas Smith**	***Sea Otter Killing*/ Lacey Act, Conspiracy**
D. Colo.	**United States v. Cargill Meat Solutions Corp.**	***Meat Packing Plant*/ CWA Misdemeanor**
S.D. Fla.	**United States v. Bruce Bivins**	***Sea Turtle Eggs*/ Lacey Act**
E.D. La.	**United States v. Georgios Stamou et al.**	***Vessel*/ APPS, False Statement**
D. Mass.	**United States v. Stephen C. Delaney, Jr., et al.**	***Misbranding Fish*/ Lacey Act**
W.D.N.Y.	**United States v. John Signore**	***Battery Storage*/ RCRA**
W.D.N.C.	**United States v. Howard William Ledford** **United States v. Chiu Hung Lo (aka Sherry Lo)**	***Ginseng*/ Lacey Act**
D.S.D.	**United States v. Wayne Breitag**	***Leopard Hunt*/ Lacey Act, Smuggling**
W.D. Wash.	**United States v. Guadalupe Sanchez-Roman**	***Vegetable Oil Dumping*/ CWA Pretreatment**

Additional Quick Links

Trials

United States v. Wayne Breitag et al., No. 1:09-CR-10035 (D.S.D.), ECS Trial Attorney James Nelson [redacted] AUSAs David Conner [redacted] and Timothy Maher ([redacted] and ECS Paralegal Bettina Baumer-Whitaker [redacted]

Defendant holding rifle

On October 30, 2009, a jury convicted Wayne Breitag for smuggling the hide of a leopard into the United States in violation of CITES. He also was found guilty of two Lacey Act violations.

Breitag traveled to South Africa in August 2002 to hunt leopards while guided by Jan Groenewald Swart, a South African outfitter, doing business as "Trophy Hunting Safaris." After Breitag killed one, Swart arranged to have the hide smuggled from South Africa into Zimbabwe, where he purchased fraudulent CITES export permits for the leopard hide. Breitag then submitted applications to the U.S. Fish and Wildlife Service falsely claiming that he had hunted and killed the leopard in Zimbabwe. In November 2004, inspectors seized a shipment of five leopard hides and three leopard skulls at the Denver International Airport, which included the hide of the leopard that Breitag had illegally killed in South Africa in 2002. Swart served an eighteen-month prison sentence, and was deported upon his release.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Informations and Indictments

United States v. Stephen C. Delaney, Jr., et al., No. 1:09-CR-10312 (D. Mass.), ECS Senior Trial Attorney Elinor Colbourn [redacted], ECS Trial Attorney Jessica Moats ([redacted] AUSA Nadine Pellegrini ([redacted], and ECS Paralegal Kathryn Loomis [redacted]

On November 4, 2009, a four-count superseding indictment was returned charging Stephen C. Delaney, Jr., and South Shore Fisheries with Lacey Act false labeling and misbranding violations related to the labeling of fish as species or country of origin that were false or misleading.

Delaney is the president and owner of South Shore Fisheries, which operated primarily as a seafood packing and repacking company. In 2004, 2005 and 2009, the defendants are alleged to have relabeled or repackaged products for wholesalers, including in some cases falsely labeling them.

This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

Plea Agreements

United States v. Douglas Smith, No. 5:09-CR-0003 (D. Alaska), AUSAs Steven Skrocki [redacted] and Aunnie Steward [redacted]

On November 17, 2009, Douglas Smith, a non-native Alaskan, pleaded guilty to a Lacey Act conspiracy and a Lacey Act violation stemming from the illegal killing and attempted illegal sale of sea otters.

The plea agreement states that, beginning in July 2007 and continuing through October 2008, Smith conspired with an unnamed co-conspirator in a scheme to unlawfully harvest sea otters in order to sell their hides. Smith agreed to permit an unnamed co-conspirator to use his boat for the illegal killing of sea otters. In exchange for permitting the use of his boat, Smith received a percentage of profits from the subsequent sale of their hides by his co-conspirator. Neither Smith nor the co-conspirator are Alaskan Natives and, therefore, they are prohibited from hunting or killing sea otters. The Marine Mammal Protection Act further bars non-Alaskan Natives from possessing any non-authentic Native handicraft made from marine mammals or their parts.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Howard William Ledford, No. 1:09-mj-66 (W.D.N.C.), ECS Trial Attorney Shennie Patel ([redacted])

On November 9, 2009, Howard William Ledford pleaded guilty to two violations of the Lacey Act for the illegal purchase of wild ginseng over a two-year period. Between 2003 through 2005, the Fish and Wildlife Service conducted an undercover operation to identify the illegal interstate and foreign sales/purchases of ginseng. Ginseng has declined from historic levels and continues to be under threat from overexploitation because the price of and demand for its roots remain high. Some varieties of ginseng root can sell for as much as $1,000 a pound in the Asian market, where it is revered for its medicinal properties. Individuals who transport/buy or sell ginseng in interstate commerce must obtain the required export certificates and permits. Ledford unlawfully purchased wild ginseng worth approximately $109,000.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Chiu Hung Lo (aka Sherry Lo), No. 1:09-mj-63 (W.D.N.C.), ECS Trial Attorney Shennie Patel ([redacted])

On November 9, 2009, Chiu Hung Lo pleaded guilty to one Lacey Act violation in connection with purchases of wild ginseng from an undercover agent over a three-year period. Lo was charged with purchasing wild ginseng out of season, purchasing ginseng without a dealer's license, and transporting ginseng in interstate commerce without the required export certificates. She admitted to making unlawful purchases of 136.9 pounds of wild ginseng with a fair market value of $54,760.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Fleet Management Ltd., No. 07-CR-00279 (E.D. Pa.), ECS Trial Attorney Tom Ballantine [redacted] and AUSA Joan Burnes [redacted]

On November 3, 2009, Fleet Management Ltd. pleaded guilty to delivery of a false record, a misdemeanor violation. At sentencing, Fleet has agreed to pay a $100,000 fine, and will make an additional $25,000 community service payment to a Philadelphia organization that assists visiting merchant sailors. The charge stems from the actions of a chief engineer for the cargo ship *Valparaiso Star* who knowingly presented a false oil record book to the Coast Guard during an inspection at the Port of Philadelphia in January 2007. The false entry related to substantial changes in the ship's bilge water tank.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Guadalupe Sanchez-Roman, No. 3:09-CR-5724 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On October 28, 2009, Guadalupe Sanchez-Roman, a Mexican national, pleaded guilty to a CWA pretreatment violation for dumping wastewater containing grease and vegetable oil into the municipal sewers in Tacoma through floor drains at a self-service car wash. He was sentenced to time served (64 days) followed by one year's supervised release and may not re-enter the country without permission from U.S. authorities.

Defendant draining drum of oily waste water

According to records filed in the case, the owners of Center Street Car Wash in Tacoma contacted the Tacoma City Public Works Department office after surveillance photos at the car wash showed the same man dumping what appeared to be oily waste water into their drain system on approximately 70 different occasions between April 2009 and August 2009. Numerous signs were visible stating that it is illegal to dump such waste. After EPA agents reviewed the photos, they identified the defendant and subsequently observed him retrieving a drum of waste from a restaurant, which was located near the car wash. They further saw Sanchez-Roman drive into a car wash bay where he proceeded to wash the truck after pulling the plug on the drum of cooking oil and grease waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with the assistance of the Tacoma Public Works Department.

Back to Top

United States v. John Signore, No. 1:09-CR-00339 (W.D.N.Y.), AUSA Aaron Mango [redacted]

Shredded battery cases

On October 23, 2009, John Signore pleaded guilty to one RCRA storage violation for his involvement in the storage of shredded battery cases (known as "chips"), a hazardous waste.

Signore was a plant manager at the Tulip Corporation, which reprocessed and recycled these chips into a useable material. Tulip purchased the chips from various suppliers, and they were delivered to the plant in tractor trailers. Each load contained approximately 40,000 pounds of chips, a significant proportion of which were contaminated with lead.

From approximately October 2004 through July 2007, at Signore's direction, the chips were occasionally stored outside the facility with the amount steadily increasing as processing equipment broke down and the surplus of chips increased. In July 2007 state hazardous waste inspectors observed approximately 80,000 pounds of chips being stored without a permit. Samples of chips analyzed for lead confirmed that they were hazardous waste.

This case was investigated by the New York State Department of Environmental Conservation and the United States Environmental Protection Agency Criminal Investigation Division.

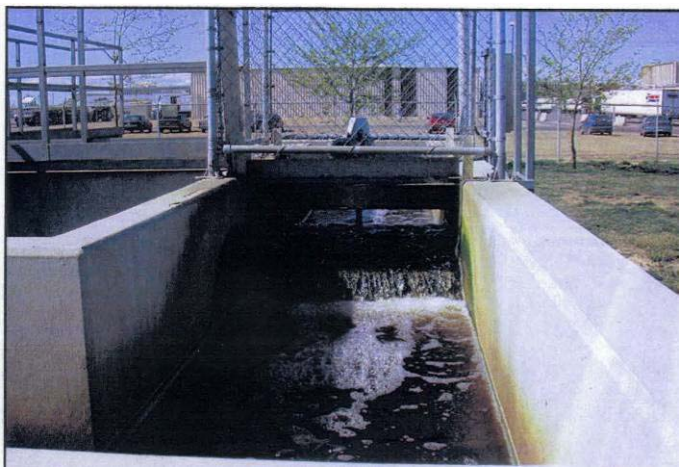
Back to Top

Sentencings

United States v. Cargill Meat Solutions Corp., No. 09-MJ-01171 (D. Colo.), AUSA John Haried [redacted]

On November 13, 2009, Cargill Meat Solutions Corporation ("Cargill") was sentenced to pay a $200,000 fine after pleading guilty to two negligent violations of the Clean Water Act.

Cargill operates a meat packing plant located in Fort Morgan, Colorado. The plant processes approximately 5,000 head of cattle and generates about 1,500,000 gallons of wastewater daily. A wastewater treatment plant is located on site to remove pollutants such as feces, dirt, and meat scraps from the wastewater that is discharged to the South Platte River. On one occasion in October 2003, the facility discharged wastewater that was above permitted



Contact chamber

limits for fecal coliform. On a separate occasion in July 2004, a wastewater sample revealed that Cargill had exceeded permitted limits for total suspended solids.

Under an administrative agreement with the EPA, the company also will implement a compliance plan which will include additional staff training, making mechanical upgrades to its wastewater treatment operation, and reassigning personnel who were responsible for the violations. Under this agreement, any further violations will subject Cargill to possible sanctions, including debarment from federal contracts.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Qi Gui Nie, No. 1:09-CR-00218 (N.D. Ga.), AUSA Mary Roemer [redacted]

Box with false bottom concealing fish

November 10, 2009, Qi Gui Nie was ordered to pay a $25,000 fine and will complete a five-year term of probation. Nie previously pleaded guilty to a smuggling violation stemming from importing endangered and prohibited wildlife into the United States through the port of Atlanta.

In October 2008, Nie, doing business as Lucky Fin, Inc., a North Carolina-based wildlife importer, attempted to smuggle ten live endangered Asian Bonytongue fish into the United States from Vietnam. During an inspection of Nie's shipments, false bottoms were discovered hidden in boxes containing legally-imported fish and coral. The smuggled fish were found in the hidden compartments. The Asian Bonytongue fish, which is commonly referred to as the Asian Arowana fish, are highly desired by the Asian community due to the belief that the fish will bring good fortune to the owner. Asian Arowana fish are protected under the Endangered Species Act through CITES.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Bruce Bivins, No. 9:09-CR-80060 (S.D. Fla.), AUSA Lauren Jorgensen [redacted]

On November 9, 2009, Bruce Bivins was sentenced to serve two years' incarceration followed by three years' supervised release after pleading guilty to unlawfully possessing and transporting sea turtle eggs.

In May 2009, Bivins was stopped by a Town of Palm Beach police officer after he was seen carrying a bag near the edge of the Intercoastal Waterway. After the officer identified himself and asked Bivins to stop, Bivins took off running. The officer watched as Bivins ran toward the Intercoastal and saw him toss the bag he was carrying. The defendant then came back toward the officer and surrendered. The bag, which was recovered and searched shortly thereafter, contained 119 Loggerhead sea turtle eggs. Approximately half of the eggs were observed to be covered in sand, and

the other half were not, indicating that they may have been collected from a female sea turtle while she was laying the eggs and before they touched the ground. The defendant is appealing his sentence.

This case was investigated by the United States Fish and Wildlife Service and the Town of Palm Beach Police Department.

Back to Top

United States v. Georgios Stamou et al., No. 2:09-CR-00186 (E.D. La.), ECS Trial Attorney Christopher Hale ([redacted] and AUSA Dee Taylor [redacted].

On November 5, 2009, Georgios Stamou, a Greek citizen and the chief engineer of the bulk cargo ship *M/V Theotokos,* was sentenced to pay a $15,000 fine and will complete a five-year term of probation. He is banned from U.S. ports and waters. The court cited the defendant's cooperation with the government when handing down the sentence.

Stamou, who previously pleaded guilty to an APPS violation and an 18 U.S.C. § 1001 false statement violation, was the third crewmember from the ship to plead guilty to crimes related to the discharge of oily wastes while on the high seas. Captain Panagiotis Lekkas and the second ranking officer, Charles Posas, both pleaded guilty to multiple felony counts and have been sentenced. The vessel management company Polembros Shipping Limited recently pleaded guilty to a five-count indictment for its role in the illegal discharges.

As chief engineer, Stamou was in charge of the engineering department and had been made aware that the oily water separator ("OWS") had stopped working. During a voyage from Korea to Panama, the defendant spoke with a company representative and notified him that there was a problem with the OWS. He then directed crew members to discharge bilge wastes knowing that they would necessarily be discharged directly overboard through the bilge line or sewage discharge valve. None of these discharges were noted in the oil record book, which was presented to Coast Guard inspectors in October 2008.

This case was investigated by the United States Coast Guard.

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

January/February 2010

EDITOR'S NOTE:

PLEASE NOTE: This issue contains case information from November and December 2009, through the third week of January 2010.

****ALSO – Two additional environmental FUGITIVES have been captured-SEE page 19 for details****

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
S.D. Ala.	United States v. McWane, Inc.	*Cast Iron Pipe Manufacturer*/ CWA, CWA Misdemeanor
D. Ariz.	United States v. Joseph Tillman et al.	*Cacti Theft*/ Lacey Act
C.D. Calif.	United States v. Moun Chau et al.	*Ivory Smuggling*/ Conspiracy, ESA, Smuggling
S.D. Calif.	United States v. Atticus Gee United States v. Joseph O'Connor et al.	*Landfill Emissions*/ Mail Fraud, CAA, False Statement *Vessel*/ Conspiracy, CWA, False Statement
S.D. Fla.	United States v. Kroy Corporation, et al.	*ODS Smuggling*/ CAA
S.D. Ga.	United States v. Daniel Cason	*POTW Operator*/ CWA
D. Idaho	United States v. Cory King	*Injection Wells*/ Safe Drinking Water Act, False Statement
W.D. Ky.	United States v. Daniel Lewis	*Injection Wells*/ Conspiracy, SDWA, False Statement, Defrauding U.S. Government
E.D. La.	United States v. Polembros Shipping Limited et al.	*Vessel*/ APPS, Ports and Waterways Safety Act, Nonindigenous Aquatic Nuisance Prevention and Control Act, False Statement
D. Md.	United States v. Oceanpro Ltd., et al. United States v. Dennis Dent et al.	*Striped Bass*/ Conspiracy, Lacey Act, False Statement
D. Mass.	United States v. The Rockmore Company	*Sewage Dumping*/ Rivers and Harbors Act
D. Minn.	United States v. Seng Her	*Wildlife Smuggling*/ Smuggling
W.D. Mo.	United States v. HPI Products, et al. United States v. John Richards	*Pesticide Dumping*/ FIFRA, RCRA, CWA *Reptile Sales*/ False Statement
D. Nev.	United States v. Gary Smith et al.	*Vehicle Emissions*/ CAA
D.N.M.	United States v. Alan Van Hout	*Wolf Killing*/ Endangered Species Act
D.N.J.	United States v. Thomas George	*Falsely Labeled Fish*/ Misbranding, Entry of Goods by False Statement

Districts	Active Cases	*Case Type* / Statutes
E.D.N.Y.	**United States v. Dov Shellef et al.**	***ODS Smuggling*/ Conspiracy, CAA, Money Laundering, Wire Fraud, Tax**
N.D.N.Y.	**United States v. Frank Onoff, et al.**	***Asbestos Abatement*/ Conspiracy, CAA, TSCA, Mail Fraud**
M.D.N.C.	**United States v. House of Raeford Farms et al.**	***Turkey Processing Plant*/ CWA**
W.D.N.C.	**United States v. Clement Calhoun**	***Bear Gall Bladders*/ Lacey Act**
[redacted]	[redacted]	[redacted]
D. Ore.	**United States v. Reginald Akeen, et al.** **United States v. Gunther Wenzek**	***Eagle Feathers*/ Migratory Bird Treaty Act** ***Coral Smuggling*/ Smuggling**
W.D. Tex.	**United States v. Michael Sayklay**	***Wood Pallet Certification*/ False Statement, Plant Protection Act**
D.V.I.	**United States v. Ivan and Gloria Chu**	**Coral Shipments/ Conspiracy, Lacey Act, Endangered Species Act, False Statement**
N.D.W.V.	**United States v. Michael Ellard et al.**	***Turtle Smuggling*/ Lacey Act**
W.D. Wisc.	**United States v. Gollon Brothers Wholesale Live Bait, Inc., et al.**	***Fish Imports*/ Lacey Act**

Additional Quick Links

Significant Environmental Decisions

District Decisions

[redacted]

Back to Top

Trials

United States v. Dov Shellef et al., No. 03-CR-00723 (E.D.N.Y.), ECS Trial Attorney James Nelson [redacted] DOJ Tax Division Attorney Mark Kotila [redacted], and ECS Paralegal Bettina Bammer-Whitaker [redacted]

On January 27, 2010, after ten hours of deliberations, the jury returned guilty verdicts on all 86 counts. Shellef and Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., were previously convicted by a jury in July 2005 on all 130 counts, which included conspiracy to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud and a variety of tax violations. The defendants failed to pay approximately $1.9 million in taxes due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes. This was the first criminal case involving CFC-113. These convictions, however, were reversed on misjoinder grounds in March 2008.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, causing the manufacturers to sell it to them tax-free. They then sold the product in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Shellef also was convicted of personal income tax evasion, subscribing to false

corporate tax returns, wire fraud and money laundering. Rubenstein previously pleaded guilty to the conspiracy violation but has not yet been sentenced.
Back to Top

Informations and Indictments

United States v. Moun Chau et al., No. 2:10-CR-00048 (C.D. Calif.), AUSA Bayron Gilchrist [redacted]

Photo of seized ivory taken by the USFWS

On January 19, 2010, a grand jury indicted a Thai national and a California man in an alleged scheme to smuggle ivory from endangered African elephants into the United States. The 11-count indictment charges Moun Chau of Montclair, California, and Samart Chokchoyma of Bangkok, Thailand, with conspiracy, illegally offering to sell endangered species, illegal importation of wildlife, entry of goods by false statement, and smuggling wildlife.

According to the indictment, Chokchoyma offered ivory for sale on the eBay Internet auction website. Between September 2006 and July 2009, the defendants engaged in six separate transactions involving illegal ivory. In one instance, Chau purchased four ivory tusk tips. In another shipment, Chokchoyma allegedly claimed on a customs declaration that the ivory shipment was a "Gift" containing "Toys." Investigators seized dozens of ivory specimens from Chau's Claremont business, much of which came from African elephants.

This case was investigated by the United States Fish and Wildlife Service, Office of Law Enforcement, with substantial assistance from the United States Customs and Border Protection and United States Immigration and Customs Enforcement. In addition, the investigation of this case was the first cooperative international law enforcement effort related to wildlife crime between the United States Fish and Wildlife Service and the Royal Thai Police. The Asia-based Freeland Foundation, a non-governmental conservation organization, was instrumental in bringing together law enforcement authorities from both nations.
Back to Top

United States v. Ivan and Gloria Chu, No.10-CR-0003 (D.V.I.), ECS Trial Attorney Christopher Hale [redacted] **and AUSA Nelson Jones** [redacted]

On January 14, 2010, an 18-count indictment was returned against Taiwanese nationals Ivan Chu and Gloria Chu for conspiracy, false statement, Lacey Act false labeling, Endangered Species Act, and false classification violations, stemming from their involvement in illegal coral shipments.

The indictment names the Chus, who operate a raw coral supply and jewelry parts business in Taipei under the name Peng Chia Enterprise Co., Ltd., as the main suppliers of illegal coral to a group of businesses in the U.S. The indictment alleges that the shipments lacked the appropriate CITES documentation and/or the coral was mislabeled, typically as a type of plastics product.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with assistance from United States Immigration and Customs Enforcement and Border Protection.

Back to Top

[redacted]

Back to Top

United States v. The Rockmore Company, No. 1:10-CR-10003 (D. Mass.), AUSA Jonathan Mitchell [redacted], SAUSAs Russell Bowman [redacted] and Cassie Kitchen [redacted]

On January 7, 2010, the Rockmore Company was charged in a two-count information with violations of the Rivers and Harbors Act for dumping sewage into North Shore waters from a popular ferry it operates out of Salem, Massachusetts.

From 1990 to 2006, the company has operated a 59-foot long passenger vessel named the *P/V Hannah Glover* based in Salem. The *Hannah Glover* provides dinner cruises and sightseeing tours in the waters along the shores of the Massachusetts towns of Marblehead, Beverly and Manchester-by-the-Sea. On several occasions, the vessel ferried passengers to the Charles River in Boston to view the annual Fourth of July celebration on the Charles River Esplanade. The company also regularly shuttled children from Marblehead to a summer camp on Children's Island just off the coast. The company additionally operated a 116-foot barge called the *P/V Rockmore,* on which the company maintained a restaurant.

The information alleges that for several years crew members routinely utilized the ship's sewage pump to discharge raw sewage directly overboard. As a matter of course, deck hands activated the pump and opened the overboard discharge valve either upon order of the vessel master, or upon observing the overflowing of the vessel's public toilets. The discharge of up to hundreds of gallons at a time took place at various locations along the coast, including Salem Harbor and off beaches in Marblehead and Beverly, as well as in the Charles River near the Esplanade during the Independence Day celebration in 2002. The sewage discharged from the *Hannah Glover* included wastes generated by its passengers, as well as the sewage from the *Rockmore*, as the company's employees routinely pumped the contents of the *Rockmore's* sewage holding tank onto the *Hannah Glover* for disposal.

There also were occasions when the company allowed the sewage holding tank aboard the *Rockmore* to overflow, allowing untreated sewage to spill into Salem Harbor.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Gary Smith et al., No.2:10-CR-00010 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Roger Yang.

On January 6, 2010, Gary Smith and nine others each were indicted for making false statements under the Clean Air Act. The charges stem from an investigation of several licensed automobile emissions testers in the Las Vegas area who falsified emissions reports by using cars they knew would pass the test and substituting the passing reports of those vehicles for other dirty vehicles that would not have passed the test. The testers did not realize that the computer generates an electronic VIN from the car actually tested which is easily compared with the vehicle's VIN that was entered in the report. The number of falsified reports varies by defendant from 123 to 750 each between July 2008 and September 2009.

This case was jointly investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

Back to Top

United States v. Seng Her, No. 09-CR-00365 (D. Minn.), AUSA William Otteson [redacted].

On December 8, 2009, Seng Her was charged with a smuggling violation based on allegations that she smuggled elephant parts and dead birds into the United States from southeast Asia.

According to the indictment, Her was stopped by U.S. Customs officials at the Minneapolis-St. Paul International Airport in November 2007 after visiting Laos. Along with the parts of an Asian elephant, an endangered species, the defendant also had in her possession several dead birds including yellow-vented flowerpeckers, tailorbirds, prinias and passerines, without the required documentation.

Her defendant previously was warned in writing by the U.S. Fish and Wildlife Service in 2007 about importing undeclared wildlife into this country. She had been stopped in 2005 at the Twin Cities airport with pieces of elephant hide, birds and other wildlife, including several threatened and endangered species, in her belongings. Trial is scheduled to begin on March 1, 2010.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Oceanpro, Ltd. et al., No. 8:09-CR-00634 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne Hettenbach [redacted] and AUSA Stacey Belf [redacted]

On December 7, 2009, an indictment was returned charging a fish wholesaler and two of its employees with Lacey Act violations stemming from the purchase of illegally harvested striped bass from the Potomac River from 1992 through 2007.

Oceanpro, Ltd. (aka Profish), and two of its fish buyers, Timothy Lydon and Benjamin Clough, were charged in a five-count felony indictment with conspiracy to violate the Lacey Act, three substantive felony Lacey Act counts, and one false statement count. The indictment alleges that from 1992 to May, 2007, Profish purchased from at least five commercial fishermen striped bass that had been illegally harvested in Maryland and Virginia. The indictment also charges commercial fishermen, Gordon Jett for his role in illegally harvesting striped bass and selling them to Profish in 2007.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. House of Raeford Farms, Inc., et al., No. 1:09-CR-00395 (M.D.N.C.), ECS Trial Attorney Mary Dee Carraway [redacted], ECS Senior Trial Attorney Daniel Dooher [redacted] and ECS Paralegal Rachel Cook [redacted]

On November 30, 2009, House of Raeford Farms, Inc., ("House of Raeford") and its plant manager, Gregory Steenblock, were named in a 14-count indictment charging them with Clean Water Act felony violations.

House of Raeford is a turkey slaughtering and processing facility located in Raeford, North Carolina. The facility processes approximately 40,000 turkeys per day and its operations generate approximately 1,000,000 gallons of wastewater each day. The indictment charges that on 15 occasions the company and Steenblock knowingly caused employees to bypass the facility's pretreatment system and send its untreated wastewater directly to the local POTW in violation of its pretreatment permit. Trial has been scheduled to begin on April 12, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Atticus Gee, No. 09-CR-004121 (S.D. Calif.), AUSA Melanie Pierson [redacted]

On November 12, 2009, Atticus Gee was charged in a three-count indictment with mail fraud, making false statements, and tampering with a monitoring method. The indictment alleges that Gee prepared false landfill gas emission reports by copying data he had in his possession without conducting the actual monitoring.

According to the indictment, between October 2004 and May 2007, Gee was employed as a technician by a company under contract with the San Diego County Department of Public Works and was responsible for taking readings of the emissions of landfill gases from several closed landfills within the County of San Diego. When landfills reach their final capacity, they can be capped by covering them with earth and other substances. In order to prevent underground fires, methane

extraction vents are to be installed. The emissions to the air from such methane extraction vents are regulated in San Diego by permits issued by the San Diego County Air Pollution Control District. Those permits place limits on the emissions and require periodic monitoring reports and certifications of compliance to be submitted by the San Diego County Department of Public Works. According to the indictment, on September 23, 2005, an underground fire was discovered at the Palomar Airport Landfill, although no unusual readings had been reported in the monitoring data from the methane extraction wells and migration probes at that location.

Trial is scheduled to begin on February 12, 2010. This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

Plea Agreements

United States v. Thomas George, No. 2:10-CR-00029 (D.N.J.), AUSAs Marc Larkins [redacted] and Zahid Quarashi [redacted] and ECS Senior Trial Attorney Elinor Colbourn [redacted]

On January 19, 2010, Thomas George, the sole owner and operator of Sterling Seafood, Inc., pleaded guilty plea to a two-count information, which resolves two separate investigations into illegal importations and sales of falsely labeled frozen fillets of fish.

Investigation by Immigration and Customs Enforcement agents revealed that George's direct importations of falsely labeled fish (predominantly *Pangasius hypophthalmus*, a fish in the catfish family typically produced in Vietnam) resulted in over $63 million of lost duties on the falsely labeled fish. At the same time, investigators with NOAA and the FDA determined that Sterling Seafood had purchased approximately $530,000 worth of the falsely labeled *Pangasius* from another importer, Virginia Star Seafood Corporation. Prosecutors in the two cases coordinated on plea negotiations, leading to an information charging entry by means of false statements for the import violations and felony misbranding for the domestic transaction violations. Sentencing is scheduled for April 28, 2010.

This case was investigated by United States Immigration and Customs Enforcement, the National Oceanic and Atmospheric Administration, and the Food and Drug Administration.

Back to Top

United States v. Dennis Dent et al., No. 8:09-CR-00590 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne Hettenbach [redacted] and AUSA Stacey Belf [redacted]

On January 12, 2010, Dennis Dent, a Virginia commercial fisherman, pleaded guilty to a one-count felony information charging him with the illegal harvest and sale of striped bass from the Potomac River. Dent admitted to selling more than 16,000 pounds of untagged, falsely tagged and oversized striped bass to Profish, a seafood wholesaler in Washington, D.C., from 2005 through 2007. On December 7, 2009, a grand jury in Maryland indicted Profish and two of its employees for Lacey Act violations and conspiracy to violate the Lacey Act. The trial is scheduled for June 1, 2010. [*SEE Indictment Section above for more details on Profish.*]

Dent is one of approximately 15 commercial fishermen who previously have pleaded guilty to Lacey Act violations involving striped bass sales and harvesting.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. Michael Sayklay, No. 3:09-CR-03209 (W.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Steven Spitzer [redacted].

On January 8, 2010, Michael Sayklay, the former vice president and warehouse manager for Economy Cash & Carry, Inc., pleaded guilty to a felony false statement charge related to the falsification of a certificate stamp in violation of the Plant Protection Act. Specifically, Sayklay admitted to falsifying stamps that certified wood pallets were heat-treated to prevent infestation, and were suitable for use in international transportation. In 2006, the defendant was responsible for having the false stamp affixed to his company's wood pallets which were used to carry products back and forth across the U.S./Mexico border.

The Department of Agriculture ("DOA") requires the heat treatment of wood pallets used in international transactions. This requirement is to prevent parasites and plant diseases from entering the United States in wood packaging materials. Pallets that carry products transported within the United States are not required to be heat treated.

Economy Cash & Carry uses wood pallets to transport food products and pharmaceuticals sold in both the United States and Mexico. In his capacity as the warehouse manager, Sayklay was responsible for directing the transfer of products destined for Mexico from untreated pallets to treated pallets. Instead of following this procedure, however, he devised a copy of a certification stamp that was used by a legitimate wood pallet treating company. The defendant subsequently had hundreds of untreated domestic pallets falsely stamped as if they were treated, saving the time to transfer products between pallets, as well as the cost of treatment. Sayklay neglected to note, however, that the falsified stamp he used was smaller than the legitimate stamp.

Consequently, other companies who received the fraudulently stamped pallets from Mexico sent them to the legitimate stamp owner for repair who then notified the government about the falsification. An investigation by DOA resulted in the seizure of fraudulently stamped pallets at the U.S./Mexico border. Sentencing is scheduled for April 15, 2010.

This case was investigated by the United States Department of Agriculture.

Back to Top

United States v. Reginald Akeen et al., 3:09-CR-00103 (D. Ore.), ECS Trial Attorney Todd Mikolop [redacted], AUSAs Stacie Beckerman [redacted] and Timothy Ohms [redacted]

On December 1, 2009, Reginald Dale Akeen (aka J.J. Lonelodge) pleaded guilty to a felony violation of the Migratory Bird Treaty Act. Akeen admitted to selling $4,800 worth of products made from protected migratory bird feathers to an undercover agent with the U.S. Fish and Wildlife Service, including a 9-feather "black and white" fan made of juvenile golden eagle feathers, which he sold for $1,750 in 2007.

Akeen was a target of an undercover operation whereby agents interacted with individuals who were in the business of selling protected migratory bird parts. Three other defendants remain charged

in the Eastern District of Washington with violations of the Bald and Golden Eagle Protection Act, the MBTA, and the Lacey Act. Sentencing is scheduled for February 26, 2010.

This case was investigated by The United States Fish and Wildlife Service, with assistance from other state, federal, and tribal law enforcement agencies.

Back to Top

United States v. Kroy Corporation et al., No.1:09-CR-20913 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

Offloading of HCFC-22 from surveillance camera

On November 20, 2009, Kroy Corporation and company president James Garrido, pleaded guilty to a three-count information charging them with Clean Air Act violations for illegally smuggling into the U.S. approximately 418,650 kilograms of hydrochlorofluorocarbon-22 ("HCFC-22"), a restricted ozone-depleting substance.

Kroy was in the business of importing merchandise that included refrigerant. Between March 2007 and April 2009, Kroy and Garrido engaged in the illegal smuggling of large quantities of HCFC-22 into the United States for subsequent resale. The defendants routinely declared imported merchandise as either legal R-134-A refrigerant or as "United States Goods Returned." In truth, except for a small quantity of legal refrigerant strategically placed in front of the containers, the 11 shipments held almost 419,000 kilograms of restricted HCFC-22.

Sentencing has been scheduled for February 11, 2010. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Custom's Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

Back to Top

United States v. Frank Onoff, et al., No. 09-CR-00319 (N.D.N.Y.), ECS Trial Attorneys Todd Gleason [redacted] and Jessica Moats [redacted], and AUSA Craig Benedict [redacted]

On November 13, 2009, Frank Onoff, a supervisor for Paragon Environmental Construction, Inc., ("Paragon") pleaded guilty to conspiracy to defraud the United States, to violate the Clean Air Act, to violate the Toxic Substances Control Act, and to commit mail fraud. Five individuals and one corporate defendant remain charged.

Certified Environmental Services, Inc. ("CES"), an asbestos air monitoring company and laboratory, previously was indicted along with the company owner, four present and former employees, and Onoff. The indictment describes a decade-long scheme in which asbestos was illegally removed, scattered, and left behind in numerous buildings and homes in Syracuse and other upstate New York locations, while the air monitoring company and laboratory gave the abatement contractors

false air results to use to prove to building owners that the asbestos had been properly removed. In other instances where asbestos was properly removed, fraudulent air monitoring still occurred.

The 17-count indictment charges CES, owner Barbara Duchene, supervisor Nicole Copeland, former supervisor Elisa Dunn, and air monitors Sandy Allen and Thomas Juliano with conspiracy to defraud the United States, to violate the Clean Air Act, to violate the Toxic Substances Control Act, and to commit mail fraud. The defendants also are charged with substantive Clean Air Act, mail fraud and false statements violations. Paragon previously pleaded guilty to similar charges.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the New York State Department of Environmental Conservation.

Back to Top

Sentencings

United States v. Gunther Wenzek, No. 3:08-CR-00377 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted]

On January 14, 2010, Gunter Wenzek was sentenced to pay a $16,510 fine, make a $8,890 community service payment to the Oregon Endangered Species Justice Fund (Zoo Administrator), and pay $9,954 in restitution to the National Oceanic and Atmospheric Administration ("NOAA") for investigative expenses. Wenzek also will complete a three-year term of probation.

Seized coral

The defendant previously pleaded guilty to a smuggling violation for smuggling protected coral into the United States via the port of Portland, Oregon. Wenzek, a German national, originally was charged in a nine-count indictment with three felony violations of smuggling protected coral into the United States, three felony Lacey Act offenses, and three misdemeanor violations of the Endangered Species Act.

Wenzek owns a company named CoraPet, based in Essen, Germany, and sold various coral products to retailers in the United States. An investigation was launched in 2007 after Wenzek attempted to ship a container to Portland loaded with fragments of endangered coral from reefs off the Philippine coast. After this initial shipment, agents subsequently seized two full containers of endangered coral shipped by the defendant to a customer in Portland. These two shipments weighed in at more than 40 tons of coral.

The seized corals have been identified as belonging to the scientific order *Scleractinia*, *genera Porites*, *Acropora*, and *Pocillopora*, which is common to Philippine reefs. Due to the threat of extinction, stony corals, such as those seized in this case, are protected by international law. Philippine law specifically forbids exports of all coral and CITES further prohibits importation of this coral to customers in the United States without a permit.

This case was investigated by the United States Fish and Wildlife Service, United States Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

Back to Top

United States v. HPI Products, et al., Nos. 4:09-CR-00024, 189 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [redacted], with assistance from AUSA William Meiners [redacted].

On January 13, 2010, HPI Products ("HPI") vice president Hans Nielsen was sentenced to pay a $4,000 fine and will complete a three-year term of probation. Nielsen previously pleaded guilty to two FIFRA violations for the disposal of pesticide wastes into floor drains at the HPI facility. The sentencing of HPI Products, which previously pleaded guilty to a felony CWA violation and a RCRA violation, has been continued.

HPI began producing pesticides and herbicides in 1980. It relocated several times as it expanded its operations in the City of St. Joseph. During the entire time it was in operation until 2007, HPI employees washed chemical wastes, spills and equipment rinses into floor drains, which connected to the city's POTW, without a permit. Two former HPI facilities and three other locations in St. Joseph were used as warehouses to store pesticides and process waste it did not dump into sewers. The pesticides and wastes were left for years in unmaintained buildings without the proper notification to state and federal authorities. Many of the containers were found to contain, among other things, chlordane, selenium and heptachlor, with characteristics of ignitability, toxicity, and/or corrosivity. Several drums had leaked or spilled onto the warehouse floors and the ground underneath the warehouses.

William Garvey, the company president and majority owner, previously pleaded guilty to a felony CWA violation and was sentenced to serve six months' incarceration, followed by six months' home confinement, and was ordered to pay a $100,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Clement Calhoun, No. 2:09-mj-00019 (W.D.N.C.), ECS Trial Attorney Shennie Patel [redacted]

On January 12, 2010, Clement Calhoun was sentenced to serve six months' incarceration followed by one year of supervised release. As a condition of his release, Calhoun will not be permitted to hunt or possess a hunting license.

The defendant previously pleaded guilty to unlawfully trafficking in bear gall bladders, in violation of the Lacey Act. The conviction arose from a three-year undercover anti-poaching investigation, known as "Operation Botanical", into the unlawful collection, purchase, sale, and transportation of bear parts and ginseng within and along the southern Appalachians.

Calhoun, a member of the Cherokee Nation, pleaded guilty to two misdemeanor violations and admitted to illegally selling 51 bear gall bladders off the Cherokee Nation trust lands, beginning in January 2005 and continuing through September 2005.

Under the Cherokee code, it is illegal for tribal members to sell parts of big game animals, such as bear gall bladders, to non-members, to anyone beyond the boundaries of Cherokee Indian trust lands, or to anyone who will remove the parts from trust lands. Bear gall bladders are used as an Asian medicinal.

Calhoun admitted that the retail value of all of the wildlife involved was at least $6,600. As part of the agreement, he has agreed to publish a statement in a newspaper apologizing for his illegal conduct.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Gollon Brothers Wholesale Live Bait, Inc., et al., Nos. 3:09-CR-00131-134 (W.D. Wisc.), AUSA Peter Jarosz [redacted].

DNR officials examine truck carrying bait

On January 8, 2010, Gollon Brothers Wholesale Live Bait, Inc., ("Gollon Brothers") was sentenced to pay a $4,800 fine and will complete a two-year term of probation. Gollon Brothers was the last of four Wisconsin bait companies sentenced for illegally importing fish from other states. Gollon Enterprises, Hayward Bait and Tackle, and Friesses Minnow Farm each were previously placed on two-year terms of probation, and were ordered to pay fines of $6,000, $5,000 and $4,000, respectively.

The companies previously pleaded guilty to a single Lacey Act violation, which was the result of a lengthy investigation that started during an outbreak of a fish-killing virus in 2007. In total, the businesses imported more than $2.5 million worth of market-value minnows from Minnesota, Arkansas, North Dakota, and South Dakota without valid permits or health certificates certifying that they were free from disease. Investigators did not obtain specific evidence that these businesses were responsible for importing *viral hemorrhagic septicimea* (also known as VHS) or other diseases into the Wisconsin fish population. It was impossible to know for certain, however, since the white suckers, shiners and fathead minnows they imported were never tested for disease.

In May 2007, Wisconsin Department of Natural Resources and United States Fish and Wildlife Service investigators stopped a truck carrying bait that was entering Wisconsin from Minnesota. The investigators wanted to check compliance with emergency state rules that banned importing live bait into the state. The truck driver did not have an import permit for the load, which included 500 gallons of wild minnows caught in Minnesota that were headed for Gollon Brothers in Stevens Point. The VHS virus was discovered in the Lake Winnebago chain about two weeks before the truck was stopped. The virus causes fish to bleed to death and affects a wide range of species.

This case was investigated by the United States Fish and Wildlife Service, the Wisconsin Department of Natural Resources, the Wisconsin State Patrol, the Wisconsin Department of Trade an .

Back to Top

United States v. Kristopher Graham, No. 6:09-CR-00228 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Bruce Ambrose [redacted]

On January 7, 2010, Kristopher Graham pleaded guilty to and was sentenced for a violation of the Bald and Golden Eagle Protection Act. He specifically pleaded guilty to aiding and abetting the destruction of a bald eagle nest during the course of a construction project in January 2005.

This case is related to the prosecution of Specialized Services and Graham Brothers Construction, two companies that were previously prosecuted for the destruction of this nest. The companies were involved in land clearing and other construction work at a residential housing development site and were employed as contractors for the developer that owned this property. In November 2003, a subcontractor observed a bald eagle nest on the property. In late December 2004 and early January 2005, as work on the project progressed, other members of the construction crew, including the defendant corporations' employees, observed the nest as well as at least two bald eagles. At least one employee talked to Kristopher Graham, the on-site supervisor, about the nest, and Graham told him to stay clear of it.

In January 2005, the defendant companies, after initially refusing to tamper with the nest, eventually allowed the developer's employees to use their heavy equipment to tear down the tree containing the nest. When questioned by investigators, Graham denied having knowledge of the nest.

Kristopher Graham was sentenced to pay a $10,000 fine and to complete a one-year term of probation. He also will perform 75 hours of community service that is likely to be completed at the Audubon Society Birds of Prey Center in Maitland, Florida.

Graham Brothers and Specialized Services were held jointly and severally liable to pay a $75,000 fine, and each will complete a one-year term of probation, during which they will be subject to an environmental compliance plan that requires them to develop procedures to prevent the recurrence of this criminal conduct and to provide training about endangered species to their officers and employees.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. McWane, Inc. et al., No. 2:09-CR-00394 (S.D. Ala.), ECS Senior Litigation Counsel Howard Stewart [redacted] ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Robert Posey [redacted]

On December 18, 2009, McWane, Inc. ("McWane"), one of the largest cast iron pipe manufacturers in the country, was sentenced after pleading guilty to environmental criminal violations that occurred at the McWane Cast Iron Pipe Company ("MCIPC"), a division of McWane located in Birmingham, Alabama. McWane pleaded guilty to nine felony counts of knowingly violating the Clean Water Act. James Delk, the former general manager and vice president of the plant, pleaded guilty to eight negligent CWA violations, and former plant manager Michael Devine pleaded guilty to five negligent CWA counts.

Mcwane was sentenced to pay a $4 million fine and will complete a five-year term of probation. The company also will be ordered to fund the Greenwood Environmental Project and will not be permitted to take a tax deduction on the project. Delk was sentenced to complete 36 months' probation with a special condition of six months' home confinement. His fine was reduced from $90,000 to $8,000, and he was given credit for time served. Devine was sentenced to serve 24 months' probation with a special condition of three months' home confinement. His fine was reduced from $7,000 to $2,000. The court remarked that the fines were reduced based upon the fact that these defendants had inherited a debilitated facility that had been run for profit.

McWane operates iron foundries that manufacture cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas. McWane, through MCIPC, manufactures ductile cast iron pipe for the water and sewer industry at its facility in Birmingham. The manufacturing process involves melting ferrous scrap metal in a water-cooled cupola furnace. Molten metal is centrifugally cast into pipe in water-cooled machines. The cast iron pipe is then tempered, cleaned, tested, cement

lined, painted, and bundled for shipment. A variety of waste streams are generated during this process including oil, grease and zinc.

From 1999 to 2001, the company and plant managers discharged thousands of gallons of wastewater into Avondale Creek which flows into Village Creek, a tributary of Black Warrior River, in violation of their NPDES permit. The defendants were previously convicted at trial in June 2005 for these same violations; however, the convictions were overturned by the Eleventh Circuit and the case was remanded to the district court for trial. These plea agreements resolve the case against all three defendants. This case is one of several successful prosecutions against McWane for environmental and safety crimes occurring at foundries owned by the company across the country.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the Alabama Department of Environmental Management.

Back to Top

United States v. Cory King, No. 4:08-CR-0002 (D. Idaho), AUSA George Breitsameter [redacted] and SAUSA Dean Ingemanson [redacted]

On December 16, 2009, Cory King was sentenced to serve four months' home confinement as a condition of three years' probation. He also will pay a $5,000 fine. King was previously convicted by a jury on all four counts of violating the Safe Drinking Water Act and one count of making false statements. During the three-day trial, the jury heard evidence that King, the farm manager of the Double C Farms in Burley, Idaho, had willfully injected water from the feedlot into a waste disposal and injection well without having obtained a permit. A couple of buried by-pass lines were discovered that had allowed King to inject surface water without reversing the backflow prevention valves. These buried by-pass lines could not be observed from the surface.

In May 2005, an Idaho State Agriculture inspector found that an earthen berm had collapsed and wastewater from the beef cattle feedlot was overflowing and running into a ditch that emptied into an irrigation pond. The inspector also discovered that two irrigation wells had their backflow prevention valves installed backwards, which allowed water in above-ground irrigation pipes to flow backwards down into the wells and into the subsurface. Later that day, the inspector returned and discovered the valves had been removed and reinstalled properly. Investigation revealed that King had submitted an application in 1987 to operate a deep underground injection well at the facility, but had never been issued a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Idaho State Agriculture Department, with assistance from the Idaho State Department of Water Resources.

Back to Top

[redacted]

[redacted]

[redacted]

Back to Top

United States v. Michael Ellard et al., Nos. 3:09-CR-00016, 57 (N.D.W.V.), AUSA Paul Camilletti [redacted]

Seized wood turtles

On December 10, 2009, Michael Ellard was sentenced to serve one year of home confinement as a condition of five year's probation, and was ordered to pay $12,000 in restitution to the National Fish and Wildlife Foundation. Ellard, a Florida reptile dealer, previously pleaded guilty to a Lacey Act violation for smuggling more than 100 turtles out of West Virginia in June 2008.

Ellard, along with two co-defendants were arrested traveling to Florida from West Virginia with 108 wood turtles, four Eastern box turtles and six snapping turtles. Kelly Stoops II was previously sentenced to serve five months' incarceration followed by one year of supervised release. A fine was not assessed. A third man, Eric Diana, initially failed to appear for sentencing, but has been rescheduled for March 30, 2010.

This case was investigated by the U.S. Fish and Wildlife Service Office of Investigations with assistance from the West Virginia Department of Natural Resources.

Back to Top

United States vs. Polembros Shipping Limited et al., Nos. 2:08-CR-00185, 186 and 2:09-CR-00252 (E.D. La.), ECS Trial Attorney Christopher Hale [redacted] **and AUSA Dorothy Taylor** [redacted]**.**

On December 9, 2009, Polembros Shipping Limited, a Greece-based vessel management company, was sentenced to pay a $2.7 million fine and an additional $100,000 will be paid as community service to the Smithsonian Environmental Research Center, a sub-unit of the Smithsonian Institute. The community service payment will be used to research and mitigate the effects of marine invasive species suspected to be transported in ballast waters of ocean-going vessels.

The company previously pleaded guilty to two APPS violations, one false statement, and one violation each of the Ports and Waterways Safety Act and the Nonindigenous Aquatic Nuisance Prevention and Control Act.

Investigation revealed serious problems with the operation and condition of the cargo ship *M/V Theotokos*, specifically the discovery of a breach in the outer skin of the vessel and fuel oil leaks into the forepeak ballast tank. Crew members suspected a leak, which was reported to company personnel, but was not recorded in writing or reported to Coast Guard inspectors until the crew was confronted during an inspection. After it was discovered that fuel oil had been leaking into the forepeak ballast tank, the crew proceeded to pump the oily liquid directly overboard through the ballast pump. None of these discharges were recorded in the oil record book. As the vessel approached New Orleans, it was clear that oil continued to leak into the forepeak tank. The chief engineer ordered two fitters to fabricate and install an obstruction device onto the forepeak tank's sounding tube so that when inspectors boarded to take a sounding, the results would obscure the presence of any oil in the tank.

During the Coast Guard boarding inspectors were able to see that the forepeak tank contained approximately one meter of oil in the tank. During a delay in the inspection, crew members removed the obstruction device before inspectors had a chance to enter the tank and see it. Inspectors also were provided with a false ballast log, which had omitted the presence of oil in the tank, as well as the effect the crack was having on the volume of liquid contained in the tank.

Maintenance of accurate ballast water records is required under Ballast Water Management for Control of Nonindigenous Species regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act. There was no evidence in this case of an invasive species introduction; however, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

Polembros also will complete a three-year term of probation with a condition that all 20 vessels owned or managed by the company will be barred from entering U.S. ports and territorial waters for three years. Additionally, the court awarded a total of $540,000 to nine whistleblowers who were former *Theotokos* crew members. Three senior crew members, captain Panagiotis Lekkas, chief officer Charles Posas, and chief engineer Georgios Stamou, already have been sentenced in this matter. This case was investigated by the United States Coast Guard.

Back to Top

United States v. Alan Van Hout, No. 1:09-po-02365 (D.N.M.), AUSA Andrea Hattan [redacted] with assistance from ECS Assistant Chief John Webb [redacted].

On December 2, 2009, Alan Van Hout was sentenced to serve a one-year term of probation. A fine was not assessed. Van Hout previously pleaded guilty to a misdemeanor charge of unlawfully possessing a Mexican gray wolf, which is protected under the Endangered Species Act. The wolf that Van Hout killed had been released into the wild as part of a reintroduction program.

In August 2008, the defendant shot and killed the wolf and tried to hide the carcass from wildlife agents who were involved in the reintroduction program. Van Hout was not charged with shooting the animal because he claimed he did not know it was a Mexican gray wolf at the time he shot it. He will forfeit the shotgun he used in the killing.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Daniel Cason, No. 1:08-CR-00099 (S.D. Ga.), AUSAs David Stewart [redacted] and Charlie Bourne [redacted]

On December 2, 2009, Daniel Cason was sentenced to serve a year and a day of incarceration followed by one year of supervised release. He also will pay a $3,000 fine plus complete 100 hours of community service.

Cason, the public works director for the City of Harlem, Georgia, previously pleaded guilty to three CWA false statement violations. He originally was charged with 11 counts of violating the Clean Water Act and with making false statements in records and reports.

Cason is responsible for operating the city's POTW. He admitted to submitting discharge monitoring reports between 2003 and 2005 that contained false readings for levels of fecal coliform and biochemical oxygen demand from the POTW.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Joseph O'Connor et al., No. 3:07-CR-02186 (S.D. Calif.), AUSA Melanie Pierson [redacted]

SMITH

O'CONNOR

On December 1, 2009, Robert F. Smith was sentenced to time served and three years' supervised release. Smith and co-defendant Joseph O'Connor recently were apprehended as environmental fugitives who had fled the country in 2006.

Smith worked for O'Connor, who is the president and owner of Britannia Shipping International ("Brittannia"), a ship brokering business based in Malta. During 2005-2006, the *F/V Maru*, a 150-foot fishing vessel owned by O'Connor that was docked in San Diego, underwent renovation work that produced concrete waste, scrap metal, and grinding waste. Investigators received information that O'Connor and Smith were dumping the waste overboard at night.

A six-count indictment was returned in August 2007 charging the company, O'Connor, and Smith with conspiracy, unlawful discharge of pollutants, unlawful discharge of plastics, and three false statement violations. Both defendants fled the jurisdiction before they were indicted and they were posted on the EPA Fugitives website when it went up last year.

O'Connor was returned to U.S. authorities after being arrested in July 2009 in Malta, based upon a red flag Interpol had attached to his name. Smith surrendered to authorities in Malta and pleaded guilty to a conspiracy count upon his return to the United States in August 2009. O'Connor pleaded guilty in October 2009 to a false statement violation, and Britannia pleaded guilty to a felony CWA count.

Scrap metal from *F/V Maru* renovation

Both O'Connor and the company were sentenced to serve a one-year term of probation and the company will pay a $70,000 fine. O'Connor and Smith spent approximately three months in custody in Malta, and Smith spent an additional two months in jail in the U.S. The *Maru* was seized by the Coast Guard and forfeited under a drug case brought in the Southern District of California.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. John Richards, No. 6:08-CR-03098 (W.D. Mo.), ECS Senior Trial Attorney Georgiann Cerese [redacted]

On November 30, 2009, John Richards was sentenced to pay a $5,000 fine and will complete a five-year term of probation. Richards previously pleaded guilty to a two-count information charging him with two false statement violations.

Using the name of Loggerhead Acres Turtle Farm, the defendant was in the business of buying and selling reptiles via the Internet and throughout Missouri. Between 2003 and 2004, Richards exported endangered species of turtles, including Blandings turtles and the western chicken turtle

species, to Japan. He admitted to providing documentation with two different shipments falsely indicating that there had been no charge for the turtles despite Richards' having received payment for them.

This case was investigated by the United States Fish and Wildlife Service and the Missouri Department of Conservation.

Back to Top

United States v. Daniel Lewis, No. 4:09-CR-0002 (W.D. Ky.), AUSAs Randy Ream [redacted] and Joshua Judd [redacted]

On November 18, 2009, Daniel Lewis was sentenced to pay a $5,000 fine and must complete a three-year term of probation. Lewis was convicted by a jury of conspiracy to violate the Safe Drinking Water Act, to make false statements, and to defraud an agency of the United States government.

As the operator of Roseclare Oil Kentucky, Lewis was responsible for the operation of 39 injection wells. These wells actively inject brine water at depths of 1,500 to 2,000 feet underground to assist in the production of oil. Every five years the wells are required to be tested in the presence of EPA inspectors for their mechanical integrity. On 11 of the wells, a device had been installed that falsely indicated that they had passed this test when in fact they had not. Lewis further submitted certification to the EPA that the wells had passed the mechanical integrity testing.

Testimony at trial revealed that Roseclare officials rigged the wells by installing an empty piece of pipe in the ground next to the well, which was connected to the wellhead. Inspectors therefore measured pressure in an empty pipe rather than the well. As the wells developed leaks, Lewis and others installed this equipment on the wells causing them to never need repairs. Brine, which contains benzene and other pollutants, can pollute ground water if the well casings become cracked or broken. As a result of the investigation, Roseclare already has spent more than $109,000 to repair the wells.

This case was investigated by the United States Environmental Criminal Investigation Division.

Back to Top

United States v. Joseph Tillman et al., No. 4:09-CR-01738 (D. Ariz.), AUSA Reese Bostwick [redacted]

On November 5, 2009, a second Tucson man was sentenced for the theft of saguaro cacti from Saguaro National Park. Gregory James McKee was sentenced to serve six months of home confinement and 100 hours of community service. Co-defendant Joseph Tillman was previously sentenced in late October to serve eight months' incarceration.

Both McKee and Tillman pleaded guilty to Lacey Act violations for removing two saguaro cacti from within the boundaries of Saguaro National Park on January 12, 2007. Earlier that day National Park Service rangers discovered that several saguaros had been dug up and cached for later transport along a roadway adjacent to the park's Tucson Mountain District.

Back to Top

Other Litigation Events

United States v. Pacific-Gulf Marine, No. 06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Michael Cunningham [redacted]

On January 4, 2010, the Probation Department filed a Notice of Violation ("NOV") against Pacific-Gulf Marine ("PGM"), citing three probation violations. The NOV follows a report submitted by the court-appointed monitor detailing the new allegations.

PGM was sentenced in January 2007 to pay a $1 million criminal fine plus a $500,000 community service payment. The company pleaded guilty to four APPS violations for the illegal discharges of oily waste from four of its U.S. registered vessels, all of which bypassed the Oily Water Separator ("OWS"). The sentence included a three-year period of probation subject to the terms of an environmental compliance plan that includes audits performed by an outside and independent entity and a review by a court-appointed monitor. The audits include a one-hour test of the OWS without dilution of the bilge waste to assure that the equipment is in good working order.

The NOV cites three instances in 2007 and 2008 when fresh water was used in order to pass the audits on two ships. In one instance, it is alleged that the entries made in the ship's oil record book showing the dilution were not added until after the audit, thereby concealing the misconduct. In another instance, the monitor has alleged that PGM assured that the tests were performed without dilution when that was not true.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. The New York City Department of Environmental Protection, No. 01-CR-00186 (S.D.N.Y.), AUSA Anne Ryan [redacted]

After eight years and four months, the New York City Department of Environmental Protection's ("DEP") term of probation ended on December 31, 2009. This case began in the fall of 1998 with the commencement of a far-reaching, three-year criminal investigation. In 2001, the investigation resulted in a guilty plea by DEP (the New York City agency responsible for the city's water supply and wastewater treatment systems) to a felony Clean Water Act violation and a misdemeanor TSCA violation. The agency was placed on probation under the supervision of a court-appointed monitor and ordered to develop and implement an effective environmental and worker health and safety compliance program relating to its water supply operations. A subsequent two and a half year criminal investigation resulted in a probation revocation and re-sentencing based on DEP's commission of an additional Clean Water Act felony while on probation. DEP was ordered to expand its compliance program to include the entire agency.

The record of the case documents that DEP violated environmental and worker health and safety laws and regulations for decades. The extended term of probation, however, resulted in an agency-wide environmental and worker health and safety compliance program, including a compliance office, a training program for its employees, and periodic audits of all of its facilities. DEP has corrected more than 45,000 deficiencies identified during facility audits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the New York City Department of Investigation. Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

March 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
S.D. Ala.	**United States v. Karen L. Blythe et al.**	***Seafood Imports*/ Conspiracy, Lacey Act, Smuggling, Misbranding**
C.D. Calif.	**United States v. Gerald Snapp**	***Elephant Skull Sale*/ ESA**
N.D. Calif.	**United States v. Luke Brugnara et al.**	***Trout Habitat Degradation*/ ESA, False Statements**
	United States v. Fleet Management Ltd. et al.	***Vessel*/ OPA, Obstruction, MBTA, False Statements**
	United States v. Chuck Sivil et al.	***Bulk Fuel Terminal*/ CAA Tampering, False Statements**
	United States v. Bai Lin Huang	***Asian Arowana Smuggling*/ Smuggling, False Statements**
S.D. Calif.	**United States v. Atticus Gee**	***Landfill Emissions*/ CAA Tampering**
M.D. Fla.	**United States v. John Loder et al.**	***Apartment Renovation*/ CAA, Accessory-after-the-Fact, False Statements**
	United States v. Kinder Morgan Port Manatee Terminal LLC	***Baghouse Emissions*/ CAA**
S.D. Fla.	**United States v. Robbie Franklin Smith et al.**	***Queen Conch and Spiny Lobster Imports*/ Lacey Act**
	United States v. Alfred Raubitschek et al.	***Counterfeit Goods*/ Trafficking**
	United States v. John Buckheim et al.	***Spiny Lobster Harvest*/ Conspiracy, Lacey Act**
N.D. Ga.	**United States v. Jennifer Duffey et al.**	***Munitions Burial*/ Conspiracy, RCRA Disposal**
D. Hawaii	**United States v. Jerome Anches et al.**	***Freight Distributor*/ RCRA Storage**
D. Idaho	**United States v. Cleve Ouellette**	***Falsified Drinking Water Tests*/ Mail Fraud**
S.D. Iowa	**United States v. Robert Joe Knapp**	***Building Demolition*/ Conspiracy, CAA**
N.D. Ill.	**United States v. Dennis Michael Egan et al.**	***Crewmember Death*/ CWA misdemeanor, Misconduct or Neglect of Ship's Officers**
M.D. La.	**United States v. Travis Dardenne et al.**	***Alligator Hunting*/ Lacey Act, ESA**
D. Mass.	**United States v. Charles Manghis**	***Ivory Smuggling*/ Conspiracy, Smuggling, False Statements**
D. Minn.	**United States v. Seng Her**	***Wildlife Smuggling*/ Smuggling**
D.N.J.	**United States v. James Robert Durr**	***Turtle Habitat Degradation*/ ESA, False Statements**
W.D.N.Y.	**United States v. John Signore**	***Battery Chips*/ RCRA Storage**

Districts	Active Cases	*Case Type* / Statutes
W.D.N.C.	**United States v. Howard William Ledford**	***Wild Ginseng Purchase/* Lacey Act**
D. N.M.I.	**United States v. Yuquiong Zheng**	***Pesticide Transportation/* HMTA, Federal Aviation Act**
[redacted]	[redacted]	[redacted]
D.S.D.	**United States v. Wayne Breitag et al.**	***Leopard Hunt/* Lacey Act, Smuggling**
W.D. Tex.	**United States v. Economy Cash & Carry**	***Wood Pallet Certification/* False Statement, Plant Protection Act**
D.V.I.	**United States v. Ivan Chu et al.**	***Coral Shipments/* Conspiracy, Lacey Act, Endangered Species Act, False Statement**
W.D. Wash.	**United States v. Robert Hurst**	***Elk Killing/* Lacey Act**

Additional Quick Links

Trials

United States v. Charles Manghis, No. 1:08-CR-10090 (D. Mass.), AUSA Nadine Pellegrini [redacted]

Sperm whale teeth in defendant's home

On January 28, 2010, Charles Manghis was convicted after a four-day bench trial of multiple felony counts for his participation in an international conspiracy to smuggle wildlife parts, specifically sperm whale teeth and elephant ivory, into the United States. Manghis was found guilty of one count of conspiracy to smuggle wildlife, six substantive counts of smuggling wildlife, and two counts of making false statements to federal agents. He was acquitted of a smuggling and a false statement violation.

For 40 years, Manghis worked as a commercial scrimshaw artist in Nantucket. His merchandise was offered for sale at a well known antique shop in Nantucket and also was displayed on his website. Evidence showed that the defendant bought ivory from persons outside the United States using Ebay and that he conspired with a Ukrainian national and others to smuggle large amounts of sperm whale ivory into the United States. Importing sperm whale ivory into the United States has been banned since the early 1970's.

In June of 2005, agents seized a large quantity of ivory pieces, many with Russian writing and pictures, from Manghis' home and shop. A computer that was seized from the defendant's home provided emails and other evidence of multiple purchases of sperm whale ivory. During the trial, forensic scientists confirmed that the items located in the defendant's home were, in fact, sperm whale teeth.

During the course of the investigation, Manghis lied to federal agents by claiming that he purchased the sperm whale ivory from a person in California and not from anyone located outside the United States. When federal agents questioned him about having Russian-origin teeth in his home, he simply denied that he possessed any.

Sentencing is scheduled for May 6, 2010. This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, the United States Fish and Wildlife Service Office of Law Enforcement, and Immigration and Customs Enforcement. Assistance also was provided by the Nantucket Police Department and the Massachusetts Environmental Police.

Back to Top

Informations and Indictments

United States v. John Loder et al., Nos. 8:10-CR-00013 and 00059 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Cherie Krigsman [redacted].

On February 19, 2010, an indictment charging four defendants was unsealed following their arraignment on conspiracy, Clean Air Act and false statement charges. John Loder, Stephen J. Spencer, Guy Gannaway, and Keith McConnell are named in the 11-count indictment.

Between November 2004 and early 2007, the defendants were involved in the purchase and renovation of apartment complexes for the purpose of converting them to condominiums. Loder and Spencer were partners in an entity called Sun Vista Development Group, which coordinated the renovation of the complexes. They also were members of corporate entities that purchased the complexes to be renovated and converted. Guy Gannaway was the majority owner of Gannaway Builders, Inc. ("GBI"), which was the general contractor on the renovation and conversion projects. Keith McConnell was a GBI employee.

In at least two of the complexes slated for renovation and conversion, the ceilings within the buildings were coated with a "popcorn" ceiling texture that contained significant amounts of asbestos. During the course of the renovations, the targets disturbed and caused others to disturb large quantities of the popcorn ceiling texture without notice to regulators and without following the work practice standards for asbestos. They also submitted documents to local regulators and caused documents to be submitted to local regulators that falsely characterized and omitted information concerning the violations in an attempt to avoid detection and to minimize or avoid administrative penalties. Co-defendant James Roger Edwards recently pleaded guilty to being an accessory-after-the-fact for his failure to notify or report an improper removal of asbestos.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Florida Department of Law Enforcement.

Back to Top

United States v. Robert Joe Knapp et al., No. 4:10-CR-00025 (S.D. Iowa), ECS Trial Attorney Gary Donner [redacted] AUSA Debra Scorpiniti [redacted], and SAUSA Kristina Gonzales.

On February 25, 2010, an indictment was returned charging Robert Joe Knapp, the owner of Equitable, L.P., and Knapp's supervisor, Russell William Coco, with committing violations of the Clean Air Act while they were overseeing the demolition and renovation of The Equitable Building.

The indictment describes an approximately two-year-long operation in which several floors of The Equitable Building, located in downtown Des Moines, were illegally demolished while still containing large amounts of asbestos. The indictment further alleges that any asbestos that was removed from the building during the demolition and renovation project was done so illegally, placed into open dumpsters, and improperly disposed of in a landfill.

The 11-count indictment charges the defendants with conspiracy to defraud the United States and to violate the Clean Air Act, as well as with substantive CAA NESHAP violations. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Iowa Department of Natural Resources.

Back to Top

United States v. James Robert Durr, No. 1:10-CR-00098 (D.N.J.), ECS Senior Trial Attorney Elinor Colbourn [redacted] and ECS Trial Attorney Mary Dee Carraway [redacted].

On February 17, 2010, an indictment was returned charging James Robert Durr with an Endangered Species Act (ESA) and a false statement violation stemming from his clear cutting trees near a stream that impacted the habitat area of the bog turtle, a threatened species.

According to the indictment, Durr purchased a farm property in December 2005, which he called Turtle Creek Farm. The property included a free flowing perennial stream that flowed into and out of a bog area that Durr knew to be the habitat of a significant population of the threatened bog turtle (*Clemmys muhlenbergii*). Immediately upon taking possession of the property, the defendant clear cut the buffer zone around the stream and ditched it just upstream of, and including part of, the bog turtle habitat. He also recontoured a field adjacent to the newly clear cut area, resulting in up to two feet of sediment being deposited in the stream. Subsequent surveys for bog turtles revealed that there is no longer a viable population in this habitat. The bog turtle has been listed as a threatened species under the ESA since 1997, and it is listed by the State of New Jersey as endangered, primarily due to habitat loss.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Yuqiong Zheng, No. 1:10-CR-00027 (D.N.M.I.), AUSA Beverly McCallum [redacted]

On February 9, 2010, Yuqiong Zheng was charged in a two-count indictment stemming from the alleged importation of undeclared pesticides from the People's Republic of China.

On October 9, 2008, the defendant attempted to transport the pesticide Buprofezin, a hazardous material, onboard an airplane. She has been charged with a violation of the Hazardous Materials Transportation Law and with a violation of the Federal Aviation Act.

This case was investigated by the U.S. Department of Transportation Office of Inspector General and the U.S. Environmental Protection Agency Criminal Investigation Division, with the assistance from the U.S. Coast Guard Investigative Service, Federal Aviation Administration, and the Commonwealth of the Northern Mariana Islands Divisions of Environmental Quality and Customs.

Back to Top

United States v. Karen L. Blyth, et al., No. 1:10-CR-00011 (S.D. Ala.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] ECS Trial Attorney Susan Park [redacted] and AUSA Deborah Griffin [redacted].

On January 28, 2010, a 28-felony count indictment was returned charging Karen Blyth, David H.M. Phelps and John J. Popa with conspiracy, as well as a Lacey Act violation, smuggling and misbranding violations.

Blyth and Phelps owned a seafood supply company in Arizona and also were co-owners with Popa and others of a seafood wholesaler in Pensacola, Florida, which sold seafood to customers in Alabama and the Florida Panhandle. From approximately October 2004 through November 2006, the defendants conspired to sell falsely labeled and unlawfully imported fish. Specifically, they bought and sold imported catfish from Vietnam that had been falsely labeled and imported without paying the applicable duties, and then sold that catfish as grouper. They also routinely substituted cheaper fish for more expensive fish by selling Lake Victoria perch as grouper, selling imported catfish as grouper, and

selling grouper as snapper. Moreover, they were selling live oysters for which the harvest date had been changed to a more recent date. Trial is scheduled to begin on June 28, 2010.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement; Department of Homeland Security, Immigration and Customs Enforcement; United States Air Force Office of Special Investigations; and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. Dennis Michael Egan et al., No. 10-CR-00033 (N.D. Ill.), AUSA Timothy Chapman [redacted] and SAUSA Crissy Pellegrin [redacted]

On January 13, 2010, Dennis Michael Egan and Egan Marine Corporation ("EMC") were charged in a three-count indictment with offenses related to a 2005 explosion and sinking of an EMC barge, the *EMC-423*, on the Chicago Sanitary and Ship Canal that resulted in the death of an EMC crew member, Alexander Oliva. Egan and EMC were charged with misconduct or neglect of ships' officers for negligently causing Oliva's death and with a misdemeanor Clean Water Act violation for the discharge of oil into a water of the United States.

Explosion from barge

At the time of the explosion, the barge, which was slightly smaller than a football field, was loaded with approximately 600,000 gallons of clarified slurry oil ("CSO"), a byproduct of petroleum refining, and was being pushed by a "tow boat," the *Lisa E*, being piloted by Egan. The indictment alleges that Egan and EMC were negligent in allowing Oliva to use an open flame (namely, a propane fueled "rosebud torch") to heat a cargo pump on the deck of the barge, a short distance from which stood a vertical standpipe that was venting CSO vapors from one of the barge's cargo compartments to the deck of the *EMC-423*. Egan and two other crew members survived the blast. Much of the CSO and other varieties of oil aboard the *EMC-423* were discharged into the canal.

This case was investigated by the Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ivan and Gloria Chu, No.10-CR-0003 (D.V.I.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Nelson Jones [redacted]

On January 14, 2010, an 18-count indictment was returned charging Taiwanese nationals Ivan Chu and Gloria Chu with conspiracy, false statement, Lacey Act false labeling, Endangered Species Act, and false classification violations, stemming from their involvement in illegal coral shipments.

The indictment names the Chus, who operate a raw coral supply and jewelry parts business in Taipei under the name Peng Chia Enterprise Co., Ltd., as the main suppliers of illegal coral to a group of businesses in the U.S. The indictment alleges that the shipments lacked the appropriate CITES documentation and/or the coral was mislabeled, typically as a type of plastics product.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with assistance from United States Immigration and Customs Enforcement and Border Protection.

Back to Top

Plea Agreements

United States v. Atticus Gee, No. 09-CR-004121 (S.D. Calif.), AUSA Melanie Pierson [redacted]

On February 18, 2010, Atticus Gee pleaded guilty to tampering with a monitoring method stemming from his preparation of false landfill gas emission reports by copying data he had in his possession without conducting the actual monitoring.

According to the indictment, between October 2004 and May 2007, Gee was employed as a technician by a company under contract with the San Diego County Department of Public Works and was responsible for taking readings of the emissions of landfill gases from several closed landfills within the County of San Diego. When landfills reach their final capacity, they can be capped by covering them with earth and other substances. In order to prevent underground fires, methane extraction vents are to be installed. The emissions to the air from such methane extraction vents are regulated in San Diego by permits issued by the San Diego County Air Pollution Control District. Those permits place limits on the emissions and require periodic monitoring reports and certifications of compliance to be submitted by the San Diego County Department of Public Works. On September 23, 2005, an underground fire was discovered at the Palomar Airport Landfill, although no unusual readings had been reported in the monitoring data from the methane extraction wells and migration probes at that location.

Sentencing is scheduled for May 14, 2010. This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Kinder Morgan Port Manatee Terminal LLC, No. 8:10-CR-00076 (M.D. Fla.), AUSA Cherie Krigsman.

Baghouse

On February 17, 2010, Kinder Morgan Port Manatee Terminal LLC ("KMPMT"), a Delaware company doing business in Manatee County, Florida, *agreed* to plead guilty to four violations of the Clean Air Act stemming from its baghouse dust emissions. The plea is scheduled to be taken on March 11, 2010. At the time of sentencing, the company has further agreed to pay a $750,000 fine and to make a $250,000 community service payment to the National Fish and Wildlife Foundation. It also will serve a two-year term of probation and implement an extensive environmental compliance plan.

According to the information and plea agreement, KMPMT operates a dry bulk material handling and storage facility, which covers six acres and includes four warehouses. It receives and ships materials such as granular fertilizer products and cement clinker by railcar, truck, and ship. When these granular materials are loaded and unloaded incorrectly, they generate particulate matter, an air pollutant regulated by

the Clean Air Act. Facilities are required to operate baghouse air pollutant control systems, in order to control particulate emissions. These systems further require permits to ensure their proper operation

Investigation revealed that, from in or about 2001 through March 2008, KMPMT's baghouse systems were in poor condition, and several were not fully operational during the times specified in various permits. In August 2006 and August 2007, the company's local managers and supervisors falsely stated in Florida Department of Environmental Protection ("FDEP") permit applications that KMPMT would operate and maintain its air pollution emissions and control equipment in accordance with regulations, knowing that the baghouses were not being operated and maintained properly. From October 2006 through March 2008, company management failed to notify the FDEP that its baghouse air pollution control systems were out of compliance.

A parallel enforcement action brought against the company by state officials resulted in FDEP ordering a $331,000 civil penalty. Corrective actions under the order include conducting compliance stack testing on the repaired baghouses, repairing the transfer towers and conveyor systems, creating an employee training program, and implementing a management tracking system to ensure future compliance through testing, record keeping and maintenance.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Florida Department of Environmental Protection.

Back to Top

United States v. Seng Her, No. 09-CR-00365 (D. Minn.), AUSA William Otteson [redacted].

On February 11, 2010, Seng Her pleaded guilty to a smuggling violation stemming from her smuggling elephant parts and dead birds into the United States from southeast Asia.

Small bird

Her was stopped by U.S. Customs officials at the Minneapolis-St. Paul International Airport in November 2007 after visiting Laos. Along with parts of an Asian elephant, an endangered species, the defendant also had in her possession several dead birds including yellow-vented flowerpeckers, tailorbirds, prinias and passerines, without the required documentation.

Her previously was warned in writing by the U.S. Fish and Wildlife Service in 2007 about importing undeclared wildlife into this country. She had been stopped in 2005 at the Twin Cities airport with pieces of elephant hide, birds and other wildlife, including several threatened and endangered species, in her belongings.

This case was investigated by the United States Fish and Wildlife Service.

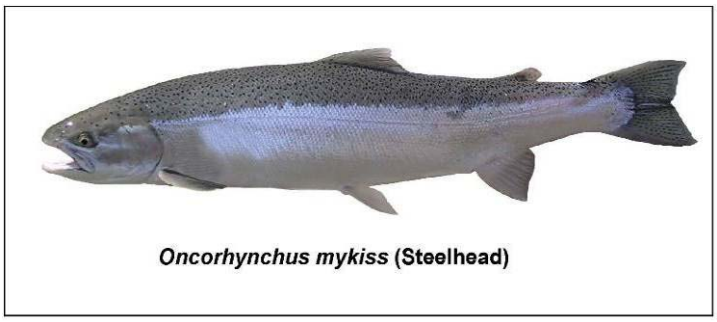
Back to Top

[redacted]

[redacted]

Back to Top

United States v. Luke Brugnara et al., No. 3:08-CR-00236 (N.D. Calif.), AUSAs Maureen Bessette [redacted] and Thomas Newman [redacted]



***Oncorhynchus mykiss* (Steelhead)**

On January 26, 2010, Luke Brugnara pleaded guilty to a six-count indictment which charged four counts of "taking" steelhead trout in violation of the Endangered Species Act and two counts of making a false statement during the course of the investigation. Charges against the Brugnara Corporation were dismissed as a condition of the plea agreement.

According to court documents, Brugnara intentionally blocked the flow of Little Arthur Creek, an important watershed for steelhead, through his private dam on property purchased by his corporation in 2001 in Gilroy, California. Steelhead are known to migrate upstream of the dam on this property, and the population of steelhead in the Little Arthur Creek, running through the defendant's property, is listed as a threatened species. One of the reasons for this decline in steelhead populations is that their access to historic spawning and rearing areas upstream of dams has been blocked.

From approximately January 2007 through April 2007, the defendant closed off the portal in his dam which had allowed the steelhead to migrate upstream. State and federal investigators located and observed numerous trapped adults downstream of the dam that were unable to migrate upstream to suitable spawning habitat. A federal fisheries biologist determined the trapped adult steelhead were of paramount importance to the survival of the species due to their low number found in the Pajaro River watershed and recommended that the adults be rescued and moved upstream. When the rescue team arrived to move the steelhead upstream, investigators found that they had disappeared, but there remained significant evidence of recent poaching and trapping activities.

During the investigation Brugnara made false statements to local law enforcement officers stating that he had not taken the fish that were caught in his dam and that he had not used the type of fishing lure that was capable of catching steelhead trout.

This is the first federal criminal case in the country charging an individual with the taking of steelhead through blocking access to upstream habitat. Sentencing is scheduled for May 5, 2010.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the California Department of Fish and Game.

Back to Top

United States v. Robbie Franklin Smith et al., No. 1:08-CR-20644 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Seized queen conch

On January 22, 2010, Robbie Franklin Smith, a Bahamian native, pleaded guilty to charges stemming from the illegal import of queen conch and spiny lobster from the Bahamas to the United States in violation of the Lacey Act and of Bahamian law.

In December 2005, a vessel operated by a Miami-based seafood dealer, James Hanson, was intercepted by a Coast Guard patrol vessel. During a boarding and inspection, officers found more than 1,000 pounds of undeclared spiny lobster and approximately 340 pounds of queen conch, which had been supplied to Hanson in the Bahamas by Smith. Hanson's intention was to land the seafood in the United States and market it through Hanson Seafood, Inc., a company which he owned. Between June and December 2005, on approximately a dozen occasions, Hanson purchased spiny lobster and conch from Smith and imported it illegally into the United States using boats owned through his companies and employees of his companies. According to court documents, the total fair market value of the trips exceeded $87,000.

Hanson, who received a lesser sentence for cooperating with the government's investigation, was sentenced to pay a $75,000 fine, ordered to perform 300 hours of community service, and complete a three-year term of probation. He further was ordered to relinquish any claim to the proceeds of the seized product, which was valued at $13,930. J.R.J.T., Inc., which is wholly-owned by Hanson, was ordered to forfeit the boat used in the commission of the offense, a 37.8-foot sport fishing vessel, valued at approximately $750,000. Smith is scheduled to be sentenced on April 6, 2010.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement, the United States Fish and Wildlife Service, and United States Immigration and Customs Enforcement, with assistance from the Ministry of Agriculture and Marine Resources, Department of Marine Resources, of the Commonwealth of the Bahamas.

Back to Top

United States v. Jennifer Duffey et al., No. 09-CR-00512 (N.D. Ga.), AUSA Susan Coppedge [redacted]

Napthalene buried underground

On December 17, 2009, Jennifer Duffey and John Duffey pleaded guilty to conspiring to illegally dispose of hazardous waste. Jennifer Duffey and John Duffey ran Joint Military Development Services ("JMDS"), a company engaged in conducting military training exercises for the United States' armed forces. In its work with the military, JMDS purchased approximately 560 "napalm bursts" for use in military exercises. These napalm bursts are explosives and contain napthalene which is federally-listed as hazardous if it is a waste and can cause liver and neurological damage. JMDS did not possess a permit to dispose of this hazardous waste.

On two separate occasions, Jennifer Duffey instructed an employee to dig a hole in the woods on property adjacent to the warehouse out of which JMDS operated and bury the napthalene. This property belonged to a third party who was unaware that hazardous waste had been buried on his land. For a second disposal in mid-November 2008, John Duffey instructed an employee to use face masks so that the strong, noxious odor would not affect them while they dug a hole and buried the remaining napalm bursts. John Duffey monitored the two employees who disposed of the hazardous waste in November.

Sentencing is scheduled for April 12, 2010. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Jerome Anches et al., No. 1:08-CR-00577 (D. Hawaii) AUSA Marshall Silverberg [redacted]

On February 22, 2010, Jerome Anches was sentenced to pay a $300,000 fine plus $84,000 in restitution, the latter due immediately. He also will complete a five-year term of probation after previously pleading guilty to a RCRA storage violation.

Drums of hazardous waste

Anches was the president of Martin Warehousing and Distribution ("MWD"). MWD was in the business of transporting and distributing freight. In August 2001, there was a hazardous waste spill involving the puncture of a 55-gallon drum of tetrachloroethylene by a MWD forklift driver. MWD contacted the Honolulu Fire Department, which arrived and contained the spill. MWD also contacted Pacific Environmental Company ("PENCO"), which specialized in the clean-up of hazardous waste sites and the disposal of hazardous waste. Shortly thereafter, PENCO employees arrived to clean-up the site. After providing samples of this material to be tested by a lab, PENCO verified that the waste must be treated as hazardous and placed the material in a container on MWD's property.

PENCO prepared manifests and hazardous waste labels for Anches and informed him that the company could transport the waste for proper disposal for approximately $16,500. Anches declined the offer due to the cost and let the waste sit without proper permitting until February 2005.

In February 2005, Anches agreed to sell the MWD property to RRL, Inc., and to co-defendant Stephen Swift, the *de facto* "responsible corporate officer" for RRL. The contract required that the hazardous waste be manifested and properly removed from the property. Swift or one of his employees, however, simply moved the container down the street from the RRL offices. The waste was moved again about a week later, from the street to property owned by Swift, without a manifest. Swift continued to unlawfully store this waste from February 2005 to May 2008.

In a letter dated January 4, 2008, the Department of Health for the State of Hawaii wrote to Swift's attorney and asked a number of questions, including whether Swift had taken care of a container with the hazardous waste located on his property. Swift responded with a number of false

statements, including that the container located on the Haleahi property did not contain waste but rather "damaged freight." Swift remains set for trial to begin on March 30, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Fleet Management Ltd. et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSAs Stacey Geis [redacted] and Jonathan Schmidt [redacted].

On February 19, 2010, Fleet Management Ltd. ("Fleet"), a Hong Kong ship management company, was sentenced to pay a $10 million fine, with an additional $2 million community service payment to be devoted to funding marine environmental projects in San Francisco Bay. Fleet also will complete a three-year term of probation and will implement an enhanced compliance program.

Fleet previously pleaded guilty to Oil Pollution Act, obstruction, and false statement violations after being charged in a third superseding indictment with acting negligently and being a proximate cause of the oil discharge from the *M/V Cosco Busan* and for the killing of migratory birds. Fleet further admitted to obstructing justice and to making false statements by falsifying ship records after the vessel crashed into the San Francisco Bay Bridge in November 2007. The collision caused a gash measuring approximately 150 feet long by 12 feet high on the port side of the ship, puncturing two of the ship's fuel tanks and damaging the fendering system on the Delta tower of the bridge, resulting in a significant environmental clean-up. At least 2,000 migratory birds died, including Brown Pelicans, Marbled Murrelets and Western Grebes. The Brown Pelican is a federally endangered species and the Marbled Murrelet is a federally threatened species and an endangered species under California law. The ship's captain, John Cota, currently is serving a sentence of 10 months' incarceration.

This case was investigated by the United States Coast Guard Criminal Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service, and the California Department of Fish and Game, Office of Spill Prevention and Response.

Back to Top

United States v. Alfred Raubitschek et al., No. 2:09-CR-20664 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Pistol grips with counterfeit trademarks

On February 17, 2010, Alfred Raubitschek and William Harvey were sentenced after pleading guilty to trafficking in counterfeit goods. The two were involved in the smuggling of pistol grips into the United States that had been manufactured from a prized Brazilian hardwood and subsequently marked with counterfeit Smith & Wesson Corp. registered trademarks.

Raubitschek was sentenced to time served of six weeks' incarceration, followed by seven months' home confinement and three year' supervised release. Raubitschek also will pay a $3,000 fine. Harvey was previously sentenced after cooperating with the government. He will complete a three-year term of

probation and pay a $5,000 fine.

The two defendants were involved in the illegal importation of more than 260 sets of custom-made pistol grips, designed for Smith & Wesson firearms. The grips, which were fabricated from protected species of Brazilian rosewood were pre-drilled and mounted with metallic medallions intended to mimic the genuine Smith & Wesson logo on legitimately produced product, in violation of the trademark.

The gun grips imported into the United States were falsely described on invoices and other documents as "rough cutting board samples". The defendants also failed to provide required notices to the Fish and Wildlife Service for the import of protected rosewood, and further failed to secure the required export permits from Brazil. Rosewood, or *Dalbergia nigra*, is a highly prized Brazilian hardwood often used to make high-end musical instruments and equipment.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. John Signore, No. 1:09-CR-00339 (W.D.N.Y.), AUSA Aaron Mango [redacted]

On February 17, 2010, John Signore was sentenced to serve two years' probation, pay a $3,000 fine, and complete 40 hours of community service. Signore recently pleaded guilty to one RCRA count for his involvement in the storage of shredded battery cases (known as "chips"), a hazardous waste.

Signore was a plant manager at the Tulip Corporation, which reprocessed and recycled these chips into a useable material. Tulip purchased the chips from various suppliers, and they were delivered to the plant in tractor trailers. Each load contained approximately 40,000 pounds of chips, a significant proportion of which were contaminated with lead.

From approximately October 2004 through July 2007, at Signore's direction, the chips were occasionally stored outside the facility, with the amount steadily increasing as processing equipment broke down and the surplus of chips increased. In July 2007, state hazardous waste inspectors observed approximately 80,000 pounds of chips being stored without a permit. Samples of chips analyzed for lead confirmed that they were hazardous waste.

This case was investigated by the New York State Department of Environmental Conservation and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cleve Ouellette, No. 1:09-CR-00230 (D. Idaho), AUSA Wendy Olson [redacted]

On February 16, 2010, Cleve Ouellette, a former organic chemist and supervisor with Analytical Laboratories, Inc. ("ALI"), was sentenced to serve six months' home confinement as a condition of three years' probation, and also will pay a $3,000 fine. Ouellette previously pleaded guilty to a mail fraud violation stemming from his preparation of fraudulent drinking water test results.

The defendant was responsible for conducting public drinking water system lab tests using a Gas Chromatography/Mass Spectrometer ("GC/MS"). The lab was required to conduct all analyses according to state and federal environmental regulations, which included the proper calibration of the GC/MS testing instrument. Beginning in January of 2004 and continuing through April of 2005, the defendant knowingly failed to calibrate the GC/MS instrument on approximately 80 percent of the days he conducted public water system drinking water tests. Ouellette subsequently prepared

fraudulent reports based upon these test results and caused invoices to be prepared and mailed to the public water system clients for whom the tests had been conducted.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and Office of Inspector General.

Back to Top

United States v. Travis Dardenne et al., Nos. 3:09-CR-00113 and 00114 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted] and AUSA Corey Amundson [redacted]

On February 4, 2010, Travis Dardenne and Jeffery Brown were each sentenced to pay a $2,000 fine and to complete a one-year term of probation. Dardenne and Brown previously pleaded guilty to a Lacey Act misdemeanor charge for knowingly attempting to acquire an American alligator in violation of the Endangered Species Act. They also are prohibited from hunting during the term of probation.

In September 2006, the two licensed alligator hunters guided an out-of-state alligator sport hunter to an area for which Dardenne and Brown did not have appropriate state authorization to hunt. The sport hunter killed a trophy-sized alligator in the unapproved area. For the purpose of maintaining a healthy alligator population, Louisiana strictly regulates the hunting of alligators in the wild. Trophy-sized alligators are highly sought after by hunters, and guides frequently take hunters to them regardless of state restrictions.

This case was investigated by the Law Enforcement Division of the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. John Buckheim et al., No. 4:09-CR-10026 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On February 2, 2010, John Buckheim and Nick Demauro were sentenced for their involvement in illegally harvesting spiny lobsters. They each will serve one year and a day of incarceration to be followed by two years of supervised release. The court also ordered the defendants to reimburse $10,560 to the United States Marshall's Service and $12,187 to the Miami-Dade Police Department Intergovernmental Bureau for investigative costs involved in dive support operations. Buckheim and Demauro pleaded guilty to a Lacey Act conspiracy count for illegally harvesting the lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary ("FKNMS") during the summer of 2008 and extending into early 2009. The fair market retail value of illegally harvested lobster by the defendants was greater than $155,000.

Artificial habitats are prohibited from being placed on the seabed in the FKNMS. The defendants admitted to sinking a vessel in this protected area for the purpose of creating an artificial lobster habitat. In taped conversations, the defendants further admitted to possessing the GPS coordinates for well over 300 illegal artificial habitat locations. Spiny lobster may only be harvested during the commercial season, which runs from August 6 through March 31 of the following year. As part of the sentencing, the defendants will continue to remove the artificial habitat they had placed in the FKNMS. After pleading guilty, under the supervision of FKNMS personnel the defendants have been removing the illegal habitat at their own expense. Thus far, approximately 300 sites have been removed. Buckheim also was ordered to forfeit a 1999 Pathfinder vessel and a 2006 GMC pick-up truck, which were used in the commission of the criminal offenses. Due to an intervening sale of the vessel, Buckheim was ordered to forfeit the proceeds of that sale, which amounted to $1,000.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, with assistance from the Florida Fish and

Wildlife Conservation Commission, and the Miami-Dade Police Department Underwater Recovery Unit.

Back to Top

United States v. Wayne Breitag et al., No. 1:09-CR-10035 (D.S.D.), ECS Trial Attorney James Nelson [redacted] AUSA Timothy Maher [redacted] and ECS Paralegal Bettina Bammer-Whitaker [redacted]

On February 1, 2010, Wayne Breitag was sentenced to serve six months' home confinement and to pay a $20,000 fine. Breitag was convicted by a jury after a retrial for smuggling a leopard hide into the United States in violation of CITES. He also was found guilty of two Lacey Act violations. The defendant's sentence includes three years' supervised release during which he is barred from hunting or being with anyone who is hunting. He also will forfeit the hide.

Breitag traveled to South Africa in August 2002 to hunt leopards while guided by Jan Groenewald Swart, a South African outfitter, doing business as "Trophy Hunting Safaris." After Breitag killed a leopard, Swart arranged to have the hide smuggled from South Africa into Zimbabwe, where he purchased fraudulent CITES export permits for the hide. Breitag then submitted applications to the U.S. Fish and Wildlife Service falsely claiming that he had hunted and killed the leopard in Zimbabwe. In November 2004, inspectors seized a shipment of five leopard hides and three leopard skulls at the Denver International Airport, which included the hide of the leopard that Breitag had illegally killed in South Africa in 2002. Co-defendant Swart served an eighteen-month prison sentence, and was deported upon his release.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Economy Cash & Carry, No. 3:09-mj-06732 (W.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Steven Spitzer [redacted]

On January 28, 2010, Economy Cash & Carry pleaded guilty to and was sentenced for the first criminal prosecution of a violation of the Plant Protection Act related to the falsification of a required certificate stamp. The company was sentenced to pay a $22,000 fine as a result of this misdemeanor violation.

Michael Sayklay, the former company vice president and warehouse manager, previously pleaded guilty to a felony false statement violation for his role in the certificate stamp falsification. Specifically, Sayklay admitted to falsifying stamps that certified wood pallets had been heat-treated to prevent infestation, and were suitable for use in international transportation. In 2006, the defendant was responsible for having the false stamp affixed to his company's wood pallets that were used to carry products back and forth across the U.S./Mexico border.

The United States Department of Agriculture ("USDA") requires the heat treatment of wood pallets used in international transactions. The requirement is to prevent insects, parasites and plant diseases from entering the United States in wood packaging materials. Pallets that carry products transported within the United States are not required to be heat treated.

Economy Cash & Carry uses wood pallets to transport food products and pharmaceuticals sold in both the United States and Mexico. In his capacity as the warehouse manager, Sayklay was responsible for directing the transfer of products destined for Mexico from untreated pallets to treated pallets. Instead of following this procedure, however, he devised a copy of a certification stamp that was used by a legitimate wood pallet treating company. The defendant subsequently had hundreds of untreated domestic pallets falsely stamped as if they were treated, saving the time to transfer products

between pallets as well as the cost of treatment. Sayklay neglected to notice, however, that the falsified stamp he used was smaller than the legitimate stamp.

Consequently, other companies that received the fraudulently stamped pallets from Mexico sent them for repair to the legitimate stamp owner who then notified the government about the falsification. An investigation by USDA resulted in the seizure of fraudulently stamped pallets at the U.S./Mexico border.

This case was investigated by the United States Department of Agriculture.

Back to Top

United States v. Gerald Snapp, No. 2:09-CR-00122 (C.D. Calif.), AUSA Dennis Mitchell [redacted]

On January 28, 2010, Gerald Snapp was sentenced to serve a three-year term of probation which includes three months' home detention and 100 hours of community service.

Snapp was convicted by a jury last year of an Endangered Species Act violation for attempting to sell to an undercover agent the skull of an Asian elephant on Craigslist. According to evidence at trial, the defendant obtained the skull of a captive Asian elephant, which had lived at the Los Angeles Zoo prior to being euthanized. In December 2008, Snapp posted an advertisement on Craigslist offering to sell the skull for $9,000. After being made aware of the posting, the United States Fish and Wildlife launched an undercover investigation, with an agent engaging in a series of emails, meetings and recorded phone calls with the defendant. In one such call, Snapp demonstrated his knowledge of CITES by describing the regulations to the agent.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Robert Hurst, No. 3:09-CR-05733 (W.D. Wash.), AUSA Jim Oesterle [redacted]

Roosevelt bull elk

On January 25, 2010, Robert Hurst pleaded guilty to and was sentenced for hunting, killing, and transporting a trophy Roosevelt bull elk from within Olympic National Park. Hurst was placed on three years' of probation and was required to immediately forfeit all hunting licenses, stamps, or permits, cease all wildlife hunting and not seek any hunting license, stamp or permit during the term of probation. The defendant was further ordered to perform 80 hours of community service and forfeit all parts of the illegally taken elk. At the sentencing hearing the court noted that "this animal was a prize possession of each and every citizen who enjoys the park, and that possession has been taken away."

Hurst entered the Olympic National Park in September 2007 along the remote south boundary. He called the trophy elk within bow range by a common tactic known as "bugling" and then killed it by using a bow and arrow. A few days after killing and dressing the animal, Hurst was contacted by a

wildlife agent about the elk parts in his possession. Forensic analysis tied the animal parts to the kill site within Olympic National Park.

Olympic National Park was originally the Olympic National Monument established in March 1909 by President Theodore Roosevelt for which the Roosevelt Elk are named. President Franklin Roosevelt established the Olympic National Park in June 1938. Protection of the Roosevelt Elk was one of the primary forces driving the establishment of both areas and providing enjoyment of the species in their natural environment for future generations. Olympic National Park also is an International Biosphere Reserve and World Heritage Site.

The two-year investigation was conducted jointly by Washington Department of Fish and Wildlife Enforcement Program, the United States Fish and Wildlife Service, and the National Park Service, with assistance from the U.S. Fish and Wildlife Forensic Laboratory and National Park Service Rangers.

Back to Top

United States v. Chuck Sivil et al., Nos. 3:09-CR-00395 and 906 (N.D. Calif.), AUSAs Stacey Geis [redacted] and Jeff Rabkin [redacted].

On January 22, 2010, Chuck Sivil was sentenced to serve one year of home confinement as a condition of a three-year term of probation. He also will complete 200 hours of community service that will be geared toward the health impacts of air pollution. Sivil previously pleaded guilty to violating the Clean Air Act in connection with his supervision of the operations at Shore Terminals LLC's bulk fuel terminal located in Selby, California.

Shore Terminals distributed ethanol and jet fuel products stored at its tank farm by loading fuel trucks with a device known as a truck loading rack. When trucks are loaded with fuel in this manner, significant amounts of volatile organic compounds are emitted into the ambient air unless the pollutants are captured with a vapor recovery unit ("VRU"). When combined with sunlight, VOCs create ground ozone, which is a major component of smog.

From approximately July 2005 through December 2006, Sivil was the senior manager of operations and compliance at the facility. During this time, Shore Terminals experienced problems with its VRU that caused it to malfunction and shut down. To avoid delays in loading trucks, company employees, under Sivil's supervision, repeatedly used a bypass switch that allowed them to load ethanol using the truck loading rack while the VRU was not operating.

During an inspection in August 2006 by a state air quality inspector, Sivil initially told the inspector that an electrical problem had caused the VRU to cease operating. He later admitted that this was not true and yet continued to direct his employees to use the bypass switch for several more months. Sivil pleaded guilty to a CAA felony count for tampering with a monitoring device.

Shore Terminals, which owned and operated the facility during this time, was convicted last year for making false statements that related to these violations. The company was sentenced to pay a $1.75 million fine and will pay an additional $750,000 toward community service projects that are related to air quality. Specifically, $500,000 will be paid into the National Fish and Wildlife Fund and $250,000 will be paid to the Bay Area Clean Air Foundation. Shore Terminals was further ordered to implement a comprehensive environmental compliance plan.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Bay Area Air Quality Management District.

Back to Top

United States v. Bai Lin Huang, No. 3:09-CR-00473 (N.D. Calif.), AUSA Stacey Geis [redacted]

On January 21, 2010, Bai Lin Huang was sentenced to serve one year and one day of incarceration and will pay a $3,000 fine for the smuggling of Asian Arowana, an endangered species, commonly known as Asian Bonytongue, "dragon fish" or "lucky fish." Huang previously pleaded guilty to one count of smuggling and one count of making a false statement, admitting to smuggling more than two dozen Asian Arowana fish on two separate occasions in 2005. Huang also admitted that he deceived both wildlife inspectors and agents during the course of the investigation, including providing false documents from China indicating that a shipment that contained the "lucky fish", disguised as "assorted Koi," had been sent to Huang by mistake, which Huang knew to be untrue. Huang further admitted to previously selling Asian Arowana on the black market in the past, and to being paid up to $2,000 per fish.

The Asian Bonytongue fish are highly desired by the Asian community due to the belief that the fish will bring good fortune to the owner. Asian Arowana fish are protected under the Endangered Species Act through CITES. An individual fish can be sold for between $2,000 - $10,000 depending on its size and color. It is illegal to trade in this fish without a permit.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Howard William Ledford, No. 1:09-mj-66 (W.D.N.C.), ECS Trial Attorney Shennie Patel [redacted].

On January 12, 2010, Howard William Ledford was sentenced to serve a one-year term of incarceration. Ledford previously pleaded guilty to two Lacey Act violations for the illegal purchase of wild ginseng over a two-year period.

From 2003 through 2005, the Fish and Wildlife Service conducted an undercover operation to identify the illegal interstate and foreign sales/purchases of ginseng. Ginseng has declined from historic levels and continues to be under threat from overexploitation because demand and price for its roots remain high. Wild ginseng generally does not reproduce until it is eight years old. Some varieties of ginseng root can sell for as much as $1,000 a pound in the Asian market, where it is revered for its medicinal properties. Individuals who transport or buy and sell ginseng in interstate commerce must obtain the required export certificates and permits. Ledford unlawfully purchased wild ginseng worth approximately $109,000.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

elizabeth.janes@usdoj.gov
[redacted]
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

April 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted]. If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org

AT A GLANCE

- [redacted]

Districts	Active Cases	*Case Type* / Statutes
D. Conn.	**United States v. Phoenix Products Co.**	***Chemical Company*/ CWA**
M.D. Fla.	**United States v. Kinder Morgan Manatee Terminal LLC**	***Baghouse Emissions*/ CAA**
S.D. Fla.	**United States v. Kroy Corporation et al.** **United States v. Mar-Cone Appliance Parts Co.**	***Ozone Depleting Substances*/ Smuggling**
M.D. La.	**United States v. Clint Martinez et al.**	***Alligator Hunting*/ Lacey Act, ESA**
D. Md.	**United States v. Scott Dent et al.**	***Striped Bass*/ Lacey Act**
D. Mass.	**United States v. Christopher Jacques** **United States v. The Rockmore Company**	***Whale Strike*/MMPA** ***Sewage Discharges*/ RHA**
W.D. Mo.	**United States v. HPI Products, et al.**	***Pesticide Company*/ RCRA, CWA, FIFRA**
E.D.N.C.	**United States v. Freedman Farms, Inc., et al.**	***CAFO*/ CWA, False Statement, Obstruction**
D.N.M.I.	[redacted]**i** **United States v. John Wylie Davis**	[redacted] ***Vessel*/ APPS, False Statement**
S.D. Ohio	**United States v. Larry R. Adkins, Jr.**	***Tree Theft*/ Depredation of Government Property**
D. Ore.	**United States v. Reginald Akeen et al.**	***Eagle Products*/ MBTA**
W.D. Pa.	**United States v. John Morgan et al.**	***Oil and Gas Company*/ SDWA**
E.D. Tenn.	**United States v. Gary Fillers et al**	***Asbestos Abatement*/ CAA, Conspiracy**
D.V.I.	**United States v. Ivan and Gloria Chu**	***Coral Shipments*/ Conspiracy, Lacey Act, Endangered Species Act, False Statement**

Additional Quick Links

Significant Environmental Decisions

Ninth Circuit

[redacted]

Back to Top

Informations and Indictments

United States v. Clint Martinez et al., No. 3:10-CR-00038 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted]

On March 17, 2010, Clint Martinez and Michael Martinez were charged in a nine-count indictment with Lacey Act violations stemming from the illegal hunting of alligators, a threatened species. According to the indictment, Clint Martinez is a licensed alligator hunter and his brother Michael Martinez is a licensed alligator helper. The brothers were employed by an outfitter and guided clients of the outfitter on sport alligator hunts. In 2005, 2006 and 2009, the Martinez brothers are alleged to have taken clients to hunt in areas for which the Martinez brothers did not have authority to hunt.

In Louisiana, alligator hunting is a highly regulated activity since alligators were hunted almost to extinction years ago. Louisiana regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property specific and hunters may only hunt in the areas designated by the tags. The indictment alleges that on nine occasions, the Martinez brothers took clients to hunt in areas for which they did not have the proper tags.

The fees charged by the outfitter for hunts are substantial, starting with a base rate of $3,500 for three days of hunting. If a client kills a trophy-sized alligator, the outfitter charges trophy fees of up to $2,000, depending on the size of the alligator. Most of the alligators taken on the charged dates were trophy-sized alligators. Guides receive a $500 bonus if the client takes a trophy-sized alligator.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Freedman Farms, Inc., et al., No. 7:10-CR-00015 (E.D.N.C.), AUSAs J. Gaston Williams [redacted] and Banumathi Rangarajan [redacted]

On February 4, 2010, a four-count indictment was returned charging Freedman Farms, Inc., and William Barry Freedman with violations relating to the illegal discharge of hog waste. The defendants are charged with Clean Water Act, false statement, and obstruction of justice violations.

According to the indictment, Freedman, the principal operator of the family-owned Freedman Farms, Inc., raised hogs for market. Freedman Farms' hog operation consisted of six hog houses that held more than 4,800 hogs. The waste from the hogs was directed to two nearby lagoons for treatment and disposal. On December 19, 2007, witnesses observed hog waste in the stream known as Browder's Branch that leads from the Freedman Farm. State officials were notified and pumps and tanker trucks were brought in to remove approximately 169,000 gallons of hog waste from the stream. Investigators determined that over 332,000 gallons of hog waste had been discharged into Browder's Branch between December 15, 2007, and December 20, 2007. Officials did not find evidence of pumping system failure, vandalism, or accidental discharge. Documents provided by Freedman falsely stated that he had properly disposed of the waste during some of this period using the approved methods of applying treated hog waste to crops located on other parts of Freedman Farms' land.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, with assistance from the Army Corps of Engineers Wilmington District Office

Back to Top

Plea Agreements

United States v. Kinder Morgan Port Manatee Terminal LLC, No. 8:10-CR-00076 (M.D. Fla.), AUSA Cherie Krigsman [redacted].

On March 11, 2010, Kinder Morgan Port Manatee Terminal LLC (KMPMT), a Delaware company doing business in Manatee County, Florida, pleaded guilty to four violations of the Clean Air Act stemming from its baghouse dust emissions.

KMPMT operates a dry bulk material handling and storage facility, which covers six acres and includes four warehouses. It receives and ships materials such as granular fertilizer products and cement clinker by railcar, truck, and ship. When these granular materials are loaded and unloaded incorrectly, they generate particulate matter, an air pollutant regulated by the Clean Air Act. Facilities are required to operate baghouse air pollutant control systems, in order to control particulate emissions. These systems further require permits to ensure their proper operation

Transfer Tower

Investigation revealed that, from in or about 2001 through March 2008, KMPMT's baghouse systems were in poor condition, and several were not fully operational during the times specified in various permits. In August 2006 and August 2007, the company's local managers and supervisors falsely stated in Florida

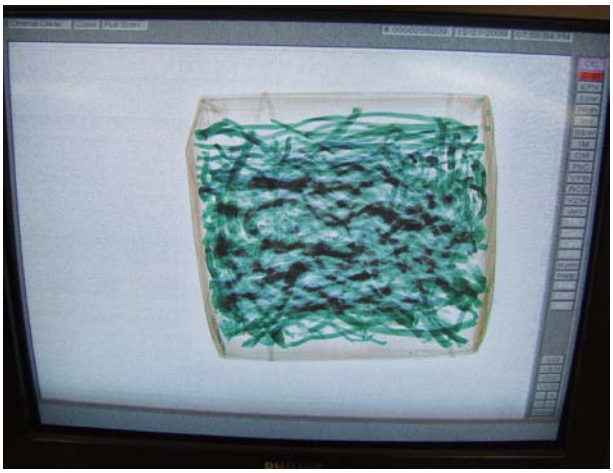
DEP permit applications that KMPMT would operate and maintain its air pollution emissions and control equipment in accordance with regulations, knowing that the baghouses were not being operated and maintained properly. From October 2006 through March 2008, company management failed to notify the FDEP that its baghouse air pollution control systems were out of compliance.

A parallel enforcement action brought against the company by state officials resulted in FDEP ordering a $331,000 civil penalty. Corrective actions under the order include conducting compliance stack testing on the repaired baghouses, repairing the transfer towers and conveyor systems, developing an employee training program, and implementing a management tracking system to ensure future compliance through testing, record keeping and maintenance.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Florida Department of Environmental Protection.

Back to Top

United States v. Ivan and Gloria Chu, No. 10-CR-0003 (D.V.I.), ECS Trial Attorney Christopher Hale and AUSA Nelson Jones



Black coral x-rayed by U.S. Customs

On March 11, 2010, Taiwanese nationals Ivan and Gloria Chu pleaded guilty to charges stemming from their involvement in illegal shipments of internationally-protected black coral into the United States.

The defendants pleaded guilty to nine counts, including conspiracy, false statements, and violations of both the Endangered Species Act and the Lacey Act. The Lacey Act makes it a felony to falsely label wildlife that is intended for international commerce. The Endangered Species Act is the U.S. domestic law that implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Each of the species of black coral is listed in Appendix II of CITES and is subject to strict trade regulations and requires permits in order to export.

The Chus own a business named Peng Chia Enterprise Co. Ltd. that supplied materials for jewelry manufacture, jewelry items, and raw black coral to customers outside of Taiwan. Prior to 2007, the Chus were issued CITES export permits by the Taiwanese government in order to ship black coral overseas, but as of 2007 they were unable to obtain permits because they were unable to produce a legitimate certificate of origin.

Black coral is one of several types of precious corals that can be polished to a high sheen and worked into artistic sculptures and used in inlaid jewelry. Black corals are long lived and slow growing; scientists have reported that one specimen was over 4,200 years old with a growth rate of only 5 micrometers (one millionth of meter) per year. They are typically found in deep waters, but have been threatened by invasive species and overharvesting due in part to the wider availability of scuba gear.

In order to supply a company based in the Virgin Islands with black coral, the Chus devised a plan whereby an agent of the company would travel to a warehouse in mainland China, instruct the Chinese supplier on quantity and quality of coral and then arrange for an intermediary to ship the black coral from Hong Kong through a commercial shipping company to Company X in St. Thomas or

affiliated locations in the mainland United States. The Chus agreed that the coral shipments would be falsely labeled in order to conceal the coral from U.S. Customs officials. The defendants obtained their coral using this scheme over a two-year period until Customs seized a shipment in August 2009.

Additionally, according to court documents, on December 23, 2008, Company X agreed to pay nearly $39,000 for multiple shipments of coral that the Chus arranged to be routed through Hong Kong. After the payment was received in February 2009, Peng Chia used its Chinese supplier and Chinese intermediary to send six shipments of black coral to Company X in St. Thomas. Coral from these shipments was analyzed by the U.S. Fish and Wildlife Service's National Forensics Laboratory in Ashland, Oregon, and was determined to be black coral. On August 19, 2009, Peng Chia sent a shipment comprised of ten boxes of black coral that were mislabeled as a type of plastics product. The Chus admit that from 2007 to 2009, they sent more than $194,000 worth of black coral to Company X.

According to the plea agreements, Ivan Chu has agreed to serve 30 months in prison and pay a $12,500 fine. Gloria Chu has agreed to serve 20 months in prison and pay a $12,500 fine. Both defendants also would be prohibited from shipping coral and other wildlife products to the United States for a three-year period after their release from prison. Sentencing is scheduled for June 23, 2010.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with support from Immigration and Customs Enforcement and United States Customs and Border Protection.

Back to Top

United States v. Larry R. Adkins, Jr., No. 2:10-CR-00022 (S.D. Ohio), AUSA Mike Marous [redacted]

On March 4, 2010, Larry R. Adkins, Jr., pleaded guilty to depredation of government property and theft of government property for cutting down 822 trees in the Wayne National Forest.

In 2006, the owner of land adjacent to Wayne National Forest contracted with the defendant's logging company to have several logs removed from his property. The boundary between the private property and the Forest was clearly marked by a fence line. Additionally, approximately two years prior the land owner had arranged for a bulldozer to be driven around the edge of his property with the boundary line marked with red flagging ribbon, all of which were clearly visible. The investigation revealed that, despite being explicitly informed on a number of occasions as to the location of the U.S. Forest Service boundary line, Adkins denied that this was the actual boundary and allowed others under his supervision to illegally remove hundreds of trees from the Forest. The total fair market timber value for those trees that were removed was $43,843. These trees were of mixed species including hardwood and softwood trees which were sold to three different mills for use as saw timber or pulpwood. This case was investigated by the United States Forest Service.

Back to Top

United States v. Scott Dent et al., No. 8:09-CR-00663 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne Hettenbach [redacted] and AUSA Stacey Belf [redacted]

On March 1, 2010, Scott Dent, a Virginia commercial fisherman, pleaded guilty to a one-count felony information charging him with the illegal harvest and sale of striped bass from the Potomac River. Dent admitted to selling approximately 22,757 pounds of untagged, falsely tagged, and oversized striped bass to Profish, a seafood wholesaler in Washington, D.C., from 2003 through 2007. The estimated fair market retail value of the fish was $113,757. Dent is one of approximately sixteen

commercial fishermen who previously have pleaded guilty to Lacey Act violations involving striped bass sales and harvesting.

Profish and two of its employees remain under indictment for Lacey Act violations and conspiracy to violate the Lacey Act. Trial is scheduled to begin on June 1, 2010.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. John Morgan et al., No. 1:10-CR-00017 (W.D. Pa.), AUSA Marshall J. Piccinini

On February 16, 2010, John Morgan and Michael Evans pleaded guilty to an information charging them with violating the Safe Drinking Water Act. Evans was part owner and Morgan was a site supervisor for Swamp Angel Energy, LLC, a Kansas-based company engaged in oil and gas development in the Allegheny National Forest. As part of the oil drilling process, brine is produced and required to be properly disposed, generally through transportation to a waste water treatment plant or through injection into non-producing wells. Disposal via an injection well requires a permit to ensure the safety of underground drinking water sources.

From approximately April 2007 through January 2008, Evans and Morgan admitted to willfully causing more than 200,000 gallons of brine to be dumped into an oil production well, located near the Allegheny National Forest, which was not permitted for underground injection. The two are scheduled to be sentenced on June 24, 2010.

Injection Well

Back to Top

Sentencings

United States v. HPI Products, et al., Nos. 4:09-CR-00024, 189 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione with assistance from AUSA William Meiners

On March 23, 2010, HPI Products ("HPI") was sentenced to pay a $300,000 fine after previously pleading guilty to a RCRA storage and felony CWA violation.

HPI began producing pesticides and herbicides in 1980. It relocated several times as it expanded its operations in the City of St. Joseph. During the entire time it was in operation until 2007, HPI employees washed chemical wastes, spills and equipment rinses into floor drains, which connected to the city's POTW, without a permit. Two former HPI facilities and three other locations in St. Joseph were used as warehouses to store pesticides and process waste it did not dump into sewers. The pesticides and wastes were left for years in unmaintained buildings without the proper notification to state and federal authorities. Many of the containers were found to contain, among other things,

chlordane, selenium and heptachlor, with characteristics of ignitability, toxicity, and/or corrosivity. Several drums had leaked or spilled onto the warehouse floors and the ground underneath the warehouses.

Company vice president Hans Nielsen was previously sentenced to pay a $4,000 fine and will complete a three-year term of probation. Nielsen pleaded guilty to two FIFRA violations for the disposal of pesticide wastes into floor drains at the HPI facility. William Garvey, HPI president and majority owner, previously pleaded guilty to a felony CWA violation and was sentenced to serve six months' incarceration, followed by six months' home confinement, and was ordered to pay a $100,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Mar-Cone Appliance Parts Co., No. 1:10-CR-20081 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On March 18, 2010, Mar-Cone Appliance Parts Co. ("Mar-Cone"), a company headquartered in St. Louis, Missouri, pleaded guilty to and was sentenced in connection with the illegal receipt, purchase, and sale of ozone-depleting refrigerant gas that had been smuggled into the United States. Mar-Cone pleaded guilty to the selling and handling of approximately 100,898 kilograms of the ozone-depleting substance ("ODS") hydrochlorofluorocarbon-22 ("HCFC-22") that was illegally imported by other companies. HCFC-22 is a refrigerant widely used for residential heat pump and air-conditioning systems, and the fair market value for this amount was $843,292.

The company was sentenced to pay a $500,000 fine and will make a community service payment of $400,000 to the Southern Environmental Enforcement Training Fund. It also will complete a five-year term of probation and implement an environmental compliance plan. Finally, Mar-Cone was ordered to forfeit to the United States $190,534.70, which represents proceeds received as a result of the crime.

Mar-Cone is a product support company serving customers throughout the United States and 117 countries worldwide. Between July 2007 and April 2009, Mar-Cone, through its Senior Vice-President for the Heating and Cooling Division, routinely negotiated with importers, who did not hold the necessary authorization to import the HCFC-22, for the purchase and sale of the ODS for distribution throughout the United States.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

Back to Top

United States v. Gary Fillers et al., Nos. 1:09-CR-00144 and 147 (E.D. Tenn.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Matthew Morris [redacted]

Powdered asbestos

On March 18, 2010, Gary Fillers was sentenced to serve six months' home detention and will complete a three-year term of probation. The defendant previously pleaded guilty to a Clean Air Act conspiracy violation for his involvement with an illegal asbestos abatement project. Fillers is the owner of Watkins Street Project, LLC, ("WSP") one of two demolition and salvage companies that were charged, along with two other individuals, with violating work practice standards related to the improper handling and disposal of asbestos.

The indictment alleges a year-long scheme in which the former Standard Coosa Thatcher plant in Chattanooga was illegally demolished while still containing large amounts of asbestos. It further states that the asbestos that was removed from the plant prior to demolition was scattered in piles and left exposed to the open air. The indictment also describes the efforts made by owners and supervisors to cover up their illegal activities by falsifying documents and by lying to federal authorities.

The 11-count indictment charges Mathis Construction Inc.; James Mathis, a Mathis Construction owner; WSP; and WSP supervisor David Wood, with conspiracy to defraud the United States and to violate the Clean Air Act and substantive CAA violations, making false statements, and obstructing justice.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Chattanooga-Hamilton County Air Pollution Control Bureau.

Back to Top

United States v. Christopher Jacques, No.1:09-CR-10066 (D. Mass.), AUSA Nadine Pellegrini [redacted]

On March 8, 2010, Christopher Jacques pleaded guilty to two misdemeanor violations of the Marine Mammal Protection Act ("MMPA") for striking two humpback whales with his boat.

On July 23, 2008, Jacques was operating a recreational fishing boat in Stellwagen Bank National Marine Sanctuary off the coast of Massachusetts. Witnesses on nearby whale watch boats observed the defendant take his vessel into an area where humpback whales were feeding. They saw him take his boat through a "bubble cloud"

Humpback whales struck by boat

created by the feeding whales and strike two humpback whales with his boat. Under the MMPA, a person "takes" a whale when s/he knowingly commits an act which has the potential to injure the animal.

Jacques was ordered to pay a $200 fine and submitted a statement that will be distributed to a variety of media outlets where he admits his guilt and urges others to be mindful of marine animals when operating a fishing vessel.

This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Reginald Akeen, et al., No. 3:09-CR-00103 (D. Ore.), AUSA Stacie Beckerman [redacted] with assistance from ECS Trial Attorney Todd Mikolop [redacted].

On February 25, 2010, Reginald Akeen was sentenced to serve 30 days' home confinement as a condition of five years' probation. Akeen also will complete 250 hours of community service at a wildlife organization and will pay $4,800 in restitution to the United States Fish and Wildlife Service North American Wetlands Conservation Fund. The defendant previously pleaded guilty to a violation of the Migratory Bird Treaty Act for selling illegally-made migratory bird products, including a fan made of juvenile golden eagle feathers.

Akeen admitted that he offered to sell a fan made of juvenile golden eagle feathers, also known as "black and whites," to a Fish and Wildlife Service undercover agent and that he contacted an accomplice who agreed to sell a nine-feather black and white fan. Akeen then accepted $1,750 in cash and bartered items from the undercover agent for the fan and arranged a meeting for his accomplice to make the delivery. The defendant further admitted that, from July through September 2007, he received $4,800 from selling illegal migratory bird products. He was one of four men arrested a year ago as the result of an undercover investigation into the illegal killing of and trade in bald and golden eagles and other protected birds in the District of Oregon and the Eastern District of Washington.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures, and the feathers of the birds are central to religious and spiritual Native American customs. By law, enrolled members of federally-recognized Native American tribes are entitled to obtain permits to possess eagle parts for religious purposes, but federal law strictly prohibits selling eagle parts under any circumstances. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally or by accident, to supply tribal members with eagle parts for religious use.

This case was investigated by the United States Fish and Wildlife Service with the help and cooperation of state, federal, and tribal law enforcement agencies.

Back to Top

United States v. John Wylie Davis, No. 1:09-CR-00025 (D.N.M.I.), AUSA Beverly McCallum [redacted]

On February 23, 2010, John Wylie Davis, a former chief engineer, was sentenced to complete a one-year term of probation and 200 hours of community service. His license also will be suspended for a year. Davis previously pleaded guilty to making a false statement and to failing to maintain an oil record book, all stemming from the overboard discharge of approximately 370 tons of untreated oily bilge waste from the *SS Pless.*

The U.S.-flagged *Pless,* a 400-ton non-tanker vessel owned by the Delaware-based Waterman Steamanship Corp., was underway between Korea and Saipan in January 2008. At that time, the vessel's onboard pollution-control equipment, including the oil water separator, was malfunctioning,

and the bilge storage tanks were filled to near capacity. On January 7th the defendant discharged almost 400 tons of untreated oily bilge waste that had been stored in the vessel's bilge and storage tanks. Davis also made a false notation in the oil record book that the waste system had been put on automatic to allow the overboard discharge of waste at 15ppm for this day.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. The Rockmore Company, No. 1:10-CR-10003 (D. Mass.), AUSA Jonathan Mitchell [redacted] SAUSAs Russell Bowman [redacted] and Cassie Kitchen [redacted]

On February 17, 2010, the Rockmore Company, Inc., was sentenced to pay a $225,000 fine, which was paid immediately, and will complete a three-year term of probation. An additional $75,000 community service payment will be paid to the Massachusetts Environmental Trust Fund, and a public apology was published in *The Boston Herald*; *The Salem News*; *The New Bedford Standard Times*, and *The Cape Cod Times* within 10 days after sentencing. The company previously pleaded guilty to a two-count information charging it with violations of the Rivers and Harbors Act for dumping sewage into North Shore waters from a popular ferry it operates out of Salem, Massachusetts.

From 1990 to 2006, the Rockmore Company has operated a 59-foot long passenger vessel named the *P/V Hannah Glover*. The *Hannah Glover* provided dinner cruises and sightseeing tours in the waters along the shores of the Massachusetts towns of Marblehead, Beverly and Manchester-by-the-Sea. On several occasions, the vessel ferried passengers to the Charles River in Boston to view the annual Fourth of July celebration on the Charles River Esplanade. The company also regularly shuttled children from Marblehead to a summer camp on Children's Island just off the coast. The company additionally operated a 116-foot barge called the *P/V Rockmore*, on which the company maintained a restaurant.

For several years crew members routinely utilized the ship's sewage pump to discharge raw sewage directly overboard. As a matter of course, deck hands activated the pump and opened the overboard discharge valve either upon order of the vessel master or upon observing the overflow from the vessel's public toilets. The discharge of up to hundreds of gallons at a time took place at various locations along the coast, including Salem Harbor and off beaches in Marblehead and Beverly, as well as in the Charles River near the Esplanade during the Independence Day celebration in 2002. The sewage discharged from the *Hannah Glover* included wastes generated by its passengers, as well as the sewage from the *Rockmore*, due to employees routinely pumping the contents of the *Rockmore's* sewage holding tank into the *Hannah Glover* for disposal. There also were occasions when the company allowed the sewage holding tank aboard the *Rockmore* to overflow, spilling untreated sewage into Salem Harbor.

This case was investigated by the United States Coast Guard Investigative Service.

Back to Top

United States v. Kroy Corporation et al., No.1:09-CR-20065, 20913 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On February 11, 2010, James Garrido was sentenced to serve a 30-month term of incarceration, followed by three years of supervised release. The Kroy Corporation will complete a five-year term of probation and both defendants were held jointly and severally liable for a $40,000 fine. They also will collectively forfeit $1,356,160. Kroy and company president Garrido previously pleaded guilty to a three-count information charging them with Clean Air Act violations for illegally smuggling into the

U.S. approximately 418,650 kilograms of hydrochlorofluorocarbon-22 ("HCFC-22"), a restricted ozone-depleting substance. Co-defendant Amador Hernandez pleaded guilty to making a false statement on a customs declaration form. Hernandez is scheduled to be sentenced on April 21, 2010.

Kroy was in the business of importing merchandise that included refrigerant. Between March 2007 and April 2009, Kroy and Garrido engaged in the illegal smuggling of large quantities of HCFC-22 into the United States for subsequent resale. The defendants routinely declared imported merchandise as either legal R-134-A refrigerant or as "United States Goods Returned." In truth, except for a small quantity of legal refrigerant strategically placed in front of the containers, the 11 shipments held almost 419,000 kilograms (or more than 29,000 cylinders) of restricted HCFC-22 with a total fair market value of more than $ 3.9 million.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

Back to Top

United States v. Phoenix Products Co., No. 3:10-CR-0001 (D. Conn.), AUSA Nora Dannehy

On February 1, 2010, Phoenix Products, Co., a specialty chemical and packaging company, was sentenced to pay up to $250,000 and will complete a three-year term of probation. The company previously pleaded guilty to a felony Clean Water Act violation for illegally discharging a pollutant into the Town of Plymouth's POTW. Phoenix will pay a $50,000 federal criminal fine, a $25,000 civil penalty to the state of Connecticut, and make a $75,000 payment to the Department of Environmental Protection's Supplement Environmental Project ("SEP") account. The company is further required to make an additional SEP payment of up to $100,000 if the business is sold, and must provide employees with annual hazardous materials training.

Phoenix, which provides formulation, blending, and packaging services for a variety of personal care and swimming pool products, generated six 250-gallon totes filled with a highly acidic, off-specification product while fulfilling a customer contract. Over several weeks in 2008, Phoenix employees were instructed to dump several gallons of the off-specification product down the drain. The company had never applied for or received a discharge permit. In addition to the fines and SEP payments, the company has already reimbursed the town of Plymouth for the costs incurred to neutralize the acidic conditions.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

May 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: ([redacted]). If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

- **Peconic Baykeeper, Inc. v. Suffolk County, 600 F.3d 180 (2d Cir. 2010).**
- **Simsbury-Avon Preservation Society, LLC v. Metacon Gun Club, 575 F. 3d 199 (2d Cir. 2009).**
- **United States v. Moses, 496 F.3d 984 (9th Cir. 2007), cert. denied, 128 S. Ct. 2963 (2008).**
- **United States v. Desnoyers, 2009 WL 1748730, No. 1:06-CR-494-DNH (N.D.N.Y. June 19, 2009).**
- **Precon Development Corp. v. United States Army Corps of Engineers, 658 F. Supp. 2d 752 (E.D. Va. 2009).**
- **United States v. King, 2008 WL 4055816 (D. Idaho, Aug. 29, 2008).**

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
D. Alaska	**United States v. Douglas Smith**	***Otter Harvesting*/ Lacey Act, Conspiracy**
C.D. Calif.	**United States v. Typhoon Restaurant d/b/a/ The Hump Restaurant** **United States v. Duc Le et al.** **United States v. Maun Chau et al.**	***Whale Meat*/ MMPA** ***Smuggling Songbirds*/ Smuggling** ***Ivory Smuggling*/ Conspiracy**
[redacted]	[redacted]	[redacted]
N.D. Ga.	**United States v. Jennifer Duffey et al.**	***Napalm Burial*/ RCRA, Conspiracy**
D. Idaho	**United States v. Jack Barron** **United States v. John Shaw**	***Wetlands*/ CWA** ***Dredge and Fill*/ CWA**
D. Hawaii	**United States v. Stephen Swift et al.**	***Waste Spill*/ RCRA**
D. Md.	**United States v. Gordon Jett et al.**	***Striped Bass*/ Lacey Act**
W.D. Mo.	**United States v. Scott A. Beckmann et al.**	***Mayor and Municipal Employee*/ False Statement, Misprision**
D. Mont.	**United States v. Lester Brothers**	***Wolf Kill*/ ESA**
S.D.N.Y.	**United States v. Saverio Todaro**	***Lead and Asbestos Falsification*/ False Statement, TSCA**
S.D. Ohio	**United States v. Danny Parrott**	***Interstate Deer Sale*/ Lacey Act, Conspiracy**
D.S.C.	**United States v. Boykin & Associates Environmental Services, LLC**	***Wastewater System Operator*/ CWA**
E.D. Tex.	**United States v. Lance Clawson**	***Deer Breeder*/ Lacey Act, Conspiracy**
S.D. Tex.	**United States v. Ioannis Mylonakis et al.** **United States v. John Porunnolil Zacharias**	***Vessel*/ APPS, Obstruction, False Statement**
W.D. Tex.	**United States v. Michael Sayklay**	***Wood Pallet Certification*/ False Statement, Plant Protection Act**
W.D. Wash.	**United States v. Wolfgang "Tito" Roempke et al.**	***Demolition Project*/ CAA, Conspiracy, False Statement**
S.D. W. Va.	**United States v. Rodney Hoffman et al.**	***Electroplater*/ RCRA**

Additional Quick Links:

Significant Environmental Decisions

Second Circuit

Peconic Baykeeper, Inc. v. Suffolk County, 600 F.3d 180 (2d Cir. 2010).

Several issues in this pesticide spraying case are likely to be rendered moot by a general NPDES permit that EPA intends to issue, meaning that much of the regulatory discussion is questionable precedence. Nevertheless, the Second Circuit did reach and reject the district court's reasoning that, since trucks and helicopters had discharged pesticides into the ambient air, any discharges into water were indirect and thus not from a "point source." "Point source" has been broadly interpreted to include a wide variety of equipment such as trucks and helicopters. Moreover, in this case the source of the discharge was the spray apparatus attached to the trucks and helicopters, not the air.

Back to Top

Simsbury-Avon Preservation Society, LLC v. Metacon Gun Club, 575 F. 3d 199 (2d Cir. 2009).

Plaintiffs, a group of homeowners living near the defendants' (a gun club, its members and guests) shooting range, filed a citizen suit alleging violations of RCRA and the Clean Water Act resulting from the discharge and accumulation of lead shot at the range. They alleged that, during flooding, there was an occasional hydrological connection between waters on the site and navigable waters, and a continuous water connection between wetlands on the site and a tributary flowing into navigable waters. They claimed that lead from spent ammunition fired into an earthen berm located near wetlands on the site migrated into groundwater and to navigable waters. At the request of the Connecticut Department of Environmental Protection, the defendants hired consulting engineers to conduct sampling and testing; they subsequently reported that the shooting range activities had not resulted in measurable contamination of either ground or surface water. The plaintiffs engaged their own experts, who concluded from testing that lead at the site was "leachable and may over time pose a threat to ground water quality" and that, coupled with unfiltered flow to wetland surface water, it represented "a potential exposure risk to both humans and wildlife" (although further assessment would be required to evaluate that risk).

The district court dismissed the plaintiffs' claim that the defendants were operating a hazardous waste disposal facility without a permit in violation of RCRA. It held (giving deference to USEPA's interpretation) that the ordinary use of lead shot in a shooting range did not fall within the regulatory definition of "solid waste." The court found that, as a result of their proper and expected use, the bullets were not "discarded material" that had been "abandoned" by reason of having been "disposed of", and thus they did not constitute RCRA hazardous waste. On similar grounds, the district court granted summary judgment to the defendants on the plaintiffs' claim that the spent bullets presented an "imminent and substantial endangerment to health or the environment."

The court also granted summary judgment to the defendants on the plaintiffs' claim that the defendants were discharging pollutants from a point source into navigable waters without an NPDES permit in violation of the CWA, holding that there was insufficient evidence that they were discharging lead into jurisdictional "navigable waters" under the test in Rapanos.

Held: On appeal, the Second Circuit (in a 2-1 decision) affirmed the judgment of the district court that had (1) dismissed claims under RCRA for permit violations, for open dumping and for imminent and substantial endangerment, and (2) granted summary judgment to the defendants regarding claims that they discharged pollutants into navigable waters without a permit in violation of the CWA. The court found that the district court properly had deferred to EPA's interpretation of its hazardous waste regulations regarding discharged lead. It also rejected the plaintiffs' claim that, even if the act of shooting did not require a RCRA permit, the maintenance of a site where spent shot accumulated did, holding that the RCRA permit requirement does not arise through the passage of time. It went on to hold that the district court properly had granted summary judgment to the defendants on the claim that their discarding of lead on the site had constituted disposal of solid waste that might present an imminent and substantial endangerment. The court did not have to address whether the lead shot had been "discarded", because it found that the plaintiffs' experts had determined only that discarded lead presented a *possible* risk to humans and wildlife, but that assessment of that risk would require further investigation.

Regarding the CWA claims, the court held (without determining whether the wetlands on the site were jurisdictional under Rapanos, although expressing doubt that either the berm or the entire shooting range would meet that standard) that there was insufficient evidence that defendants were discharging lead into those wetlands from a "point source." In a detailed analysis, the court, (citing Plaza Health Labs) noted that even the traditionally broad judicial interpretation of the term did not go so far as to punish criminally *all* human activity that results in pollutants reaching navigable waters. The runoff here from the berm, as well as from the firing lines of the shooting range, is neither collected nor channeled as contemplated under the definition of a "point source." Furthermore, the berm and firing lines were so far removed from any jurisdictional wetlands on or about the site that it would be unreasonable to conclude that lead from those locations reached such waters.

Back to Top

Ninth Circuit

United States v. Moses, 496 F.3d 984 (9th Cir. 2007), cert. denied, 128 S. Ct. 2963 (2008). *Update*

Defendant real estate broker and developer worked on a subdivision development located in a flood plain next to a creek that flowed into the Snake River, a tributary to waters of the United States. Because of an upstream irrigation diversion, water flowed in the creek (albeit in high volume) only during spring runoff. Over many years the defendant rerouted and reshaped the creek, converting three channels into a single broader, deeper channel in order to carry all of the seasonal water flow. He employed bulldozers and other heavy equipment to redeposit material, and he erected log and gravel structures in the creek.

On several occasions the Army Corps of Engineers warned the defendant that his stream alteration work required a permit under the Clean Water Act and ordered him to cease and desist, subsequently issuing an NOV. The defendant caused the work to continue and the U.S. EPA issued an administrative compliance order directing him to cease discharges and to submit a work plan for restoring the stream. The defendant ignored the order and carried on with the work, severely impacting the stream.

The defendant was charged with three felony counts of knowing discharge of pollutants without a permit over a period of three years. He was convicted by a jury on all counts. On appeal,

the defendant argued principally that the evidence had been insufficient to support the verdict and that he should have been granted a new trial, claiming that the creek was not a water of the United States (WOUS) and that he had not discharged into it. He further argued that in any event he had not needed a permit.

Held: The Ninth Circuit affirmed the defendant's conviction. Citing Hubenka, the court held that the creek was a tributary of a WOUS and remained so despite the man-made upstream diversion (even though the diversion began long before the CWA was enacted). It further found that, under Headwaters and Eidson, the seasonally intermittent creek was a WOUS. The court noted that, even under the plurality opinion in Rapanos, "seasonal rivers, which contain continuous flow during some months of the year" could constitute a WOUS. The dissenters in Rapanos and Justice Kennedy clearly would extend coverage to such intermittent flows.

The court rejected the defendant's argument that the pollutants were deposited only while the receiving portions of the creek were dry. The dredging and redepositing activities became discharges when the creek subsequently flowed (and thereby carried the material downstream to the river). The court also found that the redeposits fell well outside the regulatory definition of "incidental fallback."

The court went on to reject the defendant's claim that he otherwise had not needed a permit. It found that the work clearly had not come within the statutory exemption for "maintenance of currently serviceable structures", and that the exception did not apply because the work here "further impair[ed]" a WOUS. Finally, the court held that Nationwide Permit No. 3 was inapplicable because it was issued under the Rivers and Harbors Act, not the CWA.

*NOTE: On July 17, 2008, the defendant filed a motion to vacate his sentence under 28 U.S.C. § 2255, once again challenging federal wetlands jurisdiction over the portion of the creek situated on his property. On July 31, 2008, he moved to stay execution of his sentence (he being scheduled to surrender to the Bureau of Prisons on August 6, 2008). The district court agreed with the government that issues that had been decided on direct appeal (including federal jurisdiction) could not be collaterally raised in a motion to vacate sentence and that defendant had not demonstrated a high probability of succeeding on whatever new issues he raised. Therefore, the court denied the motion to stay and ordered defendant to surrender as ordered. Subsequently, the court considered the Section 2255 motion and ruled, first, that defendant's estoppel defense (i.e., that the Corps of Engineers had advised him in 1980 that there was no CWA jurisdiction over the site) had been addressed and rejected by the court and the Ninth Circuit. Next, his Rapanos arguments had been considered and rejected by the Ninth Circuit, holding that the seasonally intermittent stream that ultimately emptied into a river that was a WOUS could itself be a WOUS. That ruling, which was followed by a denial of certiorari by the U.S. Supreme Court, was not subject to further review.

The defendant further argued that, having failed in his argument that Justice Kennedy's "significant nexus" test should not be applied, now claimed that there was no significant nexus in this case. However, the Ninth Circuit had clearly found that the intermittently dry portion of the creek in question would be considered a WOUS and the defendant could not relitigate that holding. Finally, the court summarily rejected his claim that the wetlands would not be deemed jurisdictional under the Corps of Engineers' post-Rapanos 2007 guidance memorandum, which in fact was not in existence at the time of the Corps' determination of jurisdiction in this case. **See United States v. Moses, 642 F. Supp. 2d 1216 (D. Idaho 2009), habeas corpus denied, 78 U.S.L.W. 2394 (U.S. Jan. 11, 2010)**.

Back to Top

District Courts

Precon Development Corp. v. United States Army Corps of Engineers, 658 F. Supp. 2d 752 (E.D. Va. 2009).

Plaintiff, the developer of a multi-acre planned residential site, filed suit against the Army Corps of Engineers seeking a declaratory judgment that wetlands on a portion of the site (where the plaintiff desired to construct a number of residential buildings) were not jurisdictional under the Clean Water Act and, in the alternative, to direct the Corps to approve applications for two permits to allow the proposed construction of the residential buildings. The parties filed cross-motions for summary judgment. The matter was referred to a magistrate judge, who, after a hearing, issued a report and recommended that the plaintiff's motion be denied and that the defendant's motion be granted.

The magistrate set forth in detail the physical and hydrological nature of the site, in particular the presence of two ditches (one seasonal, the other perennial) located adjacent to the site and running along its boundaries (separated from the site by berms, which in some places are pierced by breaks), and the existence of wetlands on the site that are connected to other wetlands within the immediate area. He also set forth the procedural history of the matter, including denial by the Corps of the permit applications based upon a determination that the wetlands in the area of proposed construction were jurisdictional. The magistrate also analyzed the holdings and analysis of Rapanos, as well as application of the legal standards presented by the various opinions in that case. He then analyzed the level of deference owed to the determination of jurisdiction made by the Corps and also to its application to that determination of the "Rapanos Guidance" and "Instructional Guidebook" developed and issued by the Corps in the wake of Rapanos.

The magistrate approved of the Corps' methodology for defining a "review area" within which it could calculate effects upon wetlands at the site in combination with similarly situated wetlands in the region. Applying that approach and relying upon a number of factors beyond mere hydrological connection, he found a "significant nexus" (under the Justice Kennedy test in Rapanos) between the wetlands found within the "review area" here and traditional navigable waters. Thus the Corps had CWA jurisdiction over the wetlands on the construction site.

Finally, the magistrate found that it had not been a "clear error of judgment" for the Corps to treat the wetlands on the site as a "special aquatic site" and that practicable alternatives to the building project existed that would have a less adverse impact upon the aquatic ecosystem. Issuance of the permits here would be contrary to the public interest because of the unnecessary loss of wetlands and the potential for cumulative environmental degradation.

Held: After considering objections filed by the plaintiff, the court adopted and approved in full the magistrate's findings and recommendations. He denied the plaintiff's motion for summary judgment, granted the defendant's motion, and dismissed the suit.

Back to Top

United States v. Desnoyers, 2009 WL 1748730 (N.D.N.Y. June 19, 2009).

Defendant (an asbestos abatement air monitor) was convicted on one count of conspiracy to violate the Clean Air Act and to commit mail fraud; one count of knowingly violating the Clean Air Act; one count of knowingly committing mail fraud; and two counts of knowingly making material false statements to EPA agents regarding eight individual abatement projects.

Held: The district court granted the defendant's motion for judgment of acquittal on the conspiracy count, vacated the jury's guilty verdict and dismissed that count. The court denied the defendant's motion for judgment of acquittal on the remaining counts on which he was convicted, and denied his motion for a new trial.

The court found that seven of the eight abatement projects encompassed under the conspiracy alleged in Count One were subject to a state industrial code rule, rather than to the federal Clean Air Act. The court believed that the jury might have been confused or prejudiced in incorrectly assuming that it could find an overt act in furtherance of the multi-objective conspiracy charged in Count One from conduct involving the seven projects not covered under the CAA. However, the court found that there was sufficient evidence that the defendant had aided and abetted his co-defendants in knowingly violating the CAA, in particular, that he had known that the linear footage of the project in question exceeded the regulatory minimum of 260 feet. There also was sufficient evidence that the defendant had sent fraudulent air samples through the mail to further a scheme to defraud a building owner, and it was therefore irrelevant whether the state industrial code governed his conduct as an air monitor. Finally, the court rejected the defendant's arguments regarding the materiality of his false statements and found that those statements were within the jurisdiction of the federal government regarding its investigation of multiple offenses, even though several of the projects did not fall under the substantive provisions of the CAA.

[The defendant was sentenced in December 2009 to complete a five-year term of probation to include six months' home detention, and he must pay $34,960 in restitution].

Back to Top

United States v. King, 2008 WL 4055816 (D. Idaho, Aug. 29, 2008).*Subsequent Decision*

Defendant manager of a farm and feedlot was charged with four counts of willfully failing to comply with the federal Safe Drinking Water Act and the corresponding Idaho state law by injecting water into waste disposal and injection wells without a permit and with one count of making a false statement to an investigator. He filed a motion to dismiss on various grounds.

Held: The district court denied the motion. The court rejected the defendant's argument that the government had been required to allege and prove that the fluid or liquid injected contained a contaminant and endangered a source of drinking water, noting that defendant could assert those points as affirmative defenses. It also rejected his argument that the definition of a drinking water source under Idaho law was broader in scope than the parallel definition under the federal SDWA and, thus, that the federal government could not rely upon that definition in its prosecution here. While state protections that are broader in scope than the SDWA lie outside the federal program and cannot be prosecuted federally, here the definition in question is relevant only to the defendant's affirmative defense (that his injection did not endanger a drinking water source); hence it was not relevant to the federal government's case. Furthermore, the federal government here was relying only upon the SDWA definition, not the state definition. In any event, it is unclear whether the U.S.EPA-approved state program for the protection of drinking water sources in Idaho protects a broader scope of aquifers or that defendant was being prosecuted for injecting into a state-only protected aquifer.

The court also rejected the defendant's claim that the SDWA required the EPA to give 30 days' notice to the state prior to bringing a criminal action, which EPA had failed to do, and prohibited any suit unless the state was failing to enforce its own program. It held that the notice requirement applied only to civil suits, not criminal actions. The court also rejected the defendant's argument that the federal government could not prosecute conduct that was the subject of a prior state action. Double Jeopardy does not apply to prosecutions brought by separate sovereigns pursuant to different statutory provisions, and Congress provided only that states would have *primary* enforcement authority under

the Act (with the federal government retaining shared *secondary* authority), not that states would have *exclusive* authority. Finally, the court held that the Act does not preclude the federal government from prosecuting past, as well as current, violations thereof.

***NOTE:** In a subsequent decision in the same case, the court reaffirmed these holdings, but found that its ruling that the defendant could establish an affirmative defense if he could prove a lack of a contaminant or a lack of endangerment had been in error. The statute does not provide for such an affirmative defense. In fact, the EPA-approved Underground Injection Control programs in states such as Idaho must not allow movement of fluid containing any contaminant into underground sources of drinking water. The prohibited act under Idaho law is to inject a fluid down a well without a permit. Whether a contaminant will be injected or whether an injection will endanger an underground source of drinking water are issues to be addressed by an applicant for a permit and determined (with the setting of permit conditions) by the permitting agency. Unpermitted injection is a crime regardless of whether the fluid is a contaminant or whether the injection actually endangers or contaminates an underground source of drinking water. **United States v. King, 2008 WL 5070329 (D. Idaho 2008)**. [*After being convicted by a jury on all five counts, the defendant was sentenced in December 2009 to serve four months' home confinement as a condition of three years' probation, and he was ordered to pay a $5,000 fine. He is appealing his conviction and sentence.*]

Back to Top

Trials

United States v. Ioannis Mylonakis et al., No. 4:09-CR-00492 (S.D. Tex.), ECS Trial Attorney Ken Nelson [redacted] ECS Senior Trial Attorney David Kehoe [redacted], and ECS Paralegal Jean Bouet [redacted].

On April 28, 2010, after a 10-day trial, the jury acquitted chief engineer Ioannis Mylonakis of the three counts charged, which were an APPS, an obstruction, and a false statement violation. Mylonakis is one of two chief engineers for the *Georgios M*, a 40,000-ton oil tanker. The Panamanian operator of the ship, Styga Compania Naviera S.A., previously pleaded guilty to three APPS violations for failing to properly maintain an oil record book ("ORB"). The company was sentenced to pay a $1 million fine and to make a $250,000 community service payment to the National Marine Sanctuary Foundation.

Co-defendant Argyrios Argyropoulos remains charged with violating APPS, making false statements, and obstructing justice. The chief engineers were alleged to have maintained false ORBs that concealed the direct discharges of sludge and oily bilge wastes into the ocean. The course of conduct covers numerous discharges from 2006 through 2009. The case arose from a crewmember's coming forward to inspectors while the ship was moored in Texas City, Texas, in February 2009. Argyropoulos has been named in the indictment, but was not on board the ship when it arrived in Texas. He will face prosecution if and when he comes to the United States.

This case was investigated by the Coast Guard Investigative Service and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Stephen Swift et al., No. 1:08-CR-00577 (D. Hawaii) AUSA Marshall Silverberg [redacted]

Waste drums

On April 14, 2010, following seven days of trial, Stephen Swift was convicted on the two RCRA counts charged: transporting hazardous waste without a manifest and storing hazardous waste without a permit.

Co-defendant Jerome Anches was the president of Martin Warehousing and Distribution ("MWD"). MWD was in the business of transporting and distributing freight. In August 2001, there was a hazardous waste spill involving the puncture of a 55-gallon drum of tetrachloroethylene by a MWD forklift driver. An environmental cleanup company remediated the site, resulting in the accumulation of hazardous waste for disposal; however, Anches refused to pay for it to be properly disposed. The waste stayed on the property from August 2001 to February 2005.

In early February 2005, the Martin Warehousing site was sold, and the new owner wanted the property cleared of all objects, including all containers. Anches hired Swift to transport the hazardous waste in the Matson container to the mainland for proper disposal. Instead, Swift moved the hazardous waste to his undeveloped property where it remained in the unlocked container until the EPA learned of it in May 2008.

Anches recently was sentenced to pay a $300,000 fine plus $84,000 in restitution, the latter due immediately. He also will complete a five-year term of probation after previously pleading guilty to a RCRA storage violation. Swift is scheduled to be sentenced on August 2, 2010.

This case was investigated by the States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jack Barron, No. 2:09-CR-00043 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted]**, AUSA Nancy Cook** [redacted] **and ECS Paralegal Ben Laste** [redacted]

On April 8, 2010, the jury acquitted Jack Barron an all counts, which were three Clean Water Act violations and an obstruction of justice charge. The case involved the illegal dredge and fill of a wetland on property owned by Barron. Despite being advised by the Army Corps of Engineers on several occasions that he would need a permit to fill or alter these wetlands, Barron placed a culvert, fill, and concrete footings for a residence on the property in 2007. Barron sent a letter to the Corps claiming to have obtained a permit for the excavation of a pond on the property, which was untrue.

This case was investigated by Environmental Protection Agency Criminal Investigation Division with assistance from the National Oceanic and Atmospheric Administration.

Back to Top

Informations and Indictments

United States v. Scott A. Beckmann et al., No. 2:10-CR-04021 (W.D. Mo.), AUSA Larry Miller [redacted]

On April 15, 2010, the mayor and the public works superintendent for Stover, Missouri, were indicted for allegedly violating the Safe Drinking Water Act. Scott A. Beckmann, the mayor of Stover, and Richard R. Sparks, the superintendent of the city's Department of Public Works, were variously charged in a 29-count indictment with falsifying information about the city's water supply that was submitted to the Missouri Department of Natural Resources (MDNR).

Sparks has been charged with a total of 28 false statement violations, 26 of which are for submitting records to the MDNR that contained false sampling locations. The records indicate collection points for water samples taken between September 2006 and December 2007 at certain addresses; However, Sparks allegedly knew that the samples had not been taken there. The other two false statement counts related to bacteriological water analysis samples that Sparks submitted to the state knowing that the water had been mixed with chlorine bleach to prevent an accurate laboratory analysis of the samples.

Beckmann has been charged with misprision of a felony for concealing these crimes from authorities. Beckmann allegedly knew that Sparks had submitted false information to the MDNR, but denied any knowledge when questioned by an EPA agent.

The defendants are scheduled for trial to begin on June 7, 2010. This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Typhoon Restaurant d/b/a/ The Hump Restaurant, No. 2:10-mj-00509 (C.D. Calif.), AUSAs Mark Williams [redacted] **and Dennis Mitchell** [redacted]

On March 10, 2010, a complaint was filed against The Typhoon Restaurant, doing business as The Hump Restaurant. The sushi restaurant and one of its chefs, Kiyoshiro Yamamoto, are each charged with a violation of the Marine Mammal Protection Act for serving whale meat, an endangered species.

The investigation began last October when two members of the team that made the Oscar-winning film called "The Cove" visited the restaurant, which is known for its exotic fare. The documentary exposes the annual killing of dolphins in a Japanese fishing village.

According to the complaint, the two women used an undercover camera to film the waitress serving them whale and horse meat, and then obtained a receipt that identified their selection as "whale" and "horse" along with the $85 total. The women hid pieces of the meat in a napkin and later sent them to a researcher for preliminary testing at Oregon State University. The meat was verified to be whale meat, specifically from the Sei whale, an endangered species, and the third largest baleen whale after the Blue Whale and the Fin Whale.

After a federal investigation was initiated, the two activists returned to the restaurant and were observed by investigators asking for, and again being served, whale meat. After officials raided the restaurant, chef Yamamoto allegedly admitted that he had served whale meat. A DNA test of a second sample of meat smuggled out confirmed that it came from the Sei whale.

This case was investigated by Customs and Border Protection, the Fish and Wildlife Services and the National Oceanic and Atmospheric Administration.
Back to Top

United States v. Wolfgang "Tito" Roempke et al., No. 2:10-CR-00062 (W.D. Wash.), AUSA Jim Oesterle [redacted].

On March 9, 2010, a four-count indictment was returned charging three individuals with conspiracy, false statement, and Clean Air Act violations stemming from their involvement in the illegal removal of asbestos during a demolition project.

Wolfgang "Tito" Roempke is the owner of a vacant building that was demolished in late August and early September of 2008. The indictment states that Roempke and two contractors, Michael Neureiter of A&D Company Northwest, Inc., and James "Bruce" Thoreen, of JT Environmental, Inc., conspired to conceal the fact that regulated asbestos containing material ("RACM") was present in the building by submitting falsified documentation to appropriate authorities, thereby preventing them from monitoring the demolition and asbestos disposal.

After Roempke received a survey of the building that confirmed the presence of RACM, he obtained quotes from two asbestos abatement companies for the proper removal of the material. After being told it would cost approximately $20,000, he contacted co-defendants Thoreen and Neureiter for the purpose of completing a new survey. Neureiter told Thoreen to complete the survey in such a way as to not find any RACM in the building. Thoreen proceeded to take samples from parts of the building where asbestos was unlikely to be found, and Roempke was told it would cost $8,000 to remove the material. When Thoreen gave the samples to a lab for analysis he instructed that they use a particular methodology ensuring that the test results would not trigger any asbestos work practice standards. Notification containing this falsified information was then transmitted to the Puget Sound Clean Air Act Agency stating that no asbestos would be removed as part of the demolition project.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Puget Sound Clean Air Agency.
Back to Top

Plea Agreements

United States v. Lester Brothers, No. 9:10-CR-00008 (D. Mont.), ECS Senior Trial Attorney Robert Anderson [redacted]

On April 28, 2010, Lester Brothers pleaded guilty to a single violation of the Endangered Species Act in connection with his possession and transport of an unlawfully taken wolf near Libby, Montana, in November 2008-February 2009. Sentencing has been scheduled for June 15, 2010.

This case was investigated by the Fish and Wildlife Service.
Back to Top

United States v. John Porunnolil Zacharias, No. 6:10-CR-00039 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted]

On April 21, 2010, chief engineer John Porunnolil Zacharias pleaded guilty to a two-count indictment charging an APPS violation for failing to maintain an oil record book and to an obstruction violation for providing inspectors with a false engine room sounding log and for altering a center fuel oil tank by installing a "dummy" sounding tube to conceal the contents of the tank.

On October 6, 2009, the United States Coast Guard conducted a Port State Control Inspection of the M/V *Lowlands Sumida*, a 37,689 gross ton bulk cargo vessel registered in Panama. During the inspection they received information from one of the crewmen alleging that a chief engineer was using the center fuel tank to store oily waste water and that the waste water was then discharged overboard by tricking the oil content meter on the ship's oil water separator. The defendant admitted to installing the "dummy" sounding tube, which would show the tank as empty when measured even though there was liquid in the tank.

Zacharias is scheduled to be sentenced on July 7, 2010. This case was investigated by the Coast Guard Investigative Service, the Environmental Protection Agency Criminal Investigations Division, and the Texas Commission on Environmental Quality Environmental Crimes Unit.

Back to Top

United States v. Rodney Hoffman et al., No. 5:09-CR-00215 - 216 (S.D.W. Va.), AUSA Perry McDaniel [redacted] and AUSA Eric Goes [redacted]

Vat used for plating operation

On April 16, 2010, Rodney Hoffman, the co-owner of an electroplating business, pleaded guilty to a RCRA storage violation. Hoffman admitted to storing hazardous wastes, including solvents, heavy metals and sulfuric and chromic acids, at his facility without a permit from October 2006 to February 21, 2007. As a result, the EPA has undertaken a Superfund cleanup of the site. Hoffman is scheduled to be sentenced on August 18, 2010, and co-defendant Christopher S. Mills remains scheduled for trial to begin on June 22, 2010.

Hoffman pleaded guilty in 1999 to a Clean Water Act violation for improperly disposing of waste from a prior electroplating business and was sentenced to serve an 11 month-term of incarceration.

This case was investigated by the Environmental Protection Agency Criminal Investigations Division with assistance from the Federal Bureau of Investigation.

Back to Top

United States v. Gordon Jett et al., No. 8:09-CR-00663 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne Hettenbach [redacted] and AUSA Stacey Belf [redacted]

On April 15, 2010, commercial fisherman Gordon Jett pleaded guilty to a Lacey Act felony violation for the illegal harvest and sale of striped bass from the Potomac River. Jett admitted to selling in 2007 approximately 14,850 pounds of untagged, falsely tagged, and oversized striped bass, with an estimated fair market retail value of $74,250, to Profish, a seafood wholesaler in Washington, D.C.

In December 2009, a grand jury in Maryland indicted Jett, Profish and two of Profish's employees for Lacey Act violations and conspiracy to violate the Lacey Act. They remain scheduled for trial to begin on June 1, 2010. Jett is the 17th commercial fisherman from Maryland and Virginia to plead guilty to Lacey Act violations involving Potomac River striped bass

This case was investigated by the Interstate Watershed Task Force, formed by the Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. Lance Clawson, No. 6:09-CR-00130 (E.D. Tex.), AUSA Jim Noble [redacted]

On April 14, 2010, Lance Clawson, a licensed deer breeder from west Texas, pleaded guilty to conspiracy and to Lacey Act violations for illegally transporting whitetail deer in interstate commerce. Clawson admitted to transporting the deer from Oklahoma into Texas in violation of state and federal laws. Texas state law prohibits any importation of whitetail deer due to the threat of Chronic Wasting Disease.

According to court documents, Clawson owns and operates Regency Ranch, which is a high-fence hunting ranch and deer-breeding facility located near Goldthwaite, Texas. On October 15, 2008, the defendant traveled from Texas to Muskogee, Oklahoma, to purchase whitetail fawns from an Oklahoma deer breeder. On the return trip to Texas, he was stopped by Texas Parks and Wildlife Game Wardens with eight fawns in his vehicle. Clawson was aware that Texas law prohibits the possession of a deer from an out-of-state source.

This case was investigated by the Texas Parks and Wildlife and the United States Fish and Wildlife Service.

Back to Top

United States v. Duc Le et al., No. 2:09-CR-00439 (C.D. Calif.), AUSA Mark Williams [redacted]

On April 12, 2010, Duc Le pleaded guilty to a smuggling conspiracy violation for his role in smuggling songbirds into the United States. Co-defendant Sony Dong previously pleaded guilty to the same charge for his role in hiding more than a dozen of the birds in an elaborate, custom-tailored pair of leggings during a flight from Vietnam to Los Angeles. Dong was arrested at Los Angeles International Airport last March after an inspector spotted bird feathers and droppings on his socks and tail feathers peeking out from under his pants.

Device used to smuggle birds

Authorities later linked Dong to co-defendant Le, who was arrested and charged after investigators searched his home and found more than 50 songbirds in an outdoor aviary. Both were initially charged with conspiracy, false statement, and smuggling violations in an eight-count indictment.

Fish and Wildlife inspectors flagged Dong for inspection because he had abandoned a suitcase containing 18 birds at the Los Angeles airport in December 2009. Five of the birds died in transit. Dong travelled back to Vietnam to pick up more birds and returned a month later with three red-whiskered bul-buls, four magpie robins, and six shama thrushes under his pants. The birds were quarantined and the bul-buls are listed as an injurious species, which means they pose a threat to people, native wildlife or the ecosystem and, additionally, could be avian flu carriers. The songbirds sell for $10 to $30 in Vietnam and are sold to collectors in the United States for about $400. Sentencing is scheduled for June 21, 2010.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Moun Chau et al., No. 2:10-CR-00048 (C.D. Calif.), AUSA Bayron Gilchrist (213) 894-3152.

African Elephant Ivory

On April 8, 2010, Moun Chau pleaded guilty to conspiracy to illegally import elephant ivory. He is scheduled to be sentenced on October 18, 2010.

Chau and Thai national Samart Chokchoyma previously were charged in a multi-count indictment for their involvement in a scheme to smuggle ivory from endangered African elephants into the United States. They specifically were charged with conspiracy, illegally offering to sell endangered species, illegal importation of wildlife, entry of goods by false statement, and smuggling wildlife.

According to the indictment,

Chokchoyma offered ivory for sale on the eBay Internet auction website. Between September 2006 and July 2009, the defendants engaged in six separate transactions involving illegal ivory. In one instance, Chau purchased four ivory tusk tips. In another shipment, Chokchoyma allegedly claimed on a customs declaration that the ivory shipment was a "Gift" containing "Toys." Investigators seized dozens of ivory specimens from Chau's Claremont business, many of which came from African elephants.

This case was investigated by the Fish and Wildlife Service Office of Law Enforcement, with substantial assistance from the Customs and Border Protection and Immigration and Customs Enforcement. In addition, the investigation of this case was the first cooperative international law enforcement effort related to wildlife crime between the Fish and Wildlife Service and the Royal Thai Police. The Asia-based Freeland Foundation, a non-governmental conservation organization, was instrumental in bringing together law enforcement authorities from both nations.

Back to Top

Back to Top

United States v. Saverio Todaro, No. 1:10-CR-00268 (S.D.N.Y.) AUSA Anne Ryan [redacted]

On March 26, 2010, Saverio Todaro pleaded guilty to falsifying hundreds of lead and asbestos inspection and testing reports for residences and other locations throughout the New York City area. Among the counts in the 11-count information were several violations of lead regulations promulgated by EPA under the Toxic Substances Control Act. This case marks the first time that criminal charges have been filed under those regulations.

From approximately November 2001 through December 2009, Todaro worked as an EPA-certified lead risk assessor, operating a company called SAF Environmental Corp., which was in the business of performing environmental inspection and testing services throughout the New York City area. Throughout this period the defendant created bogus lab reports with erroneous test results from sites that required lead clearance testing. These reports were subsequently filed with local government officials, and Todaro was paid for these services. Additionally, after the state had suspended the defendant's asbestos investigator certification, he continued to prepare inspection documents without performing actual inspections. These documents were backdated to make it appear that he had performed the inspection prior to the suspension of his certification. Todaro submitted invoices for these purported services, and the documents were filed with state officials. A forfeiture count has been alleged in the amount of $304,395 from the proceeds derived from the mail fraud violations. Sentencing is scheduled for June 28, 2010.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation, and the New York Regional Office of the Department of Labor Office of Inspector General.

Back to Top

Sentencings

United States v. Boykin & Associates Environmental Services, L.L.C., No. 3:09-CR-00878 (D.S.C.), AUSAs Emery Clark [redacted] and Deborah Barbier [redacted]

On April 21, 2010, Boykin & Associates Environmental Services, L.L.C., was sentenced to pay a $1,000 fine and will complete a five-year term of probation for a felony violation of the Clean Water Act.

Boykin & Associates had a contract to manage and operate municipal wastewater systems, including one located in the Town of Timmonsville, South Carolina. As a part of its contract, and in compliance with federal law, the defendant was required to sample for a variety of parameters of the pollutants discharged from the Timmonsville POTW and submit monthly reports with the results.

Over a three-month period in 2006, the company failed to report the results of the chronic toxicity sampling and testing. Evidence determined that, if reported, the toxicity levels would have been in violation of the Timmonsville wastewater permit.

This case was investigated by the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.

Back to Top

United States v. Michael Sayklay, No. 3:09-CR-03209 (W.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Steven Spitzer [redacted].

On April 15, 2010, Michael Sayklay was sentenced to pay an $8,000 fine and will complete a two-year term of non-reporting probation. Sayklay, the former vice president and warehouse manager for Economy Cash & Carry, Inc., previously pleaded guilty to a felony false statement charge related to the falsification of a certificate stamp in violation of the Plant Protection Act. Specifically, he admitted to falsifying stamps that certified wood pallets were heat-treated to prevent infestation, and were suitable for use in international transportation. In 2006, the defendant was responsible for having the false stamp affixed to his company's wood pallets, which were used to carry products back and forth across the U.S./Mexico border.

The U.S. Department of Agriculture (USDA) requires the heat treatment of wood pallets used in international transactions. This requirement is to prevent parasites and plant diseases from entering the United States in wood packaging materials. Pallets that carry products transported within the United States are not required to be heat treated.

Economy Cash & Carry uses wood pallets to transport food products and pharmaceuticals sold in both the United States and Mexico. In his capacity as the warehouse manager, Sayklay was responsible for directing the transfer of products destined for Mexico from untreated pallets to treated pallets. Instead of following this procedure, however, he devised a copy of a certification stamp that was used by a legitimate wood pallet treating company. The defendant subsequently had hundreds of untreated domestic pallets falsely stamped as if they were treated, saving the time to transfer products between pallets, as well as the cost of treatment. Sayklay neglected to note, however, that the falsified stamp he used was smaller than the legitimate stamp.

Consequently, other companies that received the fraudulently stamped pallets from Mexico sent them to the legitimate stamp owner for repair, and that stamp owner then notified the government about the falsification. An investigation by USDA resulted in the seizure of fraudulently stamped pallets at the U.S./Mexico border. The company pleaded guilty and was sentenced this past January to a violation of the Plant Protection Act related to the falsification of the required certificate stamp. Economy Cash & Carry was ordered to pay a $22,000 fine as a result of this misdemeanor violation.

This case was investigated by the Department of Agriculture.

Back to Top

United States v. Douglas Smith, No. 5:09-CR-0003 (D. Alaska), AUSAs Steven Skrocki [redacted] and Aunnie Steward [redacted]

Otter skin

On April 15, 2010, Douglas Smith was sentenced to serve a year and a day of incarceration followed by three years' supervised release. A fine was not assessed.

Smith previously pleaded guilty to a Lacey Act conspiracy and a Lacey Act violation stemming from the illegal killing and attempted illegal sale of sea otters. Beginning in July 2007 and continuing through October 2008, Smith conspired with an unnamed co-conspirator in a scheme to unlawfully harvest sea otters in order to sell their hides. Smith agreed to permit this person to use his boat for the illegal killing of sea otters. In exchange for permitting the use of his boat, Smith received a percentage of profits from the subsequent sale of their hides. Neither Smith nor his co-conspirator is an Alaskan Native

and, therefore, they are prohibited from hunting or killing sea otters.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. John Shaw, No. 1:09-CR-00270 (D. Idaho), AUSA George Breitsameter

On April 13, 2010, John Shaw was sentenced to pay a $5,000 fine and will complete a two-year term of probation after previously pleading guilty to a misdemeanor Clean Water Act violation.

Shaw, the owner of property adjoining the Snake River, admitted that he illegally cut the river bank with a bulldozer and installed "Rock rip-rap" along approximately 2,000 linear feet of river bank without a permit. "Rock rip-rap" is a method used to stabilize river banks. The defendant admitted he was negligent in not obtaining a permit from the Army Corps of Engineers prior to performing this work. A permit to perform such work below the high water mark is required in order to control the discharge of rock, dredge, and fill material into the river.

Shaw also will be required to perform 100 hours of community service and to remediate the site.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division with assistance from the Army Corps of Engineers.

Back to Top

United States v. Jennifer Duffey et al., No. 09-CR-00512 (N.D. Ga.), AUSA Susan Coppedge

On April 12, 2010, John and Jennifer Duffey each were sentenced to serve one year and a day of incarceration, followed by three years' supervised release. The first six months of supervised release are to be completed in a home confinement detention center. The two previously pleaded guilty to conspiring to illegally dispose of hazardous waste.

The Duffey's ran Joint Military Development Services ("JMDS"), a company engaged in conducting military training exercises for the United States' armed forces. In its work with the military, JMDS purchased approximately 560 "napalm bursts" for use in military exercises. These napalm bursts are explosives and contain napthalene which is federally listed as hazardous if it is a waste and can cause liver and neurological damage. JMDS did not possess a permit to dispose of this hazardous waste.

On two separate occasions, Jennifer Duffey instructed an employee to dig a hole in the woods on property adjacent to the warehouse out of which JMDS operated and to bury the napthalene. This property belonged to a third party who was unaware that hazardous waste had been buried on his land. For a second disposal in mid-November 2008, John Duffey instructed an employee to use face masks so that the strong, noxious odor would not affect them while they dug a hole and buried the remaining napalm bursts. John Duffey monitored the two employees who disposed of the hazardous waste in November.

The defendants were further held jointly and severally liable for $41,238.83 in restitution to be paid to Lafarge North America. This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Danny Parrott, No. 2:09-CR-00045 (S.D. Ohio), AUSA Mike Marous [redacted] and SAUSA Heather Robinson [redacted].

On April 9, 2010, Danny Parrott was sentenced to serve 21 months' incarceration, followed by six months' home confinement and three years' supervised release. He will pay $35,200 in restitution to the South Carolina Department of Natural Resources, and he is barred from trafficking in deer during the period of supervised release.

Parrott was convicted last fall by a jury on 14 of 15 counts charged stemming from his involvement in an illegal deer hunting operation. The jury convicted Parrott of conspiracy and Lacey Act violations for his role in the sale and transport of Ohio whitetail deer to co-defendant James Schaffer of South Carolina. Schaffer owns a hunting preserve in South Carolina and sought to import Ohio deer to the preserve because they are much bigger than South Carolina deer. Parrott owns the River Ridge Ranch which operates as a wild animal hunting reserve in Ohio and caters to hunters from states such as South Carolina, Florida, and Georgia. He purchased numerous deer from several Amish residents who raise deer for a living. The 54 white tail deer were shipped to South Carolina from Ohio without being tested for disease, in violation of the Lacey Act. The interstate sale of deer is restricted to prevent the spread of disease which could infect other wildlife or potentially humans. Schaffer previously pleaded guilty to his role in the conspiracy, but has not yet been sentenced.

This case was investigated by the Departments of Natural Resources for the States of Florida, Ohio and South Carolina.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

June 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to [redacted]). If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

- **Wilmina Marine, AS et al. v. United States, No. 2:10-CV-00137 (S.D. Tex.).**

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
C.D. Calif.	**United States v. Andree Gunawan et al.**	***Asian Arowana Fish Sales/* Smuggling**
N.D. Calif.	**United States v. Mark Guinn**	***Dredging Company/* Conspiracy, CWA**
S.D. Calif.	**United States v. Atticus Gee**	***Landfill Gas Emissions/* CAA Tampering**
M.D. Fla.	**United States v. Aksay Denizcilik Ve Ticaret A.S.**	***Vessel/* APPS, False Statement**
S.D. Fla.	**United States v. Kelvin Soto-Acevedo** **United States v. Robbie Franklin Smith et al.**	***Spider and Reptile Sales/* Lacey Act** ***Queen Conch and Spiny Lobster Import/* Lacey Act**
D. Hawaii	**United States v. Kauai Island Utility Co**	***Utility Company/* MBTA, ESA**
D. Kans.	**United States v. James Bobby Butler, Jr., et al.**	***Interstate Deer Sale/* Conspiracy, Lacey Act, Obstruction**
D. Md.	**United States v. Triantafyllos Marmaras**	***Vessel/* False Statement, Obstruction**
E.D.N.C.	**United States v. Vaja Sikharulidze**	***Vessel/* APPS**
S.D. Ohio	**United States v. James Schaffer et al.**	***Interstate Deer Sale/* Lacey Act, Conspiracy**
S.D. Tex.	**United States v. Fleet Management Limited of Hong Kong et al.**	***Vessel/* APPS, Obstruction, False Statement, Conspiracy**

Additional Quick Links:

Significant Environmental Decisions

District Courts

Wilmina Marine, AS et al. v. United States, No. 2:10-CV-00137 (S.D. Tex.).

On May 19, 2010, Judge Janis Jack denied a petition on behalf of Wilmina Marine, AS, in which petitioners attempted to invoke the jurisdiction of a district court to set the terms of an Agreement on Surety that was being negotiated between petitioners and the United States Coast Guard. During an inspection of the *M/V Wilmina*, owned by the petitioners, the Coast Guard discovered evidence that the vessel was engaged in the illegal dumping of oil at sea. The Coast Guard administratively requested that customs departure clearance be withheld until a satisfactory surety agreement was entered. The Coast Guard provided the surety terms it found to be satisfactory to the petitioner, which included posting a bond and providing care and support for crewmember witnesses in the Southern District of Texas until the resolution of this matter. In return the petitioner would gain departure clearance and be able to continue to use the vessel in commerce instead of remaining detained in the United States. The petitioners filed the action challenging the surety terms. After two hearings, the court dismissed the petition for a lack of subject matter jurisdiction as the petitioners had failed to exhaust their administrative remedies. The court further noted that the other jurisdictional grounds that petitioner relied upon, including claims in admiralty, also were unfounded.
Back to Top

Trials

United States v. Mark Guinn, No. 09-CR-00414 (N.D. Calif.), AUSAs Stacey Geis [redacted] and Tina Hua [redacted]

Barge used to dump dredged spoils

On May 12, 2010, Mark Guinn, the general manager of the Northern California operations of Brusco Tug & Barge, Inc., was convicted by a jury after a five-day trial of one count of conspiracy to violate the Clean Water Act and one substantive CWA violation.

The jury, after deliberating for a day and a half, found that Guinn had conspired to dump contaminated dredged spoils into the San Francisco Bay without a permit from approximately April 2003 until around January 2007. The jury also convicted the defendant of one specific offload of

dredged spoils that occurred on January 7, 2007. He was acquitted of another substantive CWA count, and the jury did not reach a verdict on the remaining CWA violation.

Evidence at trial showed that beginning at least as early as 2003 and continuing until 2007, Guinn participated in the routine discharge of large amounts of contaminated dredged materials into navigable waters of the United States without a permit. Guinn unlawfully dumped such material into the Bay as well as ordering employees to do so. The defendant and others opened the hull of a barge while the barge was at or near Winter Island and then emptied the contents of the barge directly into the surrounding waters instead of properly offloading all of the material onto the island. Witnesses testified that the proper offloading of dredged spoils would have taken 12-18 hours, while the dumping took just minutes.

As part of its operations, Brusco Tug & Barge towed and disposed of dredged material generated during various dredging projects. Many of the projects Guinn oversaw involved the transportation and disposal of dredged material by barge onto Winter Island where it was intended for use in levee rehabilitation and maintenance. Winter Island, a privately owned 453-acre property located on the western edge of the Sacramento-San Joaquin River Delta in Contra Costa County, is managed as a freshwater wetland habitat and duck hunting club. The island is one of the few places in the Bay Area with an identified beneficial use for dredged material and it accepted certain limited types of material pursuant to a permit. The discharge of dredge materials to surface waters or drainage courses surrounding Winter Island is prohibited. At no time did the company or Guinn have a permit to discharge this material into these waters.

The company previously pleaded guilty to a felony CWA violation and was sentenced to pay a $1.5 million fine, including a $250,000 community service payment to fund a variety of environmental projects in the Bay. The company also was required to enter into a comprehensive environmental compliance plan.

This case was investigated by the Coast Guard Criminal Investigative Service and the Environmental Protection Agency Criminal Investigative Division.

Back to Top

Informations and Indictments

United States v. James Bobby Butler, Jr., et al. No. 6:10-CR-10089 (D. Kans.), ECS Trial Attorney Colin Black [redacted] and AUSA Matt Treaster [redacted].

On May 25, 2010, a grand jury returned a 23-count felony indictment charging two brothers with conspiracy and wildlife trafficking stemming from the illegal interstate sale of deer. The indictment charges James Bobby Butler, Jr., with conspiracy to violate the Lacey Act, 18 substantive violations of the Lacey Act, and three counts of obstructing justice. His brother, Marlin Jackson Butler, is charged with conspiracy to violate the Lacey Act and 12 substantive Lacey Act violations.

The indictment alleges that, from 2005 to 2008, James and Marlin Butler conspired to knowingly transport and sell in interstate commerce deer that had been hunted in violation of Kansas state law. Specifically, the brothers are alleged to have operated a guiding service and a hunting camp where they sold guiding services to out-of-state hunters for the purpose of illegally hunting and killing white-tailed deer and mule deer.

According to the indictment, hunters guided by the Butler brothers killed deer in excess of annual bag limits, hunted deer without permits or used permits for the wrong deer management unit,

killed deer using illegal equipment, and hunted using prohibited methods, such as spotlighting. In addition to selling their guiding services, the brothers are further alleged to have arranged for the transportation of the deer or parts of the deer (particularly the antlers) from Kansas to Texas. James Butler is further charged with lying to investigators during the investigation and with instructing others to lie and/or conceal evidence. Individual hunters allegedly paid approximately $2,500-$3,500 to hunt using archery equipment and approximately $5,000 to hunt with a rifle.

This case was investigated by the Fish and Wildlife Service, the Kansas Department of Wildlife and Parks, and the Texas Parks and Wildlife Department.

Back to Top

United States v. Kauai Island Utility Cooperative, No. 1:10-CR-00296 (D. Hawaii), ECS Senior Trial Attorney Elinor Colbourn

On May 19, 2010, a 19-count indictment was returned charging the Kauai Island Utility Cooperative (KIUC) with nine counts of violating the Endangered Species Act and 10 counts of violating the Migratory Bird Treaty Act.

According to the indictment, Newell's shearwaters, seabirds native only to Hawaii and predominantly to the island of Kauai, are known to collide with power lines, sometimes while flying at speeds of up to 50 miles an hour. In other cases the collisions may occur when young birds circle bright lights to which they are attracted, including streetlights operated by KIUC on its power line poles. The birds also may strike other structures or simply fall to the ground out of exhaustion while circling bright lights. If the bird is not killed by the impact of the collision, but falls to the ground, it will likely be unable to regain flight and may succumb to a predator, be run over by a car, or starve to death. According to the indictment, more than 30,000 Newell's shearwaters are documented to have been collected from the ground since 1978 and the population of fledgling Newell's shearwaters is estimated to have declined by more than 70 percent just between 1993 and 2008. The species is identified as endangered on the International Union for Conservation of Nature "red list" of endangered species.

The indictment specifies the taking of 53 Newell's shearwaters over a five-year period, as well as the taking, by electrocution, of a Laysan albatross. Previous attempts to bring the company into compliance without enforcement action were fruitless since KUIC failed to follow through on the recommended actions and mitigation plans.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Andree Gunawan et al., Nos. 2:10-CR-00470 - 475 (C.D. Calif.), AUSAs Christine Ewell and Joseph Johns .

On May 11, 2010, seven people were indicted on charges related to illegally smuggling Asian arowana fish into the United States. The indictments, variously charging Andree Gunawan, Tom Ku, Sam Lam, Everette Villota, Jim Nguyen, Thy Tran, and Tien Le, with Endangered Species Act and smuggling violations stem from a 2005 undercover sting operation in which a Fish and Wildlife agent acted as a middleman working for an exporter in Bogor, Indonesia. Many Southeast Asian cultures believe the

Lucky Fish

Asian arowana, or dragon fish, brings luck and protects their owners from evil spirits. The juvenile fish sell for approximately $1,000 each while the more colorful adults, which grow to up to two-feet long, can sell for upwards of $20,000.

This case was investigated by the Fish and Wildlife Service and the California Department of Fish and Game.

Back to Top

United States v. Fleet Management Limited of Hong Kong et al., Nos. 6:10-CR-00039, 00051 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted]

Bypass hose

On April 30, 2010, a shipping company and two employees were charged with obstruction of agency proceedings, making false statements, and failing to keep accurate pollution control records. Fleet Management Limited of Hong Kong is charged with one APPS violation for failing to maintain an accurate oil record book (ORB), one count of making false statements to the Coast Guard, and one count of obstruction. Prem Kumar, a ship superintendent for the company, and Prasada Reddy Mareddy, the second engineer of the *M/V Lowlands Sumida*, each are charged with conspiracy. Kumar is further charged with obstruction of a Coast Guard investigation.

In October 2009, the Coast Guard was conducting a routine port state control inspection of the *Lowlands Sumida* when an engine room crew member stated that the vessel was illegally discharging oily wastewater. He further alerted them that a center fuel oil tank on the ship was fitted with a "dummy" or false sounding tube and that oily waste water was being stored in the tank until it could be discharged overboard. The "dummy" sounding tube would show the tank to be empty, and a tank sounding log also was kept to show the tank as empty. When inspectors removed the false sounding tube and measured the contents of the tank they determined it to be almost half full with oily wastewater.

According to the indictment, acting on behalf of the company, both Kumar, a shore side manager, and Mareddy conspired to use the fabricated sounding tube to conceal the contents of the center fuel oil tank and to obstruct the Coast Guard's investigation. In addition to concealing the contents of the tank, Kumar and ship engineers obstructed the investigation by using the false sounding log to conceal the contents of the center fuel oil tank.

The vessel's chief engineer, John Porunnolil Zacharias, recently pleaded guilty to an APPS violation for failing to maintain an accurate ORB; he further pleaded guilty to an obstruction violation for providing inspectors with a false engine room sounding log and for his involvement in the installation of the fabricated sounding tube.

This case was investigated by the Coast Guard Investigative Service, the Environmental Protection Agency Criminal Investigation Division, and the Texas Commission on Environmental Quality Environmental Crimes Unit.

Back to Top

Plea Agreements

United States v. Aksay Denizcilik Ve Ticaret A.S, No. 8:10-CR-00116 (M.D. Fla.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Terry Zitek [redacted]

On May 21, 2010, Aksay Denizcilik Ve Ticaret A.S. ("Aksay"), the Turkish operator of the commercial ship *M/T Kerim*, pleaded guilty to an APPS oil record book violation and to a false statement violation. The company was sentenced to pay a $725,000 fine and will complete a three-year term of probation, during which time it will implement an environmental compliance plan.

Aksay operated the *Kerim* between approximately 2006 and 2009. Based on a tip from crew members, the Coast Guard boarded the vessel in March 2009 at the Port of Tampa. During the inspection, a "magic pipe" used to bypass the ship's oil pollution prevention equipment was uncovered. Acting on behalf of the company, ship's officers and crew members constructed and used the pipe to discharge oil-contaminated sludge directly into the ocean. These discharges were not recorded in the vessel's oil record book.

This case was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Triantafyllos Marmaras, No. 1:10-CR-00248 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Micheal Cunningham [redacted]

On May 19, 2010, Triantafyllos Marmaras pleaded guilty to an information charging him with two counts of obstruction of justice and one count of making a false statement. Marmaras was the chief engineer for the *M/V Iorana*. The Coast Guard inspected the ship on January 8, 2010, after crew members reported that the ship had illegally discharged oily waste overboard through a bypass. Marmaras admitted to his involvement in the bypassing, to falsifying the oil record book, and to instructing witnesses to lie to the inspectors.

This case was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Vaja Sikharulidze, No. 4:10-CR-00032 (E.D.N.C.), ECS Trial Attorney Shennie Patel [redacted] and AUSA Banu Rangarajan [redacted].

On May 3, 2010, Vaja Sikharulidze, the chief engineer for the *M/T Chem Faros*, pleaded guilty to an APPS violation for his involvement in the illegal overboard discharge of oily bilge waste via a bypass pipe system. The *Chem Faros* is a chemical cargo ship operated by Cooperative Success Maritime SA, a company privately incorporated in Panama and headquartered in Athens, Greece.

On March 29, 2010, a Coast Guard port state control inspection team boarded the ship in Morehead City, North Carolina. While conducting the inspection, a crewmember approached Coast Guard inspectors and handed them a note stating that the ship had illegally discharged oil-contaminated waste overboard through the use of a "magic pipe." Other crew members, including the chief and second engineers, corroborated the allegations of improper waste discharges.

This case was investigated by the Coast Guard Investigative Service and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

Tank with oil discharge warning

United States v. Kelvin Soto-Acevedo, No. 1:10-CR-20244 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On April 28, 2010, Kelvin Soto-Acevedo pleaded guilty to Lacey Act violations for the illegal smuggling of 50 Puerto Rican slider turtles and 25 Puerto Rican brown tarantulas into South Florida from Puerto Rico. The New Wildlife Law of Puerto Rico prohibits the take, possession, transportation, and export of Puerto Rican slider turtles (*Trachemys stejnegri*) and Puerto Rican brown tarantulas (*Cyrtopholis portoricae*) for use in commercial activities unless a valid permit has been obtained.

In February 2009, Soto-Acevedo received the restricted wildlife through the mail from two Puerto Rican residents after sending them $275 in payment. The wildlife had a retail value of more than $8,000 on the mainland. The defendant then sold the animals through his business, *A Touch of Class Reptiles* located in Hialeah, Florida, using various internet sites specializing in reptiles. Neither the defendant nor his Puerto Rico-based suppliers possessed the appropriate permit to engage in these activities.

A sale made to a customer in Nebraska, who subsequently attempted to re-sell the wildlife, led to this investigation by the Fish and Wildlife Service. Sentencing is scheduled for July 19, 2010.

Back to Top

Sentencings

United States v. James Schaffer et al., No. 2:08-CR-00022 (S.D. Ohio), AUSA Mike Marous ([redacted]) and SAUSA Heather Robinson [redacted]

On May 27, 2010, James Schaffer was sentenced to complete six months' home confinement as a condition of a one-year term of probation. He also will pay $235,000 and perform 500 hours of community service within the South Carolina park system during the next six months.

Schaffer's company, Graham's Turnout Hunt Company, catered to hunters from states such as South Carolina, Florida, and Georgia. Between August and November 2005, Schaffer conspired with Danny Parrott to transport a total of 54 white tail deer from Ohio to South Carolina without the proper documentation and without proper testing. Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. Schaffer also never obtained the proper state permits to allow the deer to be transported into South Carolina. Without proper testing for diseases, the imported deer could infect the local deer population in South Carolina.

Schaffer previously pleaded guilty to a Lacey Act conspiracy and two Lacey Act violations. A jury convicted Parrott in October of last year on two counts of conspiracy and 12 counts of violating the Lacey Act. Parrott was recently sentenced to serve 21 months' imprisonment followed by six months of home confinement.

Of the $235,000 Shaffer was ordered to pay, $100,000 will be used to test the deer for possible disease; $50,000 will go toward the National Wildlife Trust Fund; $50,000 will be paid into the Harry Hampton South Carolina Wildlife Trust; and $35,000 will reimburse the South Carolina Department of Natural Resources for the direct loss of more than 200 deer.

These cases were investigated by the Fish and Wildlife Service, the South Carolina Department of Natural Resources, the Florida Fish and Wildlife Conservation Commission, the Ohio Bureau of Criminal Identification and Investigation, and the Ohio Division of Wildlife.

Back to Top

United States v. Atticus Gee, No. 09-CR-004121 (S.D. Calif.), AUSA Melanie Pierson [redacted]

On May 13, 2010, Atticus Gee was sentenced to complete a two-year term of probation. A fine was not assessed. Gee previously pleaded guilty to tampering with a monitoring method stemming from his preparation of false landfill gas emission reports by copying data he had in his possession without conducting the actual monitoring.

Between October 2004 and May 2007, Gee was employed as a technician by a company under contract with the San Diego County Department of Public Works and was responsible for taking readings of the emissions of landfill gases from several closed landfills within the County of San Diego. When landfills reach their final capacity, they can be capped by covering them with earth and other substances. In order to prevent underground fires, methane extraction vents are installed. The emissions to the air from such methane extraction vents are regulated in San Diego by permits issued by the San Diego County Air Pollution Control District. Those permits place limits on the emissions and require periodic monitoring reports and certifications of compliance to be submitted by the San Diego County Department of Public Works. On September 23, 2005, an underground fire was

discovered at the Palomar Airport Landfill, although no unusual readings had been reported in the monitoring data from the methane extraction wells and migration probes at that location.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Robbie Franklin Smith et al., No. 1:08-CR-20644 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Forfeited sport fishing vessel

On May 6, 2010, Robbie Franklin Smith was sentenced to serve a year and a day of incarceration, followed by a three-year term of supervised release. A fine was not assessed due to an inability to pay. Smith, a Bahamian native, previously pleaded guilty to charges stemming from the illegal import of queen conch and spiny lobster from the Bahamas to the United States in violation of the Lacey Act and of Bahamian law.

In December 2005, a vessel operated by a Miami-based seafood dealer, James Hanson, was intercepted by a Coast Guard patrol vessel. During a boarding and inspection, officers found more than 1,000 pounds of undeclared spiny lobster and approximately 340 pounds of queen conch, which had been supplied to Hanson in the Bahamas by Smith. Hanson's intention was to land the seafood in the United States and market it through Hanson Seafood, Inc., a company that he owned. Between June and December 2005, on approximately a dozen occasions, Hanson purchased spiny lobster and conch from Smith and imported it illegally into the United States. According to court documents, the total fair market value of the trips exceeded $87,000.

Hanson, who received a lesser sentence for cooperating with the government's investigation, was sentenced to pay a $75,000 fine, ordered to perform 300 hours of community service, and will complete a three-year term of probation. He further was ordered to relinquish any claim to the proceeds of the seized product, which was valued at $13,930. His 37.8-foot sport fishing vessel, which was valued at approximately $750,000, was forfeited and is now being used at the FLETC facility in Glynco, Georgia.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement; the Fish and Wildlife Service; Immigration and Customs Enforcement; with assistance from the Ministry of Agriculture and Marine Resources, Department of Marine Resources, of the Commonwealth of the Bahamas.

Back to Top

Are you working on Pollution or Wildlife Crimes Cases?

Please submit case developments with photographs to be included in the *Environmental Crimes Monthly Bulletin* by email to:

[redacted]
Elizabeth R. Janes
Program Specialist
Environmental Crimes Section
U.S. Department of Justice

THANK YOU!

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

July 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

- **United States v. Apollo Energies, Inc., ___ F. 3d. ___ 2010, WL 2600502 (10th Cir. June 30, 2010).**

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
D. Ariz.	**United States v. Janay Brun** **United States v. Emil McCain**	***Jaguar Capture*/ Endangered Species Act, Conspiracy**
C.D. Calif.	**United States v. Sony Dong et al.**	***Asian Songbird Imports*/ Smuggling, Conspiracy**
N.D. Calif.	**United States v. Luke Brugnara et al.**	***Trout Habitat Degradation*/ Endangered Species Act, False Statement**
D. Colo.	**United States v. Jeffrey M. Bodnar et al.**	***Bobcat Trapping*/ Lacey Act, Conspiracy, Felon in Possession of Firearm**
M.D. Fla.	**United States v. Kinder Morgan Port Manatee Terminal LLC** [redacted]	***Baghouse Dust Emissions*/ CAA** [redacted]
S.D. Fla.	**United States v. Hugo Pena et al.**	***Vessel*/ APPS, Conspiracy, False Statement**
W.D. Ky.	**United States v. KEN-DEC, Inc. et al.**	***Electroplating Company*/ CWA, RCRA**
E.D. La.	**United States v. Stanships, Inc.**	***Vessel*/ APPS, OPA**
D. Md.	**United States v. Ocean Pro, Ltd. et al.**	***Rockfish*/ Lacey Act, Conspiracy, False Statement**
E.D. Mich.	**United States v. Wayne County Airport Authority**	***Wastewater Treatment*/ Probation Revocation**
D. Minn.	**United States v. Seng Her**	***Endangered Species Imports*/ Smuggling**
D. Mont.	**United States v. Provident Energy Associates** **United States v. Dale Satran**	***Gas Drilling Co.*/ MBTA** ***Eagle Killing*/ BGEPA**
D. Neb.	**United States v. Shane Bertucci et al.**	***Eagle Killing*/ MBTA, BGEPA**
D. Nev.	**United States v. Todd Davis et al.** **United States v. Peter Escudero et al.** **United States v. Joseph Dematteo et al.**	***Horse Shootings*/ Wild Horses and Burros Protection Act** ***Emissions Scanning Scheme*/ CAA False Statement**
E.D.N.Y.	**United States v. Tamba Kaba**	***Elephant Ivory Smuggling*/ Lacey Act, Smuggling**
N.D.N.Y.	**United States v. Paul Mancuso et al.**	***Asbestos Dumping*/ CAA, CERCLA, Mail Fraud, Conspiracy**
E.D.N.C.	**United States v. Cooperative Success Maritime SA**	***Vessel*/ APPS**

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D.N.D.	**United States v. Jesse Marchus**	***Eagle Killing/* BGEPA, Firearms**
S.D. Ohio	**United States v. William Ringler** **United States v. Larry R. Adkins, Jr.**	***Pig Farm/* CWA Misdemeanor** ***Trees Destroyed/* Depredation and Theft of Govt. Property**
W.D. Pa.	**United States v. John Morgan et al.**	***Gas Drilling Company/*SDWA**
E.D. Tenn.	**United States v. Selective Structures, LLC.**	***Billboard Sign Company/* RCRA**
D.V.I.	**United States v. Ivan and Gloria Chu**	***Black Coral Import/* ESA, Lacey Act, Conspiracy, False Statement**
S.D.W.V.	**United States v. Christopher Mills et al.**	***Electroplating Company /* RCRA**

Additional Quick Links:

Significant Environmental Decisions

Tenth Circuit

United States v. Apollo Energies, Inc., ___F. 3d. ___2010, WL 2600502 (10th Cir. June 30, 2010).

On June 30, 2010, the Tenth Circuit issued a significant joint decision in *United States v. Apollo Energies, Inc*. and *United States v. Walker*, two criminal cases involving the Migratory Bird Treaty Act ("MBTA"). In its decision, the Tenth Circuit confirmed that the misdemeanor criminal offense under the MBTA is a strict liability crime that does not require the prosecution to prove that the defendant acted with any particular state of mind. However, the Tenth Circuit determined that, in order to comply with the constitutional requirements of due process, at least in the case before the court, the government must prove that the migratory bird deaths were "proximately caused" by the defendant's conduct.

The court discussed proximate cause, somewhat interchangeably, both in terms of foreseeability and also fair notice to the defendant that his conduct might kill birds. In *Apollo Energies* the defendants were charged after migratory birds were killed in so-called heater-treaters (equipment used to separate oil from water at oil drilling sites). The Court upheld convictions where the defendants had been given notice by the Fish and Wildlife Service (prior to the searches that exposed the dead birds) that migratory birds might be and in fact were being killed in heater-treaters. The court vacated the conviction on another count for one defendant, however, because the evidence suggested that the defendant did not know, and a reasonable person might not have foreseen, that birds could be killed in heater-treaters.

Back to Top

Trials

United States v. Ocean Pro, Ltd. et al., No. 8:09-CR-00634 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne Hettenbach [redacted] AUSA Stacey Belf [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On July 1, 2010, following a five-week trial, a fish wholesaler and two of its employees were found guilty of purchasing illegally harvested striped bass, known locally as rockfish, from the Potomac River in Virginia and Maryland from 1995 through 2007.

Ocean Pro Ltd. d/b/a Profish, one of the largest District of Columbia seafood wholesalers, its vice-president Timothy Lydon, and its fish buyer, Benjamin Clough, all were convicted of a felony conspiracy to violate the Lacey Act. Ocean Pro and Lydon also were convicted of three felony Lacey Act violations, and Clough was convicted of three Lacey Act violations and a felony false statement charge.

Profish and Lydon began buying striped bass from Virginia fishermen fishing in the Potomac River in 1995. Lydon and Profish agreed to buy striped bass that they knew was illegally harvested by seven fishermen between 1995 and 2007. Clough joined Profish in 2001, and he continued to knowingly purchase the illegally harvested striped bass through 2007. In total, the defendants purchased more than 270,000 pounds of striped bass illegally harvested from Maryland and Virginia

waters, with a fair market retail value more than $1.6 million. Evidence also was introduced at trial that they altered records regarding their striped bass purchases and changed records indicating the harvest date on shellfish to make it appear that they were harvested more recently than they were.

Commercial striped bass fishermen are given a quota that they are allowed to catch each year. The fishermen are issued a set number of plastic tags, one of which they are required to affix to every striped bass harvested. In addition, during certain times of the year, commercial striped bass fishing is prohibited or, if allowed, a maximum striped bass size limit is imposed that prohibits the harvest of striped bass over that size. The quota restrictions and tagging requirements are designed to prevent the over-harvest of striped bass, and the seasonal closing and size restrictions are designed to protect striped bass while they are spawning and to protect the larger, sexually mature and more productive spawning fish. Striped bass do not die after spawning. They may live up to 30 years and reach 50 pounds or more. The population of coastal Atlantic striped bass depends heavily upon the capability of older, larger female striped bass to successfully reproduce.

These restrictions were implemented in the early 1990s following the crash of the striped bass fishery in the 1980s, which resulted in a moratorium on commercial striped bass harvest from 1985 to 1990.

These convictions are the result of an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit in 2003. The task force conducted undercover purchases and sales of striped bass in 2003, engaged in covert observation of commercial fishing operations in the Chesapeake Bay and Potomac River area, and conducted detailed analysis of area striped bass catch reporting and commercial business sales records from 2003 through 2007. There have been 22 convictions to date as a result of this investigation.

Back to Top

United States v. Tamba Kaba, No. 1:09-CR-00858 (E.D.N.Y.), AUSA Vamshi Reddy [redacted]

Ivory smuggled in wooden statues

On June 8, 2010, Tamba Kaba was convicted by a jury on all counts stemming from his involvement in an illegal elephant ivory smuggling ring. On several occasions in 2007 and 2008, Kaba attempted to smuggle into the U.S. via JFK International Airport pieces of illegal elephant ivory that were concealed inside African statues imported from Uganda and Nigeria. He was convicted on two smuggling violations and one Lacey Act charge. Elephants are listed on Appendix 1 of the Convention of International Trade in Endangered Species of Wild Flora and Fauna. Sentencing is scheduled for September.

This case was investigated by the Fish and Wildlife Service.

Back to Top

Informations and Indictments

United States v. Hugo Pena et al., No. 0:10-CR-60158 (S.D. Fla.), AUSA Jaime Raich [redacted]

On June 30, 2010, Hugo Pena, HP Maritime Consultants, Inc., ("HP Maritime") Ronald Ramon, and Northon Eraso were charged in a superseding indictment for their involvement in the illegal discharge of oily bilge waste from the cargo vessel *Island Express I* and for oil record book ("ORB") falsifications. Coastal Maritime Shipping, LLC, was charged in a separate two-count information with two APPS violations for failing to maintain the ORB.

According to the charging documents Coastal Maritime Shipping, LLC, was the owner of the *Island Express I*, a 155-foot cargo freighter registered in Panama. Defendant Ramon was the ship's captain, Eraso was the chief engineer, and Pena was an employee of HP Maritime, a classification surveyor. Ramon, Eraso, HP Maritime, and Pena are alleged to have conspired to conceal that the ship was discharging oily bilge waste. (The oily water separator was inoperable.) They did this by falsifying the ORB, by installing pumps and hoses to discharge wastes directly overboard, and by falsely certifying only weeks before scheduled inspections that the ship's pollution prevention systems were adequate.

In addition to the conspiracy charge, Eraso and Ramon are named in 25 of the 28 counts with failing to note the overboard discharges in the ORB on specific dates between February 7 and May 3, 2010. Pena and HP Maritime are charged with an 18 U.S.C. § 1001 false statement and an APPS violation. Coastal Maritime is charged with APPS ORB violations for presentation of the falsified document during inspections of the vessel while docked at Port Laudania on February 7 and May 3, 2010.

Trial is scheduled to begin on September 20, 2010. This case was investigated by the Coast Guard and the Coast Guard Investigative Services.

Back to Top

United States v. Janay Brun et al., No. 4:10-mj-03511 (D. Ariz.), AUSA Ryan DeJoe [redacted]

On June 15, 2010, an information was filed charging Janay Brun with conspiring to snare a jaguar, in violation of the Endangered Species Act. Snares had been previously placed solely for the purpose of capturing and placing tracking collars on mountain lions and bears.

When it became known that a large jaguar also was seen in the area, Brun and others placed jaguar scat at various snare sites in an attempt to capture and trap this *Panthera Onca* or jaguar, an endangered species. Co-defendant Emil McCain ultimately captured the jaguar and was recently sentenced.

This case is being investigated by the Fish and Wildlife Service.

Jaguar's paw

Back to Top

Plea Agreements

United States v. William Ringler, No. 2:10-CR-00118 (S. D. Ohio), AUSA Michael Marous

On June 30, 2010, William Ringler pleaded guilty to a misdemeanor violation of the CWA stemming from his operation of a pig farm in central Ohio. Steamtown Farm, a concentrated animal feeding operation, houses 2,500 pigs and is located near the West Branch of the Alum Creek, a navigable water. The Alum Creek is further designated as a Warm Water Aquatic Life Habitat.

Located on the farm is a 26,000 gallon tank, which held liquid whey, a food supplement for the pigs. On or about June 19, 2007, in two separate discharges, a total of several thousand gallons of whey spilled onto the ground and into the drainage system at the farm. Ringler was aware that the whey would end up in the Creek, but made no attempt to prevent this from happening. As a result approximately 36,700 fish and other small aquatic animals were killed due to reduced oxygen levels in the water. The facility does not have a permit to discharge into the Creek.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency Office of Special Investigations, the Ohio Department of Natural Resources Division of Wildlife, and the Ohio Attorney General's Bureau of Criminal Identification and Investigation Environmental Enforcement Unit.

Back to Top

United States v. Stanships, Inc., No. 2:10-CR-00172 (E.D. La.), ECS Senior Trial Attorney Richard Udell

On June 23, 2010, Stanships, Inc., the Greek operator of the *M/V Doric Glory*, pleaded guilty to APPS and OPA violations stemming from the illegal discharge of oily bilge waste, bypassing the oily waste separator.

On May 14, 2010, during a Coast Guard inspection of the ship while it was docked in the Port of New Orleans, a whistleblower alerted officials to the illegal discharges. Additionally, the ship was discharging up to approximately 400 gallons a day of lubricating oil from a leaking stern tube while in U.S. waters.

This case was investigated by the Coast Guard.

Back to Top

United States v. Todd Davis et al., No. 3:10-CR-00030 (D. Nev.), AUSA Sue Fahami

On June 16, 2010, two men accused of shooting and killing five mustangs in Nevada last year pleaded guilty to a misdemeanor violation of the Wild Horses and Burros Protection Act. Todd Davis and Joshua Keathley admitted to shooting the horses last fall on government-owned rangeland near the California line about 150 miles northwest of Reno.

According to the court records, on or about November 28, 2009, Davis and Keathley drove to Northern Washoe County to look for locations to set traps. Davis, who was driving, stopped when he saw eight to ten wild horses. The two exited the vehicle and Keathley shot one horse with a rifle and

observed the horse fall to the ground. Keathley then handed the rifle to Davis who shot at the rest of the horses, killing a total of five wild, free-roaming horses. Prior to leaving the scene, Keathley removed approximately ten spent ammunition casings.

The two pleaded guilty to the charges as filed. There were no plea negotiations in this matter. Sentencing is scheduled for September 14, 2010.

This case was investigated by the Bureau of Land Management Office of Law Enforcement and Security, with assistance from the Lovelock Police Department, the Washoe County Sheriff's Office, the Washoe County Forensic Services Division, the Nevada Department of Wildlife, and the California Department of Fish and Game. The Humane Society and the State of Nevada Commission for the Preservation of Wild Horses also contributed to this investigation.

Back to Top

United States v. Christopher Mills et al., Nos. 5:09-CR-00215 - 216 (S.D.W.V.), AUSAs Perry McDaniel [redacted] and Eric Goes [redacted].

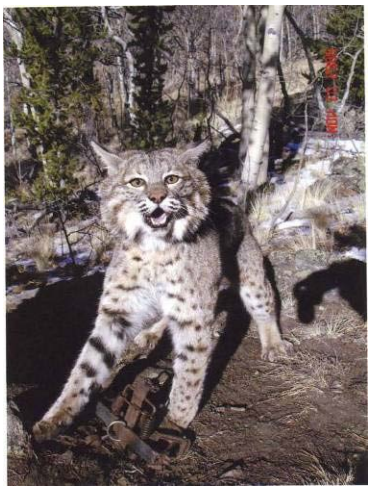
On June 4, 2010, Christopher Mills, the co-owner of an electroplating business, pleaded guilty to a RCRA storage violation. The other owner, Rodney Hoffman, already pleaded guilty to a similar charge. The two admitted to storing hazardous wastes, including solvents, heavy metals, and sulfuric and chromic acids, at the facility without a permit from October 2006 to February 21, 2007. As a result, the EPA has undertaken a Superfund cleanup of the site.

Hoffman has a previous conviction from 1999 for a Clean Water Act violation for improperly discharging waste from a prior electroplating business and was sentenced to serve an 11-month term of incarceration. Hoffman is scheduled to be sentenced on August 18, 2010, and Mills is to be sentenced on September 22, 2010.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division with assistance from the Federal Bureau of Investigation.

Back to Top

United States v. Jeffrey M. Bodnar et al., No. 1:09-CR-00441 (D. Colo.), ECS Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]



Bobcat caught in leghold trap

On June 1, 2010, a Colorado couple pleaded guilty to charges related to the illegal trapping and interstate sale of bobcats. Jeffrey M. Bodnar pleaded guilty to one felony count of conspiracy to violate the Lacey Act and one felony count of possession of a firearm by a felon. His wife, Veronica Anderson-Bodnar, pleaded guilty to one misdemeanor count of Lacey Act trafficking and one misdemeanor count of making false statements in violation of the Lacey Act.

In court documents Jeffrey Bodnar admitted to conspiring with his wife to unlawfully trap and kill bobcats without a license, using prohibited leghold traps in violation of Colorado law, and selling the bobcat pelts to fur buyers in Montana and Kansas. He also admitted to conspiring with his wife to submit false records to the Colorado Division of Wildlife in order to obtain tags for the pelts. With regard to the firearms charge, Bodnar, who was convicted of a state felony charge in 2000, admitted to possessing at least one firearm, although he may have had as many as seven. Veronica Anderson-Bodnar admitted to selling bobcat pelts to a

buyer from Kansas in March 2008, when she should have known that the bobcats were trapped without a license and caught using prohibited leghold traps. She also admitted to making and submitting false records to the Colorado Division of Wildlife in order to obtain tags for the pelts.

This case was investigated by the Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

Sentencings

United States v. John Morgan et al., No. 1:10-CR-00017 (W.D. Pa.), AUSA Marshall J. Piccinini [redacted]

On June 25, 2010, John Morgan and Michael Evans were sentenced after previously pleading guilty to violating the Safe Drinking Water Act. Morgan will complete a three-year term of probation to include eight months' home confinement. He also will pay a $4,000 fine and complete 80 hours of community service. Evans will complete a three-year term of probation to include 10 months' home confinement. Evans will pay a $5,000 fine and perform 100 hours of community service.

Evans was part owner and Morgan was a site supervisor for Swamp Angel Energy, LLC, a Kansas-based company engaged in oil and gas development in the Allegheny National Forest. As part of the oil drilling process, brine is produced and is required to be properly disposed of, generally through transportation to a waste water treatment plant or through injection into non-producing wells. Disposal into an injection well requires a permit to ensure the safety of underground drinking water sources.

From approximately April 2007 through January 2008, Evans and Morgan admitted to willfully causing more than 200,000 gallons of brine to be dumped into an oil production well located near the Allegheny National Forest, which was not permitted for underground injection.

This case was investigated by the Forest Service and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Larry R. Adkins, Jr., No. 2:10-CR-00022 (S.D. Ohio), AUSA Mike Marous [redacted]

On June 24, 2010, Larry R. Adkins, Jr., was sentenced to complete a three-year term of probation to include six months' home confinement and 200 hours of community service. Adkins also will pay $43,843 to the U.S. Forest Service in restitution for the fair market timber value of the trees he destroyed.

Adkins previously pleaded guilty to depredation of government property and theft of government property for cutting down 822 trees in the Wayne National Forest. In 2006, the owner of land adjacent to Wayne National Forest contracted with the defendant's logging company to have several logs removed from his property. The boundary between the private property and the Forest was clearly marked by a fence line. Additionally, approximately two years prior the land owner had arranged for a bulldozer to be driven around the edge of his property with the boundary line marked with red flagging ribbon, all of which were clearly

National Forest Boundary

visible. The investigation revealed that, despite being explicitly informed on a number of occasions as to the location of the Forest's boundary line, Adkins denied that this was the actual boundary and allowed others under his supervision to illegally remove hundreds of trees from this protected area. These trees were of mixed species including hardwood and softwood trees which were sold to three different mills for use as saw timber or pulpwood.

This case was investigated by the Forest Service.

Back to Top

United States v. Seng Her, No. 09-CR-00365 (D. Minn.), AUSA William Otteson [redacted].

On June 23, 2010, Seng Her was sentenced to serve three years' probation and complete 100 hours of community service during each of those years. The defendant previously pleaded guilty to a smuggling violation stemming from her smuggling elephant parts and dead birds into the United States from Southeast Asia.

Her was stopped by U.S. Customs officials at the Minneapolis-St. Paul International Airport in November 2007 after visiting Laos. Along with parts of an Asian elephant, an endangered species, the defendant also had in her possession several dead birds including yellow-vented flowerpeckers, tailorbirds, prinias and passerines, without the required documentation.

The defendant previously was warned in writing by the U.S. Fish and Wildlife Service in 2007 about importing undeclared wildlife into this country. She had been stopped in 2005 at the Twin Cities airport with pieces of elephant hide, birds, and other wildlife, including several threatened and endangered species, in her belongings.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Ivan and Gloria Chu, No. 10-CR-0003 (D.V.I.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Nelson Jones [redacted]

Black Coral

On June 23, 2010, Taiwanese nationals Ivan and Gloria Chu were sentenced to prison terms for their involvement in illegal shipments of internationally-protected black coral into the United States. Ivan Chu will serve 30 months' incarceration and pay a $12,500 fine. Gloria Chu will serve 20 months' incarceration and also will pay a $12,500 fine. The court further prohibited the Chus from shipping any coral or other wildlife products to the United States during the three-year period following their release from prison. These sentences are the longest terms of incarceration for illegal trade in coral to date.

The defendants previously pleaded guilty to nine counts, including conspiracy, false statements, and violations of both the Endangered Species Act and the Lacey Act. The Lacey Act makes it a felony to falsely label wildlife that is intended for international commerce. The Endangered Species Act is the U.S. domestic law that implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Each of the species of black coral is listed in Appendix II of CITES and is subject to strict trade regulations.

Black coral is one of the several types of precious corals that can be polished to a high sheen, worked into artistic sculptures and used in inlaid jewelry. The Chus admitted to running a business named Peng Chia Enterprise Co. Ltd. that supplied materials including black coral to customers outside of Taiwan for jewelry design and manufacture. At times prior to 2007, the Chus were issued CITES export permits by the Taiwanese government in order to ship black coral overseas. Since 2007, however, they were unable to obtain permits because they were unable to produce a legitimate certificate of origin.

Both Chus admitted that, in order to supply a company based in the Virgin Islands with black coral, they would falsely label shipments in order to conceal the coral from U.S. Customs and Border Protection officers. The conspiracy included travel to a warehouse in mainland China to choose coral from a Chinese supplier and the use of an intermediary to ship the black coral from Hong Kong to a company in St. Thomas. The defendants operated in this manner for at least two years prior to Customs' seizure of a shipment in August 2009. Peng Chia attempted to ship 10 boxes of black coral that were mislabeled as a type of plastics product. The shipment was flagged as suspicious leading to the subsequent investigation and arrest of the Chus. They admitted to sending approximately $194,000 worth of black coral to the company in St. Thomas over a two-year period.

This case was investigated by the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with support from Immigration and Customs Enforcement and Customs and Border Protection.

Back to Top

United States v. Kinder Morgan Port Manatee Terminal LLC, No. 8:10-CR-00076 (M.D. Fla.), AUSA Cherie Krigsman [redacted].

On June 22, 2010, Kinder Morgan Port Manatee Terminal LLC ("KMPMT") was sentenced to pay a $750,000 fine, to complete a two-year term of probation, and to make a $250,000 community service payment to the National Fish and Wildlife Fund. The company previously pleaded guilty to four violations of the Clean Air Act stemming from its baghouse dust emissions.

Evidence of disrepair at plant

KMPMT operates a dry bulk material handling and storage facility, which covers six acres and includes four warehouses. It receives and ships materials such as granular fertilizer products and cement clinker by railcar, truck, and ship. When these granular materials are loaded and unloaded improperly, they generate particulate matter, an air pollutant regulated by the Clean Air Act. Facilities are required to operate baghouse air pollutant control systems in order to control particulate emissions. These systems further require permits to ensure their proper operation.

Investigation revealed that, from in or about 2001 through March 2008, KMPMT's baghouse systems were in poor condition, and several were not fully operational during the times specified in various permits. In August 2006 and August 2007, the company's local managers and supervisors falsely stated in Florida DEP permit applications that KMPMT would operate and maintain its air pollution emissions and control equipment in accordance with regulations, knowing that the baghouses were not being operated and maintained properly. From October 2006 through March 2008, company

management failed to notify the FDEP that its baghouse air pollution control systems were out of compliance.

A parallel enforcement action brought against the defendant by state officials resulted in FDEP requiring the company to pay a $331,000 civil penalty. Corrective actions under the order include conducting compliance stack testing on the repaired baghouses, repairing the transfer towers and conveyor systems, developing an employee training program, and implementing a management tracking system to ensure future compliance through testing, record keeping and maintenance.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Florida Department of Environmental Protection.

Back to Top

United States v. Provident Energy Associates, LLC, No. 4:10-MJ-00019 (D. Mont.), ECS Senior Trial Attorney Bob Anderson [redacted].

Oily wastes discharged from tank

On June 10, 2010, Provident Energy Associates, LLC, ("Provident") was sentenced to complete an 18-month term of probation and will pay the maximum statutory fine of $15,000, which will be paid into the North American Wetlands Conservation Fund. The company also will make a $5,000 community service payment to the National Fish and Wildlife Foundation for the preservation of wetlands in Montana. Provident further will implement an environmental compliance plan.

The company pleaded guilty to an information charging a single violation of the Migratory Bird Treaty Act.

In September 2008, oil sludge began to leak from a long-existing hole in a storage tank at Provident's Two-Medicine Cut Bank Sand Unit located on the Blackfeet Indian Reservation. The leaking oil flowed about 50 feet across the ground and formed a 10 x 20-foot pond. Over the course of several days, approximately 18 migratory birds, including an owl, mourning dove and vesper sparrows, came into contact with the oil and died as the result of oil ingestion and coating. An employee of the company reported the spill and bird deaths to his supervisors, who notified the oil field regulating agency, which in turn notified the Fish and Wildlife Service. The employee informed investigators that the tank had leaked oil from the hole several times in the past, leading to other bird deaths, but could provide no explanation as to why it had not been repaired.

This case was investigated by the Fish and Wildlife Service, the Bureau of Land Management, and Blackfeet Tribal authorities.

Back to Top

United States v. Paul Mancuso et al., Nos. 5:08-CR-00548 and 00611 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted].

On June 9, 2010, Paul, Steven and Lester Mancuso were sentenced to complete lengthy terms of incarceration. Paul Mancuso will serve 78 months in prison followed by three years' supervised release, and will pay a $20,000 fine. Steven Mancuso was sentenced to serve 44 months in prison, followed by three years' supervised release. Their father Lester Mancuso was sentenced to serve 36 months in prison followed by three years' supervised release.

Warning label near dumped asbestos

Brothers Paul and Steven were convicted by a jury last October on all counts, with Lester pleading guilty on the eve of trial to conspiracy to defraud the United States, to violate the Clean Air Act, to violate CERCLA, and to commit mail fraud. Paul and Steven were convicted of the conspiracy and substantive CAA and CERCLA violations for the illegal removal of asbestos from numerous locations throughout central and upstate New York. Another brother, Ronald, remains scheduled to be sentenced on July 28, 2010.

Paul Mancuso previously was convicted of CAA violations related to illegal asbestos removal and disposal in 2003, and he was convicted in 2004 of insurance fraud also related to his asbestos business. As a result of those prior convictions, he was prohibited from either directly or indirectly engaging in any asbestos abatement activities or associating with anyone who was violating any laws. Evidence from the recent case proved that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities that left a variety of businesses and homes contaminated with asbestos. On multiple occasions Paul also dumped asbestos from his removal jobs on roadsides and in the woods.

Attorney Steven Mancuso aided his family in its illegal asbestos enterprises by preparing false and fraudulent documents to make it appear that their activities were legal and that they were entitled to payment for their work. Paul Mancuso and his family operated their illegal asbestos business from the offices of Steven Mancuso's law firm.

Ronald Mancuso previously pleaded guilty to a conspiracy to violate CERCLA. He admitted to taking part in the dumping of asbestos in the woods in September and October 2005.

This case was investigated by the Environmental Protection Agency.

Back to Top

United States v. Selective Structures, LLC., No. 3:10-CR-00061 (E.D. Tenn.), ECS Trial Attorney Jim Nelson [redacted] and AUSA Matthew Morris [redacted]

Sawdust used to illegally mix with waste

On June 8, 2010, Selective Structures L.L.C. pleaded guilty to and was sentenced for RCRA violations for illegally storing hazardous waste at its facility in Athens, Tennessee. The company was sentenced to pay an $80,000 fine and will pay an additional $179,174 in restitution to the Tennessee Department of Environment and Conservation ("TDEC"). The company also will complete a 37-month term of probation and is required to implement an environmental compliance plan.

Selective Structures is in the business of building support structures for roadside signs and billboards. During the course of its manufacturing process, hazardous and ignitable waste was generated in the form of spent solvents including Xylene, which was mixed with other paint waste.

After the company accumulated more than 60 55-gallon drums of spent solvent on the property, its employees attempted to dispose of the hazardous waste by pouring drums of it into a large pile of sawdust and mixing it with pitchforks. After TDEC conducted an inspection and uncovered this illegal activity it began to take the necessary steps for the proper removal of the hazardous waste.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Sony Dong et al., No. 2:09-CR-00439 (C.D. Calif.), AUSA Mark Williams [redacted]

Deceased Hwa mei

On June 7, 2010, Sony Dong and Duc Le each were sentenced for their roles in smuggling Asian song birds into this country from Vietnam. Dong will serve four months' incarceration and will pay $4,000 in restitution to federal authorities who continue to care for 36 birds that were in his possession. Co-defendant Duc Le was sentenced to serve six months' incarceration and will pay approximately $25,000 in restitution for costs incurred for the testing, quarantine, and care of approximately 50 birds seized from his residence.

Dong was arrested at Los Angeles International Airport after an inspector spotted bird feathers and droppings on his socks and tail feathers protruding from under his pants. He had devised an elaborate, custom-made pair of leggings to conceal the birds during his flight from Vietnam to Los Angeles.

After his arrest, Dong was linked to co-defendant Le, who was arrested and charged after investigators searched his home and found more than 50 songbirds in an outdoor aviary. Both were

initially charged with conspiracy, false statement, and smuggling violations in an eight-count indictment. Dong pleaded guilty to a smuggling violation and Le pleaded guilty to the conspiracy count.

Fish and Wildlife inspectors flagged Dong for inspection after he had abandoned a suitcase containing 18 birds at the Los Angeles airport in December 2009. Five of the birds died in transit. Dong travelled back to Vietnam to pick up more birds and returned a month later with three red-whiskered bul-buls, four magpie robins, and six shama thrushes under his pants. The birds were quarantined and the bul-buls are listed as an injurious species, which means they pose a threat to people, native wildlife or the ecosystem and could be avian flu carriers. The songbirds sell for $10 to $30 in Vietnam and are sold to collectors in the United States for about $400. Asian songbirds also are imported for their use in fighting competitions, drawing people who attend to gamble on the birds.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. KEN-DEC, Inc., et al., No. 1:10-CR-0003 (W.D. Ky.), AUSA Randy Ream [redacted]

Sink and rubber hose used for illegal discharges

On June 7, 2010, KEN-DEC, Inc., an electroplater formerly doing business in Horse Cave, Kentucky, and manager David Becker each were sentenced after pleading guilty to a felony CWA and a RCRA disposal violation. The company must pay a $700,000 fine and Becker will serve 18 months' incarceration, followed by one year of supervised release. KEN-DEC's parent firm, Ohio Decorative Products of Spencerville, Ohio, already paid approximately $95,000 in cleanup costs to Caveland Environmental Systems, a POTW, in Cave City, Kentucky.

The execution of a search warrant in January 2009 and subsequent investigation revealed that officials at the Horse Cave sewer plant knew in 1985 that KEN-DEC was dumping excessive concentrations of electroplating wastes, including cyanide and hydrochloric acid, into the City's sewer system. In 1989, KEN-DEC agreed to construct a "closed loop" system at the plant, which solved the problem for several years. However, POTW officials subsequently began to again notice high concentrations of acid and other chemicals which caused damage to their plant.

Becker acknowledged during the execution of the search warrant that production problems on the plating line caused the company to introduce fresh water from the city system into their closed loop requiring the disposal of excess levels of wastewater. These electroplating wastes were disposed of through a rubber hose, which agents discovered to be hooked to a tank that led to a sink near the men's bathroom. Other hazardous wastes (including cyanide plating solutions) were disposed of onto the ground through another hose that ran through a hole punched in a wall at the back of the plant.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, with assistance from the Kentucky Department of Environmental Protection.

Back to Top

United States v. Cooperative Success Maritime SA, No. 4:10-CR-00035 (E.D.N.C.), ECS Trial Attorney Shennie Patel [redacted] and AUSA Banu Rangarajan [redacted]

"Discharge of Oil Prohibited"

On June 7, 2010, Cooperative Success Maritime S.A. ("CSM"), the operator of the *M/T Chem Faros*, a 21,145 gross-ton ocean-going cargo ship, pleaded guilty to, and was sentenced for, an APPS violation and for making false statements. The company will pay a $700,000 fine and will make a $150,000 community service payment toward the National Fish and Wildlife Fund. CSM also will complete a five-year term of probation and must implement an environmental compliance plan. The company is privately incorporated in Panama and headquartered in Athens, Greece.

On March 29, 2010, a Coast Guard port state control inspection team boarded the *Chem Faros* in Morehead City, North Carolina. While conducting the inspection, a crewmember approached Coast Guard inspectors and handed them a note stating that the ship had illegally discharged oil-contaminated waste overboard through the use of a "magic pipe." Other crew members, including the chief and second engineers, corroborated the allegations of improper waste discharges. The chief engineer, Vaja Sikharulidze, previously pleaded guilty to an APPS violation for his involvement in these illegal overboard discharges. Sikharulidze further acknowledged making false entries in the oil record book to hide the true amount of oil-contaminated bilge waste that was stored in a specific tank aboard the ship. He admitted that he was continuing the practice of the prior chief engineer of making false entries for that particular tank.

This case was investigated by the Coast Guard Investigative Service and the Environmental Protection Agency Criminal Investigation Division, with assistance from the Federal Bureau of Investigation's Computer Forensic Team.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Shane Bertucci et al., Nos. 8:09-CR-00084, 117, and 121 (D. Neb.), AUSA Sandra Denton [redacted]

Hawks

On June 3, 2010, Shane Bertucci was sentenced after being convicted by a jury this past February on two counts of unlawfully killing eagles and one count of unlawfully selling red tail hawk feathers. Bertucci was sentenced to serve five months' imprisonment and five months' home confinement, followed by a one-year term of supervised release. The defendant also will complete 50 hours of community service and will be jointly and severally liable for $8,450 in restitution to be paid to the Raptor and Recovery Association of Nebraska.

On a number of occasions in 2006, wildlife officials received reports of several eagle carcasses found alongside the Missouri River near Macy, Nebraska. During the course of the investigation agents received information that Bertucci may have been involved in shooting the eagles. The defendant was interviewed and admitted to killing three eagles and five hawks. He also admitted to selling red-tailed hawk feathers for $100 and that he still possessed feathers from some of the birds that he had killed. All of the feathers that Bertucci turned over to law enforcement were recovered from locations other than Bertucci's home.

Co-defendant Quentin Dick previously pleaded guilty to a single Bald and Golden Eagle Protection Act ("BGEPA") violation and was sentenced to complete a three-year term of probation and must pay a $1,000 fine. Theodore McCauley previously was sentenced to pay a $250 fine after pleading guilty to a single BGEPA violation. Bertucci's brother Lamar previously was sentenced in a separate case to serve a year and a day of incarceration, after shooting and selling eagles and their parts to other Native Americans.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Jesse Marchus, No. 1:09-CR-00054 (D.N.D.), AUSA David Hagler [redacted]

On June 2, 2010, Jesse Marchus was sentenced after being convicted by a jury in February of this year to possession of a firearm and ammunition by a convicted felon and to the unlawful taking of a bald eagle in violation of the BGEPA. Marchus was sentenced to serve eight years and four months' incarceration followed by three years' supervised release for the firearms conviction. He was sentenced

to serve one year incarceration for the taking of the bald eagle (to be served concurrently), followed by one year of supervised release.

In March 2009, wildlife officers received information that Marchus shot a bald eagle in northern Burleigh County, near the Missouri River. An investigation led to the execution of a search warrant at a cabin believed to be Marchus' residence. During the search, officials seized nine firearms, more than 1,000 rounds of ammunition, and a pair of bald eagle feet. Marchus had previous burglary and drug convictions from 2003 and a felon in possession of a firearm conviction from 2006.

This case was investigated by the Fish and Wildlife Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Federal Bureau of Investigation; the North Dakota Game and Fish Department; the North Dakota Bureau of Criminal Investigation; and the Burleigh County Sheriff's Office.

Back to Top

United States v. Peter Escudero et al., No. 2:10-CR-00013 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Roger Yang [redacted].

On June 1, 2010, Peter Escudero was sentenced to pay a $2,000 fine and will complete a three-year term of probation after pleading guilty to a single Clean Air Act false statement count.

Escudero was indicted in January of 2010 for engaging in a practice known as “clean scanning” vehicles. The scheme involves using vehicles the testers know will pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number (“VIN”) for a vehicle that will not pass. The testers did not realize that the computer generates an electronic VIN from the car actually tested which is easily compared with the real vehicle’s VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. Court documents state that Escudero performed approximately 373 false emissions tests in 2007 and 2008. Seven other defendants currently are scheduled for trial in Las Vegas on similar charges and was recently arrested after he was recognized as a fugitive on EPA’s website.

These cases were investigated by the Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

Back to Top

United States v. Dale Satran, No. 1:10-CR-00021 (D. Mont.), AUSA Mark Smith [redacted] and ECS Senior Trial Attorney Bob Anderson [redacted].

On May 27, 2010, Dale Satran was sentenced to pay a $5,000 fine and will complete a one-year term of probation for shooting a golden eagle in March 2006. After pleading guilty to a violation of the Bald and Golden Eagle Protection Act, Satran actually told the court that he mistook the eagle for a porcupine when he shot it. The defendant also will be prohibited from hunting or fishing, or accompanying anyone hunting or fishing, while on probation.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Luke Brugnara et al., No. 3:08-CR-00236 (N.D. Calif.), AUSAs Maureen Bessette [redacted] and Thomas Newman [redacted]

On May 26, 2010, Luke Brugnara was sentenced to serve 15 months' incarceration, followed by one year of supervised release, to run concurrently with a sentence he currently is serving for a separate tax fraud case.

Brugnara previously pleaded guilty to a six-count indictment that charged four counts of "taking" steelhead trout in violation of the Endangered Species Act and two counts of making a false statement during the course of the investigation. Charges against the Brugnara Corporation were dismissed as a condition of the plea agreement.

According to court documents, Brugnara intentionally blocked the flow of Little Arthur Creek, an important watershed for steelhead, through his private dam on property purchased by his corporation in 2001 in Gilroy, California. Steelhead are known to migrate upstream of the dam on this property, and the population of steelhead in the Little Arthur Creek, running through the defendant's property, is listed as a threatened species. One of the reasons for this decline in steelhead populations is that their access to historic spawning and rearing areas upstream of dams has been blocked.

From approximately January 2007 through April 2007, the defendant closed off the portal in his dam that had allowed the steelhead to migrate upstream. State and federal investigators located and observed numerous trapped adults downstream of the dam that were unable to migrate upstream to suitable spawning habitat. A federal fisheries biologist determined the trapped adult steelhead were of paramount importance to the survival of the species due to their low number found in the Pajaro River watershed and recommended that the adults be rescued and moved upstream. When the rescue team arrived to move the steelhead upstream, investigators found that they had disappeared, but there remained significant evidence of recent poaching and trapping activities.

During the investigation Brugnara made false statements to local law enforcement officers, stating that he had not taken the fish that were caught in his dam and that he had not used the type of fishing lure that was capable of catching steelhead trout.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the California Department of Fish and Game.

Back to Top

United States v. Emil McCain, No. 4:10-CR-01036(D. Ariz.), AUSA Ryan P. DeJoe [redacted]

On May 14, 2010, Emil McCain pleaded guilty to, and was sentenced for, an Endangered Species Act violation for the unlawful take of a jaguar. McCain admitted to placing jaguar scat and directing another person to place jaguar scat at snare sites that were authorized to snare only mountain lions and bears in the Atascosa Mountains near Ruby, Arizona. McCain's attempt to lure the jaguar into a snare was successful; however, he did not have legal authorization to do so.

The defendant was sentenced to serve five years' probation with the condition that he

Captured Jaguar known as "Macho B"

is not permitted to be employed or in any way involved in any large cat or large carnivore project. He also must pay a $1,000 fine. Co-defendant Janay Brun was recently charged for assisting McCain with trapping the jaguar.

The animal ultimately was euthanized after expert veterinarians at the Phoenix Zoo determined through blood tests and physical exam that the cat was in severe and unrecoverable kidney failure. Acting on the veterinarians' recommendation, the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department decided to euthanize him rather than rerelease him to the wild, where his debilitated condition would likely cause prolonged suffering before death.

This case was investigated by the Fish and Wildlife Service.

Back to Top

Other Litigation Events

United States v. Joseph Dematteo et al., No. 2:10-CR-00004 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Roger Yang.


WANTED

by the

U.S. Environmental Protection Agency

CRIMINAL INVESTIGATION DIVISION

Name:	Joseph DeMatteo
Alias:	Joe
Sex:	Male
Race:	White
Date of Birth:	09/18/1957
Place of Birth:	Pennsylvania
Height:	5'10"
Weight:	205
Eyes:	Brown
Hair:	Brown
Scars/Tattoos:	
FBI #:	755087P8
NIC #:	71.01CS5W55999809998
Last Known Address:	Las Vegas, Nevada

Case Summary:

- DeMatteo was charged in the District of Nevada-Las Vegas
- He allegedly submitted false statements to the State of Nevada in violation of the Clean Air Act.
- Alleged violations include:
  - Falsifying Emissions Data
- DeMatteo currently is a fugitive last known to reside in the Las Vegas, Nevada area.

Anyone with information regarding this fugitive should contact the U.S. EPA, Criminal Investigation Div San Francisco, California Office at: 1-415-947-8713 or complete the form located at: http://www.epa.gov/compliance/criminal/fugitives/report-location-form.html

U.S. EPA/CID Wanted Poster April 30, 2010 www.epa.gov/fugitives

On June 9, 2010, Joseph Dematteo, the lone fugitive in this case involving 10 defendants, was captured in Los Vegas following a tip from a person who saw the EPA's fugitive notice.

Dematteo was indicted in January of 2010 for engaging in a practice known as "clean scanning" vehicles. The scheme involves using vehicles the testers know will pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number for a vehicle that will not pass. The testers did not realize that the computer generates an electronic VIN from the car actually tested that is easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. The United States Environmental Protection Agency requires, pursuant to the Clean Air Act, that the State of Nevada conduct vehicle emissions testing in certain areas because the areas exceed national standards for carbon monoxide and ozone. Las Vegas is currently required to perform this emissions testing.

Back to Top

United States v. Wayne County Airport Authority, No. 2:06-CR-20300 (E.D. Mich.), ECS Assistant Chief Kris Dighe [redacted] and ECS Senior Counsel Jim Morgulec [redacted]

On June 4, 2010, the district court granted a joint motion of the government and the Wayne County Airport Authority (Authority), to revoke its probation on the grounds that the Authority had failed to complete an $8,000,000 environmental project. The project (the construction of a force main connecting its retention ponds to the Detroit Water and Sewerage Department's sanitary sewer) was to have been completed during its four-year term of probation. The failure to complete the project was due primarily to circumstances beyond the control of the Authority, largely related to the acquisition of

easement rights to bury sanitary sewer pipes. Under the new three-year term of probation, the Authority is expected to complete the forced main project within that time.

The Authority, which operates the Detroit Wayne County Metropolitan Airport, pleaded guilty in 2006 to a misdemeanor violation of the Clean Water Act and was sentenced to pay a $75,000 fine and to complete a four-year term of probation. It pleaded guilty to a negligent failure to report a discharge of turbid water in 2001 into the Frank and Poet Drain, a waterway that leads to the Detroit River, in violation of the Airport's discharge permit. Two days after the event, the discharge was discovered during the course of an investigation of a fish-kill, which was observed near the mouth of the waterway, as it enters the Detroit River.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the Michigan Department of Environmental Quality Office of Criminal Investigation.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

August 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

- **United States v. Lewis, ___F.3d___, 2010 WL 2814314 (9th Cir., July 20, 2010).**
- **United States v. Howard William Ledford, 2010 WL 2994044 (4th Cir. July 26, 2010).**

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Ariz.	**United States v. Daniel Arnot et al.** [redacted] **United States v. Arthur Batala et al.**	***HCFC-22 Release/* CAA** [redacted] ***Eagle Possession/* MBTA**
[redacted]	[redacted]	[redacted]
S.D. Fla.	**United States v. Pescanova Inc.** **United States v. Kelvin Soto-Acevedo**	***Seafood Importer/* Lacey Act** ***Turtle and Tarantula Smuggling/* Lacy Act**
D. Md.	**United States v. Irika Shipping S.A., et al.** **United States v. Pacific-Gulf Marine**	***Vessel/* APPS, Obstruction (Multi-District)** ***Vessel/* Probation Violation**
N.D. Miss.	**United States v. Thomas Mitchell Pitts**	***Pesticide Misuse/* FIFRA**
D.N.J.	**United States v. Thomas George**	***Seafood Importer/* Entry of Goods by False Statement, Introduction of Misbranded Food**
E.D.N.Y.	**United States v. Chee Thye Chaw** **United States v. Ionia Management, S.A.**	***Asian Arowana Fish/* Smuggling** ***Vessel/* Probation Violation**
N.D.N.Y.	**United States v. Ronald Mancuso**	***Asbestos Dumping/* CAA, Conspiracy**
W.D.N.Y.	**United States v. Tonawanda Coke Corporation**	***Coke Facility/* RCRA, CAA**
W.D.N.C.	**United States v. Chiu Hung Lo**	***Ginseng Purchase/* Lacey Act**
[redacted]	[redacted]	[redacted]
S.D. Texas	**United States v Texas Oil and Gathering et al.**	***Used Oil Handler/* RCRA, Conspiracy**
E.D. Wash.	**United States v. William Wahsise et al.**	***Eagle Deaths/* BGEPA, MBTA, Lacey Act**

Additional Quick Links:

Significant Environmental Decisions

Fourth Circuit

United States v. Howard William Ledford, 2010 WL 2994044 (4th Cir. July 26, 2010), ECS Trial Attorney Shennie Patel [redacted] and ENRD Appellate Attorney Robert Lundman ([redacted]

On July 26, 2010, the Fourth Circuit issued an unpublished decision affirming Ledford's conviction and one year sentence for selling and transporting wild ginseng in violation of the Lacey Act. The Court held that Ledford knowingly and voluntarily waived the right to appeal the sentence in his plea agreement, and his sentencing arguments fall within the scope of the waiver. The Court rejected his claim of ineffective assistance of counsel in this direct appeal because the record does not conclusively establish that Ledford's trial counsel was ineffective. The Court noted that Ledford may bring his ineffective assistance claim in a 28 U.S.C. §2255 motion.

Ledford was sentenced in January of this year to serve a one-year term of incarceration. He previously pleaded guilty to two Lacey Act violations for the illegal purchase of wild ginseng over a two-year period. From 2003 through 2005, the Fish and Wildlife Service conducted an undercover operation to identify the illegal interstate and foreign sales/purchases of ginseng. Ginseng has declined from historic levels and continues to be under threat from overexploitation because demand and price for its roots remain high. Wild ginseng generally does not reproduce until it is eight years old. Some varieties of ginseng root can sell for as much as $1,000 a pound in the Asian market, where it is revered for its supposed medicinal properties. Individuals who transport or buy and sell ginseng in interstate commerce must obtain the required export certificates and permits. Ledford unlawfully purchased wild ginseng worth approximately $109,000.

Back to Top

Ninth Circuit

United States v. Lewis, ___F.3d___, 2010 WL 2814314 (9th Cir. July 20, 2010).

On July 20, 2010, the Ninth Circuit affirmed the district court's dismissal of the original indictment without prejudice for an alleged Speedy Trial Act violation. There were two earlier versions of this appeal, with the result that the circuit had found a Speedy Trial Act violation and the district court was to consider whether to dismiss the indictment with prejudice or without prejudice. This time, the district court first ruled that the time period that the circuit thought caused the violation was actually excludable, and the government argued as much to the panel, which held that its earlier determination was law of the case. However, the panel deferred to the district court's alternative determination that the dismissal for the violation should be without prejudice, balancing the three factors found in 18 U.S.C. §3162(a)(2): the seriousness of the offense, the facts leading to dismissal, and the impact of dismissal on the administration of justice. The court concluded that the defendant's felonies involving the importation of large numbers of protected reptiles were in fact "serious" offenses.

Back to Top

Informations and Indictments

United States v. Tonawanda Coke Corporation, No. 1:10-CR-00219 (W.D.N.Y.), ECS Senior Trial Attorney Kevin Cassidy [redacted], AUSA Aaron Mango [redacted] and ECS Trial Attorney Jeremy Peterson [redacted].

On July 29, 2010, a grand jury returned a 20-count indictment against Tonawanda Coke Corporation ("TCC") and its environmental manager, Mark Kamholz. The indictment charges both defendants with 15 Clean Air Act counts for violating the plant's Title V permit, four counts of violating RCRA, and one count of obstructing justice.

TCC is a merchant by-product coke facility located in Tonawanda, New York. Coke is used in the steel mill and foundry industries as an additive in the steel-making process. The Title V violations relate to TCC's operation of an unpermitted coke oven gas emission source for at least a 20-year period. Coke oven gas contains a number of chemical compounds, including benzene. Prior to an EPA inspection in April 2009, defendant Kamholz instructed another TCC employee to conceal the operation of the unpermitted coke oven gas emission source from EPA inspectors, which forms the basis of the obstruction charge. TCC also operated its quench towers without baffles in violation of its Title V permit. Baffles are required to reduce the amount of particulate matter that escapes into the atmosphere during quenching of coke. The RCRA charges involve the long-term practice of unpermitted disposal of coal tar sludge (K087 listed waste) and the disposal of a hazardous waste located in abandoned rail cars on the facility's site.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the New York State Department of Conservation.

Back to Top

United States v. Pescanova Inc., No. 1:10-CR-20526 (S.D. Fla.), AUSA Tom Watts FitzGerald [redacted]

On July 9, 2010, a one-count indictment was returned charging Pescanova, Inc., a seafood importer, with a Lacey Act violation stemming from the attempted sale of illegally caught Patagonian toothfish, also known as Chilean seabass, a slow growing deep sea species of fish. The Antarctic Marine Living Resources Convention Act protects the toothfish by requiring specific documentation when harvesting the fish. The company was charged with illegally importing the fish and then attempting to sell it in December 2009.

This case was investigated by the National Oceanic and Atmospheric Administration, Immigration and Customs Enforcement, and Customs and Border Protection.

Back to Top

United States v. Offshore Service Vessels, LLC, No. 2:10-CR-00183 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] **and AUSA Dee Taylor** [redacted]

R/V Gould

On July 2, 2010, Offshore Service Vessels, LLC ("OSV") was charged in an information with violations stemming from the illegal overboard discharge of oily bilge water from the *R/V Gould* while on the high seas.

According to charging documents, the *R/V Gould* was an American-flagged ice-breaking research vessel owned and operated by OSV. The vessel was under contract with the National Science Foundation. From July, 2005 through September, 2005, oily waste water was stored in the vessel's bilge water holding tank, which could hold approximately 12,000 gallons. When the tank reached its capacity, crew members intermittently discharged the oily wastewater from the bilge tank directly overboard.

This case was investigated by the Coast Guard Investigative Service.

Back to Top

[redacted]

Back to Top

United States v. Clinton Dean Pavelich, No. 2:10-CR-00841 (D. Ariz.), AUSA Jennifer Levinson [redacted]

On June 22, 2010, Clinton Dean Pavelich was charged in a four-count indictment with two Lacey Act violations and two counts of theft of government property. The indictment alleges that Pavelich stole six Saguaro Cacti from public lands managed by the Department of the Interior with the intent to sell the Saguaros. Trial is scheduled for September 7, 2010.

This case was investigated by the Bureau of Land Management.

Back to Top

Saguaro Cacti

United States v. Daniel Arnot et al., No. 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones [redacted]

On June 15, 2010, a 13-count indictment was returned charging Daniel Arnot, Sabrina Westbrooks, Corey Beard, and Justin Joyner with conspiracy to release ozone-depleting substances into the environment, along with 12 substantive Clean Air Act violations.

According to the indictment, beginning in early August 2008, the defendants targeted businesses with commercial-sized air conditioners in several counties. Arnot, working with his wife Sabrina or with his other accomplices, dismantled the air conditioning units so that they could steal the copper and aluminum parts. In order to take the copper parts they had to cut through a copper coil, which released hydrochlorofluorocarbon 22 (also known as HCFC-22) into the atmosphere. After dismantling the air conditioners, the defendants sold the copper and aluminum parts to scrap metal recycling businesses. The indictment alleges that the defendants' crimes involved the dismantling of approximately 35 air conditioning units from 14 locations.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

Plea Agreements

United States v. William Wahsise, et al., 2:09-CR-02034 (E.D. Wash.), ECS Senior Trial Attorney Elinor Colbourn [redacted] **AUSAs Stacie Beckerman** [redacted] **and Timothy Ohms** [redacted]**.**

On July 12, 2010, Alfred Hawk and William Wahsise pleaded guilty to charges stemming from their involvement in the illegal killing of and trade in bald and golden eagles and other protected birds. Specifically, they each pleaded guilty to a conspiracy and a Bald and Golden Eagle Protection Act violation. Hawk additionally pleaded guilty to a Migratory Bird Treaty Act and a Lacey Act violation. Sentencing is scheduled for October 13, 2010.

According to court documents, an undercover operation was initiated whereby agents interacted with individuals who were in the business of selling protected migratory bird parts. One single covert purchase from Hawk yielded a bald eagle tail, two golden eagle tails, one set of golden eagle wings, four red-shafted northern flicker tails, four rough-legged hawk tails, and two northern harrier tails for a total of $3,000. According to the documents, Hawk and Wahsise hunted and killed three bald eagles the morning of the sale by sitting near some wild horses which had been killed to bait and attract eagles.

Co-defendant Reginald Akeen was previously sentenced in the District of Oregon to serve 30 days' home confinement as a condition of five years' probation. Akeen also will complete 250 hours of community service at a wildlife organization and will pay $4,800 in restitution to the United States Fish and Wildlife Service North American Wetlands Conservation Fund. The defendant previously pleaded guilty to a MBTA violation for selling illegally-made migratory bird products, including a fan made of juvenile golden eagle feathers. Two additional defendants remain scheduled for trial to begin on September 13, 2010.

This case was investigated by the Fish and Wildlife Service with the help and cooperation of state, federal, and tribal law enforcement agencies.

Back to Top

[redacted]

Back to Top

United States v. Irika Shipping S.A., et al., No. 1:10-CR-00248 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Michael Cunningham [redacted]

On July 8, 2010, Irika Shipping S.A., a ship management corporation registered in Panama and doing business in Greece, pleaded guilty in the District of Maryland to obstruction of justice and APPS violations stemming from the concealment of deliberate vessel pollution from the *M/V Iorana*, a Greek flagged cargo ship that made port calls in Baltimore, Tacoma, and New Orleans.

According to plea agreement arising out of charges brought in the District of Maryland, Western District of Washington, and Eastern District of Louisiana, Irika Shipping has agreed to pay $4 million in penalties, to be placed on probation for a maximum five-year period, and be subject to the terms of an Enhanced Environmental Compliance Program. The proposed $4 million penalty includes a $3 million criminal fine and $1 million in organizational community service payments that will fund various marine environmental projects.

According to court documents, the investigation into the *M/V Iorana* was launched in January 2010 after a crew member passed a note to inspectors upon the ship's arrival in Baltimore alleging that the ship's chief engineer had directed the dumping of waste oil overboard through a bypass hose that circumvented pollution prevention equipment. The evidence provided included numerous photographs taken by a crew member using his cell phone.

Significantly, Irika Shipping also was the operator of the *M/V Irika*, a vessel that was the subject of a prior prosecution in the Western District of Washington in 2007. Irika Maritime, S.A., (the shell owner) and Irika Shipping failed to implement an environmental compliance program as they were ordered to do in the earlier case. Additionally, Irika Shipping retained the same chief engineer, who was convicted in the prior case and who continued to commit similar violations in the current case.

The guilty plea encompasses violations in three districts. The company pleaded guilty to six counts in Baltimore for an APPS oil record book violation, an APPS garbage book violation, and obstruction of justice. The company also pleaded guilty to one count of obstruction for the violations in both the Western District of Washington and the Eastern District of Louisiana. Chief engineer Triantafyllos Marmaras previously pleaded guilty to obstruction and a false statement violation.

Among the facts that Irika Shipping has admitted to is that 23 tons of sludge were deliberately discharged while en route between Gibraltar and Baltimore; that plastic bags filled with the oil-soaked rags used to clean out the tank holding the sludge were dumped just prior to arrival in Baltimore; that, in anticipation of the Baltimore inspection, the crew re-painted the pipes and flanges to conceal the wrench marks cause by the bypassing; and that, while in port in Baltimore, during and after the Coast Guard inspection, the master and chief engineer instructed crew members to lie to the Coast Guard.

This was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Chee Thye Chaw, No. 10-CR-00039 (E.D.N.Y.), AUSA Vamshi Reddy [redacted]

On June 23, 2010, Chee Thye Chaw pleaded guilty to smuggling 20 Asian Arowana fish (*Scleropages formosus*) into the United States from Asia. Sixteen of these fish were concealed inside the defendant's checked luggage, and another four were found in his home when he was placed under arrest. The black market value of these 20 fish is estimated to be over $100,000. The Asian Bonytongue fish, which is commonly referred to as the Asian Arowana fish, are highly desired by the Asian community due to the belief that the fish will bring good fortune to the owner. The species also is listed in Appendix I of the Convention on International Trade in Endangered Species of Flora and Fauna (CITES).

This case was investigated by the Fish and Wildlife Service.

Back to Top

Sentencings

United States v. Ronald Mancuso, No. 5:08-CR-00548 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted]

Pile of dumped asbestos (foreground)

On July 29, 2010, Ronald Mancuso was sentenced to complete a three-year term of probation after previously pleading guilty to conspiring to illegally dump asbestos.

Ronald Mancuso's brothers, Paul and Steven, and father, Lester, were convicted and sentenced to serve significant terms of incarceration earlier this month. Ronald Mancuso testified against his brothers and father at trial.

As a consequence of a prior asbestos-related conviction, Paul Mancuso was forbidden from affiliating himself with the asbestos-removal industry in 2003. Ronald and Steven Mancuso assisted Paul Mancuso in continuing to operate illegal asbestos companies. Specifically, Ronald Mancuso and the other co-conspirators operated various "shell companies" to conceal Paul Mancuso's involvement in the industry. On some of these projects, asbestos was removed in violation of EPA and OSHA regulations and was then illegally dumped on landowners' properties in Poland, New York.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Thomas Mitchell Pitts, No. 4:10-mj-01014 (N.D. Miss.), AUSA Robert Mims [redacted]

On June 28, 2010, Thomas Mitchell Pitts pleaded guilty to a one-count information charging him with a FIFRA violation for misuse of a restricted use pesticide. The court sentenced Pitts to pay a $5,000 fine, complete a six-month term of probation, and pay $4,625 in restitution ($4,000 to the victims and $625 in laboratory costs).

In May 2010, the Environmental Protection Agency received a complaint that had been forwarded from the Fish and Wildlife Service. The complaint alleged that someone had baited fields with hotdogs that had been tainted with Temik (Aldicarb), a highly toxic restricted use pesticide regulated under FIFRA. The complaint further alleged that a number of animals

Poisoned animal

had been killed by the pesticide, and several neighborhood dogs were missing.

Investigators interviewed the complainant, who identified approximately 85 poisoned bait locations, as well as multiple dead animals that may have died due to poisoning, including at least three dogs, two coyotes, two skunks, six opossums, and two snakes. Also found were hotdogs and chicken that had been laced with a black granular material that appeared to have the characteristics of Temik.

The defendant met with investigators while they were touring the bait locations. Pitts, a farmer who leases the land where the bait stations were located, admitted that he was responsible for setting out the bait that contained Temik. He further stated that he was attempting to eliminate potential predators because he wanted to introduce 3,000 mallard ducks into the bayou for commercial hunting. Pitts signed a handwritten confession admitting to the poisoning and to destroying evidence to prevent its seizure.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, with assistance from the Fish and Wildlife Service, the Mississippi Bureau of Plant Industry, and the Mississippi Department of Wildlife, Fisheries and Parks.

Back to Top

United States v. Thomas George, No. 2:10-CR-00029 (D.N.J.), AUSAs Marc Larkins [redacted] and Zahid Quarashi [redacted] and ECS Senior Trial Attorney Elinor Colbourn [redacted]

On July 27, 2010, Thomas George was sentenced to serve 22 months' incarceration, followed by one year of supervised release. George previously pleaded guilty to an information charging one count of importing falsely labeled goods into the United States and one count of selling falsely labeled fish in the United States with the intent to defraud for importing falsely labeled fish from Vietnam and evading more than $60 million in federal tariffs, as well as selling more than $500,000 in similarly misbranded fish purchased from another importer.

From January 2003 to June 2006, George maintained a business relationship through Sterling Seafood ("Sterling") with a seafood distribution company located in Vietnam. As part of that business relationship, Sterling regularly purchased *Pangasius hypophthalmus*, sometimes referred to as Vietnamese catfish, which it would then resell in the United States. In January 2003, an "anti-dumping" duty or tariff was placed on all imports of Vietnamese catfish into this country because catfish was being marketed at a significantly lower price than the market rate at that time. The initial anti-dumping order imposed a duty of up to 63.88 percent on all catfish subject to the order, and it was adjusted based on market conditions.

George admitted that from 2004 to 2006, he and this Vietnamese distribution company engaged in a scheme to falsely identify the purchase and importation of Vietnamese catfish in order to evade the anti-dumping duties. George stated that he specifically instructed the Vietnamese company to falsely identify the Vietnamese catfish as "grouper" on commercial contracts, purchase orders, and other documents because grouper was not subject to any anti-dumping duties. Additionally, the defendant admitted that from 2004 to 2005, he purchased more than $500,000 worth of similarly misbranded Vietnamese catfish that was imported from Vietnam by a Virginia corporation and then sold it throughout the United States.

In addition to the prison term, the court ordered George to pay $64,173,839 in restitution for the unpaid tariffs, plus make a $50,000 community service payment to the National Fish and Wildlife Foundation to be used for research into the identification of fish and other marine organisms.

This case was investigated by Immigration and Customs Enforcement, Customs and Border Protection, the National Oceanic and Atmospheric Administration, and the Food and Drug Administration.
Back to Top

United States v. Texas Oil and Gathering et al., No. 4:07-CR-00466 (S.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] ECS Trial Attorney Leslie Lehnert [redacted] and SAUSA William Miller.

Refinery

On July 21, 2010, an oil and gas refinery, along with two individuals each were sentenced for their involvement in the disposal of refinery wastes into an underground injection well. Texas Oil and Gathering, Inc. ("TOG"), was ordered to pay an $80,000 fine, but was given credit for the $50,000 that is to be paid by John Kessel, the company owner. Edgar Pettijohn, the operations manager, and Kessel each will complete five-year terms of probation. The two corporate officers previously pleaded guilty to conspiracy and to violating the Safe Drinking Water Act for disposing of oil-contaminated waste water from TOG's refinery process in an underground injection well permitted to accept only wastes generated by oil and gas production. The company pleaded guilty to conspiracy and to a RCRA violation for illegally disposing of hazardous waste.

TOG was a registered hazardous waste transporter and a used oil handler, but was not permitted to treat, store, or dispose of hazardous waste. As a result of its refinery operations, the company generated wastewater which was trucked to a Class II injection well that was not permitted to receive such wastes for disposal.

From January 2000 through January 2003, tens of thousands of gallons of waste, often including ignitable waste, were hauled to the injection well. Many of these loads were not accompanied by hazardous waste manifests, and the defendants instructed the truck drivers to falsify bills of lading to conceal the waste shipments. The government's investigation began in January 2003, when the injection well exploded and killed three workers. Although the explosion was not caused by the defendants, a closer look at the plastics manufacturing facilities and other chemical manufacturing plants who sold them their waste streams led to this prosecution.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, with assistance from the Texas Environmental Crimes Task Force.
Back to Top

United States v. Kelvin Soto-Acevedo, No. 1:10-CR-20244 (S.D. Fla.), AUSA Tom Watts-FitzGerald (305) 961-9413.

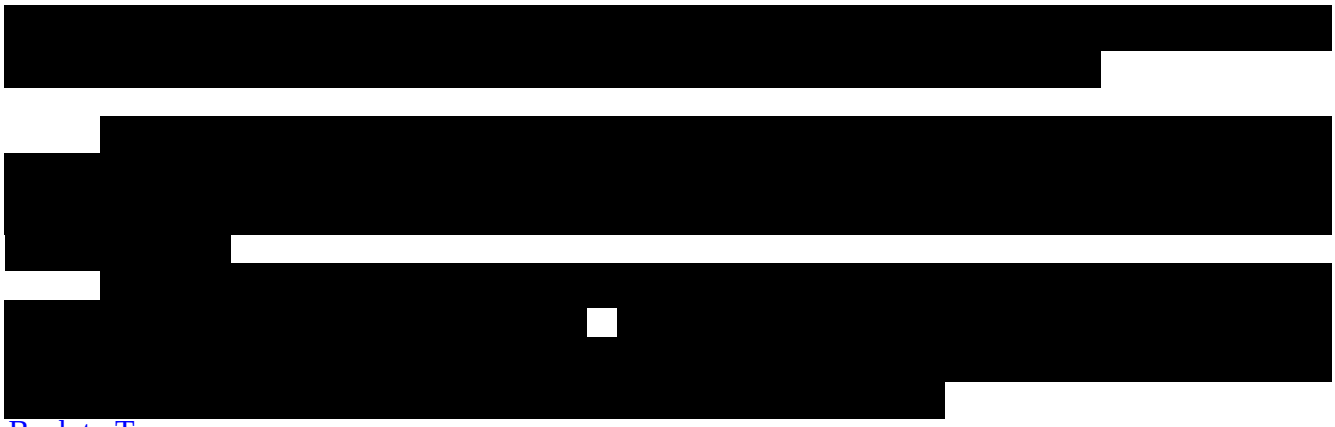
On July 19, 2010, Kelvin Soto-Acevedo was sentenced to serve two years' probation and will perform 100 hours of community service. A fine was not assessed due to the defendant's inability to pay. His reptile business was shut down.

Soto-Acevedo previously pleaded guilty to Lacey Act violations for the illegal smuggling of 50 Puerto Rican slider turtles and 25 Puerto Rican brown tarantulas into South Florida from Puerto Rico. The New Wildlife Law of Puerto Rico prohibits the take, possession, transportation, and export of Puerto Rican slider turtles (*Trachemys stejnegri*) and Puerto Rican brown tarantulas (*Cyrtopholis portoricae*) for use in commercial activities unless a valid permit has been obtained.

In February 2009, Soto-Acevedo received the restricted wildlife through the mail from two Puerto Rican residents after sending them $275 in payment. The wildlife had a retail value of more than $8,000 on the mainland. The defendant then sold the animals through his business, *A Touch of Class Reptiles*, located in Hialeah, Florida, using various internet sites specializing in reptiles. Neither the defendant nor his Puerto Rico-based suppliers possessed the appropriate permit to engage in these activities.

A sale made to a customer in Nebraska, whose subsequent attempts to re-sell the wildlife led to this investigation by the Fish and Wildlife Service.

Back to Top



Back to Top

Back to Top

United States v. Chiu Hung Lo, No. 1:09-mj-63 (W.D.N.C.), ECS Trial Attorney Shennie Patel [redacted]

On July 8, 2010, Chiu Hung Lo was sentenced to serve 30 days' incarceration, followed by seven months' home detention, and one year of supervised release. Lo also will be required to complete 50 hours of community service.

Ginseng root

Lo pleaded guilty in November 2009 to one violation of the Lacey Act for the illegal purchase of wild ginseng over a two-year period. From 2003 through 2005, the Fish and Wildlife Service conducted an undercover operation to identify the illegal interstate and foreign sales/purchases of ginseng. Lo admitted to purchasing approximately 136 pounds of wild ginseng for approximately $55,000 without the required export certificates and transported or caused the transport of wild ginseng into Georgia from North Carolina. She also forfeited approximately 430 pounds of wild ginseng worth approximately $172,000.

Ginseng has declined from historic levels and continues to be under threat from overexploitation because demand and price for its roots remain high. Some varieties of ginseng root can sell for as much as $1,000 a pound in Asian markets, where it is revered for its supposed medicinal properties. Individuals who transport or buy and sell ginseng in interstate commerce must obtain the required export certificates and permits.

This case was investigated by the Fish and Wildlife Service Office of Law Enforcement, with assistance from the National Park Service, and the Georgia Department of Natural Resources.

Back to Top

United States v. Arthur Batala et al., No. 3:10-mj-04114 (D. Ariz.), ECS Trial Attorney Shennie Patel [redacted]

On July 2, 2010, Hopi Indian Tribe members Arthur Batala, Darrell Batala, and Steven Silas were sentenced for illegally having in their possession a protected golden eagle, in violation of the Migratory Bird Treaty Act.

The three defendants were sentenced to pay $500 each in restitution to the Hopi Wildlife and Ecosystems Management Program. Arthur Batala also will complete a two-year term of probation, Darrell Batala will complete a one-year term of probation, and Silas will complete one year of unsupervised probation.

Eagles are viewed as sacred in many Native American cultures, and the feathers and other parts of the birds are central to Native American religions and customs. By law under the MBTA and the Bald and Golden Eagle Protection Act, enrolled members of federally recognized Indian tribes may obtain permits to take a limited number of eagles for religious purposes. Arthur Batala was only permitted to take one eaglet from a nest but took two. His brother Darrell and nephew Silas helped him to take the two eagles.

This case was investigated by the Fish and Wildlife Service, the Hopi Resource Enforcement Services, and the Navajo Nation Department of Fish and Wildlife.

Back to Top

Other Litigation Events

United States v. Ionia Management, S.A., No. 1:02-CR-00530 (E.D.N.Y.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Vamshi Reddy [redacted]

On July 19, 2010, the court entered a probation revocation order, finding that Ionia Management, S.A., had committed 10 violations of probation. In September 2007, Ionia was convicted of 18 felony counts in the District of Connecticut for conspiracy, APPS violations, falsification of records, and obstruction. At the time of the conviction in Connecticut, Ionia was on probation in New York for an APPS violation. After pleading guilty the company was sentenced in October 2004 to complete a three-year term of probation and was ordered to pay a $150,000 fine, which was suspended on the condition that the company make a community service payment in the same amount.

Ionia admitted that it violated the conditions of probation by committing the crimes for which it was convicted in Connecticut and for falsifying information it had been ordered to submit to the Coast Guard. As a result of these violations, the court in the Eastern District of New York revoked Ionia's probation and resentenced the company to pay a $500,000 fine and complete a new five-year period of probation. The court suspended $125,000, which is to be paid into than National Fish and Wildlife Fund.

Back to Top

United States v. Pacific-Gulf Marine, No. 06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Michael Cunningham [redacted]

On July 20, 2010, the court extended the period of probation of Pacific-Gulf Marine ("PGM") for two additional years subject to a revised and enhanced Environmental Compliance Program ("ECP").

The company was originally sentenced in January 2007 to pay a $1 million fine plus a $500,000 community service payment after pleading guilty to four APPS violations for the illegal discharges of oily waste from four of its U.S.-registered vessels, all of which bypassed their oily water separators ("OWS"). PGM was placed on a three-year term of probation and was subject to the terms of an environmental compliance plan that requires the company to undergo audits performed by an outside and independent entity and a review by a Court Appointed Monitor ("CAM"). The audits included a one-hour test of the OWS without dilution of the bilge waste to ensure that the equipment was in good working order. The Office of Probation issued a Notice of Violation this past January based on information provided by the CAM alleging that the required test had been performed on two ships with fresh water. PGM admitted that it had violated probation and agreed to extend the term of probation another two years to the maximum five-year period and further agreed to implement a revised ECP that will remain in effect for three years.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

September 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
S.D. Ala.	**United States v. DHS, Inc. (d/b/a Roto Rooter)**	***Oil and Grease Disposal History/*** **CWA, Misdemeanor, Conspiracy, Mail Fraud**
C.D. Calif.	**United States v. Charles Yi et al.** **United States v. Jim Nguyen et al.**	***Asbestos Abatement/*** **CAA, Conspiracy** ***Asian arowana/*** **Smuggling, ESA**
N.D. Calif.	**United States v. Rogelio Lowe** **United States v. Transmar Shipping et al.**	***Asbestos Certificates/*** **Mail Fraud** ***Vessel/*** **APPS, False Statement**
D. Colo.	**United States v. Dennis Eugene Rodebaugh et al.**	***Big Game Outfitter/*** **Lacey Act, Conspiracy**
M.D. Fla.	**United States v. Kevin Montgomery** **United States v. Gunduz Avaz et al.**	***Trash Dumping/*** **Degradation of Forest Service Land** ***Vessel/*** **APPS**
S.D. Fla.	**United States v. Pescanova Inc.**	***Seafood Importer/*** **Lacey Act**
D. Idaho	**United States v. Sidney Davis** **United States v. Paul McConnell et al.** **United States v. Barton Wilkinson**	***Big Game Outfitter/*** **Lacey Act, Fraud, Conspiracy** ***Fish Habitat Destruction/*** **CWA Misdemeanor, ESA** ***Fish Habitat Destruction/*** **CWA Misdemeanor, ESA**
E.D. La.	**United States v. Michael Murphy** **United States v. Offshore Vessels, LLC**	**Vessel/** ***False Statement, APPS***
D. Mass.	**United States v. David Place**	***Scrimshaw/*** **Lacey Act, Conspiracy**
E.D. Mich.	**United States v. Peter DeFilippo et al.**	***Asbestos Abatement/*** **CAA, Conspiracy, False Statement**
W.D. Mo.	**United States v. Richard Sparks et al.**	***Mayor and Municipal Employee/*** **False Statement, Misprision**
E.D. N. C.	**United States v. Vaja Sikharulidze**	**Vessel/ APPS**
D. Nev.	**United States v. Louis Demeo et al.**	***Vehicle Emissions Testing/*** **CAA**
E.D. Tex.	**United States v. Lance Clawson**	***Deer Breeder/*** **Lacey Act, Conspiracy**
D. Utah	**United States v. Andrew Costa**	***Hazardous Waste Storage/*** **RCRA**
S.D.W.V.	**United States v. Rodney Hoffman et al.**	***Electroplating Business/*** **RCRA**

Additional Quick Links:

Trials

United States v. DHS, Inc., d/b/a Roto Rooter, et al., No. 1:09-CR-00242 (S.D. Ala.), ECS Senior Trial Attorney Jeremy Korzenik [redacted], AUSA Michael Anderson [redacted] and ECS Paralegal Lisa Brooks [redacted]

Grease in sewer pipe

On August 10, 2010, the jury returned guilty verdicts against DHS, Inc., doing business as Roto Rooter, its president, Donald Gregory Smith, and manager William Wilmoth, Sr. The company was found guilty on 35 of the 40 counts charged, which included conspiracy, mail fraud and felony Clean Water Act violations. Wilmoth and Smith each were found guilty of 27 negligent CWA violations (as lesser included offenses) with Wilmoth also convicted on the conspiracy charge. All defendants are scheduled for sentencing on January 7, 2011.

The defendants were charged in a 43-count indictment with numerous violations of the Clean Water Act, mail fraud, and conspiracy for dumping thousands of gallons of waste grease and oil into the Mobile, Alabama, sewer system (and those of neighboring municipalities) that they had been hired to dispose of legally. The indictment described a decade-long period during which the City of Mobile's sewage system experienced overflows including almost 900 incidents between 1995 and 1998. Most of these overflows were caused by the blockage of sewer lines and treatment works with solidified grease.

In response to lawsuits under the CWA, the Mobile Area Water and Sewer System entered into a consent decree with EPA in 2002 under which it implemented a grease control program requiring restaurants and other food service establishments to install grease traps to prevent cooking oils from entering the sewer system. Roto Rooter and its employees subsequently were hired to appropriately

dispose of this waste grease, but they instead discharged it into the public sewer system, causing the violations and creating the harm that their customers had paid them to prevent.

Roto Rooter employee Michael L. Edington previously pleaded guilty to conspiracy to violate the CWA, to commit mail fraud, and to make false statements for dumping numerous loads of grease into area sewer systems between 2004 and 2006 and for falsifying grease tracking manifests to make it appear that the waste had been properly disposed of.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

Informations and Indictments

United States v. Dennis Eugene Rodebaugh et al., No. 1:10-CR-00444 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted], ECS Trial Attorney Mark Romley [redacted] and AUSA Linda McMahan [redacted]

On August 26, 2010, big game hunting outfitter Dennis Eugene Rodebaugh and hunting guide Brian Douglas Kunz were charged in a 10-count indictment with conspiracy and Lacey Act violations.

According to the indictment, Rodebaugh has operated a Colorado big game outfitting business called AD&S Guide and Outfitters since 1988, offering multi-day elk and deer hunts to scores of non-resident clients in the White River National Forest for between $1,200 and $1,600. Kunz worked as a seasonal guide for Rodebaugh since 1997. Each summer between 2002 and 2007, the defendants allegedly guided and outfitted numerous clients on hunts in which deer and elk were shot from tree stands near which Rodebaugh had placed hundreds of pounds of salt as bait. The placement and use of bait to hunt big game is unlawful in Colorado and is a violation of the Lacey Act.

The indictment also includes a forfeiture claim against vehicles and equipment used in the commission of the Lacey Act violations.

This case was investigated by the Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

United States v. Sidney Davis, No. 4:10-CR-00211 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and ECS Trial Attorney Jim Nelson [redacted]

On August 24, 2010, a grand jury returned a 12-count indictment charging Sidney Davis with Lacey Act, fraud, and conspiracy violations.

Davis has operated the Trail Creek Lodge, a hunting lodge located near Soda Springs, Idaho, since approximately 1992. The area around the lodge contains world-class trophy elk and abundant deer. In 1996, Davis lost his outfitter's license and the ability to hire guides as the result of an agreement with the Idaho Outfitters and Guide Board. This was the result of his being issued approximately 22 citations by state authorities between 1993, when he was first licensed, and 1996. An agreement was subsequently reached whereby the defendant voluntarily forfeited his license for life in exchange for not facing criminal prosecution on those citations.

After losing his license Davis employed several guides to assist him in performing illegal outfitting and guiding services for his clients. During that time, the defendant also has faced both state and federal charges for wildlife crimes, including a Lacey Act conviction from 1998. After violating probation for attending a Salt Lake City sporting goods show and advertising himself as an outfitter, Davis' probation was revoked and he spent several days in jail.

Davis no longer refers to Trail Creek Lodge as a hunting lodge, but now calls it a "hunting club" or a "bed and breakfast." Despite the various descriptions, Davis continued to run an outfitting business without the appropriate licensing. The pending indictment alleges that Davis defrauded both his clients and the federal government by selling hunts which he failed to deliver and by engaging in a scheme to hide assets from a bankruptcy proceeding.

This case was investigated by the Idaho Department of Fish and Game, and the United States Fish and Wildlife Service.

Back to Top

United States v. David Place, No. 1:09-CR-10152 (D. Mass.), ECS Trial Attorneys Jim Nelson [redacted] and Gary Donner [redacted].

On August 24, 2010, a nine-count superseding indictment was filed against David Place adding two additional smuggling charges. Place previously was charged with a dual conspiracy and Lacey Act violations for buying and illegally importing sperm whale teeth into the United States, as well as for selling the teeth after their illegal importation.

From 2001 to 2004, Place is alleged to have knowingly purchased and imported sperm whale teeth into the United States without the required documentation and without declaring this merchandise to customs and wildlife inspectors. Sperm whales are classified as "endangered" under the Endangered Species Act, and they are listed on CITES Appendix I. The indictment further alleges that Place conspired with others located in the Ukraine to illegally import the protected whale teeth for re-sale in the United States. The defendant is the owner of Manor House Antiques Cooperative in Nantucket. Sperm whale teeth are commonly used for scrimshaw, which is often sold for large sums of money to collectors and tourists.

This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement; the Fish and Wildlife Service, Office of Law Enforcement; and Immigration and Customs Enforcement.

Back to Top

United States v. Michael Murphy et al., No. 2:10-CR-00235 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Dee Taylor [redacted]

On August 19, 2010, Michael Murphy, a former chief engineer employed by Offshore Vessels, LLC ("OSV"), was charged in a one-count information with submitting a false statement, in violation of 18 U.S.C. § 1001.

Murphy had served aboard the *R/V Laurence M. (L.M.) Gould ("R/V Gould")*, a 2,966 gross ton American-flagged ship owned by OSV that served as an ice-breaking research vessel for the National Science Foundation on research voyages to and from Antarctica.

R/V Gould

The information alleges that on or about September 27, 2005, Murphy knowingly and willfully presented an oil record book containing false entries to the Coast Guard personnel during an inspection.

On July 29, 2010, OSV pleaded guilty to a one-count information charging a knowing violation of the Act to Prevent Pollutant from Ships (APPS). OSV admitted that on or about September 8, 2005, crew members knowingly discharged oily wastewater on the high seas directly overboard from the bilge tank of the *R/V Gould* in violation of APPS. (*see U.S. v. OSV below for more details.*)

This case was investigated by the Coast Guard Criminal Investigative Service.

Back to Top

United States v. Charles Yi et al., No. 2:10-CR-00793 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] and AUSA Bayron Gilchrist [redacted].

On August 18, 2010, Charles Yi and John Bostick were arrested after recently being charged with conspiracy and Clean Air Act asbestos work practice standards violations committed during the renovation of a 204-unit apartment building from January through February of 2006.

Yi and Bostick are upper-level officers of three companies that purchased the property and oversaw its renovation and conversion for sale as condominiums. The indictment alleges that, despite having knowledge of asbestos contained in the acoustical or "popcorn" ceilings of the apartment units, the defendants hired a company that was not licensed or trained in asbestos abatement to scrape the ceilings without informing the company's workers about the asbestos or providing them with adequate protective gear. Joseph Yoon, the project manager of the condominium conversion, previously pleaded guilty to a one-count information charging him with a CAA conspiracy violation.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the California South Coast Air Quality Management District.

Back to Top

United States v. Peter DeFilippo et al., No. 2:10-CR-20013 (E.D. Mich.), AUSA Jennifer Blackwell [redacted] and SAUSA Crissy Pellegrin [redacted]

On July 20, 2010, Peter DeFilippo, David Olsen, Joseph Terranova, and Excel Demo, Inc., were charged with conspiracy to violate the Clean Air Act and to make false statements, as well as substantive CAA and false statement violations. The charges stem from the defendants' involvement in the illegal removal of asbestos in June 2008.

One of the buildings at the Harbour Club apartments had been destroyed by fire in January 2008 and was slated for demolition in June 2008. According to an asbestos survey conducted in May 2008, more than 30,000 square feet of asbestos-containing materials were present in the building. As alleged in the indictment, DeFilippo, as the owner of Excel Demo, Inc., a general contracting firm in New York, instructed Olsen to remove the asbestos, in order to avoid paying for the asbestos to be properly abated. Olsen used temporary laborers to remove the asbestos, without the presence of a certified professional and without following work practice standards. Terranova supervised projects for GFI Management Services, Inc., the property management company for Harbour Club. According to the indictment, he also was aware of the asbestos-containing materials in the building and the fact that DeFilippo and Olsen planned to illegally remove the materials.

This case is being investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

Plea Agreements

United States v. Kevin Montgomery, No. 5:10-CR-00027 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Cherie Krigsman [redacted]

Excavation pit

On August 30, 2010, a one-count information and plea agreement were filed in this case involving the destruction and degradation of Forest Service land. According to the plea agreement, between 2004 and 2007 Kevin Montgomery lived on property adjacent to Ocala National Forest. He also was the owner of an excavation business. During this three-year period the defendant, among other things, buried refuse and car parts, including car batteries and the frame of an Econoline van, in large holes he dug on Forest Service property using heavy equipment that he employed in his landscaping and excavating business. On several occasions, Montgomery conducted his digging and burying operations at night. After an investigation was initiated in 2007, state investigators took soil samples from the impacted area and found high concentrations of petroleum in the soil on Forest Service land.

In November 2008, the Forest Service conducted an excavation of an area behind the defendant's property, where it was believed large items had been buried. The pit that was excavated measured approximately 82 feet long, 15 feet wide and six to eight feet deep. During the nine-hour excavation, investigators removed a total of over 5,000 pounds of refuse from the pit dug on Forest Service land, which also yielded the discovery of the van.

This case was investigated by the United States Forest Service.

Back to Top

United States v. Pescanova Inc., No. 1:10-CR-20526 (S.D. Fla.), AUSA Tom Watts FitzGerald [redacted]

On August 24, 2010, Pescanova, Inc., a seafood importer, pleaded guilty to a Lacey Act violation for the attempted sale of illegally caught Patagonian toothfish, also known as Chilean seabass, a slow growing deep sea species of fish. The Antarctic Marine Living Resources Convention Act protects the toothfish by requiring specific documentation when harvesting the fish. The company was charged with illegally importing the fish and then attempting to sell it in December 2009. Sentencing has been scheduled for November 17, 2010.

This case was investigated by the National Oceanic and Atmospheric Administration, Immigration and Customs Enforcement, and Customs and Border Protection.

Back to Top

United States v. Louis Demeo et al., Nos. 2:10-CR-00005 - 0006 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] ECS Trial Attorney Sue Park [redacted], and AUSA Roger Yang [redacted]

On August 23, 2010, Louis Demeo pleaded guilty to a single Clean Air Act false statement count charged in the indictment. On August 18th Eduardo Franco entered a similar guilty plea.

Demeo and Franco were two of 10 individuals indicted in January of 2010 for engaging in a practice known as "clean scanning" vehicles. The scheme involved using vehicles the testers knew would pass emissions tests for the actual test, but entered into the computerized system the vehicle identification number ("VIN") for a vehicle that would not pass. The testers did not realize that the computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. Demeo is scheduled to be sentenced on November 15, 2010 and Franco is scheduled for December 3, 2010.

These cases were investigated by the Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

Back to Top

United States v. Andrew Costa, No. 2:09-CR-00744 (D. Utah), AUSA Jared Bennett [redacted]

On August 17, 2010, Andrew Costa pleaded guilty to a RCRA violation for storing approximately 67 drums containing hazardous waste. Sentencing has been scheduled for December 16, 2010.

In May 2005, Costa purchased two semi-truck trailers that contained drums of hazardous waste. At the time of purchase, the two trailers were located in a salvage yard. In or about April or May 2006, the defendant moved them out of the salvage yard and onto the street in front of the yard.

Semi-truck trailers

In June 2006, a Salt Lake City Parking Enforcement Officer observed a liquid leaking from one of the trailers onto the public street. Hazmat units responded to the scene and confirmed that some of the drums contained hazardous waste. When Costa was notified by authorities he refused to claim the drums.

The United States Environmental Protection Agency spent more than $70,000 performing removal and cleanup of the hazardous waste found in the two trailers.

Back to Top

United States v. Paul McConnell et al., No. 3:10-CR-00205 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Nancy Cook [redacted]

Dredging

On August 17, 2010, Paul McConnell, Donna McConnell, and James Renshaw pleaded guilty to a two-count information charging them with a negligent Clean Water Act violation and an Endangered Species Act violation stemming from their involvement in the damage of habitat critical to the survival of Snake River Steelhead [redacted] own property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises Chinook salmon to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

The McConnells decided to channelize Clear Creek adjacent to the Clear Creek Property in an effort to prevent flooding during spring runoff. Renshaw performed stream channelization work with a bulldozer in August 2007 for the McConnells and a neighbor, Barton Wilkinson, who previously pleaded guilty (*see U.S. v. Wilkinson below for more details*).

Renshaw dredged rock and soil from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark, affecting approximately .25 acres. The channelization significantly modified fish habitat in the river and produced large amounts of siltation downstream from the site work. The defendants did not have a permit from the Army Corps of Engineers to perform the work in Clear Creek and caused damage to critical salmonid habitat.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Richard Sparks et al., No. 2:10-CR-04021 (W.D. Mo.), AUSA Larry Miller [redacted]

On August 16, 2010, Richard Sparks pleaded guilty to a false statement violation. Sparks, the superintendent of the Stover, Missouri, Department of Public Works, was charged in a 29-count indictment with false statement violations for falsifying information about the city's water supply that was then submitted to the Missouri Department of Natural Resources (MDNR).

Sparks had been charged with a total of 28 false statement violations, 26 of which were for submitting records to the MDNR that contained false sampling locations. The records indicate collection points for water samples taken between September 2006 and December 2007 at certain addresses; however, Sparks knew that the samples had not been taken there. The other two false statement counts related to bacteriological water analysis samples that Sparks allegedly submitted to

the state knowing that the water had been mixed with chlorine bleach to prevent an accurate laboratory analysis of the samples.

Scott Beckmann, the mayor of Stover, was charged with misprision of a felony for concealing these crimes from authorities. Beckmann allegedly knew that Sparks had submitted false information to the MDNR, but denied any knowledge when questioned by an EPA agent. Beckmann remains scheduled for trial to begin on February 14, 2011.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jim Nguyen et al., Nos. 2:10-CR-00470 - 475 (C.D. Calif.), AUSAs Christine Ewell [redacted] and Joseph Johns [redacted]

On August 6, 2010, Jim Nguyen pleaded guilty to a single smuggling violation for his involvement in the illegal importation of Asian arowana or "lucky fish" into the United States. Nguyen, Andree Gunawan, Tom Ku, Sam Lam, Everette Villota, Thy Tran, and Tien Le were charged in May of this year with smuggling and Endangered Species Act violations.

The case evolved out of a 2005 undercover sting operation in which a Fish and Wildlife agent acted as a middleman working for an exporter in Bogor, Indonesia. Many Southeast Asian cultures believe the Asian arowana, or dragon fish, brings luck and protects their owners from evil spirits. The juvenile fish sell for approximately $1,000 each while the more colorful adults, which grow to up to two-feet long, can sell for upwards of $20,000.

This case was investigated by the Fish and Wildlife Service and the California Department of Fish and Game.

Back to Top

United States v. Gunduz Avaz et al., Nos. 8:10-CR-00264, 00286 (M.D. Fla.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Jay Hoffer [redacted]

On August 3 and July 22, 2010, Turkish nationals Gunduz Avaz and Yavuz Molgultay each pleaded guilty to a single APPS violation for failing to accurately maintain an oil record book (ORB). Avaz was the chief engineer and Molgultay was the second engineer on board the *M/V Avenue Star* when the vessel made a port call in Tampa, Florida, in October 2009. As chief engineer Avaz admitted he knew that bilge wastes were being dumped from the ship at sea, and Molgultay admitted to participating in the dumping. During the vessel's transit to Tampa from Honduras, Molgultay pumped oily bilge waste into the aft port peak ballast tank, a tank that is designed to hold certain amounts of sea water depending on the stability needs of the vessel. Thereafter, during the transit, Molgultay dumped a large quantity of the oily waste from the ballast tank into the sea. Avaz knew that this was taking place, and neither defendant accurately recorded these activities in the ORB. Avaz presented the ORB with the false entries to Coast Guard personnel during the port call in Tampa.

This case was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v Rogelio Lowe, No. 3:09-CR-01013 (N.D. Calif.), AUSA Stacey Geis [redacted]

On August 1, 2010, Rogelio Lowe pleaded guilty to two counts of mail fraud stemming from his operation of E&D Environmental Safety Training, Inc., a company that offered occupational training for asbestos workers.

According to the plea agreement, starting in 2007 and continuing into 2009, Lowe devised a scheme wherein he charged students for asbestos training, but did not train them for the required amount of time and in several instances provided little or no training. By law, any person seeking accreditation as an asbestos worker must complete a 32-hour training program over the course of four days. The course must include lectures, demonstrations, and at least 14 hours of hands-on training, culminating in a closed-book examination.

According to the plea agreement, the classes Lowe provided were no longer than 30 minutes in length. Further, he provided answers to the closed-book examinations and forged tests for students who did not attend the test day. Lowe then issued certificates to students and charged their employers accordingly. The defendant submitted class rosters to the California Division of Industrial Relations, Division of Occupational Safety and Health, (Cal/OSHA) which falsely reflected that these students had successfully completed the training and passed the examination. Cal/OSHA used and relied on these rosters to add the names of students to its list of state-qualified asbestos workers.

This case was investigated by the Federal Bureau of Investigation and the Environmental Protection Agency Criminal Investigative Division, with assistance provided by Cal/OSHA.

Back to Top

United States v. Transmar Shipping, et al., No. 4:10-CR-00552 (N.D. Calif.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Chinhayi Cadet [redacted].

On July 30, 2010, chief engineer Dimitrios Dimitrakis and second engineer Volodomyr Dombrovsky pleaded guilty to an APPS violation. Ship operator Transmar Shipping pleaded guilty to an APPS and a false statement violation.

M/V New Fortune

This case involves the illegal discharges of oil from the Marshall Islands-flagged cargo ship *M/V New Fortune,* which arrived at port in Oakland, California, in February 2010. During a routine inspection by the Coast Guard, a crew member on the ship notified Coast Guard inspectors that the ship had been dumping oily wastes at sea by using a flexible bypass hose at the direction of the chief and second engineers. Multiple crew members provided the Coast Guard with photographs of the bypass hose in use while the ship was at sea. Further investigation revealed problems with the ship's oil water separator ("OWS") and incinerator. The oil record book falsely reported that the OWS and incinerator were being used routinely to process and dispose of the ship's oily wastes.

Transmar was sentenced to pay a $750,000 fine and a $100,000 community service payment. It also will complete a three-year term of probation and implement an environmental compliance plan. Dombrovsky was sentenced to pay a $500 fine and will serve a two-year term of probation. Dimitrakis has not yet been sentenced.

This case was investigated by the Coast Guard.

Back to Top

United States v. Offshore Vessels, LLC, No. 2:10-CR-00183 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Dee Taylor [redacted]

On July 29, 2010, Offshore Vessels, LLC (OSV), pleaded guilty to a one-count information charging an APPS violation.

OSV owned and operated the *R/V Laurence M. (L.M.) Gould ("R/V Gould")*. The *R/V Gould* was a 2,966 gross ton American-flagged ship that served as an ice-breaking research vessel for the National Science Foundation on research voyages to and from Antarctica. On or about September 8, 2005, crew members knowingly discharged oily wastewater on the high seas directly overboard from the bilge tank of the *R/V Gould* in violation of APPS. (*see U.S. v. Murphy above for more details.*)

Sentencing is scheduled for November 4, 2010. This case was investigated by the Coast Guard Criminal Investigative Services.

Back to Top

Sentencings

United States v. Rodney Hoffman et al., Nos. 5:09-CR-00215 - 216 (S.D.W.V.), SAUSA Perry McDaniel [redacted] and AUSA Eric Goes [redacted]

Electroplating waste

On August 25, 2010, Rodney Hoffman, a co-owner of an electroplating business, was sentenced to serve 30 months' incarceration and was ordered to pay $133,819 in restitution to the U.S. Environmental Protection Agency for cleanup costs.

Hoffman and co-owner Christopher Mills previously pleaded guilty to a RCRA storage violation, admitting to storing hazardous wastes, including solvents, heavy metals, and sulfuric and chromic acids, at the facility without a permit from October 2006 to February 21, 2007. The hazardous waste, which was discovered by state investigators in open containers and vats, had been abandoned after plant operations were moved to a different location. As a result, the EPA has undertaken a Superfund cleanup of the site.

Hoffman has a conviction from 1999 for a Clean Water Act violation for improperly discharging waste from a prior electroplating business into a drain leading to a local municipal wastewater treatment system. He served an 11-month term of incarceration. Mills remains scheduled for sentencing on September 22, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the West Virginia Department of Environmental Protection, with assistance

from the Environmental Protection Agency National Enforcement Investigations Center and the Federal Bureau of Investigation.
Back to Top

United States v. Barton Wilkinson, No. 3:09-CR-00203 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Nancy Cook [redacted]

On August 23, 2010, Barton Wilkinson was sentenced to pay a $2,000 fine and will complete a two-year term of probation. He previously pleaded guilty to an Endangered Species Act violation for his involvement in damaging habitat critical to the survival of Snake River steelhead trout.

The defendant owns property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises Chinook salmon to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

Wilkinson was approached by neighbors regarding channelization of Clear Creek next to his Clear Creek property in an effort to prevent flooding during spring runoff. A contractor was then hired to perform stream reconfiguration work with a bulldozer. The contractor dredged rock and soil material from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark affecting approximately a quarter-acre area.

Wilkinson did not obtain a permit from the Army Corps of Engineers to perform this work in Clear Creek, which produced large amounts of siltation downstream and caused significant damage to an endangered species habitat. As part of his sentence, Wilkinson will be held jointly and severally liable for restitution to be used to restore the creek. Co-defendants Paul McConnell, Donna McConnell and James Renshaw recently pleaded guilty for their involvement (*See U.S. v. Paul McConnell et al. above*).

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.
Back to Top

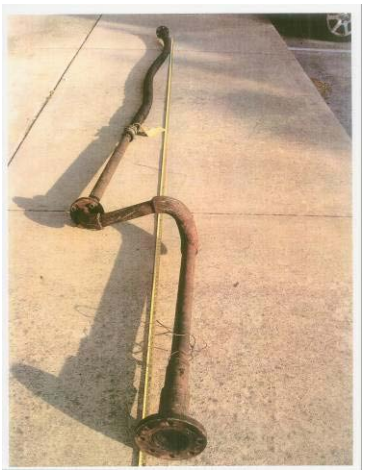
United States v. Lance Clawson, No. 6:09-CR-00130 (E.D. Tex.), AUSA Jim Noble [redacted]

On August 18, 2010, Lance Clawson, a licensed deer breeder from west Texas, was sentenced to pay a $15,000 fine, complete a three-year term of probation, and make a $7,250 community service payment to the Texas Parks and Wildlife Foundation. Clawson previously pleaded guilty to a Lacey Act violation for the unlawful transportation of wildlife in interstate commerce. Clawson admitted to transporting whitetail deer from Oklahoma into Texas in violation of state and federal laws. Texas state law prohibits any importation of whitetail deer due to the threat of Chronic Wasting Disease.

Clawson owns and operates Regency Ranch, which is a hunting ranch and deer-breeding facility located near Goldthwaite, Texas. On October 15, 2008, the defendant traveled from Texas to Muskogee, Oklahoma, to purchase whitetail fawns from an Oklahoma deer breeder. On the return trip to Texas, he was stopped by Texas Parks and Wildlife Game Wardens with eight fawns in his vehicle. Clawson was aware that Texas law prohibits the possession of deer from an out-of-state source.

This case was investigated by the Texas Parks and Wildlife Department and the Fish and Wildlife Service.
Back to Top

United States v. Vaja Sikharulidze et al., No. 4:10-CR-00032 (E.D.N.C.), ECS Trial Attorney Shennie Patel [redacted] and AUSA Banu Rangarajan [redacted]



Bypass pipe

On August 17, 2010, Vaja Sikharulidze, the chief engineer for the *M/T Chem Faros*, was sentenced to complete a one-year term of probation to include seven days of home detention. The defendant's sentence was reduced based upon his substantial cooperation in this investigation. Sikharulidze previously pleaded guilty to an APPS violation for his involvement in illegal overboard discharges of oily bilge waste via a bypass pipe system. The *Chem Faros* is a chemical cargo ship operated by Cooperative Success Maritime SA, a company incorporated in Panama and headquartered in Athens, Greece.

On March 29, 2010, a Coast Guard port state control inspection team boarded the ship in Morehead City, North Carolina. While conducting the inspection, a crewmember approached Coast Guard inspectors and handed them a note stating that the ship had illegally discharged oil-contaminated waste overboard through the use of a "magic pipe." Other crew members, including the chief and second engineers, corroborated the allegations of improper waste discharges. Cooperative Success Maritime was previously sentenced to pay a $700,000 fine, make a $150,000 community service payment, complete a five-year term of probation, and implement an environmental compliance plan. The company pleaded guilty to an APPS violation and to making material false statements.

This case was investigated by the Coast Guard.

Back to Top

United States v. Lester Brothers, No. 9:10-CR-00008 (D. Mont.), ECS Senior Trial Attorney Robert Anderson [redacted]

On August 3, 2010, Lester Brothers was sentenced to complete a two-year term of unsupervised probation and will perform 50 hours of community service. A fine was not assessed.

Brothers previously pleaded guilty to a single violation of the Endangered Species Act in connection with his transportation and possession of an unlawfully taken wolf near Libby, Montana, in November 2008-February 2009.

This case was investigated by the Fish and Wildlife Service.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

October 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
S.D. Ala.	**United States v. John J. Popa et al.**	***Seafood Misbranding*/ Smuggling, Lacey Act**
D. Ariz.	**United States v. Eugene Mansfield et al.**	***Eagle Taking*/ BGEPA**
N.D. Calif.	**United States v. Dimitrios Dimitrakis** **United States v. Mark Guinn**	***Vessel*/ APPS** ***Dredged Spoils Dumping*/ CWA, Conspiracy**
[redacted]	[redacted]	[redacted]
D. Colo.	**United States v. Encana Oil & Gas (USA) Inc.**	***Oil and Gas Drilling*/ MBTA**
M.D. Fla.	**United States v. Gunduz Avaz et al.**	***Vessel*/ APPS**
S.D. Fla.	**United States v. Hugo Pena et al.** **United States v. Northern Fisheries, Ltd. et al.**	***Vessel*/ APPS, False Statement, Conspiracy** ***Seafood Mislabeling*/ Lacey Act, Conspiracy**
D. Hi.	**United States v. Hiroki Uetsuki** **United States v. County of Kauai**	***Turtle Smuggling*/ False Statement, Smuggling** ***Newell's Shearwater Taking*/ MBTA**
D. Idaho	**United States v. Paul McConnell et al.**	***Damage to Trout Habitat*/ CWA Misdemeanor, ESA**
S.D. Ind.	**United States v. Todd Rorie et al.**	***Paint Waste*/ RCRA**
S.D. Iowa	**United States v. G&K Services**	***Industrial Laundry*/ CWA Misdemeanor**
E.D. La.	**United States v. DRD Towing Company, LLC, et al.** **United States v. Stanships, Inc.**	***Tugboat Crash*/Ports and Waterways Safety Act, CWA Misdemeanor** ***Vessel*/ APPS, OPA**
M.D. La.	**United States v. Gregory K. Dupont et al.**	***Alligator Hunting*/ Lacey Act**
D. Md.	**United States v. Irika Shipping et al.**	***Vessel Recidivist* / APPS, Obstruction**
E.D. N. C.	[redacted] **United States v. Cooperative Success Maritime SA**	[redacted] ***Vessel*/ Probation Violation**
D.N.M.I.	**United States v. Albert Taitano et al.**	***Fruit Bat Poaching*/ ESA, Lacey Act**
D. Nev.	**United States v. Alexander Worster et al.**	***Vehicle Emissions Testing*/ CAA**
S.D. Tex.	**United States v. Fleet Management Limited of Hong Kong et al.**	***Vessel*/ APPS, False Statement, Obstruction**
D. V. I.	**United States v. Juan Oscar Garcia**	***Sea Turtle Egg Removal*/ ESA**
E.D. Wash.	**United States v. Ricky Wahchumah et al.**	***Illegal Sale of Eagle Parts*/ BGEPA, Conspiracy, Lacey Act**
W.D. Wash.	**United States v. Philip A. Smith**	***Wetlands*/ CWA**

Additional Quick Links:

Trials

United States v. Hugo Pena et al., Nos. 0:10-CR-60158 and 60189 (S.D. Fla.), AUSA Jaime Raich [redacted]

On September 27, 2010, Hugo Pena, HP Maritime Consultants, Inc. ("HP Maritime"), Ronald Ramon, and Northon Eraso were convicted by a jury for their involvement in the illegal discharge of oily bilge wastes at sea. The jury convicted Pena and HP Maritime of a false statement violation and an APPS violation for failing to conduct a complete oil pollution prevention survey of the cargo ship *Island Express I.* The jury convicted Ramon and Eraso of conspiring to maintain a false oil record book (ORB) and of 17 and 25 substantive APPS violations, respectively, for failure to maintain an ORB. A fourth co-defendant, Coastal Maritime Shipping, LLC, previously pleaded guilty to two APPS violations for failing to maintain the ORB. The company was sentenced to pay a $350,000 fine and will complete a three-year term of probation. The court further ordered Coastal Maritime to make a $350,000 community service payment.

Coastal Maritime Shipping, LLC, was the owner of the *Island Express I*, a 155-foot cargo freighter registered in Panama. Defendant Ramon was the ship's captain, Eraso was the chief engineer, and Pena was an employee of HP Maritime, a classification surveyor. Ramon, Eraso, HP Maritime, and Pena conspired to conceal that the ship was discharging oily bilge waste. (The oily water separator was inoperable.) They did this by falsifying the ORB, by installing pumps and hoses to discharge wastes directly overboard, and by falsely certifying (merely weeks before scheduled inspections) that the ship's pollution prevention systems were adequate. In addition to the conspiracy charge, Eraso and Ramon were found guilty of multiple counts of failing to note the overboard discharges in the ORB on specific dates between February 7 and May 3, 2010.

The conviction of Pena and HP Maritime Consultants represents the first criminal case brought against a classification surveyor for failure to fulfill its pollution prevention responsibilities in the United States. Sentencing is scheduled for December 3, 2010.

This case was investigated by the Coast Guard and the Coast Guard Investigative Services.

Back to Top

United States v. Ricky Wahchumwah et al., No. 3:09-CR-02035 (E.D. Wash.), AUSAs Timothy Ohms [redacted] and Tyler Tornabene [redacted]

On September 23, 2010, Yakama tribal members Ricky Wahchumwah and his wife, Victoria Jim, were found guilty by a jury of violations stemming from the illegal sale of bald and golden eagle parts.

After a 10-day trial, the jury found Wahchumwah guilty of conspiracy, three counts of selling or offering to sell eagle parts in violation of the Bald and Golden Eagle Protection Act ("BGEPA"), and one count of selling wildlife in violation of the Lacey Act. Jim also was found guilty of conspiracy, two BGEPA violations, and one Lacey Act count.

The evidence at trial showed that the defendants had been illegally acquiring and selling bald and golden eagle parts since approximately April 2008. An undercover Fish and Wildlife agent purchased golden eagle parts from them in April 2008, May 2008, and October 2008. Among the items seized during a search of the defendants' home in March 2009 were four eagle carcasses with their wings and tail bases removed, at least 60 eagle wings, approximately 89 eagle feet with talons, and at least 728 loose wing feathers.

Eagle talons

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures, and the feathers of the birds are central to religious and spiritual Native American customs. By law, enrolled members of federally-recognized Native American tribes are entitled to obtain permits to possess eagle parts for religious purposes but federal law strictly prohibits selling eagle parts under any circumstances. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally or by accident, to supply enrolled members of federally-recognized tribes with eagle parts for religious use.

The Service has worked to increase the number of salvaged eagles sent to the Repository from state and federal agencies as well as from zoos and is making it easier to send birds to the facility by providing free shipping materials. Sentencing is scheduled for January 19, 2011.

This investigation was conducted by the Fish and Wildlife Service, with the assistance of state and tribal wildlife authorities.

Back to Top

Informations and Indictments

United States v. Juan Oscar Garcia, No. 1:10-CR-00041 (D.V.I.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Ronda Williams Henry [redacted]

On September 21, 2010, a grand jury on St. Croix returned a two-count indictment charging Juan Oscar Garcia for his role in removing sea turtle eggs from their nest. Garcia was charged with taking an endangered species and with possessing an illegally taken endangered species. According to

the indictment, on June 6, 2009, Garcia removed hawksbill sea turtle eggs from a nest in Frederiksted, St. Croix.

This case is the result of a joint investigation conducted by the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Hiroki Uetsuki, No. 1:10-CR-00660 (D. Hawaii), AUSA Tom Brady [redacted] with assistance from ECS Senior Trial Attorney Elinor Colbourn [redacted]

Indian Star Tortoises

On September 21, 2010, Hiroki Uetsuki, a Japanese citizen, was indicted on smuggling and false statement violations after customs inspectors at Honolulu airport allegedly found 42 exotic turtles in his suitcase after he arrived on a flight from Japan. Uetsuki allegedly tried to smuggle several Indian Star tortoises, white-fronted box turtles and Fly River turtles in his luggage. The white-fronted box turtle has been restricted for private and commercial import to Hawaii and must be cleared with the state. All turtles or tortoises also must be approved by the state's Department of Agriculture before they can be brought into the islands.

Although these species, which are popular in the exotic pet trade, do not appear on Hawaii's prohibited species list, they still pose a threat to native Hawaiian species, including freshwater shrimp and fish. In 2009, wildlife trade monitoring network TRAFFIC reported that species of Asian box turtles had nearly vanished from the wild due to widespread smuggling operations.

This case is being investigated by the Fish and Wildlife Service and Customs and Border Protection.

Back to Top

United States v. Albert Taitano et al., No. 1:10-CR-00037 (D.N.M.I.), ECS Trial Attorney Christopher Hale [redacted] and AUSA Eric O'Malley [redacted]

On September 16, 2010, a five-count indictment was returned charging Albert Taitano, Adrian Mendiola, and David Santos with Endangered Species Act and Lacey Act violations related to their poaching of fruit bats. The violations occurred in 2008 on the island of Rota, in the Northern Mariana Islands, where two of the few remaining breeding colonies of the Mariana fruit bat were decimated by hunters using shotguns.

There has been a moratorium on hunting in the Mariana Islands since the 1990s and, in 2005, the U.S. Fish and Wildlife Service listed the Mariana fruit bats as threatened due to an alarming decline in the fruit bat population. Biologists estimated that about 10 to 14 percent of the total fruit bat population on Rota was killed during

Baby fruit bat

three separate poaching events over a six-month period.

This case was investigated by the Fish and Wildlife Service and the Commonwealth of the Northern Mariana Islands ("C.N.M.I.") Department of Land and Natural Resources Division of Fish and Wildlife, with assistance from the C.N.M.I. Department of Public Safety; the Bureau of Alcohol, Tobacco, and Firearms; the Drug Enforcement Agency; the Federal Bureau of Investigation; the National Marine Fisheries Service; Immigration and Customs Enforcement; the Coast Guard; the Marshals Service; the Naval Criminal Investigative Service; and the National Wildlife Forensics Laboratory.

Back to Top

United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., et al., No. 3:10-CR-00140 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted] and ECS Trial Attorney Shennie Patel [redacted].

On September 15, 2010, a three-count indictment was returned charging Gregory K. Dupont with Lacey Act violations stemming from the illegal hunting and purchasing of alligators, a threatened species. Dupont is a licensed alligator hunter and owns Louisiana Hunters, Inc., a guiding and outfitting company in Plaquemine, Louisiana. In 2006 Dupont allegedly took clients to hunt in areas for which he did not have authority to hunt, and in 2005 he allegedly purchased an alligator killed by one of his clients, in violation of Louisiana regulations.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property specific and hunters may only hunt in the areas designated by the tags. Louisiana regulations also prohibit alligator hunters, like Dupont, from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

The fees charged by Dupont for hunts are substantial, starting with a base rate of $3,500 for three days of hunting. If a client kills a trophy-sized alligator, Dupont charged trophy fees of up to $2,000, depending on the size of the alligator. Several of the alligators taken on the alleged dates of the illegal hunts were trophy-sized.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.

Back to Top

United States v. Northern Fisheries, Ltd., et al., No. 1:10-CR-20678 (S.D. Fla.), AUSA Norman O. Hemming, III [redacted]

On September 9, 2010, a two-count indictment was returned charging two seafood companies and the company presidents with conspiracy and Lacey Act false labeling violations.

According to the indictment, between January and February 2010, Northern Fisheries, Ltd., its president Brian D. Eliason, Shifco, Inc., and company president Mark Platt engaged in a scheme wherein Platt oversaw the false and fraudulent repackaging and labeling of 1,500 pounds of frozen chum Salmon fillets. The Salmon, which had been purchased from a Chinese company, was subsequently relabeled as a "Product of Russia."

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Department of Agriculture and Consumer Services.

Back to Top

United States v. Eugene Mansfield et al., No. 3:10-mj-04215 (D. Ariz.), AUSA Camille Bibles [redacted]

On September 7, 2010, five Hopi tribal members were charged with violations of the Bald and Golden Eagle Protection Act for the taking of two golden eagles without a permit. According to the complaint, Eugene Mansfield, Brendan Mansfield, Eldrice Mansfield, Emmett Namoki, and Lucas Namoki, Jr., were all involved in taking two eaglets from their nest in May of this year at Elephant Butte on the Navajo Nation.

One of the defendants who received the permit allegedly told the others that they could collect the eaglets when apparently it was too early to do so. When questioned by authorities, one of the defendants stated that there is a great deal of competition for eaglets among Hopi collectors.

This case was investigated by the Fish and Wildlife Service, the Hopi Cultural Preservation Office, the Hopi Resource Enforcement Services, and the Navajo Fish and Wildlife Division of Natural Resources.

Back to Top

Plea Agreements

United States v. John J. Popa et al., No. 1:10-CR-00011 (S.D. Ala.), ECS Senior Trial Attorney Wayne Hettenbach [redacted]**, ECS Trial Attorney Susan Park** [redacted] **AUSA Deborah Griffin** [redacted]**, and ECS Paralegal Kathryn Loomis** [redacted]

On September 22, 2010, John J. Popa pleaded guilty to 15 counts, which included smuggling and Lacey Act misbranding violations. Popa and codefendants Karen Blyth and David H. M. Phelps previously were charged in a 28-count indictment with conspiracy, as well as Lacey Act, smuggling, and misbranding violations.

Blyth and Phelps owned a seafood supply company in Arizona and also were co-owners with Popa and others of a seafood wholesaler in Pensacola, Florida, which sold seafood to customers in Alabama and the Florida Panhandle. From approximately October 2004 through November 2006, the defendants conspired to sell falsely labeled and unlawfully imported fish. Specifically, they bought imported catfish from Vietnam that had been falsely labeled and imported without paying the applicable duties, and then they sold that catfish as grouper. They also routinely substituted cheaper fish for more expensive fish by selling Lake Victoria perch as grouper, selling imported catfish as grouper, and selling grouper as snapper. Moreover, they were selling live oysters for which the harvest date had been changed to a more recent date.

Popa is scheduled to be sentenced on February 22, 2011. This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement; Department of Homeland Security, Immigration and Customs Enforcement; United States Air Force Office of Special Investigations; and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. Paul McConnell et al., No. 3:10-CR-00205 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Nancy Cook [redacted]

On September 21, 2010, Paul McConnell, Donna McConnell, and James Renshaw pleaded guilty to a two-count information charging them with a negligent Clean Water Act violation and an Endangered Species Act violation stemming from their involvement in the damage of habitat critical to the survival of Snake River Steelhead trout.

The McConnells own property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises Chinook salmon to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

The McConnells decided to channelize Clear Creek adjacent to the Clear Creek Property in an effort to prevent flooding during spring runoff. Renshaw performed stream channelization work with a bulldozer in August 2007, for the McConnells and a neighbor, Barton Wilkinson, who previously pleaded guilty. Renshaw dredged rock and soil from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark affecting approximately .25 acres. The channelization significantly modified fish habitat in the river and produced large amounts of siltation downstream from the site work. The defendants did not have a permit from the Army Corps of Engineers to perform the work in Clear Creek and caused damage to critical salmonid habitat.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Philip A. Smith, No. 3:09-CR-05590 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On September 20, 2010, Phillip Smith pleaded guilty to one Clean Water Act violation for his involvement in dumping fill materials into wetlands he had owned between August 2005 and February 2008. Approximately 65 percent of the 190 acres Smith owned were covered in wetlands that drain into Lacamas Creek. The creek flows into the Cowlitz River and ultimately empties into the Columbia River. Neither Smith nor anyone associated with the property ever applied for the required permits. Sentencing is scheduled for January 10, 2011.

This case was investigated by the Army Corps of Engineers, the Washington State Department of Ecology, and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Alexander Worster et al., Nos. 2:10-CR-0008 and 00012 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe ([redacted]) ECS Trial Attorney Sue Park ([redacted]) and AUSA Roger Yang [redacted]

On September 13, 2010, Alexander Worster pleaded guilty to the single Clean Air Act false statement count charged in the indictment. Adolpho Silva-Contreras entered a similar plea on September 7th. To date, five defendants of the 10 charged have pleaded guilty for their involvement in a practice known as "clean scanning" vehicles. The scheme involved using vehicles the testers knew would pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number ("VIN") for a vehicle that would not pass. The testers did not realize that the

computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. Silva-Contreras is scheduled for sentencing on December 6, 2010 and Worster is scheduled to be sentenced on December 13, 2010. This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.
Back to Top

United States v. DRD Towing Company, LLC, et al., Nos. 2:10-DR-00190 and 191 (E.D. La.), AUSA Dorothy Taylor [redacted]

On September 3, 2010, maritime company DRD Towing Company, LLC, ("DRD") pleaded guilty to a felony violation of the Ports and Waterways Safety Act and a misdemeanor violation of the Clean Water Act. Company co-owner Randall Dantin pleaded guilty to obstruction of justice.

DRD owned and managed tugboats that pushed barges for other companies. On July 23, 2008, the DRD-owned *M/V Mel Oliver*, which was pushing a tanker barge full of fuel oil, crossed paths with the *M/T Tintomara*, a 600-foot Liberian-flagged tanker ship, causing a collision that resulted in the negligent discharge of approximately 282,686 gallons of fuel oil from the barge into the Mississippi River.

DRD admitted that it had created a hazardous condition by assigning employees without proper Coast Guard licenses to operate certain vessels and by paying licensed captains to operate a vessel for 24 hours a day without a relief captain. Dantin admitted that he obstructed justice by causing the deletion of electronic payroll records from a DRD laptop computer. These documents were material to a Coast Guard hearing that had been convened to investigate the collision. Dantin has been scheduled to be sentenced on December 8, 2010, and the company is scheduled for sentencing on December 15, 2010.

This case was investigated by Coast Guard Investigative Services and Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. G & K Services, Inc., No. 4:10-CR-00106 (S.D. Iowa), AUSA John Beamer [redacted]

On September 2, 2010, G & K Services, Inc., pleaded guilty to a Clean Water Act violation for negligently discharging wastewater from their facility.

G&K operated an industrial laundry facility. Between October 2005 and August 2008, on at least 18 different occasions, the business violated its pretreatment permit by exceeding allowable oil and grease levels in its discharged wastewater. The defendant also failed to disclose these permit violations to the proper authorities. Sentencing is scheduled for December 2, 2010.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.
Back to Top

[redacted]

[redacted]

Back to Top

Sentencings

United States v. Stanships, Inc., No. 2:10-CR-00172 (E.D. La.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Dorothy Taylor [redacted].

On September 29, 2010, Stanships, Inc., was sentenced to pay a $525,000 fine and to make a $125,000 community service payment. The Greek operator of the *M/V Doric Glory* previously pleaded guilty to violations of the Act to Prevent Pollution from Ships and the Oil Pollution Act stemming from its bypassing the oily wastewater separator and illegally discharging oily waste overboard from approximately December 2009 through May 2010.

In May 2010, during a Coast Guard inspection of the ship while it was docked in the Port of New Orleans, a whistleblower alerted officials to the illegal discharges. Oil-contaminated waste was illegally discharged overboard from the *Doric Glory* approximately once a month on its voyages between Jamaica and the United States, none of which was recorded in the oil record book.

Additionally, the company admitted knowing that the ship had an oil leak in its stern tube while in U.S. waters. The problem was known to the crew since at least the middle of April, 2010, when the ship was in dry dock in Mexico. As a result of the leak, lubricating oil needed to operate the ship leaked into the stern tube and then overboard when the ship was operating. The oil was leaking from the stern tube to such an extent that the engineers had to add approximately 400 liters of oil after each four-hour shift. This also is approximately how much oil was being discharged overboard.

As one condition of a three-year term of probation, Stanships also will implement an environmental compliance plan. This case was investigated by the Coast Guard Criminal Investigative Service.

Back to Top

[redacted]

United States v. Todd Rorie et al., No. 3:10-CR-00079 (S.D. Ind.), AUSA Donald Schmid [redacted]

Testing of abandoned drum

On September 27, 2010, Todd Rorie, and his brother, Robert Scott Rorie, each were sentenced to terms of incarceration for their involvement in the illegal transportation and disposal of hazardous waste, in violation of RCRA. Todd Rorie will serve 12 months and one day of imprisonment and Robert Rorie will serve 18 months' incarceration. They also will complete a two-year term of supervised release.

In the spring of 2009, the defendants transported six barrels containing more than 300 gallons of hazardous waste from Scott's business, Midwest Custom Painting, to his residence. After illegally storing these drums at the residence for several months, these same six barrels were found dumped near roadsides that were in the vicinity of drinking water wells.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Indiana Department of Environmental Management-Office of Criminal Investigations, the St. Joseph County Health Department, and the St. Joseph County Police.

Back to Top

United States v. Irika Shipping et al., No. 1:10-CR-00248 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] AUSAs Michael Cunningham [redacted] Jim Oesterle [redacted] and Dorothy Taylor [redacted].

On September 21, 2010, Irika Shipping S.A. was sentenced to pay a $3 million fine and to make an additional $1 million community service payment. This ship management company, registered in Panama and headquartered in Greece, also will complete a five-year term of probation during which it will be subject to a compliance program that includes audits by an independent firm and oversight by a court appointed monitor. The court further awarded to four crew members $125,000 each for notifying authorities about the illegal discharges of oil and plastic from the *M/V Iorana*. Of the $1 million community service payment, $750,000 will go to the congressionally-established National Fish and Wildlife Foundation and will be used for Chesapeake Bay projects in the District of Maryland. In the Western District of Washington, $125,000 will fund environmental projects in and around the waters of Puget Sound and the Straits of Juan De Fuca. In Louisiana, $125,000 will go toward funding habitat conservation, protection, restoration, and management projects to benefit fish and wildlife resources and habitats.

Irika Shipping previously pleaded guilty as part of a multi-district plea agreement arising out of charges brought in the District of Maryland, Western District of Washington and Eastern District of Louisiana, including felony APPS violations related to port calls in Baltimore, Tacoma, and New Orleans by the *M/V Iorana*, and obstruction of justice charges based upon false statements to the Coast Guard, destruction of evidence, and other acts of concealment.

The investigation into the *M/V Iorana* was launched in January 2010 after a crew member passed a note to inspectors upon the ship's arrival in Baltimore, alleging that the ship's chief engineer had directed the dumping of waste oil overboard through an illegal bypass hose. The evidence provided included numerous photographs taken by a crew member using his cell phone.

Significantly, Irika Shipping also was the operator of the *M/V Irika*, a vessel that was the subject of a prior prosecution in the Western District of Washington in 2007. Irika Maritime, SA, (the shell owner) and Irika Shipping failed to implement an environmental compliance program as they were ordered to do in the earlier case. Additionally, Irika Shipping retained the same chief engineer, who was convicted in the prior case and who continued to commit similar violations in the current case.

The guilty plea encompasses violations in three districts. The company pleaded guilty to six counts in Baltimore for an APPS oil record book violation, an APPS garbage book violation, and obstruction of justice. The company also pleaded guilty to one count of obstruction for the violations in both the Western District of Washington and the Eastern District of Louisiana. Chief engineer Triantafyllos Marmaras recently was sentenced to pay a $5,000 fine and complete a term of probation.

Among the facts that Irika Shipping has admitted is that 23 tons of sludge were deliberately discharged while en-route between Gibraltar and Baltimore; that plastic bags filled with the oil-soaked rags used to clean out the tank holding the sludge were dumped just prior to arrival in Baltimore; that, in anticipation of the Baltimore inspection, the crew re-painted the pipes and flanges to conceal the wrench marks cause by the bypassing; and that, while in port in Baltimore, during and after the Coast Guard inspection, the master and chief engineer instructed crew members to lie to the Coast Guard. Specifically, after the Coast Guard asked the master to call crew members to be interviewed, he and the chief engineer first met with them in the master's cabin and told them to repeat a false story and to deny the bypassing.

These cases were investigated by the Coast Guard, and the Environmental Protection Agency Criminal Investigation Division, with assistance from Customs and Border Protection.

Back to Top

United States v. Fleet Management Limited of Hong Kong et al., Nos. 6:10-CR-00051-52 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted]

On September 9, 2010, ship operator Fleet Management Limited of Hong Kong (Fleet Management) was sentenced to pay a $3 million fine and will complete a three-year term of probation. The company previously pleaded guilty to one APPS violation for failing to maintain an accurate oil record book (ORB), one count of making false statements to the Coast Guard, and one count of obstruction. Prem Kumar, a ship superintendent for the company, and Prasada Reddy Mareddy, the second engineer of the *M/V Lowlands Sumida*, previously pleaded guilty to conspiracy to make false statements and to obstruct justice.


FLEXIBLE HOSE CONNECTED IN THE FUEL OIL TRANSFER PUMP TO BILGE TANK

In October 2009, the Coast Guard was conducting a routine port state control inspection of the *Lowlands Sumida* when an engine room crew member stated that the vessel was illegally discharging oily wastewater. He further alerted them that a center fuel oil tank on the ship was fitted with a "dummy" or false sounding tube and that oily waste water was being stored in the tank until it could be discharged overboard. The "dummy" sounding tube would show the tank to be empty, and a tank sounding log also was kept to show the tank as empty. When inspectors removed the false sounding tube and measured the contents of the tank they determined it to be almost half full with oily wastewater.

Acting on behalf of the company, both Kumar, a shore side manager, and Mareddy conspired to use the fabricated sounding tube to conceal the contents of the center fuel oil tank and to obstruct the Coast Guard's investigation. In addition to concealing the contents of the tank, Kumar and ship engineers obstructed the investigation by using the false sounding log to conceal the contents of the center fuel oil tank.

The vessel's chief engineer, John Porunnolil Zacharias, previously pleaded guilty to an APPS violation for failing to maintain an accurate ORB. He further pleaded guilty to an obstruction violation for providing inspectors with a false engine room sounding log and for his involvement in the installation of the fabricated sounding tube. Zacharias is scheduled to be sentenced on October 4, 2010, [redacted]

This case was investigated by the Coast Guard Investigative Service, the Environmental Protection Agency Criminal Investigation Division, and the Texas Commission on Environmental Quality Environmental Crimes Unit.

Back to Top

United States v. County of Kauai, No. 1:10-CR-00614 (D. Hawaii), ECS Senior Trial Attorney Elinor Colbourn [redacted] and ECS Trial Attorney Todd Mikolop [redacted]

Newell's shearwater

On September 9, 2010, the government filed a plea agreement and a one-count information charging the County of Kauai ("County") with a Migratory Bird Treaty Act violation for the killing of Newells shearwaters.

The County manages football stadiums and other outdoor facilities (baseball fields, tennis courts, etc.) that operate at night with lights. The lights attract seabirds, particularly fledgling Newell's shearwaters that circle the lights eventually hitting something or falling to the ground in exhaustion. Newell's shearwaters are threatened and migratory birds. Past efforts to cooperatively and voluntarily bring the County into compliance with the Endangered Species Act and the MBTA have failed. Following the indictment of Kauai Island Utility Co-op for similar takings last May, the County subsequently contacted the government stating that it wanted to resolve its exposure.

The County was sentenced to pay a $15,000 fine and will complete a 30-month term of unsupervised probation, during which it will implement several corrective measures to minimize the killing of additional birds. Actions include, among other things, the re-scheduling of sporting events to avoid using the lights, making public service announcements at the games regarding seabirds, and the installation of shields around the lights when in use. The defendant is further required to submit status reports every six months on progress made toward these corrective measures.

Prior to sentencing, as community service aimed at the harm caused by the previous takings, the County was required to make a $180,000 payment to the National Fish and Wildlife Foundation to be used to increase the population of Newell's shearwaters on the island of Kauai. In anticipation of the additional bird deaths likely to occur during the course of probation the County will make an additional $30,000 community service payment to the Kauai Humane Society that will be used to

support the "Save Our Shearwater" program, which has been instrumental in rehabilitating and rescuing downed birds.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Gunduz Avaz et al., Nos. 8:10-CR-00264, 00286 (M.D. Fla.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Jay Hoffer [redacted]

On September 7 and August 26, 2010, Turkish nationals Gunduz Avaz and Yavuz Molgultay each were sentenced after previously pleading guilty to a single APPS violation for failing to accurately maintain an oil record book (ORB). Both will complete five year-terms of probation; no fine was assessed.

Avaz was the chief engineer and Molgultay was the second engineer on board the *M/V Avenue Star* when the vessel made a port call in Tampa, Florida, in October 2009. As chief engineer Avaz admitted he knew that bilge wastes were being dumped from the ship at sea, and Molgultay admitted to participating in the dumping. During the vessel's transit to Tampa from Honduras, Molgultay pumped

oily bilge waste into the aft port peak ballast tank, a tank that is designed to hold certain amounts of sea water depending on the stability needs of the vessel. Thereafter, during the transit, Molgultay dumped a large quantity of the oily waste from the ballast tank into the sea. Avaz knew that this was taking place, and neither defendant accurately recorded these activities in the ORB. Avaz presented the ORB with the false entries to Coast Guard personnel during the port call in Tampa.

This case was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Dimitrios Dimitrakis, No. 4:10-CR-00552 (N.D. Calif.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Chinhayi Cadet [redacted].

On September 3, 2010, Dimitrios Dimitrakis was sentenced to pay a $5,000 fine and will complete a three-year term of probation after previously pleading guilty to an APPS violation for failing to maintain an oil record book (ORB).

Dimitrakis served as a chief engineer for the *M/V New Fortune*, which was operated by Transmar Shipping. In February 2010, during a routine inspection while at the port of Oakland, a crew member onboard notified Coast Guard inspectors that crew members had been directed by both the chief and second engineer to dump oily wastes at sea by using a flexible bypass hose. Multiple crew members provided the Coast Guard with photographs of the bypass hose in use while the ship was at sea. Further investigation revealed problems with the ship's oil water separator (OWS) and the incinerator. The ORB falsely reported that the OWS and incinerator were being routinely used to process and dispose of the ship's oily wastes.

Transmar Shipping was previously sentenced to pay a $750,000 fine and to make a $100,000 community service payment. It also will complete a three-year term of probation and implement an environmental compliance plan. Second Engineer Volodomyr Dombrovsky was sentenced to pay a $500 fine and will serve a two-year term of probation.

This case was investigated by the Coast Guard.

Back to Top

United States v. Mark Guinn, No. 09-CR-00414 (N.D. Calif.), AUSAs Stacey Geis [redacted] and Tina Hua [redacted]

On August 27, 2010, Mark Guinn was sentenced to serve 21 months' incarceration and will complete 200 hours of community service following his conviction by a jury last May. Guinn, the general manager of the Northern California operations of Brusco Tug & Barge, Inc., was convicted after a five-day trial of one count of conspiracy to violate the Clean Water Act and one substantive CWA violation.

Evidence at trial proved that Guinn had conspired to dump contaminated dredged spoils into the San Francisco Bay without a permit from approximately April 2003 until around January 2007. Guinn also was found guilty of offloading dredged spoils on a specific occasion. He was acquitted of another substantive CWA count, and the jury did not reach a verdict on the remaining CWA violation.

Beginning at least as early as 2003 and continuing until 2007, Guinn participated in the routine discharge of large amounts of contaminated dredged materials into navigable waters of the United States without a permit. Guinn unlawfully dumped this material into the Bay as well as ordering employees to do so. The defendant and others opened the hull of a barge while the barge was at or near Winter Island and then emptied its contents directly into the surrounding waters instead of properly

offloading all of the material onto the island. Witnesses testified that the offloading of dredged spoils would have taken 12-18 hours, while the dumping took just minutes.

As part of its operations, Brusco Tug & Barge towed and disposed of dredged material generated during various dredging projects. Many of the projects Guinn oversaw involved the transportation and disposal of dredged material by barge onto Winter Island where it was intended for use in levee rehabilitation and maintenance. Winter Island, a privately owned 453-acre property located on the western edge of the Sacramento-San Joaquin River Delta in Contra Costa County, is managed as a freshwater wetland habitat and duck hunting club. The island is one of the few places in the Bay Area with an identified beneficial use for dredged material and it accepted certain limited types of material pursuant to a permit. The discharge of dredge materials to surface waters or drainage courses surrounding Winter Island is prohibited.

The company previously pleaded guilty to a felony CWA violation and was sentenced to pay a $1.5 million fine, including a $250,000 community service payment to fund a variety of environmental projects in the Bay. The company also was required to enter into a comprehensive environmental compliance plan.

This case was investigated by the Coast Guard Criminal Investigative Service and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Encana Oil & Gas (USA) Inc., No. 1:10-mj-01139 (D. Colo.), ECS Senior Trial Attorney Robert Anderson

On August 26, 2010, Encana Oil & Gas (USA), Inc. ("Encana") pleaded guilty to a two-count information charging the company with two Migratory Bird Treaty Act violations that resolve migratory bird fatalities at is facilities in Colorado and Wyoming.

The company is headquartered in Denver and extracts oil and natural gas from drilling and production operations in the western United States. Several migratory birds have died as the result of landing on open or insufficiently protected pits, ponds, and tanks and other facilities. The government's investigation began in 2005 at Encana's facilities in the Piceance Basin of Colorado and expanded in 2009 to the company's operations in Wyoming. The company eventually cooperated with the investigation providing voluntary self-disclosure of mortalities, promising continued cooperation, and already has spent millions of dollars on remedial and compliance measures at both plants in Colorado and Wyoming.

The company was sentenced to pay the maximum statutory fine of $15,000 per count, which was directed to the North American Wetlands Conservation Fund, and will make a community service payment of $85,000 per count to the National Fish and Wildlife Foundation, directed to waterfowl habitat remediation in Colorado and Wyoming. Encana also will complete an 18-month term of probation during which it will develop and implement an environmental compliance plan focused on preventing future avian mortality at its sites.

Back to Top

Other Litigation Events

United States v. Cooperative Success Maritime SA, No. 4:10-CR-00035 (E.D.N.C.), ECS Trial Attorney Shennie Patel [redacted] and AUSA Banu Rangarajan [redacted]

On September 7, 2010, Cooperative Success Maritime's (CSM) fleet was banned from using all U.S. ports and the company was ordered to immediately pay its outstanding $350,000 fine following a probation violation hearing. After being sentenced in June, CSM was required to implement an environmental compliance plan (ECP). The company failed to respond to numerous phone calls and voice mails from the probation office regarding implementation of the plan.

CSM was the operator of the *M/T Chem Faros*, a 21,145 gross-ton ocean-going cargo ship. The company pleaded guilty to, and was sentenced for, an APPS violation and for making false statements. The company was ordered to pay a $700,000 fine (half of which was paid to whistleblower crew members) and was to make a $150,000 community service payment toward the National Fish and Wildlife Fund. CSM also was to begin serving a five-year term of probation and to implement the ECP.

On March 29, 2010, a Coast Guard port state control inspection team boarded the *Chem Faros* in Morehead City, North Carolina. While conducting the inspection, a crewmember approached Coast Guard inspectors and handed them a note stating that the ship had illegally discharged oil-contaminated waste overboard through the use of a "magic pipe." Other crew members, including the chief and second engineers, corroborated the allegations of improper waste discharges. The chief engineer, Vaja Sikharulidze, previously pleaded guilty to an APPS violation for his involvement in these illegal overboard discharges. Sikharulidze further acknowledged making false entries in the oil record book to hide the true amount of oil-contaminated bilge waste that was stored in a specific tank aboard the ship. He admitted that he was continuing the practice of a former chief engineer of making false entries for that particular tank. He was sentenced to serve seven days home detention and one year of probation. No fine was imposed.

This case was investigated by the Coast Guard Investigative Service and the Environmental Protection Agency Criminal Investigation Division, with assistance from the Federal Bureau of Investigation's Computer Forensic Team.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

June 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Fruit Bat
See *U.S. v. Mendiola* inside, for details on a trial involving fruit bat poaching.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. John L. Popa et al.	*Seafood Mislabeling/ Lacey Act; Food, Drug, Cosmetic Act; Smuggling, Conspiracy*
D. Ariz.	United States v. Janay Brun	*Jaguar Capture/*ESA
[redacted]	[redacted]	[redacted]
D. Colo.	United States v. Richard O'Brien et al.	*Rhinoceros Horn Smuggling/* ESA
S.D. Fla.	United States v. Americas Marine Management Services., Inc. d/b/a Antillean Marine United States v. Mercator Ship Management, S.A., d/b/a Bernuth Lines	*Vessel/* APPS, National Ballast Information Clearinghouse *Vessel/* CWA
D. Idaho	United States v. Sidney Davis et al.	*Guiding and Outfitting/* Lacey Act, Bankruptcy,
D. Maine	United States v. Mark Cox	*Salmon Fishing/* ESA
N.D. M. I.	United States v. Adrian Mendiola et al.	*Fruit Bat Possession/* Lacey Act, ESA
D. Mass.	United States v. Universal Group, Inc. et al.	*Seafood Mislabeling/ Lacey Act*
D. Md.	United States v. Dimitrios Grifakis	*Vessel/* Obstruction
E.D. Mich.	United States v. David Olsen et al.	*Asbestos Removal/* CAA, Negligent Endangerment
D.N.H.	United States v. American Refrigeration Corporation, Inc.	*Refrigeration System Repair/* CWA
D.P.R.	United States v. Uniteam Marine Shipping GmbH	*Vessel/* APPS
D.S.C.	United States v. John A. Mabus	*Direct Discharge/* CWA Misdemeanor
E.D. Tenn.	United States v. Johnny Carl Grooms et al.	*Ginseng and Drug Trafficking/* Lacey Act, Conspiracy, Drug Violations

Additional Quick Links:

Trials

United States v. Adrian Mendiola et al., No. 1:10-CR-00037 (D.N.M.I.), and AUSAs Kirk Schuler and Eric O'Malley [redacted] with assistance from ECS Trial Attorney Christopher Hale [redacted]

Fruit bat

On May 13, 2011, a jury convicted Adrian Mendiola of an Endangered Species Act violation for possession of a Mariana fruit bat, a threatened species. He was acquitted on a Lacey Act charge for receiving wildlife. Mendiola, a former police officer, and co-defendants Albert Taitano and David Santos were variously charged in a five-count indictment with charges stemming from the poaching of fruit bats.

The poaching occurred in 2008 on the island of Rota, in the Northern Mariana Islands, where two of the few remaining breeding colonies of the Mariana fruit bat were decimated by hunters using shotguns. There has been a moratorium on hunting in the Mariana Islands since the 1990s and in 2005 the United States Fish and Wildlife Service listed Mariana fruit bats as threatened due to an alarming decline in the fruit bat population. Biologists estimated that about 10 to 14 percent of the total fruit bat population on Rota was killed during three separate poaching events over a six-month period.

The government dismissed without prejudice the charges against Taitano, a Rota Customs Officer, and Santos, an employee with the Division of Fish and Wildlife. This is the first successful prosecution of a bat poaching incident involving a threatened species in this district.

This case was investigated by the Fish and Wildlife Service and the Commonwealth of the Northern Mariana Islands (C.N.M.I.) Department of Land and Natural Resources Division of Fish and Wildlife, with assistance from the C.N.M.I. Department of Public Safety; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Agency; the Federal Bureau of Investigation; the National Marine Fisheries Service; Immigration and Customs Enforcement; the

Coast Guard; the Marshals Service; the Naval Criminal Investigative Service; and the National Wildlife Forensics Laboratory.

Back to Top

United States v. Johnny Carl Grooms et al., No. 2:10-CR-00087 (E.D. Tenn.), AUSA Neil Smith [redacted]

On May 13, 2011, following a four-day trial, a jury convicted Johnny Carl Grooms of charges that included Lacey Act violations for illegally trafficking in ginseng. Specifically, Grooms was found guilty of conspiring to distribute oxycodone and cocaine, interstate travel to further drug trafficking, possession of oxycodone with the intent to distribute, distribution of cocaine, possession of firearms by a convicted felon, and illegally trafficking in ginseng. Grooms' wife, Rosalba Ibarra Grooms, a Mexican national, was found not guilty of the four drug counts in which she was named.

Evidence at trial established that the U.S. Fish and Wildlife Service received reports in the fall of 2008 that the defendant was illegally trafficking in wild American ginseng, a protected plant. An agent posing as a ginseng dealer contacted Grooms in September 2008 at his business, the Park Entrance Grocery in Cosby. In addition to discussing the illegal trafficking in ginseng, Grooms also was observed selling drugs, including oxycodone, hydrocodone, and Xanax, from the counter at the store.

Grooms delivered multiple pounds of wild ginseng to the undercover agent on four occasions in November and December 2009 and January and February 2010. He had not obtained a dealer permit or kept records of ginseng sales as required by Tennessee state law. Ginseng roots that had been marked by the National Park Service in the Great Smoky Mountains National Park also were found in the ginseng sold by Grooms. He acknowledged in recorded conversations that he knew this ginseng had been illegally taken from the Park.

This case was investigated by the United States Fish and Wildlife Service; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Cocke County Sheriff's Office; the National Park Service; the Tennessee Wildlife Resources Agency; the Tennessee Bureau of Investigation; and the Federal Bureau of Investigation.

Back to Top

[redacted]

[redacted]

Back to Top

Informations and Indictments

United States v. Americas Marine Management Services, Inc., d/b/a Antillean Marine, No. 1:11-CR-20348 (S.D. Fla.), AUSA Jaime Raich [redacted].

Titan Express

On May 19, 2011, Americas Marine Management Services, Inc., d/b/a Antillean Marine, was charged with APPS violations for discharging oily waste and for failing to note the discharges in the oil record book (ORB). The company was further charged with failing to submit reports to the National Ballast Information Clearinghouse (NBIC or Clearinghouse), in violation of 16 U.S.C. § 4711(g)(2).

According to the information, Americas Marine Management Services operated the *Titan Express* from a terminal on the Miami River. On or about July 9, 2010, the ship's crew discharged oily waste into a water of the U.S. knowing that the pollution prevention equipment was not working. This discharge was not noted in the ORB.

The information further alleges that the company failed to submit a report to the NBIC in advance of the ship's arrival at the Port of Miami. The Clearinghouse is a joint program of the Smithsonian Environmental Research Center and the United States Coast Guard. Its mandate is to understand and prevent the introduction of non-indigenous species to the fresh, brackish, and saltwater environments of the United States.

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

Plea Agreements

United States v. Sidney Davis et al., Nos. 4:10-CR-00211, 4:11-CR-00002 and 00083 (D. Idaho), ECS Trial Attorney Jim Nelson [redacted], AUSA Michael Fica [redacted], Bank Fraud Coordinator Celeste Miller [redacted], and ECS Paralegal Christina Liu [redacted].

On May 26, 2011, Sidney Davis pleaded guilty to a Lacey Act violation and to making a false declaration in a bankruptcy proceeding.

Davis admitted to guiding or outfitting a mule deer hunt from October 11 through October 16, 2008, at the Trail Creek Lodge near Soda Springs, Idaho, a lodge Davis has operated since approximately 1992. On this particular trip, the hunters traveled from Nevada with the understanding that they would receive outfitting and guiding services. Over the course of five days, both Davis and his employee Jeffrey J. Dickman, guided the hunters into the field at various locations on both private and public land. During the hunt one of the hunters killed a mule deer while being guided by Dickman. After the animal was killed, Davis and Dickman both arranged to have meat from the deer transported to the hunters in Nevada.

Davis has not had an outfitters license since he lost it in 1996. This was the result of his being issued approximately 20 citations by state authorities between 1993, when he was first licensed, and 1996. An agreement was subsequently reached whereby the defendant voluntarily forfeited his license for life in exchange for not facing criminal prosecution on those citations.

After losing his license Davis employed several guides to assist him in performing illegal outfitting and guiding services for his clients. Dickman, who also did not possess a valid outfitters license in Idaho, recently pleaded guilty to, and was sentenced for, a misdemeanor Lacey Act violation. Peter Balestracci participated in the hunt in October 2008 and is scheduled to be sentenced on July 25, 2011, after pleading guilty to a Lacey Act misdemeanor.

Davis further admitted to falsely omitting certain material information from a Chapter 7 bankruptcy filing dated October 14, 2005. Specifically, Davis admitted that he did not inform the bankruptcy trustee that certain creditors had claims against him on the date he filed for bankruptcy; that he transferred 21 acres of real property within a year of filing for bankruptcy; and that he served as an officer, director, and managing executive of Trail Creek Lodge, Inc., within six years of filing for bankruptcy. Davis is scheduled to be sentenced on August 3, 2011.

This case was investigated by the Idaho Department of Fish and Game and the United States Fish and Wildlife Service, with assistance from the Office of the United States Trustee.

Back to Top

United States v. John A. Mabus, No. 1:11-CR-00555 (D.S.C.), AUSA Winston Holliday [redacted]

Pumping water from lagoon into creek

On May 24, 2011, John A. Mabus pleaded guilty to a negligent violation of the Clean Water Act.

During a sewer line construction project in January of 2008, Mabus and his company, Mabus Construction Co., began digging a ditch for a sewer line near the Clearwater Finishing Industrial Facility, an abandoned textile mill. The mill is located near the Little Horse Creek, a tributary of the Savannah River, which is a water of the United States.

As Mabus and his crew were digging, water from a lagoon that had been contaminated with heavy metals infiltrated the ditch. Mabus instructed his employees to pump water from the lagoon into the Little Horse Creek for approximately three days in January 2008. The defendant and his employees pumped approximately four million gallons of industrial wastewater and sludge into the creek, draining the lagoon and contaminating the creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the South Carolina Department of Health and Environmental Control.

Back to Top

United States v. Uniteam Marine Shipping GmbH, No. 3:11-CR-00195 (D.P.R.), ECS Trial Attorney Kenneth Nelson [redacted] and AUSA Marshal Morgan [redacted]

On May 19, 2011, Uniteam Marine Shipping GmbH (Uniteam) pleaded guilty to an APPS violation and to a false statement charge for the presentation of a false oil record book (ORB) to the Coast Guard.

The *M/V CCNI Vado Ligure* is a 16,800-ton ocean-going ship operated by Uniteam. On May 10, 2010, while the vessel was in port in San Juan, Puerto Rico, Coast Guard inspectors located evidence that the crew had been discharging oily bilge waste from January until May 2010. The crew had manipulated the vessel's oily water separation equipment so that bilge waste would be discharged from the vessel without being processed or monitored, and they did not record these discharges in the ORB.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Dimitrios Grifakis, No. 1:11-CR-00011 (D. Md.), ECS Counsel Tom Ballantine [redacted] AUSA Justin Herring [redacted], and ECS Paralegal Jessica Egler [redacted]

On May 4, 2011, a week before trial was scheduled to begin, Dimitrios Grifakis, a former chief engineer for the *M/V Capitola*, pleaded guilty to obstructing a Coast Guard inspection that took place aboard that ship between May 3 and May 11, 2010. Grifakis had been charged in an eight-count indictment with maintaining a false oil record book (ORB), making false statements, tampering with witnesses, and obstruction.

Crew standing in front of daily sounding log

Grifakis admitted on several occasions between March 2009 and May 3, 2010, to ordering his subordinates to illegally pump oil-contaminated bilge waste by using a bypass hose and other means directly into the ocean without processing it through the required pollution prevention equipment. The investigation began on May 3, 2010, at the Port of Baltimore after a crew member informed a clergyman, who was on board the ship for a pastoral visit, that a bypass pipe had been used to illegally dump waste oil overboard. The crew member asked the minister to alert the Coast Guard and to pass on a flash drive containing a video taken in the ship's engine room. The video showed a black hose tied in several places to overhead piping, which connected one of the vessel's waste oil tanks to a valve that opened directly to the ocean. Grifakis further obstructed the investigation by denying the existence of a Daily Sounding Record (DSR) and by withholding the document from officials. The DSR is where daily measurements of the contents of the ship's waste tanks are noted. Access to the DSR would have assisted inspectors as to determining tank-level fluctuations and could have been used to compare to ORB entries. The defendant also directed other members of the engine room crew to lie to investigators and claim that the *Capitola* did not have a DSR.

Cardiff Marine, a Liberian corporation and the operator of the *Capitola*, was sentenced to pay a $2.4 million fine, complete a three-year term of probation, and implement an environmental compliance plan after pleading guilty to an APPS violation and to obstructing an agency proceeding. Grifakis is scheduled to be sentenced on June 14, 2011.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. David Olsen et al., No. 2:10-CR-20013 (E.D. Mich.), AUSA Jennifer Blackwell [redacted] and SAUSA Crissy Pellegrin [redacted]

Apartment ceiling after illegal asbestos removal

On April 20, 2011, David Olsen pleaded guilty to a Clean Air Act negligent endangerment violation for his involvement in an illegal asbestos-removal project. Co-defendant Joseph Terranova pleaded guilty to a false statement violation, and Peter DeFilippo previously pleaded guilty to a CAA violation.

DeFilippo contracted through his company, Excel Demo, Inc., to supervise the demolition of a fire-damaged building at Harbour Club Apartments. The defendant knew that the building contained regulated asbestos-containing materials (RACM), and he also knew that he was required to have the RACM properly removed during the demolition. Despite this knowledge, DeFilippo instructed others to remove the RACM without the presence of a certified professional and without complying with work practice standards. Terranova was a supervisor for GFI Management Services, Inc. (the property management company for Harbour Club), and Olsen is a firefighter who also worked for DeFilippo. DeFilippo is scheduled to be sentenced on June 30, 2011. Olsen is scheduled for July 19, 2011, and Terranova is scheduled for August 2, 2011. Charges against Excel, a sham corporation, will be dismissed when DeFilippo is sentenced.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Pretrial Diversion

United States v. Janay Brun et al., No. 4:10-CR-01703 (D. Ariz.), AUSA Ryan DeJoe[redacted]

On May 12, 2011, Janay Brun entered into a pretrial diversion agreement. Brun had been charged in an information with conspiring to snare a *Panthera Onca* or jaguar, in violation of the Endangered Species Act.

The information had alleged that, after being made aware of the presence of a large jaguar, Brun and others had placed jaguar scat at various snare sites in an attempt to capture and trap the animal. Co-defendant Emil McCain ultimately captured the jaguar and was convicted and sentenced to pay a $1,000 fine and complete a five-year term of probation. The agreement requires Brun to admit to the factual basis under oath, to continue to cooperate with the government, and to defer involvement with any project involving jaguars during the 12-18 month diversion period.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Sentencings

United States v. John L. Popa et al., No. 1:10-CR-00011 (S.D. Ala.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] ECS Trial Attorney Susan Park [redacted] AUSA Deborah Griffin [redacted], and ECS Paralegal Kathryn Loomis [redacted]

On May 26, 2011, John L. Popa was sentenced to serve 13 months' incarceration, followed by three years' supervised release. Co-defendants Karen Blyth and David H.M. Phelps were recently sentenced to serve 33 and 24 months' incarceration, respectively, followed by three years' supervised release. They also each will pay a $5,000 fine and are barred for three years from working in the seafood industry or owning any seafood-related business. The three previously pleaded guilty to multiple counts, including conspiracy, Lacey Act, misbranding, and smuggling violations, for their roles in the mislabeling of seafood.

Blyth was the co-owner and president of two companies, Consolidated Seafood Enterprises Inc., and Reel Fish and Seafood, Inc., which traded in a variety of seafood products. Phelps co-owned Consolidated Seafood and Reel Fish and served as a vice president for both companies. Popa managed and co-owned Reel Fish with Blyth and Phelps and served as a company vice president.

The defendants used Consolidated Seafood to buy frozen fillets of a type of farm-raised Vietnamese catfish (known as sutchi) that they knew had been imported into the U.S. and falsely declared as wild caught sole, in order to avoid anti-dumping duties that were owed on this product. Anti-dumping duties went into effect on frozen fillets of sutchi, basa, and swai in 2003, after an investigation by the Department of Commerce established that this product was being sold in this country at less than fair value, thereby injuring domestic catfish producers. In all, the defendants conspired to falsely label and buy approximately 283,500 pounds of farm raised sutchi, which was imported without paying $145,625 in anti-dumping duties.

Some of the fish seized during the investigation tested positive for malachite green and Enrofloxin, both of which are prohibited from use in U.S. food. Malachite green is a chemical compound often used in overseas fish farming, and Enrofloxin is an antibiotic used in some foreign fish farming, but is banned by the FDA in food sold in the U.S. The defendants ultimately received 81,000 pounds of this illegally imported sutchi and sold 34,100 pounds of it to Reel Fish, which in turn sold it to customers in Alabama, Florida, and elsewhere.

The defendants changed the labeling on the sutchi and other imported basa to the more desirable "grouper," and sold it to customers in Alabama, Florida, and Mississippi at a higher cost. The defendants sold more than 100,000 pounds of this falsely labeled basa and sutchi to these customers. Blyth and Phelps bought more than 25,000 pounds of Lake Victoria perch from Africa and then mislabeled and sold it as grouper and snapper to customers in Alabama and Florida at a higher cost and in greater quantities than if it had been accurately labeled. The defendants further conspired to mislabel and create false labels for shrimp they sold to customers in these areas by repackaging farm-raised foreign shrimp as U.S. wild-caught shrimp.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, the Department of Homeland Security Immigration and Customs Enforcement, the Air Force Office of Special Investigations, and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. Universal Group, Inc. et al., No. 1:10-CR-10120 (D. Mass.), ECS Assistant Chief Elinor Colbourn [redacted] ECS Trial Attorney Jessica Alloway [redacted], AUSA Nadine Pellegrini [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On May 25, 2011, Universal Group, Inc., and company president Thomas Katz were sentenced for their roles in the purchase and sale of falsely labeled Asian catfish. Katz was sentenced to pay a $75,000 fine and will complete a one-year term of probation, to include three months' home confinement. Universal Group also will pay a $75,000 fine and complete a three-year term of probation. The company further was ordered to take out a public service advertisement.

Universal Group and Katz pleaded guilty in May 2010 to one felony violation and one misdemeanor violation, respectively, of the Lacey Act. Between June and August 2004, Universal Group purchased approximately 90,000 pounds of frozen fish fillets worth more than $300,000 that was invoiced as "China basa," a type of Asian catfish. Universal commissioned a cold storage facility to re-label the containers of the fish as grouper and sold the relabeled fish to a national restaurant chain. Between February 2004 and July 2005, Katz and Universal Group purchased an additional 2.5 million pounds of fish worth more than $5.5 million that was misleadingly labeled as grouper. Laboratory analysis confirmed that this fish was actually swai, another inexpensive type of Vietnamese catfish, for which no anti-dumping duties had been paid.

This prosecution is one of several over the past few years that have targeted fraud in the seafood industry. In April 2011, Stephen C. Delaney was convicted by a jury of a felony Lacey Act mislabeling violation and a misdemeanor Food, Drug, and Cosmetic Act misbranding violation for work he carried out for Katz and Universal. To date, 18 other individuals and companies based in the U.S. have been convicted of similar offenses resulting in sentences ranging from probation to 63 months in prison.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement and the Food and Drug Association Office of Criminal Investigations.

Back to Top

United States v. Sven Koppler, No. 2:10-CR-01338 (C.D. Calif.), AUSA Mark Williams [redacted]

Tarantula

On May 16, 2011, Sven Koppler, a German national considered to be among the world's top spider smugglers, was sentenced to serve six months' incarceration, followed by three years' supervised release, for bringing hundreds of tarantulas into the United States by mail. Koppler also must pay a $4,000 fine and will likely be deported to Germany upon the completion of his sentence.

The defendant pleaded guilty in January 2011 to a smuggling violation for using the U.S. Mail to illegally import hundreds of tarantulas, some of which are protected under CITES. He sold thousands of tarantulas to more than 50 people in 16 countries between 2008 and 2010. Some of the spiders, including a protected Mexican species, were mailed by Koppler from Germany to Los Angeles. Fish

and Wildlife Service agents who intercepted the packages subsequently posed as customers and ordered dozens more spiders. Koppler received approximately $350,000 from the spider sales. At the time the defendant sold and shipped the tarantulas, he did not possess the required permits and documentation to legally make these shipments. Knowing his actions were illegal, Koppler took steps to conceal the illegal importation by mislabeling some of the containers.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the United States Postal Inspection Service, United States Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Mark Cox, No. 1:10-CR-00206 (D. Maine), AUSA Todd Lowell [redacted]

On May 11, 2011, Mark Cox was sentenced to serve six months' incarceration followed by two years of supervised release. Cox pleaded guilty to a Lacey Act violation for taking, selling, and attempting to sell Atlantic salmon, an endangered species. The Atlantic salmon's freshwater range extends from watersheds of the Androscoggin River northward along the Maine coast to the Dennys Rivers.

Defendant holding salmon

Over the course of several days in August 2009, Cox took approximately eight adult Atlantic salmon from the Piscataquis River by snagging them with a weighted hook, an illegal method of fishing. Some of these salmon were female and had returned to the river from the sea to spawn. He then attempted to sell the fish to a restaurant owner. Investigation revealed that the defendant knew it was a violation of federal law to take Atlantic salmon.

This case was investigated by the United States Fish and Wildlife Service and the State of Maine Department of Inland Fisheries and Wildlife.

Back to Top

United States v. Richard O'Brien et al., No. 1:10-CR-00588 (D. Colo.), ECS Senior Counsel Robert Anderson [redacted] ECS Senior Trial Attorney Jennifer Whitfield [redacted], and AUSA Linda McMahan [redacted]

Rhino horns in dresser drawer

On May 3, 2011, Irish nationals Richard O'Brien and Michael Hegarty each pleaded guilty to one count of smuggling rhinoceros horns out of the United States in violation of the Endangered Species Act (ESA). Both were sentenced to serve six months' incarceration followed by three years' supervised release. They also will forfeit four horns and $17,500 in proceeds.

The defendants travelled to the U.S. to buy rhinoceros horns with the intent to ship them back to

Ireland hidden in furniture. In November 2010, they made contact with an undercover Fish and Wildlife agent posing as a potential seller. After meeting with the agent in Denver to purchase the horns, the two were arrested.

The horns in this case came from the black rhinoceros, an endangered species that is also listed on CITES Appendix I. It is unlawful to export or trade within interstate or foreign commerce black rhino horns without a permit. The district court also issued an order denying the defendants' motion to dismiss the indictment in this case on the grounds that a violation of the ESA, which is a misdemeanor offense, could not be a predicate offense for a felony smuggling violation under 18 U.S.C. § 554. This is the first district court opinion issued confirming the government's use of an ESA violation in connection with this particular smuggling statute.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Mercator Ship Management, S.A., d/b/a Bernuth Lines, No. 11-CR-20220 (S.D. Fla.), AUSA Jaime Raich [redacted]

On May 3, 2011, Mercator Ship Management, S.A., d/b/a Bernuth Lines (Mercator), was sentenced to pay a $100,000 fine and will complete a one-year term of probation. As special conditions of probation, the company must complete an environmental compliance plan and $50,000 shall be used as a community service payment to the South Florida National Parks Trust for projects dedicated to conservation, restoration, and protection of the local marine environment. The company pleaded guilty to a Clean Water Act violation for discharging lubricating oil into navigable waters in January 2011.

M/V NERA II

Mercator operated the *M/V NERA II*, a 2,427 gross-ton cargo ship that travelled from its base of operations on the Miami River to destinations in Haiti and the Dominican Republic. On multiple occasions, the Coast Guard determined that the ship was leaking lubricating oil into the sea through its stern tube. In July 2010, the Coast Guard required the ship to submit a dry dock plan. The company submitted a plan and promised to fix the leaking stern tube. Instead of making these repairs, however, the ship purportedly switched to biodegradable lubricating oil and continued its normal operations. On January 4, 2011, a local ferry reported a possible sewage discharge emanating from the vessel into the Miami River. The Coast Guard responded to the ship and discovered that it was still leaking the same non-biodegradable lubricating oil through its leaky stern tubes.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. American Refrigeration Corporation, Inc., No. 10-CR-00178 (D.N.H.), AUSA Bill Morse [redacted].

On May 2, 2011, American Refrigeration Corporation (ARC) was sentenced to pay a $40,000 fine and complete a two-year term of probation. The company previously pleaded guilty to one Clean

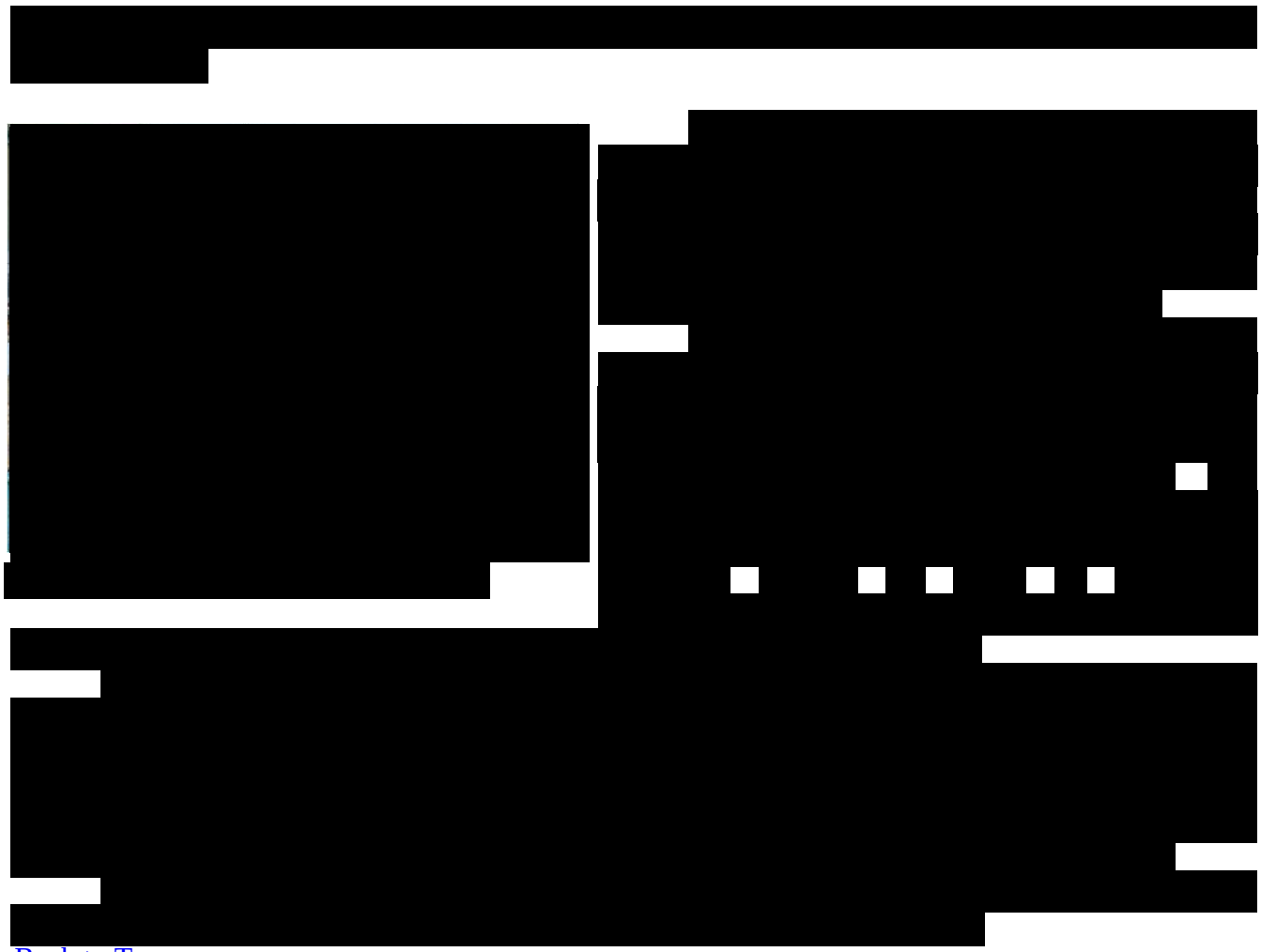
Water Act felony violation for causing the local POTW to discharge wastewater into the Merrimack River in violation of its NPDES permit.

ARC is in the business of servicing industrial refrigeration systems. On January 24, 2008, an ammonia technician employed by the company began servicing an industrial refrigeration system at a customer's facility. The service job required the technician to remove all of the ammonia from the holding tank. After transferring most, but not all of the ammonia to other parts of the refrigeration system, the technician drained the remaining ammonia to a floor drain, which he knew led to the POTW.

On the following day, pH levels at the POTW were elevated, causing it to violate its NPDES permit. In addition, the ammonia killed much of the organic biomass relied upon for the treatment of sewage. Significantly undertreated and untreated wastewater was discharged to the Merrimack River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top



Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

July 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted]). If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Abandoned hazardous waste by recidivist Johnnie Williams
See *U.S. v. Williams* inside, for details.

AT A GLANCE:

- United States v. Mancuso, No. 10-2420, 2011 WL 2580228 (2d. Cir. June 30, 2011).

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
N.D. Ala.	United States v. Randall T. Boothe	*Illegal Baiting/* MBTA
C.D. Calif.	United States v. Charles Yi et al.	*Asbestos Abatement/* CAA, Conspiracy
N.D. Calif.	United States v. Dhiren Patel	*Beverage Plant Manager/* CWA
[redacted]	[redacted]	[redacted]
S.D. Fla.	United States v. Van Bodden-Martinez United States v. Clemente DiMuro	*Seafood Imports/* Lacey Act *Bird Feather Sales/* Lacey Act
N.D. Ga.	United States v. Michael Kelly et al.	*Emissions Certificate Fraud/* CAA
C.D. Ill.	United States v. Jeffery B. Foiles et al.	*Duck Hunter/* Lacey Act, MBTA
N.D. Ind.	United States v. Charles D. Woodworth United States v. Michael Materna d/b/a Materna Mint Farms	*Aluminum Recycler/* CAA Conspiracy *Mint Farm/* CWA
S.D. Iowa	United States v. Robert Joe Knapp et al.	*Asbestos Removal/* CAA
D. Kans.	United States v. James Bobby Butler et al.	*Deer Hunting Guides/* Lacey Act, Conspiracy, Obstruction
E.D. La.	United States v. Edward Hannan	*Wastewater Processor/* CWA

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
W.D. La.	United States v. J. Jeffrey Pruett et al.	*Wastewater Treatment Business/* CWA, CWA Misdemeanor
D. Md.	United States v. Dimitrios Grifakis	*Vessel/* Obstruction
D. Mass.	United States v. Daniel B. Birkbeck	*Striped Bass Fishing/* Lacey Act
D. Md.	United States v. Cephus Murrell	*Lead-Based Paint Disclosure/* TSCA, CAA
E.D. Mich.	United States v. Douglas V. Mertz United States v. MoReno Taylor et al.	*CFC Refrigerant Sale/* CAA *Lead Inspector/* Mail Fraud, False Statement, Interstate Transportation of Money Acquired by Fraud
W.D. Mo.	United States v. Oak Mill, Inc., et al.	*Soybean Oil Reclamation/* CWA
D. Mont.	United States v. William E. Hugs, Sr., et al. United States v. Darin Fromdahl	*Trafficking of Bird Parts/* MBTA, BGEPA *Abandoned Drums/* RCRA
D. Nev.	United States v. Gary Smith	*Vehicle Emissions Scam/* CAA
D.N.J.	United States v. Albert Roach	*Turtle Purchases/* Lacey Act
N.D.N.Y.	United States v. Julius DeSimone et al.	*Massive Asbestos Dumping/* Conspiracy, CWA, CERCLA, Wire Fraud, Obstruction
W.D.N.Y.	United States v. Roy S. Larson	*Hunting Guide/* MBTA
W.D.N.C.	United States v. Kaara Doolin-Smith	*Hazardous Waste Transporter/* RCRA
N.D. Ohio	United States v. Stricker Refinishing Company et al.	*Metal Plating Business/* CWA

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Ohio	United States v. Cardington Yutaka Technologies, Inc., et al.	*Auto Parts Manufacturer/* Conspiracy, False Statement, False Records
	United States v. John A. Anderson	POTW Operator/ *CWA*
	United States v. Donald Meadows	*Coal Mine Wastewater/* CWA misdemeanor
W.D. Okla.	United States v. William Creepingbear et al.	*Bald Eagle Sales/* BGEPA, MBTA, Lacey Act
W.D. Tenn.	United States v Johnnie Williams	*Recidivist Drum Recycler/* RCRA
E.D. Tex.	United States v. Billy Powell	*Deer Breeder/* Smuggling, False Statement
S.D. Tex.	United States v. Noka Shipping Company, Ltd.	*Vessel/* APPS, PWSA
E.D. Va.	United States v. Marine Environmental Services et al.	*Ship Dismantler/* CWA, Refuse Act
D. Vt.	United States v. Mace Security International, Inc.	*Tear Gas Manufacturer/* RCRA
W.D. Wash.	United States v. Darigold, Inc., et al.	*Dairy Cooperative/* CWA misdemeanor, ESA

Additional Quick Links:

Significant Environmental Decisions

Second Circuit

United States v. Mancuso, No. 10-2420, 2011 WL 2580228 (2d. Cir. June 30, 2011).

On June 30, 2011, the Second Circuit Court of Appeals affirmed the convictions of both Paul and Steven Mancuso, finding that overwhelming evidence existed on all counts to sustain a conviction. The court further stated that many of the claimed bases for the appeal were without merit. The Second Circuit did, however, remand for sentencing on the basis of the trial court's application of both the "discharge without a permit" and "obstruction" guidelines. The Second Circuit instructed the trial court to build a factual record supporting its findings.

Brothers Paul and Steven were convicted by a jury in October 2010 on all counts, with their father Lester Mancuso pleading guilty on the eve of trial to conspiracy to defraud the United States, violate the Clean Air Act, violate CERCLA, and commit mail fraud. Paul and Steven were convicted of conspiracy and substantive CAA and CERCLA violations for the illegal removal of asbestos from numerous locations throughout central and upstate New York.

Paul Mancuso previously was convicted of CAA violations related to illegal asbestos removal and disposal in 2003, and he was convicted in 2004 of insurance fraud also related to his asbestos business. As a result of those prior convictions, he was prohibited from either directly or indirectly engaging in any asbestos abatement activities or associating with anyone who was violating any laws. Evidence from the recent case proved that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities that left a variety of businesses and homes contaminated with asbestos. On multiple occasions Paul also dumped asbestos from his removal jobs on roadsides and in the woods.

Attorney Steven Mancuso aided his family in its illegal asbestos enterprises by preparing false and fraudulent documents to make it appear that their activities were legal and that they were entitled to payment for their work. Paul Mancuso and his family operated their illegal asbestos business from the offices of Steven Mancuso's law firm. Another brother, Ronald Mancuso, was sentenced to complete a three-year term of probation on July 29, 2010, after pleading guilty to a conspiracy to violate CERCLA. He admitted to taking part in the dumping of asbestos in the woods in September and October 2005.

Back to Top

Informations and Indictments

United States v. Cardington Yutaka Technologies, Inc., et al., No. 2:11-CR-00140 (S.D. Ohio), ECS Trial Attorney Richard J. Powers [redacted] and AUSA Mike Marous [redacted]

On June 30, 2011, a superseding indictment was returned adding maintenance manager James Carroll as a defendant, as well as an additional false statement violation. Cardington Yutaka Technologies, Inc. (CYT), its executive vice president Muhammed Razavi, human resources administrator Carl Wolf, and Carroll are now charged in a 13-count indictment with conspiracy, false statement, and false records violations.

CYT is an auto parts manufacturer located in Cardington, Ohio, and is a wholly-owned subsidiary of Yutaka Giken Company, Ltd., based in Japan. The indictment alleges that, over an eight-year period, Razavi, Wolf, Carroll and the company conspired to make and made false statements and false records in order to conceal the existence, nature, and volume of the company's discharge of industrial wastewater to the local POTW. These falsified records were submitted to the Ohio EPA and to the Village of Cardington.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency Office of Special Investigations, and the Ohio Bureau of Criminal Identification and Investigation.

Back to Top

United States v. William E. Hugs, Sr., et al., Nos. 1:11-CR-00054 and 55 (D. Mont.), AUSAs Mark Steger Smith [redacted] and Kris McLean [redacted]

On June 24, 2011, and June 14, 201l, six individuals were arrested following a multi-year investigation into the illegal trafficking of eagle and migratory bird feathers and remains.

William E. Hugs, Sr., William E. Hugs, Jr., Ernie L. Stewart, Harvey A. Hugs, Marc J. Little Light, and Gilbert G. Walks, Jr., are variously charged in two multi-count indictments with conspiracy and the unlawful trafficking in migratory birds and eagles from December 2010 through February 2011.

These cases were investigated by the United States Fish and Wildlife Service Office of Law Enforcement, with assistance from the Bureau of Indian Affairs and the United States Marshals Service.

Back to Top

United States v. Douglas V. Mertz, No. 2:11-CR-20403 (E.D. Mich.), AUSA Jennifer Blackwell [redacted] and SAUSA James Cha [redacted]

On June 23, 2011, Douglas V. Mertz was indicted for a violation of the Clean Air Act for knowingly selling and offering for sale and distribution a Class II substance for use as a refrigerant to a person who could not legally purchase it.

In August 2009, EPA received an e-mail complaint regarding an advertisement that had been placed on the Internet offering to sell refrigerants. Specifically, the complaint stated that someone had posted an ad on Craigslist in the Metro-Detroit area, offering to sell refrigerants to un-certified

individuals. Investigation revealed that Mertz and his company, Frontier Mechanical Systems, were responsible for the posting.

In November 2009, Mertz is alleged to have sold ten containers of "R-22" refrigerant to a person who was not a technician certified to handle such substances and without meeting any of the required conditions for a legal sale.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Edward Hannan, No. 2:11-CR-00148 (E.D. La.), AUSA Dee Taylor [redacted]

On June 14, 2011, an information was filed charging Edward Hannan with a felony violation of the Clean Water Act.

Hannan was the manager of St. Bernard Well Service, a company in the business of handling process waste water from other facilities. One of these facilities was Linder Oil Company, an offshore oil and gas platform operator.

In July 2007, an Louisiana Department of Environmental Quality inspector observed two discharges from the Linder facility. Further investigation disclosed that the facility accumulated approximately 600 barrels per month of process wastewater, which was illegally discharged in the Breton Sound once a month for approximately six months through an unpermitted discharge pipe. Linder previously was sentenced to pay a $50,000 fine and $20,000 in community service after pleading guilty to a violation of the Rivers and Harbors Act. Hannan is scheduled for trial to begin on August 22, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cephus Murrell, No. 1:11-CR-000330 (D. Md.), AUSA Michael Cunningham [redacted]

On June 10, 2011, a three-count information was filed charging Cephus Murrell with Clean Air Act and Toxic Substances Control Act violations for failing to disclose the presence of lead-based paint to apartment tenants in Baltimore and for conducting improper lead abatement.

Murrell is the president and owner of C. Murrell Business Consultants, Inc. Through his company, the defendant owns and manages approximately 68 rental properties (175 rental units) throughout the city of Baltimore. Murrell has been a landlord in Baltimore since 1974 and has taken lead-based paint training, earning accreditation as a "Lead-Based Paint Visual Inspector" and a "Lead-Based Paint Residential and Commercial Building Contractor."

The information alleges that, in May 2008, Murrell and his company failed to disclose to tenants the presence of lead-based paint hazards found in units with a history of lead-based paint problems. Inspection records have been maintained by the Maryland Department of the Environment over several years that document lead-based paint violations and children with elevated lead blood levels in many of the properties owned by Murrell. It is further alleged that proper procedures were not followed during two lead abatement projects in 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Daniel B. Birkbeck, No. 1:11-CR-10224 (D. Mass.), ECS Trial Attorneys Gary Donner and Jim Nelson

On June 8, 2011, Daniel B. Birkbeck was charged with trafficking in and falsifying records for illegally harvested Atlantic Striped Bass (*Morone saxatilis*), in violation of the Lacey Act.

Commercial fishing for striped bass in both Massachusetts and Rhode Island is governed by a quota system overseen by the Atlantic States Marine Fisheries Commission. This quota system was enacted in response to declining striped bass populations. Since 2003, Rhode Island's commercial striped bass quota has been 243,625 pounds and Massachusetts's commercial striped bass quota has been 1,159,750 pounds. As a result, the Massachusetts commercial striped bass season is open longer than the Rhode Island season.

The indictment charges that Birkbeck, who is licensed as a commercial fisherman in both Rhode Island and Massachusetts, harvested striped bass in Rhode Island waters after the Rhode Island commercial fishing season had closed and transported those fish to a fish dealer in Massachusetts for sale during the 2009 and 2010 commercial fishing seasons. The defendant is further alleged to have falsely reported to the Massachusetts Division of Marine Fisheries that he had legally harvested the striped bass in Massachusetts waters. The indictment states that Birkbeck illegally harvested and sold 12,140 pounds of striped bass.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Julius DeSimone et al., Nos. 1:11-CR-00142 and 5:11-CR-00264 (N.D.N.Y.), ECS Trial Attorney Todd Gleason and AUSA Craig Benedict.

On June 2, 2011, a seven-count indictment was filed charging the owner of a New Jersey solid waste management company and three of his associates with conspiring to transport and dump thousands of tons of asbestos-contaminated debris at an upstate New York farm containing wetlands. Julius DeSimone, Donald Torriero, Cross Nicastro II, and Dominick Mazza are named along with Mazza's New Jersey-based company Mazza & Sons, Inc.

The indictment describes a multi-year scheme to illegally dump thousands of tons of asbestos-contaminated, pulverized construction and demolition debris that was processed at Eagle Recycling's and Mazza & Sons, Inc.'s, New Jersey-based solid waste management facilities. This debris then was transported to and dumped at Nicastro's farm in Frankfort, much of which contained federally-regulated wetlands. The dumping and excavating operations were managed on-site by DeSimone.

According to court documents, Torriero and other conspirators concealed the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forging the name of a DEC official on the fraudulent permit. Once the conspirators learned that they were under investigation, they began a systematic pattern of document concealment, alteration, and destruction by destroying and secreting documents responsive to Grand Jury subpoenas and falsifying and submitting environmental sampling to the U.S. Environmental Protection Agency.

The indictment charges the defendants with conspiracy to defraud the U.S., violate the Clean Water Act and CERCLA, and to commit wire fraud. Torriero also is charged with wire fraud for his fabrication and transmission of the fake permit the conspirators used to conceal the dumping. Mazza & Sons and Dominick Mazza are charged with violating the CERCLA requirement to report the release of toxic materials, along with obstruction of justice. Mazza and DeSimone are additionally

charged with making false statements to EPA special agents. Lieze Associates, d/b/a Eagle Recycling, recently pleaded guilty to conspiracy to violate the Clean Water Act and to defraud the U.S.

This case was investigated by the New York State Environmental Conservation Police, Bureau of Environmental Crimes; the United States Environmental Protection Agency Criminal Investigation Division; the Internal Revenue Service; the New Jersey State Police, Office of Business Integrity Unit; the New Jersey Department of Environmental Protection; and the Ohio Department of Environmental Protection.

Back to Top

United States v. William Creepingbear et al., Nos. 5:11-CR-00166 - 00168 (W.D. Okla.), AUSA Robert Gifford [redacted].

On May 17, 2011, indictments were returned variously charging William Creepingbear, Tuhtaka Neshoba Wilson, Michael J. Yount, and Brandon Roberts with attempting to transport and sell a bald eagle carcass and feathers, in violation of the Bald and Golden Eagle Protection Act, the Lacey Act, and the Migratory Bird Treaty Act.

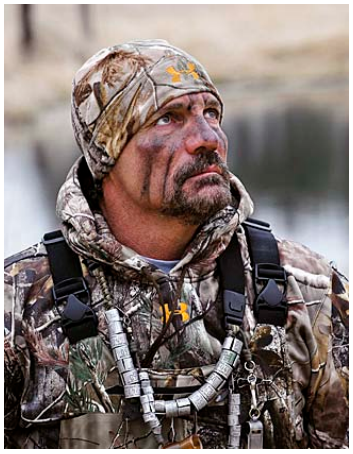
Wilson is accused of stealing a bald eagle carcass in June 2008 from his sister and brother-in-law and then selling it to Creepingbear for $300. Wilson and Creepingbear are further alleged to have conspired to transport the carcass and sell its feathers. Yount and Roberts are alleged to have taken possession of those feathers and to have transported them for sale.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top

Plea Agreements

United States v. Jeffery B. Foiles et al., No. 3:10-CR-30100 (C.D. Ill.), ECS Trial Attorney Colin Black [redacted], AUSA Gregory Gilmore [redacted], and ECS Paralegal Rachel Van Wert [redacted].



Jeff Foiles

On June 23, 2011, professional duck hunter Jeffrey Foiles pleaded guilty to violations stemming from the illegal sale of guided waterfowl hunts. Foiles pleaded guilty to a misdemeanor Lacey Act violation for the unlawful sale of wildlife, as well as one misdemeanor count of unlawfully taking migratory game birds in violation of the Migratory Bird Treaty Act. The company that operates Foiles' hunting club, the Fallin' Skies Strait Meat Duck Club, LLC, also pleaded guilty to one felony count of unlawful sale of wildlife in violation of the Lacey Act and one felony count of making false writings in a matter within the jurisdiction of the U.S. Fish and Wildlife Service.

Between 2003 and 2007, for $250 per day, Foiles sold and guided waterfowl hunts at the club for the purpose of illegally hunting ducks and geese in excess of hunters' individual daily bag limits. Foiles and others at the club also falsified hunting records in order to conceal the excesses.

Foiles is scheduled to be sentenced on September 21, 2011, and the company is scheduled for October 27, 2011.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Illinois Department of Natural Resources, the Iowa Department of Natural Resources, and the Canadian government.

Back to Top

United States v. Van Bodden-Martinez, No. 9:11-CR-80056 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On June 15, 2011, Van Bodden-Martinez, a Bahamian national residing in Palm Beach County, Florida, pleaded guilty to a Lacey Act violation for importing and attempting to import into the United States fish and wildlife possessed and transported in violation of Bahamian laws.

On or about February 19, 2011, Bodden-Martinez attempted to import spiny lobster, queen conch, and yellowtail snapper, all of which had been harvested without the necessary permits and in violation of the possession limits for each of these species as specified in Bahamian regulations. At sentencing, scheduled for September 2, 2011, the government will pursue the forfeiture of the illegal catch, which consisted of approximately 45 spiny lobster tails, 42 yellowtail snapper, and 343 pounds of queen conch.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, Immigration and Customs Enforcement; United States Customs and Border Protection; the Florida Fish and Wildlife Conservation Commission; the United States Coast Guard; and the Palm Beach County Sheriff's Office.

Back to Top

United States v. Darigold, Inc., et al., Nos. 2:11-CR-00196 and 00199 (W.D. Wash.), AUSA Jim Oesterle [redacted].

On June 15, 2011, Darigold, Inc., the nation's fourth largest dairy cooperative, pleaded guilty to a misdemeanor violation of the Clean Water Act, in connection with an October 2009, discharge of an ammonia solution from the company's dairy processing plant at Issaquah, Washington, into the East Fork of Issaquah Creek. The company further pleaded guilty to an Endangered Species Act violation as the release killed a significant number of fish, including several adult Chinook salmon, a species listed as threatened under the ESA. Former plant engineer, Gerald Marsland pleaded guilty on June 16th to one misdemeanor CWA violation.

Under the terms of the plea agreement, both parties will jointly recommend imposition of a sentence to include the development and implementation of a corporate environmental compliance plan covering 13 processing facilities located in five western states, the payment of a $10,000 criminal fine, and an additional $60,000 community service payment targeted toward protecting and restoring vital natural resources in the Issaquah Creek watershed. The cooperative also has agreed to publicly apologize for its criminal conduct by publishing a statement in the Issaquah Press newspaper. The company is scheduled to be sentenced on September 13, 2011.

This case was investigated by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration's Office of Law Enforcement with assistance from the Washington State Department of Ecology and the Washington State Department of Fish and Wildlife.

Back to Top

United States v. Darin Fromdahl, No. 4:11-CR-00033 (D. Mont.), AUSA Kris McLean [redacted]

On June 14, 2011, Darin Fromdahl pleaded guilty to RCRA storage and transportation violations stemming from the discovery of 45 drums found to contain hazardous waste. In June 2010, a rancher discovered the drums on property he was leasing from the Ft. Peck tribe. The owner of the property stated that Fromdahl (the owner of an electroplating business) paid him $500 in 2009 to store the drums, but did not indicate that the drums contained anything hazardous.

Sentencing is scheduled for October 17, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Abandoned drums

United States v. Billy Powell, No. 6:11-CR-00059 (E.D. Tex.), AUSA James Noble [redacted]

On June 14, 2011, after a four-year investigation, licensed deer breeder Billy Powell pleaded guilty to illegally transporting wildlife and to lying about it to a federal agent.

Powell pleaded guilty to smuggling approximately 37 whitetail deer from Indiana, Illinois, and Ohio, into Texas, over a three-year period. Powell also admitted that he made a false statement and submitted a false document to a U.S. Fish and Wildlife agent.

On at least four separate occasions between October 2006 and June 2008, Powell illegally imported the deer, many of which came from captive deer farms in Indiana, to his deer breeding facility in Cherokee County Texas. Powell was aware that Texas law prohibits any person from possessing a deer acquired from an out-of-state source. The fair market value of these deer exceeded approximately $800,000, with the additional value of the semen and the progeny estimated to exceed $1.25 million. The defendant also lied to a Fish and Wildlife agent regarding the actual number of deer that he had brought into the state.

As an unfortunate consequence of Powell's actions, all 334 deer at his facility were euthanized to facilitate testing for chronic wasting disease (CWD) and bovine tuberculosis (BT), as there currently is no live-animal test for CWD. This was necessary to ensure that neither disease was present in Powell's deer breeding facility or in any deer breeding facility that had received deer from Powell's facility since October 2004. Once these diseases become established in wild populations, they are extremely difficult, if not impossible, to eradicate.

The Texas Parks and Wildlife Department has undertaken an intensive CWD surveillance program since 2002, and neither CWD nor BT has yet been detected in the Texas deer population. However, illegal entry of white-tailed deer from other states poses a serious risk of introducing these diseases and others into Texas. One detrimental result would be the impact on the longtime cultural tradition of deer hunting, which generates an estimated $1.2 billion in retail sales and adds more than $2 billion to the Texas economy each year.

This case was investigated by the Special Operations Unit of the Texas Parks and Wildlife and United States Fish and Wildlife Service.

Back to Top

United States v. Kaara Doolin-Smith, No. 11-CR-00146 (W.D.N.C.), AUSA Steven Kaufman [redacted]

Abandoned drums in public storage unit

On June 14, 2011, Kaara Doolin-Smith pleaded guilty to a RCRA storage violation, stemming from the abandonment of hazardous waste in public storage units.

In October 2010, investigators received information regarding the discovery of more than 150 containers of waste (determined to be hazardous) found in four units at a public storage facility in Charlotte, North Carolina. The four storage units were leased by Dove Environmental Management, Inc., a registered hazardous waste transportation company. Several generators listed on the containers advised that Dove contracted to remove and dispose of waste as far back as 2007. The company owners, a husband and wife, Brian Smith and the defendant, are believed to be separated and to be living in Florida and Illinois, respectively.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation's Drug Diversion and Environmental Crimes Unit.

Back to Top

United States v. John A. Anderson, No. 2:11-CR-00145 (S.D. Ohio), AUSA Michael Marous ([redacted]) and SAUSA Brad Beeson [redacted].

On June 9, 2011, John A. Anderson pleaded guilty to a Clean Water Act false statement violation related to the operation of the sewage treatment plant that services the Village of Pomeroy.

Anderson was the village administrator from approximately 1989 to 2009. He was responsible for the operation of Pomeroy's wastewater treatment plant, including the filing of monthly reports with the State of Ohio.

At various times between 2006 and 2009, Anderson failed to collect and/or analyze required samples of discharge water from the plant. Instead he fabricated numbers for several pollutants, including solids and fecal coliform bacteria, and hr submitted those numbers to the Ohio EPA. Additionally, during site visits to the plant in 2007 and 2008, state inspectors found that large quantities of solids had been discharged into the Ohio River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Ohio Environmental Protection Agency.

Back to Top

United States v. Roy S. Larson, No. 1:11-mj-02046 (W.D. N.Y.), AUSA Aaron Mango [redacted]

On June 7, 2011, Roy S. Larson pleaded guilty to a misdemeanor charge of violating the Migratory Bird Treaty Act, and he was sentenced to pay a $100 criminal fine. As part of the plea, Larson also will have his Coast Guard Merchant Mariner credential revoked for three years and his hunting and fishing license will be revoked for one year. The defendant forfeited his 1998 19-foot Lund motorboat and his boat trailer, valued at approximately $5,000, to the New York State Department of Environmental Conservation (DEC).

Forfeited fishing boat

On December 31, 2010 and January 2, 2011, while operating in his capacity as a commercial waterfowl hunting guide on the Niagara River and Lake Ontario, Larson allowed and encouraged clients to violate the MBTA by shooting long-tailed ducks, a protected migratory bird, from a motorboat while the boat was operated under the power of its engine. Officers with the DEC Police observed this activity, and subsequently conducted interviews with the defendant's clients. In 2007, Larson was issued violation notices by the United States Fish and Wildlife Service for similar activity.

This case was investigated by the United States Fish and Wildlife Service, and the New York State Department of Environmental Conservation Police.

Back to Top

United States v. Clemente DiMuro, No. 1:11-CR-20268 (S.D. Fla.), ECS Senior Trial Attorney Georgiann Cerese [redacted] and AUSA Tom Watts-FitzGerald [redacted]

On June 3, 2011, Clemente DiMuro pleaded guilty to a one-count information charging him with a felony Migratory Bird Treaty Act violation. As part of an undercover investigation into the unlawful sale of migratory bird feathers, an agent covertly purchased anhinga feathers from an individual in early 2009. After the execution of a search warrant at this person's residence, evidence was obtained suggesting that DiMuro was the source for those feathers. The defendant admitted to illegally selling feathers from anhingas (also known as waterbirds or snakebirds) between December 2008 and March 2009. DiMuro is scheduled to be sentenced on August 15, 2011.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Charles D. Woodworth, No. 2:10-CR-00165 (N.D. Ind.), ECS Trial Attorney Gary Donner [redacted], AUSA Toi Houston [redacted] SAUSA Dave Mucha [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On June 2, 2011, Charles D. Woodworth pleaded guilty to a Clean Air Act conspiracy charge. Woodworth, the maintenance manager for Jupiter Aluminum Corporation, had been charged with conspiring to violate the CAA and to make false statements, as well as with substantive false statement violations.

The Jupiter Aluminum Corporation is an aluminum recycling facility. Over the course of the five-year conspiracy, Woodworth directed and caused workers to illegally falsify baghouse reports, which reflect operation of the company's pollution control equipment. During an extended period of time, the mechanics ignored the condition of the baghouses and falsified the reports to give the impression that they were operating properly. Woodworth is scheduled to be sentenced on November 1, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Indiana Department of Environmental Management.

Back to Top

United States v. Marine Environmental Services et al., No. 4:10-CR-00012 (E.D. Va.), AUSA Brian Samuels [redacted] and RCEC David Lastra [redacted]

USS Pawcatuck

On May 16, 2011, tank cleaning company Marine Environmental Services (MES) and manager Jerry R. Askew, Sr., pleaded guilty to a Clean Water Act and a Refuse Act violation stemming from the decommissioning of the *USS Pawcatuck*, a Navy tanker vessel.

In October, 2005, a ship dismantling company was hired to break down and dispose of the *Pawcatuck*, which was transferred to the company's facility in Chesapeake, Virginia, adjacent to the Elizabeth River. Tanks on board the vessel held approximately two million gallons of ballast water contaminated with a variety of pollutants, including oil, grease, bacteria, and heavy metals. In order to properly dispose of the vessel, the dismantling company hired MES to remove this ballast water and to clean the tanks. MES was required to analyze the volume and contents of the tanks to determine whether it would transport the liquids to a waste treatment facility or discharge them to the sanitary sewer, after notifying and obtaining approval from POTW officials.

Askew directed, however, that MES employees discharge a portion of the dirty ballast water overboard into the River. The overboard discharges occurred on different occasions between October, 2005, and July, 2006. The defendants pleaded guilty to the knowing discharge of 500,000 gallons of dirty ballast water from a vessel into the Elizabeth River in Chesapeake, Virginia, without a permit and to the discharge of refuse matter into navigable waters of the United States. Sentencing is scheduled for August 24, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Coast Guard Investigative Service, and the United States Department of Transportation Office of Inspector General.

Back to Top

Sentencings

United States v. Gary Smith, No. 2:10-CR-00010 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Roger Yang [redacted]

On June 27, 2011, Gary Smith was sentenced to serve four months' home confinement as a condition of a two-year term of probation. Smith also must perform 125 hours of community service. Smith is one of ten individuals who pleaded guilty to a Clean Air Act violation for falsifying vehicle emissions tests.

The "clean scanning" scheme involved using vehicles the testers knew would pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number (VIN) for a vehicle that would not pass. The testers did not realize that the computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

Back to Top

United States v. MoReno Taylor et al., No. 2:10-CR-20584 (E.D. Mich.), AUSAs Jennifer Blackwell [redacted] and Lynn Helland (on detail).

On June 23, 2011, MoReno Taylor was sentenced to serve three months' home confinement followed by two years' supervised release. A fine was not assessed. Taylor, a certified lead inspector, and co-defendants Anthony Sharpe and Sharpe Environmental Testing & Consulting, Inc., were variously charged in a 14-count indictment with mail fraud, false statement violations, and the interstate transportation of money acquired by fraud.

From September 2004 through December 2007, lead testing consultant Anthony Sharpe, owner of Sharpe Environmental, falsified lead sample results for a multi-unit apartment building located in the City of Detroit, as well as for several other multi-family dwellings in the Detroit metro-area and in Ohio. These reports were subsequently either submitted to EPA officials, HUD, and/or delegated HUD authorities in order to prove compliance with the various lead-based paint regulations. The buildings were then cleared as being free of lead hazards, despite the fact that necessary sampling in fact had not been performed.

During this period, Sharpe also served as the City of Detroit's Childhood Lead Poisoning Prevention Program Manager. Some of the buildings for which the falsified reports were generated are known to have families with children under the age of six residing there as well as children with confirmed elevated blood lead levels.

Taylor pleaded guilty in January 2011 to one false statement violation for his role in the submittal of false lead based paint inspection reports as a subcontractor to Sharpe Environmental. Specifically, Taylor was hired by Sharpe in 2007 to test an apartment building for the presence of lead. Sharpe asked Taylor to obtain "clean" dust wipe samples for the report Sharpe was preparing. Taylor complied by obtaining samples from a different building with surfaces he knew were not likely to

result in positive lead results. Sharpe and his company pleaded guilty to a mail fraud violation for using the mail to submit false lead test results in furtherance of a scheme to defraud a local agency that received federal grant money to perform lead paint inspections. Sharpe is scheduled to be sentenced on August 2, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Housing and Urban Development.

Back to Top

United States v. Robert Joe Knapp et al., No. 4:10-CR-00025 (S.D. Iowa), ECS Trial Attorneys Gary Donner and Mark Romley AUSA Debra Scorpiniti SAUSA Kristina Gonzales (913) 551-7121, and ECS Paralegal Lisa Brooks

On June 22, 2011, Robert Joe Knapp was sentenced to serve 41 months' incarceration, followed by two years' supervised release. Knapp also must pay a $2,500 fine and perform 300 hours of community service. Knapp pleaded guilty to one count of conspiracy to violate the Clean Air Act and to one count of failing to remove all regulated asbestos-containing material (RACM) from the Equitable Building before commencement of a three-year renovation project. Co-defendant William Coco pleaded guilty to the same charges and is scheduled to be sentenced on July 13, 2011.

Knapp, as the owner of the Equitable Building, which was located in downtown Des Moines, oversaw its renovation from 2006 through February 2008. The renovation included the disturbance of asbestos-containing pipe insulation and tile as workers gutted several floors of the building while converting the floors into luxury residential condominium units and additional commercial space.

Knapp admitted to conspiring with Coco, his construction manager, to illegally remove more than 260 feet of RACM from steam pipes and more than 160 square feet of floor tile containing RACM from the building, which subsequently was illegally disposed of in an uncovered dumpster. None of the workers involved in the project were properly trained to perform asbestos abatement work.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Iowa Department of Natural Resources.

Back to Top

United States v. Donald Meadows, No. 2:11-CR-00049 (S.D. Ohio), AUSA Mike Marous RCEC Dave Mucha and SAUSA Robert Cheugh.

On June 22, 2011, Donald Meadows was sentenced to complete a one-year term of probation and will perform 156 hours of community service. He previously pleaded guilty to a one-count information charging him with a negligent Clean Water Act violation.

Meadows was a manager for the Ohio Valley Coal Company (OVCC). The process of removing coal from underground produces wastewater that is collected in an impoundment, allowing solids to settle and the wastewater to be discharged via a decant pipe.

In May 2000, the company was issued a NPDES permit for discharges from several outfalls, with number 001 going into Captina Creek, a water of the U.S. The permit required this outfall to utilize a 24-hour automatic sampling station to obtain composite and representative samples. In 2007, outfall number 001 was moved to a different location in the impoundment. The change was permitted with the requirements that the old outfall be sealed and that automatic sampling had to resume at the new outfall, with results to be submitted monthly to regulatory officials.

From January 2008 through February 2008, Meadows ordered employees to discharge waste water from the impoundment through new outfall 001 to Captina Creek without the required

monitoring or sampling. Meadows ordered employees to install a pump that ran continuously from the impoundment through the outfall into Perkins Run, which discharges to Captina Creek, for 21 days without any sampling. This discharge turned the creek black, prompting a call to authorizes from a concerned citizen.

David Bartsch, the company environmental coordinator, previously was sentenced to complete a one-year term of probation and to perform 104 hours of community service (two hours per week over the term of probation). Bartsch previously pleaded guilty to a one-count information charging him with a negligent CWA violation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigative Division, the Ohio Environmental Protection Agency, and the Ohio Bureau of Criminal Identification and Investigation.

Back to Top

United States v. James Bobby Butler, Jr., et al., No. 6:10-CR-10089 (D. Kansas), ECS Trial Attorney Colin Black [redacted] and AUSA Matt Treaster [redacted].

Confiscated deer mounts

On June 21, 2011, James Bobby Butler, Jr., was sentenced to serve 41 months' incarceration, followed by three years' supervised release during which he will be banned from all hunting and guiding. He also was ordered to pay a $25,000 fine to the Lacey Act reward fund and $25,000 restitution to the Kansas Department of Wildlife and Parks. Butler pleaded guilty in March 2010 to one count of conspiracy to violate the Lacey Act, one Lacey Act interstate trafficking count, and one count of obstruction of justice. His brother, Marlin Jackson Butler, previously pleaded guilty to one count of conspiracy to violate the Lacey Act and one Lacey Act count. Marlin Butler was sentenced on June 24th to serve 27 months' incarceration, followed by three years' supervised release. He was ordered to pay a $10,000 fine and make a $10,000 restitution payment.

The brothers operated a guiding service and hunting camp near Coldwater, Kansas, where they sold guiding services to out-of-state hunters for the purpose of illegally hunting and killing white-tailed and mule deer. Hunters guided by the Butler brothers killed deer in excess of annual bag limits, hunted deer without permits or with permits for the wrong deer management unit, killed deer using illegal equipment, and hunted using prohibited methods, such as spotlighting.

The guided hunts were sold for between $2,500 and $5,500, and in several instances resulted in the killing of trophy-sized buck deer. The Butlers admitted to knowingly selling guided hunts for the illegal taking of 25 buck deer for which hunters paid them a total of $77,500 in guiding fees plus tips. In addition to selling guiding services, the brothers also arranged for transport of the deer, in particular the antlers and capes, from Kansas to Texas and Louisiana. James Butler further admitted to instructing another person to conceal or destroy evidence during the investigation.

This case was investigated by the United States Fish and Wildlife Service, the Kansas Department of Wildlife and Parks, and the Texas Parks and Wildlife Department.

Back to Top

United States v. Dhiren Patel, No. 3:10-CR-00724 (N.D. Calif.), AUSA Stacey Geis [redacted]

On June 21, 2011, Dhiren Patel was sentenced to serve four months' incarceration followed by one year of supervised release. Patel was further ordered to perform 100 hours of community service related to the environment. He also was ordered to give a minimum of four talks to at least 100 other environmental managers explaining the circumstances leading to his incarceration. The court has required Patel to report back in December 2011 on the status of the presentations. Patel previously pleaded guilty to one Clean Water Act violation for diluting required effluent samples submitted in discharge monitoring reports (DMRs) to city officials.

The defendant was the environmental affairs manager for AMCAN Beverages bottling plant, a subsidiary of Coca-Cola Company. In 2007, the plant produced approximately 18 million bottles and cans of various beverage products and generated 150,000 gallons of wastewater. Patel was responsible for the operation of the facility's WWTP, which processed this wastewater.

From January 2006 until August 2007, Patel diluted and ordered others to dilute samples of the effluent with up to 50 percent water. These results were then submitted on DMRs to local city officials, in accordance with company's pretreatment permit. Investigation revealed that the plant was frequently and significantly violating both the total suspended solids and the biological oxygen demand parameters permitted.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Dimitrios Grifakis, No. 1:11-CR-00011 (D. Md.), ECS Counsel Tom Ballantine [redacted] AUSA Justin Herring [redacted], and ECS Paralegal Jessica Egler [redacted]

On June 16, 2011, Dimitrios Grifakis was sentenced to serve six months' incarceration followed by two years' supervised release. Grifakis, a former chief engineer for the *M/V Capitola*, pleaded guilty to obstructing a Coast Guard inspection that took place aboard the ship in May 2010. Grifakis had been charged in an eight-count indictment with maintaining a false oil record book (ORB), making false statements, tampering with witnesses, and obstructing justice.

Grifakis admitted to ordering his subordinates on several occasions between March 2009 and May 2010, to illegally pump oil-contaminated bilge waste by using a bypass hose and other means directly into the ocean without processing it through the pollution prevention equipment. The investigation began on May 3, 2010, at the Port of Baltimore, after a crew member informed a clergyman, who was on board the ship for a pastoral visit, that a bypass pipe had been used to illegally dump waste oil overboard. The crew member asked the minister to alert the Coast Guard and to pass on a flash drive containing a video taken in the ship's engine room. The video showed a black hose tied in several places to overhead piping, which connected one of the vessel's waste oil tanks to a valve that opened directly to the ocean.

Grifakis further obstructed the investigation by denying the existence of a Daily Sounding Record (DSR) and by withholding the document from officials. The DSR is where daily measurements of the contents of the ship's waste tanks are noted. Access to the DSR would have assisted inspectors as to tank-level fluctuations and could have been used to compare to ORB entries. The defendant also directed other members of the engine room crew to lie to investigators and claim that the *Capitola* did not have a DSR.

After pleading guilty to an APPS violation and to obstructing an agency proceeding, Cardiff Marine, a Liberian corporation and the operator of the *Capitola*, was sentenced to pay a $2.4 million fine, to complete a three-year term of probation, and to implement an environmental compliance plan.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Michael Kelly et al., No. 1:11-CR-00068 (N.D. Ga.), AUSA Stephen McClain [redacted]

On June 15, 2011, Michael Kelly was sentenced to serve two years' incarceration, followed by one year of supervised release, for violating the Clean Air Act by fraudulently issuing emissions certificates to cars that otherwise would have failed the inspection. Kelly previously pleaded guilty to a single CAA violation along with co-defendants Jackie Baker and James Hinton.

The defendants were licensed emissions inspectors working at a "Stop N Shop" inspection station in College Park, Georgia, through May 2009. From January to May 2009, the defendants issued over 1,400 fraudulent emissions certificates to car owners that falsely stated that their cars had passed the required emissions test. Kelly personally issued 476 fraudulent certificates. All three defendants have had their licenses revoked.

The scheme involved using the test results from cars that already had passed emissions tests in lieu of testing the owners' real cars. During the tests, the computer system automatically transmitted emissions testing data to a statewide database accessible by the Georgia Environmental Protection Division. The defendants manually entered other information into the system, such as the make, model, and VIN, to make it appear that they were testing the actual cars, many of which had already failed an emissions test or had equipment malfunctions. The defendants charged $100 to $125 for a fraudulent emissions test, far more than the usual $20 charged for a legitimate inspection. Georgia law prohibits inspection stations from charging more than $25 for an emissions test.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Georgia Department of Natural Resources Environmental Protection Division.

Back to Top

United States v. Johnnie Williams, No. 2:10-CR-20174 (W.D. Tenn.), AUSA John Fabian [redacted]

Abandoned drums

On June 8, 2011, Johnnie Williams was sentenced to serve 37 months' incarceration followed by three years' supervised release. He further was ordered to pay $322,749 in restitution for cleanup costs to the Environmental Protection Agency for an emergency cleanup at his drum recycling business, American Drum and Pallet.

Investigation revealed that many containers onsite were leaking pesticides onto the ground as well as releasing vapors into the air. Among the chemicals found was methyl parathion. Of particular concern was the proximity of the business to nearby residential properties and an absence of fencing around the property.

Williams previously was convicted by a jury in January 1997 on two counts of illegal storage and disposal of hazardous waste in a low-income minority neighborhood in Memphis. At the time, he owned and operated W & R Drum, Inc., another used drum reclamation business, which was closed in July 1994 and designated as a Superfund site. There were 30,000 drums at this site, 1,100 of which contained ignitable and corrosive hazardous waste that saturated the soil with hydrocarbons and heavy metals to a depth of two to three feet. Williams was sentenced in March 1997 to serve 41 months' incarceration followed by two years of supervised release.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and Federal Bureau of Investigation.

Back to Top

United States v. J. Jeffrey Pruett et al., No. 09-CR-00112 (W.D. La.), AUSA Earl Campbell [redacted] and SAUSA Tom Walsh [redacted].

Bucket 'treatment' system

On June 8, 2011, Jeffrey Pruett was sentenced to serve 21 months' incarceration, followed by two years' supervised release. Pruett was further ordered to pay a $310,000 fine. Louisiana Land & Water Co., (LLWC) and LWC Management Co. (LWC), were ordered to pay fines of $300,000 and $240,000, respectively.

Pruett and his public water and wastewater treatment businesses were convicted by a jury of multiple CWA violations for improperly operating and maintaining the treatment facilities and for failing to submit discharge monitoring reports. The wastewater treatment facilities served seven residential subdivisions in Ouachita Parish from approximately 2004 through 2008.

Pruett is the president of LLWC and the chief executive of LWC. The businesses operated more than 30 water and wastewater treatment systems in northeastern Louisiana. The defendants

allowed the wastewater treatment facilities to overflow in several residential subdivisions, discharging effluent on the ground without proper treatment; allowed suspended solids and fecal coliform to exceed effluent limitations in state discharge permits; and discharged raw sewage into several residential neighborhoods.

Pruett and LLWC were convicted of six felony CWA violations for failure to maintain and provide records pertaining to all of the impacted subdivisions. Pruett and LLWC also were convicted of one felony count for effluent violations at one specific subdivision. Pruett additionally was found guilty of a misdemeanor CWA violation for failure to properly operate and maintain one of the facilities, and LWC was found guilty of one count of failure to provide records.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality, and the Louisiana Department of Health and Hospitals.

Back to Top

United States v. Noka Shipping Company, Ltd., No. 2:11-CR-00534 (S.D. Tex.), ECS Trial Attorney David O'Connell [redacted] and AUSA Jeffrey Miller [redacted]

On June 7, 2011, Greek ship management company Noka Shipping Company Ltd., (Noka) pleaded guilty to, and was sentenced for, deliberately concealing wastewater discharges from the *M/V Florin*, which bypassed pollution control equipment, and for failing to notify the Coast Guard of numerous safety hazards on board the vessel.

Noka pleaded guilty to an APPS oil record book (ORB) violation and to a violation of the Ports and Waterways Safety Act for failing to report a hazardous condition on board, which included excessive amounts of oil in the vessel's machinery spaces and bilges, significant oil leaks from the vessel's main engine and generators, and oil in the vessel's fire suppression system.

The company was sentenced to pay a $750,000 fine along with a $150,000 community service payment to the National Marine Sanctuary Foundation. The money will be designated for use in the Flower Garden and Stetson Banks National Marine Sanctuary, headquartered in Galveston, Texas, to support the protection and preservation of natural and cultural resources located in and adjacent to the sanctuary. Noka also will complete a five-year term of probation, a condition of which is the barring of all ships owned or managed by Noka from U.S. ports and territorial waters during the period of probation.

From approximately June 2010 until September 2010 engineers onboard the *Florin* used the ship's fixed piping system and fire main pump to bypass pollution prevention equipment to discharge oily bilge waste directly overboard. The crew neglected to record these discharges in the ORB and made false entries to conceal those illegal discharges.

During a Coast Guard inspection at the Port of Houston in June 2010, numerous hazardous conditions were brought to the crews' attention and required to be corrected. These deficiencies, however, were not corrected and Noka failed to report these conditions upon the vessel returning to the port of Corpus Christi in September 2010.

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

United States v. Albert Roach, No. 3:11-mj-04511 (D.N.J.), ECS Trial Attorney Jeremy Peterson [redacted]

Confiscated Spotted Turtles

On June 7, 2011, Albert Roach was sentenced to pay a $5,000 fine and will complete a one-year term of probation. Roach pleaded guilty to a two-count information charging Lacey Act violations for the unlawful purchase of wildlife in interstate commerce.

The defendant was the owner/operator of an online reptile website called "reptastic.com." The website allowed other individuals to buy, sell, and trade in turtles. In May 2008, Roach was contacted via email by an undercover wildlife officer in Pennsylvania. In June 2008, after several email exchanges, Roach agreed to purchase a North American Wood Turtle from the agent in exchange for two Spotted Turtles. This was *after* Roach contacted a federal Fish and Wildlife Service agent and was told that it was illegal to buy or sell wild-caught turtles in Pennsylvania. In October 2008, the defendant purchased three more North American Wood Turtles from the undercover agent for $375.

This case was investigated by the United States Fish and Wildlife Service and the Pennsylvania Fish and Boat Commission.

Back to Top

United States v. Charles Yi et al., Nos. 2:10-CR-00575 and 00793 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] AUSA Bayron Gilchrist [redacted], and ECS Paralegal Kathryn Loomis [redacted].

On June 6, 2011, Charles Yi was sentenced to serve 48 months' incarceration, followed by two years' supervised release. John Bostick was sentenced to serve six months of home confinement as a condition of a three-year term of probation. Bostick also will complete 150 hours of community service.

Yi was convicted by a jury after a two-week trial on a conspiracy violation and five Clean Air Act counts stemming from his involvement in the renovation of a 200-plus-unit apartment building in January and February of 2006. Co-defendants Joseph Yoon and Bostick previously pleaded guilty to a Clean Air Act conspiracy violation.

Yi was the owner of the now-defunct Millennium-Pacific Icon Group, which owned the apartment complex that was being converted into condominiums in 2006. Knowing that asbestos was present in the apartment ceilings, Yi and his co-conspirators hired a group of workers who were not trained or certified to conduct asbestos abatements. The workers scraped the ceilings of the apartments without knowing about the asbestos and without wearing any protective gear. The illegal scraping resulted in the repeated release of asbestos-containing material throughout the complex and the surrounding area. After the abatement project was shut down, the asbestos was cleaned up at a cost of approximately $1.2 million. Yi was further ordered to pay $5,400 in restitution to cover the cost of medical monitoring for three workers involved in the illegal asbestos removal. Yoon remains scheduled for sentencing in July 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the California South Coast Air Quality Management District.

Back to Top

United States v. Michael Materna d/b/a Materna Mint Farms, No.11-CR-00069 (N.D. Ind.), AUSA Donald Schmid [redacted].

On June 6, 2011, Michael Materna, d/b/a Materna Mint Farms, pleaded guilty to a Clean Water Act violation for knowingly discharging pollutants without a permit, stemming from the discharge of water into a stream at a temperature hot enough to scald a dog to death, which happened in front of the dog's owner last summer.

Materna is a mint farmer who operates a still that boils down mint leaves into mint oil using water heated to temperatures between 160 and 190 degrees. The wastewater discharged was not cooled before it was discharged from the facility into a roadside ditch, which then flowed into the stream.

After the dog's owner brought the incident to the attention of authorities it was found that Materna was operating the still without a permit and discharging water well over the 90 degree standard set by the state. Sentencing is scheduled for September 1, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Indiana Department of Environmental Management.

Back to Top

United States v. Stricker Refinishing Company et al., No. 1:10-CR-00505 (N.D. Ohio), SAUSA Brad Beeson [redacted]

On June 3, 2011, Stricker Refinishing Company (SRC), Thomas Stricker, and Gregory Stricker were all sentenced after previously pleading guilty to a Clean Water Act pretreatment violation for illegally discharging wastewater into the City of Cleveland's sewer system in 2007. All three defendants were ordered to pay $30,000 fines. Thomas and Gregory Stricker also will complete three-year terms of probation, perform 500 hours of community service, and each will pay $25,000 in community service payments to Ducks Unlimited, a wetlands and waterfowl conservation organization. The company will complete a two-year term of probation and make an additional $20,000 community service payment to Ducks Unlimited.

SRC, Thomas Stricker, and Gregory Stricker were the owner/operators of this metal plating company located in Cleveland, Ohio. During the plating process, rinse waters from the processing of copper, nickel, silver, zinc, and cyanide were generated. The facility's permit required that this rinse water be pretreated prior to its discharge into the sewer system. On numerous occasions between March and August 2007, the defendants bypassed or directed SRC employees to bypass the facility's pretreatment system. Some of the rinse waters were pH treated while others were discharged directly to the sewer system without treatment.

This case was investigated by members of the Northeast Ohio Environmental Crimes Task Force, which includes the Northeast Ohio Regional Sewer District, the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Department of Defense Criminal Investigative Service, and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Oak Mill, Inc., et al., No. 5:08-CR-06016 (W.D. Mo.), AUSA Jane Brown [redacted] and SAUSAs Anne Rauche [redacted] and Kristina Gonzales [redacted]

On June 2, 2011, Oak Mill, Inc., and company vice president Robert Arundale were sentenced for illegally discharging pollutants into the city of St. Joseph's POTW in violation of the Clean Water

Act. Both defendants will complete a five-year term of probation and were held jointly and severally liable for the payment of a $50,000 fine. They also will pay $4,000 in restitution to the city of St. Joseph.

Oak Mill is a company that reclaims soybean oil for resale and uses acid in the process of removing vegetable oils from tanker trucks. Arundale admitted that Oak Mill violated the provisions of its permit, which limits levels of pollutants that may be discharged to the POTW. The defendants admitted that, on October 5 and 12, 2006, they violated pretreatment standards relating to the zinc and nickel levels they were permitted to discharge. The permit limits were 3.00 mg/l for zinc and .99 mg/l for nickel. On October 5th the zinc levels discharged were measured at 20.9 mg/l, and nickel was measured at 2.47 mg/l. On October 12th the zinc levels discharged were 19.6 mg/l, and nickel was 2.94 mg/l. Arundale pleaded guilty to a negligent CWA violation and Oak Mill pleaded guilty to two felony CWA violations.

This case was investigated by the United States Environmental Protection Criminal Investigation Division, the Missouri Department of Natural Resources, and the City of St. Joseph.

Back to Top

United States v. Randall T. Boothe, No. 7:10-CR-00478 (N.D. Ala.), AUSA Henry Cornelius [redacted]

On May 26, 2011, Randall T. Boothe was sentenced pay a $2,000 fine and will complete a three-year term of probation for illegally baiting waterfowl, in violation of the Migratory Bird Treaty Act. Boothe also will complete 20 hours of community service and is prohibited from hunting while on probation.

In the weeks prior to the 2009/2010 waterfowl season, Boothe admitted to placing corn in an area of flooded timber on his hunting lease in Pickens County to attract ducks and other wildlife to the area. In December 2009, wildlife officers apprehended four juveniles hunting wood ducks over the baited area.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Alabama Division of Wildlife and Freshwater Fisheries.

Back to Top

United States v. Mace Security International, Inc., No. 5:10-CR-00147 (D. Vt.), AUSA Joseph Perrella [redacted]

On May 26, 2011, Mace Security International, Inc. (Mace), a pepper spray and tear gas manufacturer, was sentenced to pay a $100,000 fine and will remain on probation until January 2012 or until the fine is paid.

Mace previously pleaded guilty to a RCRA violation for storing hazardous waste without a permit at its Bennington facility. The company and its president, Jon Goodrich, were charged with illegally storing hazardous waste from 1998 to 2008. Goodrich is not yet scheduled for trial.

The indictment states that containers labeled as "toxic" were located behind the facility close to the Walloomsac River. In July 2006, Federal Emergency Management Agency officials notified the Town of Bennington that the shipping containers were too close to the river and might be in the flood plain. In April 2007, the town issued a zoning violation to Goodrich and ordered the containers to be removed. In January 2008, Goodrich hired a contractor to move the drums of waste from the shipping containers to mill buildings on the property.

During a January 2008 inspection, Environmental Protection Agency and Vermont Department of Environmental Conservation officials found more than 80 drums of unlabeled chemicals in factory

mill buildings. There were no signs posted indicating the storage of hazardous waste. Inspectors ultimately identified more than 2,200 pounds of hazardous waste in the buildings, which included spent solvents, 2-chlorobenzalmalononitrile or chloroacetophenone, and oleoresin capsicum.

This case was investigated by the United States Environment Protection Agency Criminal Investigation Division.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

August 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Money belts strapped to defendant's body concealing 12 live reptiles during an international flight. See *U.S. v. Plank* inside, for details.

AT A GLANCE:

- United States v. Peter X. Lam et al., 2011 WL 2878009 (9th Cir. 2011).
- [redacted]

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
N.D. Ala.	United States v. David Langella	*Reptile Sales/* Lacey Act, Conspiracy, Obstruction
D. Alaska	United States v. Michael Duby United States v. Michael E. Smith	*Animal Sales/* MBTA, Lacey Act *Sea Otter Pelt Sales/* Lacey Act
C.D. Calif.	United States v. Chau-Shin Lin et al. [redacted] United States v. Michael Plank United States v. Joseph Yoon et al.	*Fish Mislabeling/* Lacey Act, FDCA [redacted] *Reptile Smuggling/* Smuggling *Condo Renovation/* CAA, Conspiracy
M.D. Fla.	United States v. Guy Gannaway et al.	*Condo Renovation/* CAA, Conspiracy, False Statement
N.D. Calif.	United States v. James Dickson	*Wildlife Trade/* Lacey Act
S.D. Calif.	United States v. Nathan Lee et al.	*Fishing in Int'l Waters/* Lacey Act
S.D. Fla.	United States v. Brendan Clery United States v. Richard Stowell et al.	*Importing Ozone Depleting Substances/* Smuggling *Mislabeled Shrimp/* Lacey Act, FDCA
[redacted]	[redacted]	[redacted]
N.D. Ga.	United States v. Michael Kelly et al. United States v. Corey Beard et al.	*Emissions Certificate Fraud/* CAA *ODS Release/* CAA, Conspiracy

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Iowa	United States v. William Coco et al.	*Building Renovation/* CAA, Conspiracy
E.D. La.	United States v. Stolthaven New Orleans, LLC United States v. Freddy Langford United States v. Stanships, Inc. (Marshall Islands), et al.	*Bulk Storage Terminal/* CWA Misdemeanor *Fish Transport/* Lacey Act *Vessel/* APPS, Obstruction, PWSA
W.D. La.	United States v. Byron Hamilton	*Crude Oil Refinery/* CAA Negligent Endangerment
D. Md.	United States v. Cephus Murrell	*Lead-Based Paint Disclosure/* TSCA, CAA
E.D. Mich.	United States v. Brian Waite et al.	*Asbestos Removal/* CAA, Conspiracy
D. Mont.	United States v. Daniel Vanacker et al. United States v. Steven Augare	*Pond Construction/* CWA Misdemeanor *Drinking Water Operator/* False Statement
E.D.N.Y.	United States v. Victor Gordon	*Ivory Smuggling/* Lacey Act, Conspiracy, Smuggling
S.D.N.Y.	United States v. Peter Ward	*Recidivist Asbestos Inspector/* CAA
E.D.N.C.	United States v. Freedman Farms, Inc., et al.	*CAFO/* CWA
W.D.N.C.	United States v. Stephen Dickinson et al.	*Emissions Certificate Fraud/* CAA Conspiracy
S.D. Ohio	United States v. Columbus Steel Castings	*Steel Foundry/* CWA
E.D. Pa.	United States v. Debbie Wanner et al.	*Laboratory Testing/* CWA
M.D. Pa.	United States v. Matthew R. Lentz	*Electroplating Business/*CWA Misdemeanor
E.D. Tex.	United States v. Clinton Promise	*Truck Wash Business/* RCRA
D.V.I.	United States v. GEM Manufacturing LLC United States v. Juan O. Garcia	*Jewelry Business/* Lacey Act, ESA *Turtle Egg Sales/* ESA

Additional Quick Links:

Significant Environmental Decisions

Ninth Circuit

United States v. Peter X. Lam et al., 2011 WL 2878009 (9th Cir. 2011).

On June 29, 2011, the Ninth Circuit entered a memorandum affirming the convictions of Peter X. Lam for selling illegally imported fish (Vietnamese catfish falsely labeled as sole, among other things) in violation of 18 U.S.C. §545, and for introducing misbranded fish into interstate commerce with the intent to defraud in violation of 21 U.S.C. §§ 331 and 333. The court found that venue was appropriate in the Central District of California, that the evidence was sufficient to support the convictions, and that, if there were any inappropriate arguments during closing (which the court did not find), it would have been harmless error. The court remanded for resentencing, though, due to a procedural error in the district court's calculation of the loss value; however, the Ninth Circuit noted that regardless of the error, the sentence was reasonable.

Lam and co-defendant Arthur Yavelberg were sentenced in May 2009 after being convicted by a jury in October 2008 for their roles in a scheme to import misbranded Vietnamese catfish (*Pangasius hypophthalmus*). Lam was sentenced to serve 63 months' incarceration and was ordered to forfeit more than $12 million. Yavelberg was ordered to complete a one-year term of probation. Lam was found guilty of conspiring to import mislabeled fish in order to avoid paying federal import tariffs. He also was convicted on three counts of dealing in fish that he knew had been illegally imported. Yavelberg was convicted of a misdemeanor conspiracy for trading in misbranded food.

Two Virginia-based companies, Virginia Star Seafood Corp., of which Lam was president, and International Sea Products Corporation, illegally imported more than ten million pounds, or $15.5 million worth, of frozen fish fillets from Vietnamese companies Binh Dinh, Antesco, and Anhaco between May 2004 and March 2005. These companies were affiliated with Cafatex, one of the largest producers in Vietnam of Vietnamese catfish. Although the fish imported by Virginia Star and International Sea Products was labeled and imported as sole, grouper, flounder, snakehead, channa and conger pike (a type of eel), DNA tests revealed that the frozen fish fillets were in fact *Pangasius hypophthalmus*, aka catfish.

Further evidence presented at trial showed that Kich Nguyen, the head of Cafatex, imported the fish to his son, Henry Nguyen, who oversaw Virginia Star, International Sea Products, and a third company, Silver Seas, of which Yavelberg was president. Lam then knowingly marketed and sold millions of dollars worth of the falsely labeled and illegally imported fish to seafood buyers in the United States as basa, a trade name for a more expensive type of Vietnamese catfish, *Pangasius bocourti*, and also as sole. All of the fish sold was invoiced to match the false labels that were still on the boxes.

Back to Top

District Courts

[redacted]

Back to Top

Trials

United States v. Freedman Farms, Inc., et al., No. 7:10-CR-00015 (E.D.N.C.), ECS Trial Attorney Mary Dee Carraway [redacted], AUSA J. Gaston Williams [redacted], and ECS Paralegal Rachel Van Wert [redacted]

Hog waste discharged to Browder's Branch

On July 6, 2011, after a week of trial, the defendants pleaded guilty to a Clean Water Act violation. Specifically Freedman Farms, Inc., pleaded guilty to a felony CWA violation and William B. Freedman pleaded guilty to a misdemeanor CWA charge. The two had been charged in a four-count indictment with Clean Water Act, false statement, and obstruction violations related to the illegal discharge of hog waste.

William Freedman and the family-owned Freedman Farms are in the business of raising hogs for market. This particular Freedman Farms hog operation consists of six hog houses that hold more than 4,800 hogs. The waste from the hogs is directed to two nearby lagoons for treatment and disposal.

On December 19, 2007, witnesses observed hog waste in the stream known as Browder's Branch that leads from the farm. State officials were notified and pumps and tanker trucks were brought in to remove approximately 169,000 gallons of hog waste from the stream. Investigators determined that more than 332,000 gallons of waste had been discharged into Browder's Branch over a five-day period. Officials did not find evidence of pumping system failure, vandalism, or accidental discharge. Documents provided by Freedman falsely stated that he had properly disposed of the waste during some of this period using the approved methods of applying treated hog waste to crops located on other parts of Freedman Farms' land.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the North Carolina State Bureau of Investigation, with assistance from the Environmental Protection Agency Science and Ecosystem Support Division.

Back to Top

Informations and Indictments

United States v. Victor Gordon, No. 1:11-CR-00517 (E.D.N.Y.), AUSAs Vamshi Reddy [redacted] and Claire Kedeshian [redacted]

On July 15, 2011, Victor Gordon, the owner of a Philadelphia African art store, was charged with conspiracy, smuggling, and Lacey Act violations related to the illegal importation and sale of African elephant ivory. Federal agents seized approximately one ton of elephant ivory, one of the largest U.S. elephant ivory seizures on record.

Seized ivory carvings

As alleged in the ten-count felony indictment, between May 2006 and April 2009, Gordon paid a co-conspirator to travel to Africa to purchase raw elephant ivory and have it carved to Gordon's specifications. In advance of the trips, Gordon provided the co-conspirator with photographs or other depictions of ivory carvings, which served as templates for the carvers in Africa. He further directed the co-conspirator to stain or dye the elephant ivory so that the specimens would appear old. The defendant then planned and financed the illegal importation of the ivory from Africa to the United States through JFK Airport and sold the carvings to customers at his store in Philadelphia.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. David Langella, No. 5:11-CR-00302 (N.D. Ala.), ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Henry Cornelius [redacted].

On July 25, 2011, a seven-count indictment was returned charging David Langella with conspiracy to violate the Lacey Act, substantive Lacey Act violations, and obstruction, relative to his travelling to Arizona to illegally obtain reptiles to sell in Alabama and other states.

The indictment alleges that Langella and others conspired to obtain Gila Monsters and Ridge-nosed rattlesnakes from Arizona in September 2009, with Langella providing guiding and tracking services to his co-conspirators. The charges further allege that in 2006, 2008, and 2009 the defendant made trips between Alabama and Arizona and Alabama and Georgia with illegally obtained reptiles. The obstruction charge alleges that in August 2009, Langella and co-conspirators moved some of these reptiles to a vacant building to thwart the efforts of law enforcement officials in their investigation.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement, and the Alabama Wildlife and Freshwater Fisheries Division Special Operations Unit.

Back to Top

United States v. Brian Waite et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell [redacted] and SAUSA Jim Cha [redacted]

On July 19, 2011, Brian Waite and Daniel Clements were charged in a three-count indictment with conspiracy to violate the Clean Air Act and with substantive violations of the Clean Air Act for the illegal removal of regulated asbestos-containing materials (RACM) from December 2010 through February 2011 at a former Ford plant in Utica, Michigan.

According to an asbestos survey of the plant, the building contained over 60,000 linear feet of RACM. During the removal, the defendants allegedly directed workers to tear down the RACM while it was dry and to place it into plastic bags without wetting it. To speed things up Waite and Clements allegedly instructed workers to meet a daily goal of removing 1,000 feet of RACM. In response, workers sometimes kicked or threw the RACM to the ground and broke-up larger pieces of the material to make it fit into the bags.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Stolthaven New Orleans, LLC, No. 2:11-CR-00169 (E.D. La.), AUSA Dorothy Taylor [redacted].

On July 12, 2011, an information was filed charging Stolthaven New Orleans, LLC, with a misdemeanor Clean Water Act violation (33 U.S.C. §1319(c)(1)(A)) for the negligent discharge of acid into the Mississippi River on March 17, 2008.

Stolthaven operates a bulk liquid storage and transfer terminal located adjacent to the Mississippi River. It receives and stores a variety of both hazardous and non-hazardous products in fixed-roof tanks. In 2005, the company contracted to store fluorosilicic acid (FSA), a toxic chemical used in the manufacture of circuit boards and chips. Due to its corrosivity, the owners of the FSA advised Stolthaven that the chemical must be stored in a quarter-inch rubber-lined stainless steel tank. Additionally, all hosing, tubes, valves, and couplings were to be lined with high-density polyethylene. Stolthaven altered the contract, however, and used a tank lined with Plastite 4100 instead of a rubber-lined tank. The Plastite product was supposed to be comparable to rubber, but cheaper. As a result, however, numerous intermittent releases of FSA were recorded from the Stolthaven facility in 2007 and continued until the tank experienced a catastrophic rupture in March 2008, causing the spill of approximately 468,000 gallons of the chemical into the Mississippi River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Debbie Wanner et al., Nos. 5:11-CR-00259, 00264 (E.D. Pa.), AUSA Thomas Moshang [redacted].

On July 5, 2011, an information was filed charging Debbie Wanner, a former Blue Marsh Laboratory manager, with three counts of making false statements under the Clean Water Act.

Blue Marsh and company president Michael McKenna were charged in April of this year in an 84-count indictment with charges stemming from the falsification of environmental laboratory testing from 2005 through 2007. Among the tests allegedly falsified were results from Hurricane Katrina flood water samples that were to be tested for a variety of contaminants, including cyanide. Other tests allegedly falsified were those required by the USDA for fruit imported from South America suspected

of being contaminated with pesticides. The pending charges include conspiracy, Clean Water Act tampering, obstruction, wire fraud, and false statement violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Michael Duby, No. 1:11-CR-00010 (D. Alaska), ECS Senior Counsel Bob Anderson [redacted] and AUSA Aunnie Steward [redacted]

On June 23, 2011, Michael Duby was charged in a seven-count indictment with felony violations of the Migratory Bird Treaty Act for the illegal sale of migratory birds and a Lacey Act violation for the sale of an illegally taken bear. From October 2007 through approximately June 2009, the defendant allegedly posted on Ebay a variety of migratory birds and bird parts for sale. In February 2008, Duby allegedly was warned by Ebay that he might be in violation of federal law. Over the following year, however, he continued to sell migratory birds on the auction website.

The indictment further charges that, between February 2009 and June 2009, the defendant transported and sold parts of a black bear between Alaska and the state of Washington, when he should have known that the bear had been taken illegally, contrary to Alaska law, and in violation of the Lacey Act.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Plea Agreements

United States v. Chau-Shing Lin et al., No. 2:11-CR-00297 (C. D. Calif.), ECS Assistant Chief Elinor Colbourn [redacted] AUSA Joe Johns [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On July 25, 2011, Chau-Shing (aka Duke) Lin, Christopher Scott Ragone, and Seafood Solutions, Inc., pleaded guilty to criminal charges stemming from their involvement in sales of a fish in the catfish family that were misleadingly labeled as "Paradise Grouper" and "Falcon Baie Grouper." Duke Lin is the president and founder of Ocean Duke Corporation, a seafood importer located in Torrance, California. Ragone purchased, marketed, and sold frozen seafood products, including frozen *Pangasius* (a type of catfish) fillets. Seafood Solutions, Inc., is affiliated with Ocean Duke Corporation.

In approximately June 2004, Lin's company began to sell a fish it declared to customs as "ponga." The fish being imported at this time as ponga was *Pangasius hypophthalmus*, a species in the catfish family. The fish was then sold under the brand names and in boxes labeled in part as "Paradise Grouper" and "Falcon Baie Grouper" with a sole listed ingredient of "ponga."

Between July 2005 and February 2006, a wholesale distributor that had purchased the fish returned approximately $411,000 worth of the product labeled as "Paradise Grouper" and "ponga" or "Falcon Baie Grouper" and "ponga" after it was determined that the product was, in fact, not grouper. Seafood Solutions agreed to be invoiced for and received the returned product, knowing that it had been inaccurately labeled. Defendants Lin, Ragone and Seafood Solutions, resold and transported the

fish in interstate commerce even after its return from the customer, knowing that it was misleadingly labeled. From February 2006 to April 2006, Ragone sold approximately $2,000,000 worth of *Pangasius* fillets knowing that the product bore the "Paradise Grouper" and "ponga" labels and thus was misleadingly labeled.

Lin pleaded guilty to a Lacey Act trafficking violation (16 U.S.C. §§3372(a)(1), 3373(d)(2)) and to a misbranding violation (21 U.S.C. §§331(c)(a), 333(a)(1)). Ragone pleaded guilty to two misbranding violations, with Seafood Solutions pleading guilty to a Lacey Act trafficking violation.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Department of Homeland Security Immigration and Customs Enforcement.

Back to Top

United States v. Columbus Steel Castings, No. 2:11-CR-00180 (S.D. Ohio), AUSA Michael Marous [redacted]

On July 21, 2011, Columbus Steel Castings (CSC) pleaded guilty to an information charging six counts of violating the Clean Air Act.

CSC owns and operates a steel foundry in Columbus, Ohio, that manufactures steel castings for various industries, including the railroad industry. The company has a Title V permit for several emission sources that require air pollution control devices. In 2007, the Central Ohio Environmental Crimes Task Force began investigating the company due to the significant number of NOVs issued to the facility, the repeated nature of the violations, and the significant number of complaints being made to the Ohio EPA regarding emissions from the facility.

The company admitted to, among other things, knowingly failing to report malfunctions of air pollution control equipment; knowingly operating emission units on one or more occasion while the associated air pollution control technology was not in operation; knowingly failing to submit an accurate annual compliance certification or a revised annual compliance certification for the previous year that did not accurately state its compliance status; and knowingly failing to conduct emission testing within six months prior to the permit expiration.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cephus Murrell, No. 1:11-CR-000330 (D. Md.), AUSA Michael Cunningham [redacted]

On July 19, 2011, Cephus Murrell pleaded guilty to three misdemeanor TSCA violations (15 U.S.C. §§ 2615(b), 2689) for failing to disclose the presence of lead-based paint to apartment tenants in Baltimore and for conducting improper lead abatement.

Murrell is the president and owner of C. Murrell Business Consultants, Inc. Through his company, the defendant owns and manages approximately 68 rental properties (175 rental units) throughout the City of Baltimore. All of these properties were built before 1978 and are subject to regulations relating to the risks associated with lead-paint exposure. Murrell has been a landlord in Baltimore since approximately 1974.

In May 2008, Murrell and his company failed to disclose to tenants the presence of lead-based paint hazards found in units with a history of lead-based paint problems. Inspection records have been maintained by the Maryland Department of the Environment over several years that document lead-based paint violations and children with elevated lead blood levels in many of the properties owned by

Murrell. More than 20 notices of violation and compliance orders have been issued against Murrell and/or his company for lead-based paint violations.

In September 2010, workers conducting lead-paint abatement under Murrell's direction did not follow proper procedures by, among other things, working without a supervisor on site despite Murrell's submission of certifications to local authorities that a supervisor would be present.

Sentencing has been scheduled for November 4, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Maryland Department of the Environment, and the Maryland Attorney General's Office.

Back to Top

United States v. GEM Manufacturing LLC, No. 2:11-CR-00019 (D.V.I.) ECS Trial Attorney Christopher Hale and AUSA Nelson Jones

Black coral cufflinks

On July 15, 2011, GEM Manufacturing LLC (GEM) pleaded guilty to a seven-count information charging two felony Lacey Act false labeling violations (16 U.S.C. §§ 3372(d), 3373(d)(3)(A)) as well as five misdemeanor Endangered Species Act counts (16 U.S.C. §§ 1538(c), 1540(b)). The defendant utilizes the black coral in the manufacture of high-end jewelry and art figurines. The charges stem from the company's purchase of thousands of pounds of CITES Appendix II black coral in 2009 that were falsely labeled and lacked required CITES certificates.

Black coral is one of the several types of precious corals that may be polished to a high sheen, worked into artistic sculptures, and used in inlaid jewelry. Black coral is typically found in deep waters, and many species have long life spans and are slow-growing. Using deep sea submersibles, scientists have observed that fish and invertebrates tend to accumulate around the black coral colonies. Thus, black coral communities serve important habitat functions in the mesophotic and deepwater zones. In the last few decades, pressures from overharvesting, due in part to the wider availability of diving gear, and the introduction of invasive species have threatened this group of coral.

The plea was taken before the magistrate judge, who in turn recommended that the chief judge formally accept the defendant's guilty plea. Sentencing is set for October 26, 2011. If the court imposes the agreed-upon sentence, GEM will pay a $2 million fine, make a community service payment of $500,000, and forfeit raw black coral and jewelry valued at over $2.09 million. The aggregate financial penalty of $4.59 million would be the largest involving the illegal trade in coral and the largest non-seafood wildlife trafficking financial penalty to date.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with support from United States Immigration and Customs Enforcement and United States Customs and Border Protection.

Back to Top

United States v. Stephen Dickinson et al., No. 3:11-CR-00101 (W.D.N.C.) AUSA Stephen Kaufman

On July 14, 2011, former service technician Jin Sung Chang pleaded guilty to a Clean Air Act conspiracy violation (42 U.S.C. §7413 (c)(2)(A) and to making a false statement (18 U.S.C. §1001) for his involvement in a scheme to bypass the state of North Carolina's vehicle emissions program.

Several former service technicians who worked for Hendrick BMW used an illegally purchased OBDII simulator that enabled them to falsify emissions test results. The illegal simulator allowed the technicians to access the state's computerized emission program and print out falsified emissions certificates without actually testing a car. Illegal inspections were performed on the defendants' personal vehicles and those of family and friends, often with cash payments to the defendants.

Former technicians Stephen Dickinson and Alexander Edwards each pleaded guilty in April 2011 to a CAA charge. Car salesman Chuck Yee Cheung was arrested in May 2011 for violating supervised release after having been charged with a CAA violation. On June 7, 2011, Cheung pleaded guilty to this new charge while under supervised release for a prior drug conviction. Thanh Long Quoc Nguyen, owner of a used car dealership, pleaded guilty on July 6, 2011, to a CAA violation.

The investigation is ongoing and is being conducted by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the North Carolina Division of Motor Vehicles License and Theft Bureau.

Back to Top

United States v. Byron Hamilton, No. 2:11-CR-00130 (W.D. La.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney Christopher Hale [redacted], ECS Senior Counsel Rocky Piaggione [redacted] AUSA Stephanie Finley [redacted], and Paralegal Ben Laste [redacted]

On July 6, 2011, Byron Hamilton pleaded guilty to two Clean Air Act negligent endangerment violations. From approximately January 2005 to the present, Hamilton served as the vice president and general manager of Pelican Refining Company (PRC), a crude oil and asphalt refining facility located in Lake Charles, Louisiana. Hamilton was viewed as the one in charge and the highest level managers at the facility, including two refinery managers, reported directly to him.

Pelican Refinery

From approximately August 2005 through December 2006, PRC sporadically processed crude oil and was required by its permit to maintain and utilize certain pollution prevention equipment to mitigate the release of harmful air pollutants. Much of the equipment, however, was not functioning and/or poorly maintained such that there were significant releases of pollutants into the atmosphere and at the refinery. Crude oil contains benzene, ethyl benzene, toluene, and xylene (collectively known as "BTEX") and each is a listed hazardous air pollutant.

In 2005 and 2006, PRC processed "sour" crude with high concentrations of hydrogen sulfide, also known as "H2S." H2S is a highly toxic, colorless, and flammable gas inherent to sour crude refining. It is classified as an "extremely hazardous substance" with a characteristic odor of rotten eggs at low concentrations. Refinery workers reported smelling H2S as well as having their personal H2S monitors periodically alarm. PRC had no procedure to record, track, report, or mitigate H2S releases. At higher concentrations H2S disables the sense of smell so that its odor is no longer perceived. At very high concentrations it paralyzes the respiratory center of the brain causing the exposed individual to stop breathing.

Sources of H2S and BTEX emissions at the Pelican Refinery included the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified

and fitted and which also had failed. For the periods from August through December of 2005, and from January through December of 2006, Hamilton admitted that he was responsible for the release of hazardous air pollutants including benzene, ethylbenzene, toluene, and xylene, along with hydrogen sulfide, negligently placing other persons in imminent danger of death or serious bodily injury.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana State Police, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

United States v. Clinton Promise, No. 9:11-CR-00017 (E.D. Tex.), AUSA Jim Noble [redacted]

On July 5, 2011, Clinton Promise pleaded guilty to a RCRA disposal violation (42 U.S.C. § 6928 (d)(2)) for unlawfully disposing of hazardous wastes.

In March 2006, Promise was an employee at QualaWash, a truck washing and cleaning business. He was paid by HOT Transport, a chemical transportation company, to illegally dispose of approximately 45,000 pounds of tank wash wastewater that exhibited hazardous waste characteristics.

QualaWash was not permitted to receive, treat, or dispose of hazardous wastes. QualaWash management had no knowledge of the disposal, but another employee was terminated for allowing Promise to dispose of the wastes at the site.

David Overdorf, the former HOT Transport president, also pleaded guilty to a RCRA disposal violation. He admitted to directing HOT employees to wash out the interiors of trailer-mounted tanks at HOT's place of business knowing that these tanks contained hazardous wastes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Environmental Enforcement Task Force.

Back to Top

United States v. Freddy Langford, No. 2:11-CR-00158 (E.D. La.), AUSA Jordan Ginsberg [redacted]

On July 5, 2011, Freddy Langford pleaded guilty to a felony Lacey Act violation (16 U.S.C. §3372(a)(2)(A)) for knowingly transporting and selling tilapia, a species of fish not native to Louisiana.

Langford was the president of the company Langford Aquatics, based in Lakeland, Florida, which was in the business of raising and selling fish for stocking private ponds. In July 2006, Langford sold and transported a truck-load of tilapia from Florida to a buyer in Louisiana when he should have known that doing so violated Louisiana state regulations.

This case was investigated by the United States Fish and Wildlife Service and Louisiana Department of Wildlife and Fisheries.

Back to Top

Sentencings

United States v. Brendan Clery, No. 1:11-CR-20280 (S.D. Fla.), SAUSA Jodi Mazer [redacted] and AUSA Tom Watts-FitzGerald[redacted]

On July 29, 2011, Brendan Clery was sentenced for illegally importing HCFC-22 into the United States. Clery will serve 18 months' imprisonment, followed by two years' supervised release. He also will pay a $10,000 fine and was ordered to forfeit $935,240, which represents the proceeds from his illegal conduct.

Clery previously pleaded guilty to a one-count information charging him with a smuggling violation (18 U.S.C. §545) for knowingly importing more than 270,000 kilograms of illegal hydrochlorofluorocarbon - 22 (HCFC-22) into the United States. HCFC-22 is a widely used refrigerant for residential heat pump and air-conditioning systems.

In 2005, Clery formed Lateral Investments for the purpose of importing merchandise, including refrigerant gas. Between June and August 2007, the defendant illegally imported approximately 20,460 cylinders of restricted HCFC-22, with a market value of $1,438,270. At no time did Clery or his company hold unexpended consumption allowances that would have allowed them to legally import the HCFC-22.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, United States Immigration and Customs Enforcement Homeland Security Investigations, and the Florida Department of Environmental Protection Criminal Investigation Bureau.

Back to Top

United States v. Stanships, Inc. (Marshall Islands), et al., No. 11-CR-00057 (E.D. La.), ECS Senior Trial Attorney Richard Udell[redacted] and AUSAs Emily Greenfield[redacted] and Dorothy Taylor[redacted].

Overboard pipe with oil stain above

On July 28, 2011, Stanships, Inc. (Marshall Islands), Stanships, Inc. (New York), Standard Shipping, Inc. (Liberia), and Calmore Shipping (British Virgin Islands) were collectively sentenced to pay a $1 million penalty and will be banned from doing business in the U.S during a five-year term of probation. Of the $1 million, $250,000 will be used to fund community service projects in the Eastern District of Louisiana.

The defendants previously pleaded guilty to an eight-count information charging them with obstruction, APPS oil record book violations, and Ports and Waterways Safety Act violations (33 U.S.C. § 1908(a), 33 U.S.C. § 1232(b)(1), 18 U.S.C. §§ 1505 and 1519) for failing to notify the Coast

Guard of a hazardous condition on the *M/V Americana*, a Panamanian-registered cargo vessel operated by Stanships, Inc. (Marshall Islands).

An investigation was initiated after a crew member made allegations of illegal overboard discharges of oily waste and sludge and provided the Coast Guard with cell phone photos showing the use of a bypass pipe. The ship's oil record book was falsified to conceal the discharges. Additionally, in November 2011, the ship arrived at the port of New Orleans with a variety of unreported hazardous conditions, including an inoperable and unreliable generator and a hole between a fuel tank and a ballast tank. Prior to arriving in New Orleans, the ship had been adrift for approximately three to four days without engine power.

Stanships, Inc. (Marshall Islands) is a repeat offender, having been sentenced in September 2010 in the Eastern District of Louisiana to pay a $700,000 fine, make a $175,000 community service payment, complete a three-year term of probation, and implement an environmental compliance plan. In that case, the company pleaded guilty to an APPS ORB charge and a Clean Water Act violation for a knowing discharge of oil in the Gulf of Mexico from the *M/V Doric Glory*. In April 2011, the previous term of probation was revoked based upon the new violations. As a result, the *M/V Americana* and the *M/V Doric Glory* are banned from entering U.S. waters.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Richard Stowell et al., No. 1:11-CR-20256 (S.D. Fla.), AUSA Norman O. Hemming, III [redacted].

On July 27, 2011, Richard Stowell and United Seafood Imports, Inc. (USI) were sentenced after previously pleading guilty to charges stemming from the sale of mislabeled shrimp. Stowell will complete a two-year term of probation to include six months' home confinement. He also will perform 200 hours of community service to include writing an article describing his conduct in this case and holding two seminars addressing the seafood industry about Country of Origin Labeling regulations and Lacey Act requirements. USI will pay a $200,000 fine and will complete a two-year term of probation.

The defendants previously pleaded guilty to conspiracy to falsely label and misbrand seafood, Lacey Act false labeling, and Food, Drug, and Cosmetic Act (FDCA) misbranding violations (18 U.S.C. §371; 16 U.S.C. §3372(d)(2); 21 U.S.C. §331(a)).

Stowell is USI's owner, president, and sole shareholder. He and other co-defendants conspired to violate the Lacey Act and the FDCA by mislabeling and misbranding approximately one million pounds of shrimp. USI purchased the shrimp in boxes labeled "Product of Thailand," "Product of Malaysia," and "Product of Indonesia." The defendants then re-packaged and re-labeled the shrimp as "Product of Panama," "Product of Ecuador," and "Product of Honduras." The shrimp, valued at between $400,000 and $1,000,000, was ultimately sold to supermarkets in the northeastern United States.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Florida Department of Agriculture and Consumer Services.

Back to Top

[redacted]

Back to Top

United States v. Juan O. Garcia, No. 1:10-CR-00041 (D.V.I.), AUSA Rhonda Williams-Henry [redacted]

On July 21, 2011, Juan O. Garcia was sentenced to serve six months of home confinement as a condition of a one-year term of probation. He also will perform 100 hours of community service.

Garcia previously pleaded guilty to an Endangered Species Act violation (16 U.S.C. §1538 (a)(1)(B)) for the illegal take of more than 140 eggs from a Hawksbill sea turtle nest. A concerned citizen contacted authorities in June 2009, when the defendant was seen selling eggs from a bucket at a gas station. Garcia freely admitted that they were turtle eggs, and that he had removed 146 from a nest. Analysis confirmed that they were from a Hawksbill sea turtle, an endangered species.

Immediately after the eggs were recovered, a wildlife biologist reburied them in another location in St. Croix with all 146 of the eggs eventually hatching.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

Biologist with sea turtle hatchlings

Back to Top

United States v. Guy Gannaway et al., Nos. 8:10-CR-00013, 00059 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] AUSA Cherie Krigsman [redacted], and ECS Paralegal Rachel Van Wert [redacted]

On July 21, 2011, Guy Gannaway was sentenced to serve 90 days' incarceration, followed by six months' home detention, as conditions of a three-year term of supervised release. A fine was waived, but Gannaway also will perform 30 hours of community service to focus on speaking to contractor-related groups about asbestos removal. Stephen Spencer will pay a $10,000 fine, complete a five-year term of probation, and will perform 30 hours of community service addressing contractor/architecture-related groups about asbestos removal.

Gannaway and Spencer were convicted by a jury in January of this year of conspiracy to violate the Clean Air Act and various CAA charges related to the mishandling of asbestos (18 U.S.C. § 371, 42 U.S.C. §7413.) Gannaway also was convicted of making a false statement (18 U.S.C. § 1001.) The jury acquitted co-defendant John Loder on five counts and could not reach a verdict on two remaining counts. Defendant Keith McConnell died earlier this year of an extended illness, and the case against him was dismissed.

From approximately November 2004 through September 2005, the defendants were involved in the purchase and renovation of apartment complexes for the purpose of converting them to condominiums. Gannaway was the owner of Gannaway Builders, Inc. (GBI), the general contractor on the project. McConnell was the GBI superintendent for renovation operations. Spencer was a partner in Sun Vista Indian Pass, LLC, the developer of the project and also was the architect for the project.

Evidence at trial showed that asbestos-containing materials were mishandled by the defendants, despite repeated warnings from the Pinellas County Air Quality Division and various asbestos consultants and contractors. In at least two of the complexes slated for renovation and conversion, the ceilings within the buildings were coated with a "popcorn" ceiling mixture that contained significant amounts of asbestos. During the course of the renovations, the defendants disturbed and caused others to disturb large quantities of this material without notifying regulators and without following the work practice standards for asbestos. Photographs showed wide-ranging disturbances of asbestos-containing material as well as improper disposal of those materials in general construction debris dumpsters. GBI employees were also depicted dry sweeping debris, resulting in significant clouds of dust in areas where asbestos was found. Co-defendant James Roger Edwards previously pleaded guilty to being an accessory-after-the-fact for his failure to notify or report an improper removal of asbestos.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Florida Department of Law Enforcement.

Back to Top

United States v. William Coco, et al., No. 4:10-CR-00025 (S.D. Iowa), ECS Trial Attorneys Gary Donner [redacted] and Mark Romley [redacted], AUSA Debra Scorpiniti [redacted] SAUSA Kristina Gonzales [redacted], and ECS Paralegal Lisa Brooks [redacted].

On July 13, 2011, William Coco was sentenced to complete three years' probation and will perform 200 hours of community service that must be geared toward either environmental or homeless/low economic housing issues. Coco pleaded guilty to conspiracy and to a Clean Air Act violation (18 U.S.C. § 371; 42 U.S.C. §7413 (c)(1)) for his involvement in an illegal asbestos abatement project. Co-defendant Robert Joe Knapp recently was sentenced to serve 41 months' incarceration, followed by two years' supervised release. Knapp also must pay a $12,500 fine and perform 300 hours of community service. Knapp pleaded guilty to one count of conspiracy to violate

the CAA and to one CAA count for failing to remove all regulated asbestos-containing material (RACM) from the Equitable Building before commencement of a three-year renovation project.

Knapp, as the owner of the Equitable Building (located in downtown Des Moines), oversaw its renovation from 2006 through February 2008. The renovation included the disturbance of asbestos-containing pipe insulation and tile as workers gutted several floors of the building while converting the floors into luxury residential condominium units and additional commercial space.

Knapp admitted to conspiring with Coco, his construction manager, to illegally remove more than 260 feet of RACM from steam pipes and more than 160 square feet of floor tile containing RACM from the building, which subsequently was illegally disposed of in an uncovered dumpster. None of the workers involved in the project were properly trained to perform asbestos abatement work.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Iowa Department of Natural Resources.

Back to Top

United States v. Matthew R. Lentz, No. 1:11-CR-00066 (M.D. Pa.), AUSA Bruce Brandler [redacted]

On July 12, 2011, Matthew R. Lentz was sentenced to pay a $2,500 fine and will complete a one-year term of probation.

Lentz previously pleaded guilty to a one-count information charging him with a misdemeanor Clean Water Act violation (33 U.S.C. § 1319(c)(1)(A)) for illegal wastewater discharges made to the City of Lebanon's POTW.

Between 1996 and 2009, the defendant was the president and co-owner of Lebanon Finished Products (LFP), an electroplating company. During this period the company repeatedly violated its permit requirements, primarily by exceeding its zinc effluent limitations. After the issuance of numerous notices of violation by the local sewer authority, the company was placed under a consent order and, in May 2005, Lentz agreed to upgrade the pretreatment system in accordance with a compliance agreement. After assuring local authorities that new equipment had been installed, the company remained in significant non-compliance with its permitted zinc levels from September 2005 through November 2009.

In 2008, the EPA received additional information that company employees were tampering with a monitoring device in an attempt to conceal permit violations by placing the intake hose into a clean bucket of water.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. James Dickson, No. 3:11-CR-00165 (N.D. Calif.), AUSA Stacey Geis

Wildlife mounts

On July 12, 2011, James Dickson was sentenced to serve six months' incarceration followed by three years' supervised release, stemming from his participation in the illegal trade of protected wildlife. Dickson also was ordered to forfeit numerous wildlife taxidermy mounts worth thousands of dollars.

Dickson pleaded guilty in April of this year to a felony Lacey Act violation (16 U.S.C. § 3372(a)(1) and (a)(4)) for knowingly selling numerous endangered and otherwise protected species on the Internet for tens of thousands of dollars, including a juvenile bald eagle that he sold to an undercover agent for $2,200. Other protected big game animals that Dickson illegally sold or offered to sell on Craigslist included taxidermy mounts of a Siberian tiger for $15,000, a Kodiak bear for $14,000, a polar bear for $6,500, a black panther for $4,500, a black bear for $3,800, and a cheetah rug for $900. Dickson admitted that he knew it was illegal to sell these protected wildlife and that he could face jail time if apprehended. As part of his sentence the defendant reimbursed the United States Fish and Wildlife Service $2,200 in restitution for the undercover transactions.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the California Department of Fish and Game.

Back to Top

United States v. Michael E. Smith, No. 1:11-CR-00004 (D. Alaska) AUSA Steven Skrocki

On July 8, 2011, Michael E. Smith was sentenced to serve six months' imprisonment, followed by one year of supervised release, for illegally selling two tanned sea otter pelts to an undercover officer in violation of the Lacey Act (16 U.S.C. §3372 (a)(1)).

Smith, an Alaska native and an employee with the Sitka Tribal Tannery, illegally sold two whole sea otter pelts to an undercover agent for $800. The tanned pelts were then shipped outside of Alaska to the undercover agent in violation of the Lacey Act. The case is a result of an 18-month undercover investigation targeting illegal sea otter hunting and trafficking in Southeast Alaska, Anchorage, and Fairbanks. At sentencing the court expressed particular concern that Smith broke the law despite holding the position of a village police officer.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Division of Alaska Wildlife Troopers.

Back to Top

United States v. Peter Ward, No.11-CR-00196 (S.D.N.Y.), AUSA Janis Echenberg [redacted] and former AUSA Anne Ryan.

On July 7, 2011, Peter Ward, formerly a licensed asbestos investigator, was sentenced to serve 27 months' incarceration, followed by three years' supervised release. He also will pay a $2,000 fine. Ward previously pleaded guilty to violating the conditions of his supervised release imposed following his 2006 conviction for asbestos-related violations of the Clean Air Act. Ward specifically pleaded guilty to a 17-count information charging him with filing 17 false reports with the Probation Office regarding his employment.

From the early 1990s until July 2005, Ward held a New York City Asbestos Investigator's license. In July 2005, his license was revoked, after which he held no licenses to perform asbestos-related work. Ward operated two companies, TUC Environmental Group, Inc., and Oak Drive Enterprises, Inc. Since April 2002 neither company has been licensed to perform asbestos-related work.

In June 2006, Ward was sentenced to serve 27 months' incarceration, followed by three years' supervised release, for improperly removing asbestos from a police precinct building in Queens and an apartment building in Brooklyn. Ward had pleaded guilty to one CAA charge, admitting that in 2001 he improperly removed the asbestos from the apartment building, and had attempted to conceal his actions by not notifying the EPA.

While under supervision, Ward was prohibited from engaging in any employment that involved asbestos material. He was further required to submit truthful and complete monthly reports to his probation officer concerning, among other things, his employment and sources of income.

Ward completed his term of incarceration in February 2008, and by the spring of 2008 through July 2010, he was back working in the asbestos industry through his two companies. During this time, he submitted monthly reports to the probation office that mischaracterized his employment and omitted earnings documentation that would have signaled that he was still working in the asbestos industry.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Michael Plank, No. 2:09-CR-01278 (C.D. Calif.), AUSA Dennis Mitchell [redacted]

On July 6, 20111, Michael Plank was sentenced to serve 15 months' incarceration followed by three years' supervised release, and will pay a $2,000 fine. Plank pleaded guilty to a smuggling violation (18 U.S.C. §545) for smuggling 15 juvenile lizards from Australia into the United States, all of which were concealed in money belts on his body when he attempted to pass through United States Customs at the Los Angeles International Airport in November 2009.

Juvenile lizards found in money belts

Plank pleaded guilty to smuggling two Geckos, two Monitor lizards, and 11 Skink lizards from Australia. Monitor lizards are listed on Appendix II of the Convention on International Trade in Endangered Species (CITES), which means that the species may become threatened with extinction unless trade is closely controlled.

This case was investigated by the United States Fish and Wildlife Service and United States Customs and Border Protection.

Back to Top

United States v. Joseph Yoon et al., Nos. 2:10-CR-00575 and 00793 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] AUSA Bayron Gilchrist [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On July 6, 2011, Joseph Yoon was sentenced to complete a two-year term of probation and will be held jointly and severally liable with his co-defendants for $5,400 in restitution to cover the cost of medical monitoring for three workers involved in the illegal removal of asbestos during a condo renovation project. Charles Yi previously was sentenced to serve 48 months' incarceration, followed by two years' supervised release. John Bostick was sentenced to serve six months of home confinement as a condition of a three-year term of probation. Bostick also will complete 150 hours of community service.

Yi was convicted by a jury after a two-week trial on a conspiracy violation and five Clean Air Act counts stemming from his involvement in the renovation of a 200-plus-unit apartment building in January and February of 2006. Co-defendants Yoon and Bostick previously pleaded guilty to a CAA conspiracy violation.

Yi was the owner of the now-defunct Millennium-Pacific Icon Group, which owned the apartment complex that was being converted into condominiums in 2006. Knowing that asbestos was present in the apartment ceilings, Yi and his co-conspirators hired a group of workers who were not trained or certified to conduct asbestos abatements. The workers scraped the apartments' ceilings without knowing about the asbestos and without wearing any protective gear. The illegal scraping resulted in the repeated release of asbestos-containing material throughout the complex and the surrounding area. After the abatement was shut down, the asbestos was cleaned up at a cost of approximately $1.2 million.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the California South Coast Air Quality Management District.

Back to Top

United States v. Daniel Vanacker et al., No. 9:11-CR-00019 (D. Mont.), AUSA Mark Steger Smith [redacted].

Discharge from pond to river

On June 30, 2011, Daniel Vanacker was sentenced to serve a one-year term of unsupervised probation and was ordered to pay a $2,500 fine, after previously pleading guilty to a misdemeanor Clean Water Act violation.

In March 2006, contractors Vanacker and Marcus Schmidt were hired by LEMB, a real estate investment company, to construct a large fishing pond on LEMB property. A general permit was issued by the Montana Department of Environmental Quality for stormwater discharges associated with this project and specified that any other discharges would require additional permitting.

In April 2006, several individuals observed a brown, muddy discharge being pumped from the pond on the LEMB property to the nearby Clark Fork River. In May 2006, a neighbor chartered an airplane and flew over the area where he observed a substantial discharge being pumped from LEMB's pond and flowing into the Clark Fork River. Vanacker admitted that he and Schmidt pumped the sediment-laden water from pond to the river in order to continue digging in the pond, which was in violation of the general permit.

Schmidt remains charged with two counts of negligently discharging pollutants into waters of the United States without a permit and is scheduled for trial to begin on September 12, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Montana Department of Environmental Quality.

Back to Top

United States v. Steven Augare, No. 6:10-CR-00014 (D. Mont.), AUSA Kris McLean [redacted]

On June 30, 2011, Steven Augare was sentenced to serve a two-year term of probation after pleading guilty to a false statement violation (18 U.S.C. §1001). A fine was not assessed.

Augare was a former water system operator for the East Glacier Water and Sewer District (EGWSD). He pleaded guilty to submitting a monthly report to officials in February 2006 that falsified the chlorine values and turbidity levels for drinking water samples.

The defendant is a member of the Blackfoot Tribe, and the EGWSD services approximately 800 residents (including Blackfoot tribal members) along with public schools, restaurants, hotels, and other commercial consumers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Michael Kelly et al., No. 1:11-CR-00068 (N.D. Ga.), AUSA Stephen McClain [redacted]

On June 29, 2011, James Hinton and Jackie Baker were sentenced for their involvement in the issuance of fraudulent vehicle emissions certificates, in violation of the Clean Air Act. Hinton will

complete 180 days' home confinement as a condition of a two-year term of probation. He also will perform 50 hours of community service. Baker will serve 120 hours of home confinement as a condition of a two-year term of probation. Co-defendant Michael Kelly was recently sentenced to serve two years' incarceration, followed by one year of supervised release, based on prior criminal history.

The defendants were licensed emissions inspectors working at a "Stop N Shop" inspection station in College Park, Georgia, through May 2009. From January to May 2009, the defendants issued more than 1,400 fraudulent emissions certificates to car owners that falsely stated that their cars had passed the required emissions test. Kelly personally issued 476 fraudulent certificates. All three defendants have had their licenses revoked.

The scheme involved using the test results from cars that had already passed emissions tests in lieu of testing the owners' real cars. During the tests, the computer system automatically transmitted emissions testing data to a statewide database accessible by the Georgia Environmental Protection Division. The defendants manually entered other information into the system, such as the make, model, and VIN, to make it appear that they were testing the actual cars, many of which had already failed an emissions test or had equipment malfunctions. The defendants charged $100 to $125 for a fraudulent emissions test, far more than the usual $20 charged for a legitimate inspection. Georgia law prohibits inspection stations from charging more than $25 for an emissions test.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Georgia Department of Natural Resources Environmental Protection Division.

Back to Top

United States v. Nathan Lee et al., No. 3:11-02651 (S. D. Calif.), AUSA Melanie Pierson [redacted]

On June 28, 2011, two commercial fishermen pleaded guilty to, and were sentenced for, Lacey Act violations for illegally fishing for albacore tuna in Mexican waters, without the fishing permits required under Mexican law.

Two Captains

Nathan Lee, captain of the *Two Captains*, and Scott Hawkins, Captain of the *Jody H*, admitted that in June 2010, they caught approximately 800 pounds of albacore tuna in Mexican waters without the necessary permits. Lee had been warned in 2008 by the United States Coast Guard that such fishing was unlawful, and both defendants admitted to having functional navigation equipment onboard that informed them of their location. Authorities determined that the vessels were fishing over a hundred miles into Mexican waters near Guadalupe Island when the defendants illegally caught the tuna.

In addition to violating the Lacey Act, Lee further admitted that during this same fishing trip, while anchored off of San Clemente Island, he used a rifle to shoot and injure a sea lion, in violation of the Marine Mammal Protection Act. The defendants were each sentenced to pay a $500 fine and will complete three-year terms of probation.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Service Office of Law Enforcement, the United States Coast Guard, and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Corey Beard et al., No. 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones

[redacted]

On June 14, 2011, Justin Joyner, Daniel Arnot, and Corey Beard were sentenced. The sentences were ordered concurrent with prior sentencing for state-level charges, resulting in sentences of "time served." Joyner and Arnot were each sentenced to serve 21 months' incarceration followed by 36 months of supervised release. Beard was sentenced to serve 14 months' incarceration, followed by 36 months of supervised release. All three will perform 240 hours of community service and were held jointly and severally liable for the payment of $13,000 in restitution to Dunlap Stainless, Inc.

Beard, Joyner, Daniel Arnot, and Sabrina Westbrooks Arnot, were charged in a 14-count indictment with conspiracy to release ozone-depleting substances into the environment, along with 13 substantive CAA violations. Beginning in early August 2008, the defendants targeted businesses in several counties with commercial-sized air conditioners. Arnot, working with his wife Sabrina or with his other accomplices, dismantled the air conditioning units so that they could steal the copper and aluminum parts. This required that they cut through a copper coil to remove the copper parts, causing the release of hydrochlorofluorocarbon 22 (also known as HCFC-22), into the atmosphere. After dismantling the air conditioners, the defendants sold the copper and aluminum parts to scrap metal recycling businesses. All together, the defendants dismantled 37 air conditioning units from 14 locations. Beard pleaded guilty to conspiracy and to nine CAA counts; Joyner pleaded guilty to conspiracy and to a single CAA charge; Arnot pleaded guilty to all 14 counts and his wife, Sabrina Westbrooks Arnot, remains scheduled for trial to begin on August 8, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

September 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Illegal "channel dam". See *U.S. v. Betz et al*., inside, for details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
C.D. Calif.	United States v. Atsushi Yamagami et al.	*Turtle Import/* Smuggling
N.D. Calif.	United States v. Steven Robinson	*Angelfish Import/* Lacey Act
M.D. Fla.	United States v. John L. Yates	*Undersized Catch/* Obstruction, Destruction of Evidence
S.D. Fla.	United States v. Sea Food Center, LLC, et al. United States v. Americas Marine Management Services, Inc., d/b/a Antillean Marine United States v. Clemente N. DiMuro, Jr.	*Mislabeled Shrimp/* Lacey Act, Food, Drug, and Cosmetic Act *Vessel/* APPS, Non indigenous Aquatic Nuisance Prevention and Control Act *Feather Sales/* MBTA
N.D. Ga.	United States v. Sabrina Westbrooks Arnot, et al.	*ODS Release/* CAA, Conspiracy
D. Idaho	United States v. Peter Balestracci [redacted] United States v. Mike Vierstra	*Deer Hunt/* Lacey Act [redacted] *CAFO/*CWA misdemeanor
N.D. Ill.	United States v. Frank Scaccia et al.	*Drinking Water/* False Statements
M.D. La.	United States v. Larry Dees, Sr., et al.	*Alligator Hunts/*Lacey Act
W.D. La.	United States v. Leslie W. Hardwick, Jr.	*Pesticide Application/* FIFRA, MBTA
D. Mass.	United States v. Charles Manghis	*Scrimshaw/* Conspiracy, Smuggling, False Statement
E.D. Mich.	United States v. Peter DeFilippo et al.	*Asbestos Removal/* CAA, Conspiracy
W.D. Mich.	United States v. Rodger D. DeVries	*Polar Bear Trophy/* MMPA

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Mont.	United States v. T.P. Construction	*Sewage Discharge/* CWA Misdemeanor
D.N.J.	United States v. Todd Reeves et al.	*Oyster Harvest/* Lacey Act, Conspiracy, Obstruction
E.D.N.Y.	United States v. Dov Shellef et al.	*ODS Smuggling/* Conspiracy, Tax, Money Laundering, Wire Fraud
W.D.N.Y.	United States v. Johnson Contracting of WNY, et al.	*Asbestos Abatement/* Conspiracy, CAA, False Statement
D. Nev.	United States v. Wadji Waked	*Emissions Testing/* CAA
S.D. Ohio	United States v. Honey Creek Contracting Company, et al.	*Building Renovation/* CAA, Conspiracy
D. Oregon	United States v. Geraldine Betz et al.	*Illegal Dam/* RHA
D. P. R.	United States v. EPPS Shipping Company	*Vessel/* APPS, False Statement
S.D. Tex.	United States v. Seaside Aquaculture Inc., et al.	*Fish Farm/* MBTA
W.D. Wash.	United States v. Patrick Dooley United States v. Timothy A. Isom	*Chlorine Gas/* CWA *Eagle Shooting/* BGEPA

Additional Quick Links:

Trials

United States v. John L. Yates, No. 2:10-CR-00066 (M.D. Fla.), AUSAs Jeffrey Michelland [redacted] and Tama Koss Caldarone [redacted]

On August 5, 2011, John L. Yates was found guilty by a jury of disposing of evidence to prevent seizure (18 U.S.C. §2232(a)), and destroying evidence to impede or obstruct a federal investigation (18 U.S.C. §1519). He was acquitted of a false statement violation.

According to evidence presented at trial, National Marine Fisheries Service officers boarded the *Miss Katie* in the Gulf of Mexico and discovered 72 undersized red grouper on board the fishing boat. The officers instructed Yates, the captain, to leave the fish onboard the vessel and report back to Cortez, Florida, so that officials could seize the fish. Instead of reporting as instructed, Yates instructed his crew to throw the fish overboard. He is scheduled to be sentenced on November 14, 2011.

This case was investigated by the National Marine Fisheries Service, the United States Coast Guard, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Seaside Aquaculture Inc. et al., No. 6:11-CR-00031 (S.D. Tex.), AUSA Hugo R. Martinez [redacted]

On August 10, 2011, a jury returned a guilty verdict, finding fish farm Seaside Aquaculture Inc., (Seaside) and its owner, Khanh Vu, guilty of the single Migratory Bird Treaty Act (MBTA) violation charged (16 U.S.C. §§703, 707(a)), stemming from the killing of approximately 90 brown pelicans (*Pelecanus occidentalis*).

Pelican bones

Evidence at trial established that in October 2010, the Fish and Wildlife Service received a letter from a former Seaside worker alleging that he had witnessed several employees, including Vu, illegally killing many species of birds. In December 2010, an agent inspected the area around the fish farm and photographed several empty shot gun shells and bird carcasses. As a result of the execution of a search warrant in February 2011, agents seized the

carcasses of approximately 90 brown pelicans, 17 great blue herons, five great egrets, four black-crowned night herons, four turkey vultures, two osprey, two gulls and one scaup (a small diving duck). Company employees denied shooting any birds; however, Vu did admit to shooting six pelicans to prevent them from eating his fish. At trial, the defense unsuccessfully attempted to convince the jury that the birds had died as a result of running into power lines.

Sentencing for Vu and the company is scheduled for November 7, 2011.

This case was investigated by the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department.

Back to Top

Informations and Indictments

United States v. Sea Food Center, LLC, et al., No. 1:11-CR-20564 (S.D. Fla.), AUSA Norman O Hemming, III [redacted].

On August 19, 2011, a nine-count information was filed charging Sea Food Center, LLC, and company president Adrian Vela, with conspiracy to violate the Lacey Act and substantive Lacey Act violations for selling mislabeled shrimp. The defendants are further charged with four misbranding counts in violation of the Food, Drug and Cosmetic Act.

According to the information, in 2008 and 2009, Vela conspired with Richard Stowell and United Seafood, Inc. to violate the Lacey Act by mislabeling and selling approximately five hundred thousand pounds of shrimp. The shrimp, valued in excess of $400,000, was ultimately sold to supermarkets in the northeastern United States. Stowell and United Seafood previously pleaded guilty and have been sentenced for their role in the conspiracy.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Florida Department of Agriculture and Consumer Services.

Back to Top

United States v. Frank Scaccia et al., No. 1:11-CR-00533 (N.D. Ill.), AUSA Tim Chapman [redacted]

On August 11, 2011, Frank Scaccia, a former drinking water operator for the Village of Crestwood, and Theresa Neubauer, a former water department supervisor and the current Crestwood police chief, were variously charged in a 23-count indictment with making false statements regarding the source of Crestwood's drinking water.

The indictment alleges that for close to 20 years, Crestwood used a city well to provide water to its residents, which local environmental officials were led to believe had *not* been used, except in emergencies. The Village instead falsely reported that it obtained all if its water from Lake Michigan, which was purchased from the Village of Alsip, Illinois. The well that was being used in Crestwood was found to be contaminated with vinyl chloride at levels above the safe drinking water limits.

It is further alleged that all the monthly operating reports submitted from 1994 through 2007 were not reviewed nor signed by the water operator. In her capacity as water supervisor, Neubauer allegedly signed Scaccia's name on the reports and submitted them to authorities.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Johnson Contracting of WNY, Inc., et al., No. 1:11-CR-00241 (W.D.N.Y.), AUSA Aaron Mango [redacted].

On August 3, 2011, a 23-count indictment was returned charging two companies and nine individuals with felony charges related to an asbestos abatement project at an apartment complex. The following defendants are variously charged with Clean Air Act, conspiracy, and false statement violations: Johnson Contracting of WNY, Inc. (Johnson Contracting); JMD Environmental, Inc. (JMD); Ernest Johnson (Johnson Contracting president); Rai Johnson (Johnson Contracting supervisor); Evan Harnden (JMD supervisor); and JMD project monitors Brian Scott, Henry Hawkins, and Chris Coseglia. Also charged are city building inspectors Donald Grzebielucha and William Manuszewski, along with Theodore Lehmann, an inspector with the New York State Department of Labor, Asbestos Control Bureau.

The indictment states that, in June 2009, Johnson Contracting was awarded a sub-contract to conduct an asbestos abatement project at Kensington Towers, a six-building complex owned by the Buffalo Municipal Housing Authority. In an environmental survey conducted before the commencement of the abatement project, it was estimated that each building at Kensington Towers contained in excess of 63,000 square feet of regulated asbestos-containing material (RACM).

From June 2009 through January 2010, Johnson Contracting, Ernest Johnson, and Rai Johnson allegedly performed and supervised the stripping and removal of RACM at the Kensington Towers. These three defendants are accused of conspiring to violate the CAA and to defraud the United States, by (among other things) instructing workers to dump RACM down holes cut through the floors at the buildings, by failing to wet the asbestos during removal operations, and by instructing workers to leave this material in the buildings knowing that the buildings were intended for demolition.

During this period, defendants JMD, Harnden, Hawkins, Coseglia, and Scott were subcontracted to perform air sampling and project monitoring on site. As part of the conspiracy, these defendants are alleged to have (among other things) failed to conduct proper air sampling by creating false visual inspection reports certifying that all asbestos had been removed from the buildings.

Building inspectors Grzebielucha and Manuszewski are alleged to have made and used false inspection reports relating to all six Kensington Towers buildings. The indictment states that these two defendants specifically certified in their final inspection reports that all RACM had been removed from the buildings when, in fact, they knew this to be false.

Finally, Lehmann, an inspector employed with the New York State Department of Labor, Asbestos Control Bureau, is charged with a CAA violation for concealing the improper asbestos abatement activities that were occurring at Kensington Towers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Department of Housing and Urban Development Office of Inspector General, and the New York State Department of Environmental Conservation Police Bureau of Environmental Crimes Investigations, with assistance from the New York State Department of Labor Asbestos Control Bureau.

Back to Top

United States v. Todd Reeves et al., No. 1:11-CR-00520 (D.N.J.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] AUSA Matthew Smith [redacted], and ECS Paralegal Kathryn Loomis ([redacted]

On August 2, 2011, six individuals were charged (along with two companies) with conspiracy, obstruction, and multiple Lacey Act false labeling and trafficking violations, for their involvement in the illegal harvest of oysters from New Jersey and for their subsequent sale to a fish wholesaler in Delaware. Authorities have also seized ten fishing boats.

Named in the 15-count indictment are Thomas Reeves, Todd Reeves, Renee Reeves, Kenneth W. Bailey, Mark Bryan, and Pamela Meloney. Reeves Brothers, and Harbor House Seafood, which is co-owned by Bryan, are also charged.

According to the indictment, from 2004 through 2007, Thomas and Todd Reeves were oyster fishermen who owned the oyster dealer business Reeves Brothers. Renee Reeves was employed by the company. The Reeves would create reports and records required by state and federal law that claimed they harvested fewer oysters than they actually did, and they would take more oysters from the Delaware Bay than they were allowed under New Jersey law. The fair market retail value of the Reeves' illegal harvest during this time was well in excess of $600,000, and they over-harvested their quota in some years by as much as 90 percent.

To conceal their illegal harvest, the Reeves, Bryan, and Meloney created records that falsely indicated the amount of oysters the Reeves actually sold to Harbor House. To prevent their actions from being discovered, Bryan and Meloney provided investigators records of Harbor House's purchases from the Reeves that they knew were false.

The indictment further charges that Bryan and Meloney created false records of Harbor House's purchases from Bailey. Like the Reeves, in 2006 and 2007, Bailey allegedly created reports and records that claimed he harvested fewer oysters than he actually did, and he also took more from the Delaware Bay than allowed under New Jersey law.

The indictment identifies ten vessels that were used by the Reeves and/or Bailey to engage in the illegal harvest, and are therefore subject to forfeiture. To ensure that the vessels are available for forfeiture and in the same condition, five of them (the *Janet R*, the *Amanda Laurnen*, the *Miss Lill*, the *Crab Daddy* and the *Conch Emperor*) were seized by U.S. Marshals. The other five vessels (the *Martha Meerwald*, the *Louise Ockers*, the *Linda W*, the *Turkey Jack* and the *Beverly Ray Bailey*) are subject to a restraining order that prohibits their use or operation pending the outcome of the case.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, and the New Jersey Department of Environmental Protection Division of Fish and Wildlife.

Back to Top

United States v. Patrick Dooley, No. 2:11-CR-00252 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On July 27, 2011, Patrick Dooley was charged in a four-count indictment for conduct arising from an incident in which a company employee, following Dooley's instructions, was overcome by deadly chlorine gas while disposing of chemicals.

Dooley is the president and owner of Bargains, Inc., a business that purchases overstock from other companies, including chemical cleaning products. On August 13, 2010, the indictment alleges that a17-year-old employee dumped multiple five-gallon buckets of bleach together with containers of a commercial laundry soap into a toilet at the facility. The soap was highly acidic and when mixed with the bleach in the toilet bowl generated chlorine gas. A concerned citizen alerted first responders

to the incident after observing that the teenager was suffering an intense reaction to the gas, ultimately losing consciousness. He recovered from the exposure after being taken by paramedics to the emergency room.

Dooley is charged with two Clean Water Act pretreatment violations for illegally discharging hazardous substances into the sewer. He also is charged with knowingly discharging into a sewer system a pollutant which could cause personal injury. He also is charged with a CWA violation for discharging a substance to a POTW with a pH lower than 5.0. It also is alleged that Dooley tampered with a witness by instructing another employee to lie to investigators concerning his employment status.

Back to Top

Plea Agreements

United States v. Rodger D. DeVries, No. 2:11-CR-00026 (W.D. Mich.), ECS Senior Trial Attorney David Kehoe [redacted] and USA Don Davis [redacted]

Polar Bear trophy

On August 22, 2011, Rodger D. DeVries pleaded guilty to a violation of the Marine Mammal Protection Act (MMPA) (16 U.S.C. § 1372(a)(2)(B)) for illegally importing a polar bear trophy mount from Canada into Michigan.

In November 2000, DeVries obtained a license from the Nunavut Territory in Canada to hunt and kill a polar bear from the Foxe Basin. Knowing that polar bears from the Foxe Basin could not be imported into the United States, the defendant had the polar bear trophy stored in Canada.

The MMPA prohibits importation of polar bear trophies or parts unless the Secretary of the Interior has made a determination that, in doing so, the region would still maintain sustainable population levels. The Secretary has not made such a determination for the Foxe River Basin.

In July 2007, DeVries travelled to Canada to retrieve the trophy. He then transported the trophies by boat from Ontario across the border to port in Raber Ray, Michigan. A few days later, the defendant moved the trophy to his home and then sold the boat.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Steven Robinson, No. 11-CR-00513 (N.D. Calif.), AUSA Stacey Geis [redacted]

On August 18, 2011, Steven Robinson pleaded guilty to one Lacey Act violation for illegally importing 52 Clipperton Angelfish.

Robinson, a tropical fish dealer, admitted that in late April 2009, he took a four-day voyage to the Clipperton atoll for the purposes of finding and collecting Clipperton Angelfish without a permit. Robinson further admitted that in May 2009, he imported through his company, Cortez Marine International, 52 of the fish but labeled them as a more common species of angelfish known as *Holacanthus passer* or "Blue passer," which are found in Mexican waters where Robinson was permitted to fish. The defendant further admitted that once the fish were brought into the United States, he deceived federal wildlife authorities for several days by continuing to claim the fish were Blue passer when he knew they actually were Clipperton Angelfish.

Clipperton Angelfish

The Clipperton Angelfish (*Holacanthus limbaughi*) is a rare species of fish found only in the waters of Clipperton Island, an uninhabited atoll under French authority. Fishing for the Clipperton Angelfish in the Clipperton atoll requires permission from the French government. Because the fish are so rare, each live fish can command several thousand dollars in U.S. markets and up to $10,000 in Asian markets.

Robinson is scheduled to be sentenced on November 30, 2011. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Americas Marine Management Services, Inc., d/b/a Antillean Marine, No. 1:11-CR-20348 (S.D. Fla.), AUSA Jaime Raich [redacted].

Titan Express

On August 11, 2011, Americas Marine Management Services, Inc., (AMMS) a cargo ship vessel operator d/b/a Antillean Marine, pleaded guilty to one count of failure to maintain an accurate oil record book, in violation of 33 U.S.C. § 1908(a); and one count of failing to submit reports to the National Ballast Information Clearinghouse (NBIC), in violation of the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4711(g)(2)).

AMMS operated the *Titan Express* from a terminal on the Miami River. During an inspection in August 2010, the Coast Guard found ample evidence of illegal overboard discharges and false records in the oil record book. Specifically, the sensor on the oil water separator was filled with oily waste. A compressed air line running throughout the engine room was also filled with oily waste, which sprayed out of the line when opened by inspectors. An entry made in the night orders book in January 2010, stated "Always pump out the bilge water. When finished, wash the pump with sea water for 20 minutes to clean out the line. If you don't, you'll bring

pollution problems in Miami especially."

The company also failed to submit reports to the NBIC in advance of the ship's arrival to the Port of Miami. The NBIC is a joint program of the Smithsonian Environmental Research Center and the United States Coast Guard. Its mandate is to understand and prevent the introduction of non-indigenous species to the fresh, brackish, and saltwater environments of the United States. Sentencing is scheduled for October 21, 2011.

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

United States v. Leslie W. Hardwick, Jr., No. 3:11-CR-00127 (W.D. La.), AUSA Cytheria Jernigen [redacted].

On July 25, 2011, Leslie Hardwick pleaded guilty to a FIFRA and a MBTA violation (7 U.S.C. §§136j (a)(2)(G) and 136*l* (b)(1)(B); 16 U.S.C. §§703 and 707(a)) stemming from the illegal application of a pesticide and the killing of several animals, including migratory birds.

In January 2011, state wildlife officials were notified that Aldicarb (aka Temik) had been mixed with meat and illegally used as bait that was then placed around a 600-acre hunting preserve known as Bosco Lodge (Bosco). Investigators determined that Leslie Hardwick, a Bosco employee, was responsible for mixing the pesticide with the meat and for distributing the contaminated meat on Bosco property as well as adjacent property. When questioned, Hardwick stated that he was trying to kill coyotes.

Agents located approximately 60 dead animals and birds including 17 coyotes, 16 raccoons, 12 opossums, four Bobcats, and four migratory birds including a hawk, an owl, and two sparrows.

Hardwick is scheduled to be sentenced on November 7, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, and the Louisiana Department of Wildlife and Fisheries Law Enforcement Division.

Back to Top

Sentencings

United States v. Dov Shellef et al., No. 03-CR-00723 (E.D.N.Y.), ECS Trial Attorney James Nelson [redacted] and DOJ Tax Division Attorney Mark Kotila [redacted]

On August 23, 2011, William Rubenstein was sentenced to time-served (four months) followed by two years of supervised release. He was ordered to pay $940,230 in restitution to the U.S. Treasury in excise taxes and an additional $10,000 fine. Rubenstein pleaded guilty in February 2009 to conspiracy to defraud the U.S. by interfering with the IRS's collection of excise taxes. Co-defendant Dov Shellef was sentenced earlier this year to serve 60 months' incarceration, followed by three years' supervised release, and to forfeit $1,102,540, which was derived from the value of the funds that he laundered.

A jury convicted Shellef in January 2010 in a retrial on 86 counts, which included conspiracy to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud, and a variety of tax violations. In August 2010, the court granted a partial judgment of acquittal, finding that the jury had properly convicted on 53 of the 86 counts charged in the indictment. It concluded, however, that

the evidence was insufficient to support the convictions on money laundering charged in 33 counts, stating that the counts were duplicative of the several wire fraud counts. It further found that the evidence was insufficient to show that those transactions involved the proceeds of unlawful activity.

Shellef and Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., originally were convicted by a jury in July 2005 on 130 counts, stemming from their failure to pay approximately $1.9 million in taxes due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes. The original convictions, however, were reversed on misjoinder grounds in March 2008, and a superseding indictment was filed. Shellef was retried in a five-week trial that began in December 2009.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, causing the manufacturers to sell it to them tax-free. They then sold the product in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Shellef also was convicted of personal income tax evasion, subscribing to false corporate tax returns, wire fraud, and money laundering.

This case was investigated by the Internal Revenue Service, with assistance from the United States Environmental Protection Agency Criminal Investigation Division, the Drug Enforcement Agency, and the Defense Criminal Investigative Service.

Back to Top

United States v. Wadji Waked, No. 2:10-CR-00011 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Roger Yang [redacted]

On August 23, 2011, Wadji Waked was sentenced to complete a three-year term of probation including six months' home confinement. Waked also will perform 40 hours of community service. He is one of ten defendants who pleaded guilty to violating the Clean Air Act (42 U.S.C. §7413 (c)(2)(A)). All ten of the defendants charged in this "clean scanning" investigation have pleaded guilty to CAA violations for causing false test results to be transmitted to the Nevada Department of Motor Vehicles (DMV). Typically the testers used a vehicle they knew would pass the emissions test to produce a false result for a vehicle that could not otherwise pass the test.

These defendants came to the attention of Nevada authorities in 2008 when the DMV hired a contractor to create a vehicle identification database to uncover possible emissions testing fraud. As a result, in 2008 alone there were more than 4,000 false vehicle emissions certificates issued in Las Vegas. The database allows investigators to check the vehicle identification number that the emissions tester enters against the vehicle actually tested. Las Vegas and the surrounding Clark County are required by the EPA to conduct air emissions testing due to significant concentrations of carbon monoxide and ozone measured in the area.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Nevada Department of Motor Vehicles.

Back to Top

United States v. Honey Creek Contracting Company, et al., No. 2:11-CR-0050 (S.D. Ohio), AUSA Mike Marous [redacted] and RCEC Brad Beeson [redacted].

On August 23, 2011, Honey Creek Contracting Company (Honey Creek), and company owner A. David Sugar, were sentenced for their involvement in the improper removal of asbestos. Sugar was sentenced to complete a three-year term of probation, which includes spending the first 15 weekends in

jail, followed by 21 weeks of home confinement. He also will pay a $10,000 fine. Honey Creek was ordered to pay a $30,000 fine and will pay for employees involved in the illegal asbestos removal to obtain baseline X-rays.

The defendants pleaded guilty in March 2011, to a five-count information charging them with violations stemming from an illegal renovation of the Weirton Steel Plant (WSP). Specifically, they pleaded guilty to conspiracy to violate the Clean Air Act and to four CAA NESHAP violations (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(1)).

In July 2004, Sugar purchased the steel plant on behalf of Honey Creek for renovation. Prior to the defendants' purchase of the facility, an environmental consultant determined that there was approximately 30,000 linear feet of asbestos piping throughout the entire plant. Almost 6,000 linear feet of pipe was located in a single area (known as the "Green Room") where the majority of the insulation was intact. The consultant was not retained, however, to remove the asbestos from the plant.

Beginning in approximately August 2004, Sugar participated in and oversaw the renovation activities. As the crew began to remove dry asbestos-covered pipe from the Green Room, they simply dropped it to the ground floor. After an inspection of the facility by state environmental officials in 2005, a licensed asbestos removal contractor was brought in to properly finish the job.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, and the Ohio Environmental Protection Agency.

Back to Top

United States v. T.P. Construction, No. 4:11-CR-00065 (D. Mont.), AUSA Kris McLean [redacted]

On August 23, 2011, T.P. Construction was sentenced to pay a $25,000 fine and to complete a one-year term of probation, stemming from a misdemeanor Clean Water Act violation (33 U.S.C. §1319(c)(1)(a)) for the negligent discharge of sewage.

In November and December 2009, investigators were informed that sewage had been found on tribal lands on the Fort Belknap Reservation, after several individuals allegedly had hired T.P Construction to pump their household septic systems. Subsequent investigation indicated that several company employees were illegally dumping waste on the Reservation in November 2009.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Peter Balestracci, No. 4:11-CR-00002 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted], ECS Trial Attorney Jim Nelson [redacted], and ECS Paralegal Christina Liu [redacted].

On August 22, 2011, Peter Balestracci was sentenced to complete a three-year term of probation, with his hunting privileges suspended, and he will pay $1,200 in restitution to the State of Idaho. Balestracci previously pleaded guilty to a misdemeanor Lacey Act violation (16 U.S.C. §§3372(a)(2)(A), (a)(4) and 3373(d)(2)), for transporting an illegally tagged mule deer.

In October 2008, Balestracci participated in a deer hunt based at the Trail Creek Lodge. After he shot a deer, he tagged it with a tag issued to his son, rather than his own. He then transported the deer to a meat processor in Wyoming, who then sent the meat to the defendant's home in Nevada. Balestracci transported the trophy parts of the deer to Nevada.

The defendant was a frequent guest at the Lodge, which has been owned by Sidney Davis since approximately 1992. The area around the lodge contains world-class trophy elk and abundant deer. Davis pleaded guilty in May of this year to a Lacey Act violation and to making false statements during a bankruptcy proceeding, and is scheduled to be sentenced on October 24, 2011.

This case was investigated by the Idaho Department of Fish and Game and the United States Fish and Wildlife Service.

Back to Top

United States v. Geraldine Betz et al., No. 6:11-CR-60090 (D. Ore.), ECS Trial Attorney Jessie Alloway [redacted] and SAUSA Patrick Flanagan [redacted].

Dammed creek

On August 22, 2011, Geraldine Betz and Stephen Ponder pleaded guilty to, and were sentenced for, the unlawful discharge of multiple truck loads of rock and other debris into a side channel of the McKenzie River, in violation of the Rivers and Harbors Act (33 U.S.C. §§ 407 and 411.)

Neighbors Betz and Ponder each owned property located along a side-channel of the McKenzie River and had long been concerned about the erosion of the river banks along their property. In the spring of 2008, the defendants discussed constructing a "channel dam" to stabilize the bank and to stop the flow. In November 2008, Betz hired a construction company to bring rock to her property to build a dam, with Ponder agreeing to help pay for the project. At the direction of the defendants, approximately eight to 12 dump-truck loads of rock and other material were placed into the entrance of the McKenzie River from the side-channel.

Betz and Ponder were each sentenced to serve three years of probation. Betz also will pay a $6,500 fine, as well as make a $3,500 community service payment to the Oregon Governor's Fund for the Environment. Ponder was sentenced to pay a $1,625 fine and to make an $875 community service payment to the same fund. The Oregon Governor's Fund for the Environment is a sustained granting fund managed by the National Fish and Wildlife Foundation to benefit the coastal areas and rivers and streams passing through the District of Oregon.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the United States Fish and Wildlife Service.

Back to Top

United States v. Clemente N. DiMuro, Jr., No. 1:11-CR-20268 (S.D. Fla.), ECS Senior Trial Attorney Georgiann Cerese [redacted] and AUSA Tom Watts-FitzGerald [redacted].

On August 16, 2011, Clemente N. DiMuro, Jr., was sentenced to time served, followed by six months of home detention, and one year of supervised release for his role in the illegal sale of anhinga feathers. DiMuro also will perform 250 hours of community service and is prohibited from hunting, fishing, or trapping while on supervised release. DiMuro previously pleaded guilty to a violation of the Migratory Bird Treaty Act (MBTA) for selling and offering to sell migratory bird parts.

According to court documents, the defendant communicated via MySpace with an individual in Utah and supplied that individual on multiple occasions with anhinga feathers which the person in Utah then sold to others, including an undercover federal wildlife agent. In March 2009, the defendant's MySpace home page listed his occupation as "feather man." Evidence documenting DiMuro's sale of anhinga feathers to the Utah individual was obtained during the execution of a search warrant at this person's residence in March 2009.

The defendant admitted to illegally selling feathers from anhingas (also known as waterbirds or snakebirds) between December 2008 and March 2009. Anhingas are found in the Everglades as well as in southern swamps and shallow waters.

This case was investigated by the United States Fish and Wildlife Service in cooperation with the Navajo Nation Department of Fish and Wildlife.

Back to Top

United States v. EPPS Shipping Company, No. 3:11-CR-00058 (D.P.R.), ECS Trial Attorney Ken Nelson and AUSA Marshal Morgan

On August 18, 2011, EPPS Shipping Company (EPPS) was sentenced to pay a $600,000 fine and will make a $100,000 community service payment to support projects used to rehabilitate and protect coral reefs in Guanica Bay, Puerto Rico. The company also will complete a five-year term of probation and implement an environmental compliance plan.

EPPS previously pleaded guilty to a two-count information charging an APPS violation and a false statement violation (33 U.S.C. § 1908(a), 18 U.S.C. § 1001) stemming from the unlawful discharges of oily waste at sea and the failure to record those discharges in the oil record book.

The *M/V Carib Vision* was a 5,070 ton ocean-going ship owned and controlled by EPPS. The ship was registered in St. Kitts and Nevis and was engaged in international trade. During a port call made in November 2010 in Puerto Rico, inspectors uncovered evidence that the crew used the emergency bilge discharge system to pump oily waste directly into the ocean. The crew further failed to record these illegal discharges in the vessel's oil record book.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Sabrina Westbrooks Arnot et al., Nos. 2:11-CR-00032 and 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones

On August 11, 2011, Sabrina Westbrooks Arnot pleaded guilty to a Clean Air Act violation (42 U.S.C. §§7671(c)(1) and 7413(c)(1))for her involvement in the venting of HCFC-22 into the environment. She is scheduled to be sentenced on October 14, 2011.

Arnot's husband Daniel, was previously sentenced along with co-defendants Justin Joyner and Corey Beard to time served, concurrent with prior sentencing for state-level charges. Joyner and Arnot were each sentenced to serve 21 months' incarceration followed by 36 months of supervised release. Beard was sentenced to serve 14 months' incarceration, followed by 36 months of supervised release. All three will perform 240 hours of community service and were held jointly and severally liable for the payment of $13,000 in restitution to Dunlap Stainless, Inc.

Beard, Joyner, Daniel Arnot, and Sabrina Westbrooks Arnot, were charged in a 14-count indictment with conspiracy to release ozone-depleting substances into the environment, along with 13 substantive CAA violations. Beginning in early August 2008, the defendants targeted businesses in several counties with commercial-sized air conditioners. Daniel Arnot, working with his wife, Sabrina, or with his other accomplices, dismantled the air conditioning units so that they could steal the

copper and aluminum parts. This required that they cut through a copper coil to remove the copper parts, causing the release of hydrochlorofluorocarbon 22 (also known as HCFC-22) into the atmosphere. After dismantling the air conditioners, the defendants sold the copper and aluminum parts to scrap metal recycling businesses. All together, the defendants dismantled 37 air conditioning units from 14 locations. Beard pleaded guilty to conspiracy (18 U.S.C. 371; 42 U.S.C. §§7671(c)(1) and 7413(c)(1)) and to nine CAA counts; Joyner pleaded guilty to conspiracy and to a single CAA charge; Daniel Arnot pleaded guilty to all 14 counts.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Larry Dees, Sr., et al., Nos. 3:11-CR-00029 and 00030 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted]

On August 10, 2011, Larry Dees, Sr., and Larry Dees, Jr., were sentenced after previously pleading guilty to two Lacey Act violations (16 U.S.C. §§ 3372(a)(1), 3373(d)(2)) for leading sport hunters to unauthorized areas to hunt American alligators in violation of the Endangered Species Act and Louisiana law. Both will complete three-year terms of probation and were ordered to pay $2,000 fines. The fine against Larry Dees, Jr., however, was suspended due to an inability to pay. During the term of probation, the defendants will be prohibited from hunting under various restrictions.

On three dates in September 2009, Dees, Sr., and Dees, Jr., licensed alligator helpers, guided out-of-state alligator sport hunters to unapproved areas, that is, areas for which they did not have appropriate state authorization to hunt. During one of these trips a sport hunter killed a trophy-sized alligator that was over nine feet long.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted for many years. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property-specific and hunters may hunt only in the areas designated by the tags. Alligator helpers are not issued tags, but are given tags by alligator hunters. Helpers are required to comply with all alligator regulations, including ensuring they are hunting in areas designated by the tags they receive from hunters.

This case was investigated by the Louisiana Department of Wildlife and Fisheries Law Enforcement Division and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Peter DeFilippo et al., No. 2:10-CR-20013 (E.D. Mich.), AUSA Jennifer Blackwell [redacted] and SAUSA Crissy Pellegrin [redacted]

On August 9, 2011, Peter DeFilippo was sentenced to serve 13 months' imprisonment, followed by two years' supervised release. He also will pay a $5,000 fine and an additional $5,000 in restitution to a worker for medical expenses. David Olsen, Joseph Terranova, and DeFilippo previously pleaded guilty to charges stemming from their involvement in an illegal asbestos-removal project.

DeFilippo contracted through his company, Excel Demo, Inc., to supervise the demolition of a fire-damaged building at Harbour Club Apartments. This defendant knew that the building contained regulated asbestos-containing materials (RACM), and he also knew that he was required to have the RACM properly removed during the demolition. Despite this knowledge, DeFilippo instructed others to remove the RACM without the presence of a certified professional and without complying with work practice standards. Terranova was a supervisor for GFI Management Services, Inc. (the property management company for Harbour Club), and Olsen is a firefighter who also worked for DeFilippo. Olsen pleaded guilty to a Clean Air Act negligent endangerment violation (42 U.S.C. §7413(c)(4), Terranova pleaded guilty to a false statement violation (18 U.S.C. §1001), and DeFilippo pleaded guilty to a CAA violation (42 U.S.C. §7413 (c)(1)). Charges against Excel, a sham corporation, were dismissed.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Mike Vierstra, No. 1:10-CR-00204 (D. Idaho), AUSA George Breitsameter [redacted] and RCEC Dean Ingemansen [redacted]

On August 3, 2011, Mike Vierstra was sentenced to serve 60 days' incarceration as a condition of a three-year term of probation. He also was ordered to pay a $12,000 fine. Vierstra is the owner and operator of Vierstra Dairy, a concentrated animal feeding operation with approximately 1,200 cows. The defendant was previously convicted by a jury of negligently discharging processed wastewater from pipes and ditches at his dairy operations into the Low Line Canal, a water of the United States, without a permit (33 U.S.C. §§1311 and 1319(c)(1)(A)).

On June 1, 2009, a dairy inspector responded to a complaint of an unauthorized discharge into the canal. The inspector observed the discharge in the canal and traced it back to the Vierstra Dairy. After the defendant was advised of the discharge, he closed off a valve that had been left open by one of his employees.

This case was investigated by the United States Protection Agency Criminal Investigation Division.

Back to Top

United States v. Atsushi Yamagami et al.,No.2:11-CR-00082 (C.D. Calif.), AUSA Dennis Mitchell

Turtles found in luggage

On August 1, 2011, Norihide Ushirozako was sentenced to time served, followed by two years' supervised release. A fine was not assessed. Japanese nationals Atsushi Yamagami and Ushirozako were charged earlier this year with conspiracy, smuggling, and Endangered Species Act violations for smuggling more than 50 live turtles and tortoises into the United States on a flight from Japan in January 2011.

The turtles and tortoises were hidden in snack food boxes found in a suitcase. At the time of their arrests, one of the defendants stated that he had been involved in eight prior trips from Japan to the U.S. where live turtles and tortoises were concealed in luggage. Several return trips were made taking native turtles and tortoises from the U.S. back to Japan as well. Among the species found were Fly River turtles, Indian Star tortoises, Chinese Big Headed turtles, and Malayan Snail-eating turtles, all of which are CITES-protected species. Yamagami and Ushirozako both pleaded guilty to a smuggling violation (18 U.S.C. §545) and Yamagami is scheduled to be sentenced on October 31, 2011.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Charles Manghis, No. 1:08-CR-10090 (D. Mass.), AUSA Nadine Pellegrini

On August 1, 2011, Charles Manghis was sentenced to serve a two-year term of probation to include 30 days of intermittent incarceration. Manghis also will pay a $50,000 fine and was ordered to forfeit a number of ivory carvings.

Manghis was convicted after a after a four-day bench trial of multiple felony counts for his participation in an international conspiracy to smuggle wildlife parts, specifically sperm whale teeth and elephant ivory, into the United States. Manghis was found guilty of one count of conspiracy to smuggle wildlife, six substantive counts of smuggling wildlife, and two counts of making false statements to federal agents (18 U.S.C. §371; 18 U.S.C. §545; 18 U.S.C. § 1001). He was acquitted of a smuggling and a false statement violation. Co-defendant Andriy Mikhalyov pleaded guilty to a conspiracy violation, and was sentenced to time served in January of this year. The court further ordered that he be deported back to Ukraine.

For 40 years, Manghis worked as a commercial scrimshaw artist in Nantucket. His merchandise was offered for sale at a well known antique shop in Nantucket and also was displayed on his website. Evidence showed that the defendant bought ivory from persons outside the United States using Ebay and that he conspired with Mikhalyov (a Ukrainian national) and others to smuggle large amounts of sperm whale ivory into the United States. In June of 2005, agents seized a large quantity of ivory pieces, many with Russian writing and pictures, from Manghis' home and shop. A computer that was seized from the defendant's home provided emails between he and Mikhalyov and other

evidence of multiple purchases of sperm whale ivory. During the trial, forensic scientists confirmed that the items located in the defendant's home were, in fact, sperm whale teeth.

During the course of the investigation, Manghis lied to federal agents by claiming that he purchased the sperm whale ivory from a person in California and not from anyone located outside the United States. When federal agents questioned him about having Russian-origin teeth in his home, he simply denied that he possessed any.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, the United States Fish and Wildlife Service Office of Law Enforcement, and the United States Immigration and Customs Enforcement. Assistance also was provided by the Nantucket Police Department and the Massachusetts Environmental Police.

Back to Top

United States v. Timothy A. Isom, No. 11-CR-05250 (W.D. Wash.), AUSA Jim Oesterle (206) 553-5040.

On July 28, 2011, Timothy A. Isom pleaded guilty to, and was sentenced for, taking and possessing a bald eagle in violation of the Bald and Golden Eagle Protection Act (16 U.S.C. § 668(a)).

In February 2011, Washington State Department of Fish and Wildlife officers received a report that a bald eagle had been shot in southwest Washington. Responding to the location, the officers retrieved a dead bald eagle, which had been shot with a large caliber gun. Witnesses identified Isom as the shooter. Isom was sentenced to serve a two-year term of probation and must complete 120 hours of community service at a nearby National Wildlife Refuge. He also will forfeit all hunting licenses, give up licensed hunting for two years, and forfeit the gun used to shoot the eagle.

This case was investigated by the United States Fish and Wildlife Service.

Dead eagle

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

October 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Reptiles wrapped in pantyhose and concealed in defendant's clothing; see *U.S. v. Borges*, inside, for details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Alaska	United States v. Arne Fuglvog	*Fisheries Advisor/* Lacey Act
E.D. Ark.	United States v. Hawk Field Services, LLC	*Angelfish Import/* Lacey Act
N.D. Calif.	United States v. Kie-Con, Inc.	*Concrete Manufacturer/* CWA misdemeanor
D. Colo.	United States v. Executive Recycling, Inc., et al.	*Electronic Waste Exports/* RCRA, Mail Fraud, Wire Fraud, Smuggling, Obstruction
[redacted]	[redacted]	[redacted]
S.D. Fla.	United States v. Elias Garcia Garcia et al. United States v. Sea Food Center, LLC, et al. United States v. David P. Horan, Jr. United States v. Simon Turola Borges United States v. Van Bodden-Martinez	*Jaguar Skin Sales/* ESA, Conspiracy *Mislabeled Shrimp/* Lacey Act; Food, Drug, and Cosmetic Act *Fish Sales/* Lacey Act *Reptile Imports/* Smuggling *Fish Imports/* Lacey Act
N.D. Ga.	United States v. David Adams	*Panther Killing/* ESA
C.D. Ill.	United States v. Duane O'Malley et al. United States v. Jeffrey G. Foiles, et al.	*Asbestos Abatement/* CAA Duck Hunter/ MBTA, Lacey Act, False Writings

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
W.D. Ky.	United States v. Daniel Evanoff United States v. Roger Cherry	*Aluminum Manufacturer/* CAA, Conspiracy *Bird Baiting/* MBTA
[redacted]	United States v. Oakmont Environmental, Inc. [redacted] United States v. DRD Towing Company, LLC, et al.	*Waste Treatment/* CWA [redacted] *Oil Spill/* PWSA, CWA, Obstruction
M.D. La.	United States v. Clint Martinez et al.	*Alligator Hunts*/Lacey Act
W.D. La.	United States v. Pelican Refining Company, LLC	*Oil Refinery/* CAA, Obstruction
D. Mass.	United States v. Josimar Ferreira United States v. Stephen C. Delaney, Jr. United States v. Albania DeLeon	*Pest Exterminator/* FIFRA *Fish False Labeling/* Lacey Act; Food, Drug and Cosmetic Act *Asbestos Certification School/* Conspiracy, False Statement, Mail Fraud, Tax
E.D. Mich.	United States v. GLO Wrecking Company et al. United States v. Anthony Sharpe et al. United States v. Joseph Terranova et al.	*Demolition Project/* CAA *Lead Inspector/* Mail Fraud *Asbestos Abatement/* CAA, False Statement
W.D. Mich.	United States v. Rodger Dale DeVries	*Polar Bear Trophy/* MMPA
E.D.N.Y.	United States v. Lin Feng Xu	*Elephant Ivory/* Smuggling
N.D.N.Y.	United States v. Leonard J. Pugh, Jr.	*Asbestos Removal/* CAA

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D.N.Y.	United States v. Cheng Yan Huang et al.	*Pesticide Packaging/* FIFRA, Conspiracy
W.D.N.Y.	United States v. Keith Gordon-Smith et al.	*Demolition Project/* CAA, False Statement
W.D.N.C.	United States v. Brian K. Smith et al. United States v. Tanveer Anwar et al.	*Abandoned Hazardous Waste/* RCRA *Emissions Testing/* CAA, Conspiracy
D.N.D.	United States v. Slawson Exploration Company, Inc. et al.	*Oil Companies/* MBTA
D.N.M.I.	United States v. Adrian Mendiola et al.	*Bat Poaching/* ESA
S.D. Ohio	United States v. John A. Anderson	*Municipal Employee/* CWA False Statement
D. Oregon	United States v. Robert H. Block, Jr., et al.	*Stream Diversion/* CWA, ESA
D.P.R.	United States v. Uniteam Marine Shipping GMbH	*Vessel/* APPS, False Statement
D.S.C.	United States v. John A. Mabus	*Direct Discharge/* CWA Misdemeanor
D.S.D.	United States v. Michael Solberg	*Hunting Lodge/* BGEPA
E.D. Tex.	United States v. Billy Powell	*Deer Breeder/* Lacey Act
E.D. Va.	United States v. Marine Environmental Services, et al.	*Ship Dismantler/* CWA, Refuse Act

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
[redacted]	[redacted]	[redacted]
D.V.I.	United States v. Ashu Bhandari	*Black Coral Imports/* False Statement

Additional Quick Links:

Trials

United States v. Duane O'Malley et al., No. 2:10-CR-00242 (C.D. Ill.), AUSA Eugene Miller.

Abandoned bags with asbestos

On September 26, 2011, Duane O'Malley was convicted by a jury on all five Clean Air Act (42 U.S.C. § 7413(c)(1))counts stemming from his involvement in an illegal asbestos abatement of a five-story building. Co-defendant James Mikrut recently pleaded guilty to five CAA violations and Michael Pinski pleaded guilty to one CAA violation.

In August 2009, Pinski hired O'Malley, owner and operator of Origin Fire Protection, to remove asbestos-containing insulation from pipes in the building. Neither O'Malley nor his company was trained to perform asbestos removal work. O'Malley agreed to remove the asbestos insulation for an amount that was substantially less than a trained asbestos abatement contractor would have

charged to remove the material. O'Malley arranged for Mikrut to recruit five individuals to remove the asbestos insulation from the pipes inside the building during a five-day period in August 2009.

The asbestos insulation was placed in approximately 120 unlabeled plastic garbage bags that later were emptied onto an open field in a residential area resulting in asbestos contamination of the soil.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Informations and Indictments

United States v. Lin Feng Xu, No. 1:11-mj-00940 (E.D.N.Y), ECS Senior Trial Attorney Richard Udell and AUSA William Sarratt.

On September 20, 2011, a complaint was filed charging Lin Feng Xu with smuggling (18 U.S.C. § 545) for the export of elephant ivory. The complaint alleges that Xu was apprehended at J.F.K. Airport in New York on September 17, 2011, before boarding a flight to China. His luggage was found to contain several objects made from carved ivory. Also found was an invoice from an auction house for more than $19,000, noting the purchase of items made from elephant ivory.

The demand for antiques and art made of or containing elephant ivory has resulted in a significant adverse impact on the species and a thriving black market.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Cheng Yan Huang et al., Nos. 1:11-mj-02417 and 02418 (S.D.N.Y.), AUSA Janis Echenberg.

On September 19, 2011, after 12 arrests and the seizure of thousands of packages containing illegal pesticides, two people have been charged in federal complaints with conspiracy and FIFRA violations (18 U.S.C. § 371; 7 U.S.C. § 136) for their roles in the illegal distribution and sale of unregistered and misbranded pesticides.

Chen Yan Huang and Jai Ping Chen (along with ten other people charged in state court) were arrested after pesticides were seized from dozens of locations throughout Manhattan. These pesticides were particularly dangerous because the packaging could lead people to mistake them to contain cookies or cough medicine. The pesticides were not registered with the EPA and were missing required label warnings, thus providing consumers no way of knowing how dangerous the products were or how best to protect themselves from harmful exposure. A woman accidentally ingested one of the pesticides, believing it to be medicine, and was hospitalized as a result.

The cases are being investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, United States Immigration and Customs Enforcement's Homeland Security Investigations, and the United States Postal Inspection Service.

Back to Top

United States v. Executive Recycling, Inc., et al., No. 1:11-CR-00376 (D. Colo.), AUSA Suneeta Hazra, SAUSA Lillian Alves, and ECS Trial Attorney Leslie Lehnert.

On September 16, 2011, an indictment was unsealed charging Executive Recycling (ER), its president Brandon Richter, and former vice president Tor Olson with mail and wire fraud, smuggling, obstruction of justice, and a RCRA violation (18 U.S.C. § 1341; 18 U.S.C. § 1343; 42 U.S.C. § 6928(d)(4); 18 U.S.C. § 554; 18 U.S.C. § 1519) arising out of the unlawful export of electronics waste (e-waste) to China. From February 2005 through January 2009, ER operated as a recycling company in Denver, Colorado, that specialized in environmentally friendly recycling of e-waste. Specifically, ER assured customers that it would properly and completely dispose of e-waste in the United States in order to induce them to contract with ER for the disposal of their e-waste. The e-waste collected by ER included Cathode Ray Tubes (CRTs), which are the glass video display component of electronic devices. CRTs are potentially hazardous waste due to the presence of lead.

The investigation into the company began after a *60 Minutes* segment aired in November 2008 that followed a shipping container loaded with used computer monitors from the company's Colorado facility through a port in Tacoma, Washington, to its final destination in Hong Kong in April 2008. Hong Kong customs officers rejected the shipment because used CRTs are considered hazardous waste under Chinese law. The container was returned to the United States, where it was searched by EPA and ICE agents who recovered 296 CRTs and twenty boxes of broken computer monitor parts. All monitors tested exhibited the hazardous waste characteristic toxicity for the presence of lead above the regulatory threshold of 5 mg/L.

The company appeared as the exporter of record in more than 300 exports from the United States between 2005 and 2008. Approximately 160 of these exported cargo containers contained a total of more than 100,000 CRTs. The obstruction charge stems from Richter and Olson shredding documents after the investigation had commenced.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Homeland Security, Immigration and Customs Enforcement.

Back to Top

United States v. Daniel Evanoff, No. 1:11-CR-00022 (W.D. Ky.), AUSA Joshua Judd.

On September 7, 2011, an executive for an automotive casting company was indicted on charges of conspiracy and tampering with environmental monitors (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(C)) at their facility located in Glasgow, Kentucky. Daniel Evanoff was charged with conspiring to defraud the United States and with rendering inaccurate a monitoring device required under the Clean Air Act.

Evanoff was the North American alloy manager for J.L. French, a Wisconsin-based company that makes die-cast aluminum products for the automobile industry. The Glasgow plant makes its products by melting down scrap aluminum in furnaces and transferring the molten aluminum in ladles to the die-casting operation, where the aluminum is cast into auto parts. The indictment alleges that Evanoff engaged in a scheme with three unnamed co-conspirators at the plant from 2007 to November 2009 to deliberately underreport the number of ladles of molten aluminum the facility processed.

In addition to reporting the number of ladles produced, emissions testing required that plant officials monitor the baghouses for leaks as well as other baghouse data. The defendant and co-conspirators also are alleged to have destroyed documents that contained the actual numbers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division.

Back to Top

United States v. Pelican Refining Co., LLC, No. 2:11-CR-00227 (W.D. La.), ECS Senior Trial Attorney Richard Udell, ECS Trial Attorney Christopher Hale, USA Stephanie Finley, and ECS Paralegal Ben Laste.

Oil on rooftop

On September 6, 2011, a three-count information was filed against Pelican Refining Co. (PRC), charging it with two Clean Air Act violations and one obstruction charge (42 U.S.C. §§ 7661a(a), 7413(c)(1); 18 U.S.C. § 1519). The charges stem from PRC's operation of the Pelican Refinery in Lake Charles, Louisiana, from August 2005 to March 2007. PRC knowingly operated the refinery without properly functioning pollution prevention equipment, as required by its Title V permit. The company is expected to admit that due to the pollution prevention equipment not working, pollutants, including benzene, toluene, ethyl benzene, and xylene (collectively known as BTEX) and hydrogen sulfide H_2S, were illegally released into the atmosphere.

Sources of H_2S and BTEX emissions at the Pelican Refinery included the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified and fitted. The obstruction charge stems from false statements made in a 2006 report submitted to the Louisiana Department of Environmental Quality. Company Vice President Byron Hamilton previously pleaded guilty to two CAA negligent endangerment violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana State Police, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

United States v. Oakmont Environmental, Inc., No. 2:11-CR-00213 (E.D. La.), AUSA Dorothy Taylor.

On August 31, 2011, a one-count information was filed charging Oakmont, a waste treatment facility, with knowingly violating the Clean Water Act (33 U.S.C. § 1319 (c)(2)(A)).

Oakmont was in the business of receiving waste oil from sources including tank farms, shipyards and clean up operations. After receipt, the company was responsible for separating the water from the oil, shipping the oil to a recycling plant, and discharging the treated waste water to the local POTW.

From September 2007 through May 2009, the indictment alleges that Oakmont discharged approximately 3.6 million gallons of oily waste water directly into the Harvey Canal, a navigable water.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Elias Garcia Garcia et al., No. 1:11-CR-20525 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

Jaguar skins

On August 29, 2011, Elias Garcia Garcia and Maria Angela Plancarte were arrested as they crossed the border from Mexico into the United States at Brownsville, Texas. The two were transferred to Miami to face Endangered Species Act and conspiracy charges (16 U.S.C. § 1538; 18 U.S.C. § 371) related to their alleged interstate sale of jaguar skins illegally imported from Mexico into the United States in 2010.

According to the indictment, Garcia and Plancarte offered to sell jaguar skins in person to potential customers in Texas and by electronic means elsewhere. Additionally, they made repeated trips to South Florida, carrying jaguar skins in their car to sell to Florida customers, while purporting to do business for the plant seed company that they jointly operated.

In November 2010, the defendants allegedly sold two jaguar pelts to undercover agents in Texas for a total of $3,000 and offered the agents up to ten jaguar skins at a time for any future sale. A second sale of skins was allegedly made to undercover agents in Homestead, Florida, resulting in a payment of $4,000, of which $1,000 was as a deposit against the future sale of up to ten jaguar skins.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Slawson Exploration Company, Inc., et al., Nos. 4:11-po-0002-0006, 0008-0009 (D.N.D.), AUSA Cameron Hayden.

On August 22, 2011, seven oil companies were charged with Migratory Bird Treaty Act violations (16 U.S.C. §§ 703,707(a)) for allegedly killing migratory birds that died after landing in oil waste pits in western North Dakota. The charges involve 28 dead birds that were discovered in pits between May 6, 2011, and June 20, 2011. Companies charged are Slawson Exploration Company, Inc.; ConocoPhillips Company; Newfield Production Company; Brigham Oil and Gas, LP; Continental Resources, Inc.; Fidelity Exploration and Production Company; and Petro Hunt, LLC. Among the migratory birds that perished were Mallard ducks, Gadwalls, Blue-Winged Teals, and Northern Shovelers.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Ashu Bhandari, No. 3:11-CR-00028 (D.V.I.), ECS Trial Attorney Christopher Hale and AUSA Nelson Jones.

On August 25, 2011, Ashu Bhandari was charged in a six-count information with six false statement charges (18 U.S.C. § 1001(a)(3)). The charges stem from Bhandari's participation in a scheme to illegally import black coral into St. Thomas during 2008 and 2009. The black coral was used in the manufacture of high-end jewelry and art objects that were sold through retail galleries operated by GEM Manufacturing LLC (GEM). Until he was terminated in January 2010, Bhandari

was the president and CEO of GEM. Black coral is internationally protected under the CITES treaty. GEM's supplier of black coral could not obtain legitimate CITES permits for the black coral it exported from China to the United States. The fundamentals of the scheme were to falsely label the coral as "plastic" or "plastic of craft work" [sic] to divert Customs officers and to conceal the fact that the CITES-regulated specimens were being illegally traded.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

Back to Top

Plea Agreements

United States v. Brian K. Smith et al., Nos. 11-CR-00146, 00280 (W.D.N.C.), AUSA Steven Kaufman.

On September 28, 2011, Brian K. Smith pleaded guilty to a RCRA storage violation (42 U.S.C. § 6928(d)(2)(A)), stemming from his involvement in the abandonment of hazardous waste in public storage units. His wife, Kaara Doolin-Smith, previously entered a similar plea.

From July to November 2010, the defendants were the owners of Dove Environmental Management (Dove), a licensed hazardous waste transporter. During that time, they illegally stored more than 90 containers of regulated hazardous waste materials in public rental storage units. The containers were discovered in October 2010 during an inspection by the rental facility after the company failed to make numerous monthly payments. The ensuing investigation prompted an emergency EPA Superfund response. Several generators listed on the containers advised that they had contracted with Dove to remove and dispose of the wastes as far back as 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation Diversion and Environmental Crimes Unit, and the Department of Environment and Natural Resources Hazardous Waste Section.

Back to Top

United States v. Leonard J. Pugh, Jr., No. 5:11-CR-00579 (N.D.N.Y.), AUSA Craig Benedict.

On September 9, 2011, Leonard Pugh pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)) stemming from the illegal removal of asbestos.

Pugh is an owner of a business that was located in a building containing approximately 6,000 square feet of asbestos. Pugh admitted to hiring an unlicensed individual in 2006 to demolish the building and he did not provide notice to the EPA of the demolition activity. Pugh further failed to ensure that the asbestos remained wet during the removal nor did he ensure that it was properly disposed of in an authorized landfill. Sentencing is scheduled for January 10, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation, with assistance from the New York State Department of Labor.

Back to Top

United States v. GLO Wrecking Company et al., No. 2:11-CR-20362 (E.D. Mich.), AUSA Jennifer Blackwell and RCEC James Cha.

On September 9, 2011, GLO Wrecking Company (GWC) and its owner, Ashok Badhwar, each pleaded guilty to violating the Clean Air Act (42 U.S.C. § 7413(c)(1)) stemming from their involvement in a demolition project.

Badhwar and GLO were hired by the City of Detroit to demolish the former McMillan School building, which the defendants knew contained regulated asbestos-containing materials (RACM). In December 2008, GWC began demolishing the building without wetting the RACM in the building, and without ensuring that these materials remained wet until collected for disposal. In addition, the defendants failed to have an on-site representative present who was trained in the provisions of the federal asbestos regulations.

The defendants are scheduled to be sentenced on December 15, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Robert H. Block, Jr., et al., No. 3:11-CR-00164 (D. Oregon), AUSA Stacie Beckerman and SAUSA Patrick Flanagan.

On September 9, 2011, Robert H. Block, Jr., pleaded guilty to a misdemeanor violation of the Clean Water Act and an Endangered Species Act violation (33 U.S.C. §§ 1311(a), 1319(c)(l)(A); 16 U.S.C. §§ 1538(a)(1)(G) and 1540(b)(l)).

Block owns property abutting Gales Creek in Gales Creek, Oregon. In October 2009, the defendant used an excavator to move earthen materials within the Gales Creek stream channel, to divert the flow of the stream. Their work impacted an area approximately 700 feet long and 50 to 90 feet wide.

Block hired David Dober, Sr., to move earthen materials within the creek to assist in diverting the flow of the stream. Together, they moved approximately 100,000 pounds of material in and around the creek. The alteration of the stream channel significantly modified and degraded the habitat of Upper Willamette River Steelhead. Neither the defendant nor Dober possessed a permit from the Army Corps of Engineers to perform this work. Dober is scheduled for trial to begin on November 8, 2011, and Block is scheduled to be sentenced on December 7, 2011.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Sea Food Center, LLC, et al., No. 1:11-CR-20564 (S.D. Fla.), AUSA Norman O. Hemming, III.

On September 9, 2011, Sea Food Center, LLC, and company president Adrian Vela, pleaded guilty to three of the nine violations charged stemming from the sale of mislabeled shrimp. Specifically, the defendants pleaded guilty to conspiracy to violate the Lacey Act, a substantive Lacey Act violation, and a misbranding count in violation of the Food, Drug and Cosmetic Act (18 U.S.C. § 371; 16 U.S.C. §§ 3372(d)(2), 3373(d)(3)(A), and 21 U.S.C §§ 331,343(a)(1)).

In 2008 and 2009, Vela and Sea Food Center conspired with Richard Stowell and United Seafood, Inc., to violate the Lacey Act by mislabeling and selling approximately 500,000 pounds of shrimp. Specifically, they oversaw the false labeling of a less marketable substituted seafood product ("Shrimp, Product of Thailand," "Shrimp, Product of Malaysia," and "Shrimp, Product of Indonesia,") which was misbranded and marketed as "Shrimp, Product of Panama", "Shrimp, Product of Ecuador",

and "Shrimp, Product of Honduras", all of which are more readily marketable seafood products. The shrimp, valued in excess of $400,000, was ultimately sold to supermarkets in the northeastern United States. Stowell and United Seafood previously pleaded guilty and have been sentenced for their role in the conspiracy.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Florida Department of Agriculture and Consumer Services.

Back to Top

United States v. Josimar Ferreira, No. 1:10-CR-10245(D. Mass.), AUSAs Lori Halik and Anton Geidt, and RCEC Peter Kenyon.

On September 1, 2011, Josimar Ferreira, a Brazilian native, pleaded guilty to 16 FIFRA violations and one false statement count (7 U.S.C. §§ 136j(a)(2)(G), 136*1*(b)(2); 18 U.S.C. § 1001).

From 2007 through 2010, Ferreira operated pest extermination company TVF Pest Control, Inc. The defendant told his clients that he could eradicate bed bugs from their homes with his use of a "special" mixture, supposedly approved for indoor application. Ferreira was actually applying a pesticide containing the insecticide Malathion, which is not approved for indoor application. The defendant sprayed the Malathion on surfaces including a baby crib, mattresses, bed frames, baseboards, closets and furniture.

Ferreira is scheduled to be sentenced on November 22, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Massachusetts Department of Agricultural Resources.

Back to Top

United States v. Tanveer Anwar et al., Nos. 3:11-CR-00240 and 00241 (W.D.N.C.) AUSA Stephen Kaufman.

On August 29, 2011, Tanveer Anwar and Erick Chicas each pleaded guilty to one-count informations charging them with conspiracy to violate the Clean Air Act (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(A)), for their involvement in a scheme to bypass the state of North Carolina's vehicle emissions program.

Several former service technicians who worked for Hendrick BMW were found to have been using an illegally purchased OBDII simulator that enabled them to falsify emissions test results. Approximately 50 illegal scans were conducted between June 2010 and March 2011. The illegal simulator allowed the technicians to access the state's computerized emission program and print out falsified emissions certificates without ever actually testing a car. Illegal inspections were performed on the defendants' personal vehicles and those of family and friends, often including a cash payment to the defendants.

The investigation is ongoing and is being conducted by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the North Carolina Division of Motor Vehicles License and Theft Bureau.

Back to Top

United States v. David Adams, No. 3:10-CR-00009 (N.D. Ga.), AUSA Mary Roemer.

On August 25, 2011, David Adams was sentenced after pleading guilty to a violation of the Endangered Species Act (16 U.S.C. § 1538) for the unlawful take of a Florida Panther, a subspecies of cougar. Adams was sentenced to pay a $2,000 fine and will complete a two-year term of unsupervised probation. He is prohibited from hunting or from obtaining a hunting license during the period of probation.

In November 2008, Adams shot and killed a Florida panther while on a deer hunt. At the time of the killing, Adams knew he was shooting at a species of cougar, for which there is no open hunting season in the State of Georgia. The Florida Panther has been listed as an endangered species since 1967.

Deceased Florida Panther

This case was investigated by the United States Fish and Wildlife Service and the Georgia Department of Natural Resources.

Back to Top

[redacted]

Back to Top

United States v. DRD Towing Company, LLC, et al., Nos. 2:10-CR-00190, 191, 333 (E.D. La.), AUSA Dorothy Taylor.

Oil spill on the Mississippi River

On August 24, 2011, John Bavaret was sentenced to serve six months' incarceration and six months' home confinement, followed by three years' supervised release. Bavaret previously pleaded guilty to a violation of the Ports and Waterways Safety Act (PWSA) and a misdemeanor violation of the Clean Water Act (33 U.S.C. § 1221; 33 U.S.C. § 1319(c)(1)(A)) stemming from his involvement in the collision of two vessels on the Mississippi River in July 2008. A total of three individuals were prosecuted in this incident that resulted in the discharge of a significant amount of fuel oil into the river.

Maritime company DRD Towing Company owned and managed tugboats that pushed barges for other companies. On July 23, 2008, the DRD-owned *M/V Mel Oliver*, which was pushing a tanker barge full of fuel oil, crossed paths with the *M/T Tintomara*, a 600-foot Liberian-flagged tanker ship, causing a collision that resulted in the negligent discharge of approximately 282,680 gallons of fuel oil from the barge into the river.

DRD admitted that it had created a hazardous condition by assigning employees without proper Coast Guard licenses to operate certain vessels and by paying licensed captains to operate vessels for 24 hours a day without a relief captain. Randall Dantin, the company owner, admitted that he had obstructed justice (18 U.S.C. § 1505) by deleting electronic payroll records from a laptop computer. These documents were material to a Coast Guard hearing that had been convened to investigate the collision.

Dantin was sentenced to serve 21 months' incarceration followed by two years' supervised release, and he will pay a $50,000 fine. DRD was sentenced to pay a $200,000 fine and will complete a two-year term of probation. Terry Carver, the captain of the *Mel Oliver* the day of the spill, was sentenced to serve three years' probation for violating the PWSA. The company previously pleaded guilty to a PWSA violation and to a CWA misdemeanor violation.

This case was investigated by the United States Coast Guard Investigative Services and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. David P. Horan, Jr., No. 4:11-CR-10011 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On August 22, 2011, David P. Horan, Jr., pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372 (a)(2)(A), 3373 (d)(1)(A)) for unlawfully harvesting and selling 133 pounds of black grouper in interstate commerce.

From July 2007 through approximately October 2010, Horan regularly harvested spiny lobster and finfish while holding only a Florida commercial fishing license. A NOAA-issued permit is required to commercially harvest snapper and grouper in the Atlantic and Gulf waters adjacent to Florida. Additionally, Florida wholesale dealers are prohibited from purchasing lobster and finfish without first confirming that the seller possessed all required state and federal licenses.

Horan admitted that upon harvesting the fish without the proper NOAA-issued permits, he further mislabeled the actual species caught on trip reports that were filed with Florida Fish and Wildlife Conservation Commission. The grouper was then sold to Rusty Anchor Seafood of Key West, Inc., which was recently prosecuted and sentenced to pay a $500,000 fine.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Arne Fuglvog, No. 3:11-CR-00067 (D. Alaska), AUSA Aunnie Steward.

On August 11, 2011, Arne Fuglvog pleaded guilty to a Lacey Act misdemeanour charge (16 U.S.C. § 3373(d)(3)(B)) for a fisheries violation. Fuglvog had been a fisheries advisor to Alaska Senator Lisa Murkowski and was a member of the North Pacific Fishery Management Council at the time of the violation.

From 2001 to 2006, as the owner and operator of the *F/V Kamilar*, Fuglvog had permits to fish in the Gulf of Alaska for sablefish and halibut. On several occasions during this period, Fuglvog fished in one regulatory area and then falsely reported that the fish were caught in a different regulatory area. Specifically, in 2005, the defendant possessed a permit for sable fish in the area designated as "Western Yakatat." His permit allowed him to catch approximately 30,000 pounds of sablefish in the Western Yakatat area in 2005; however, he actually caught more than twice that amount of sablefish (approximately 63,000 pounds) in the Western Yakatat in 2005. Fuglvog concealed this illegal catch by submitting documents stating that he had landed this additional fish in a completely different area. The value of the illegally caught fish was approximately $100,000.

Fuglvog is scheduled to be sentenced on November 18, 2011. This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Back to Top

Sentencings

United States v. Adrian Mendiola et al., No. 1:10-CR-00037 (D.N.M.I.), and AUSAs Kirk Schuler and Eric O'Malley, with assistance from ECS Trial Attorney Christopher Hale.

On September 27, 2011, former police officer Adrian Mendiola was sentenced to serve 90 days' incarceration followed by six months' supervised release. Mendiola also will pay a $1,000 fine and perform 100 hours of community service for the Division of Fish and Wildlife's community outreach education program.

The defendant was previously convicted by a jury of an Endangered Species Act violation (16 U.S.C. § 1538) for possession of a Mariana fruit bat, a threatened species. He was acquitted on a Lacey Act charge for receiving

Deceased bat with shotgun shells

wildlife. Mendiola was charged along with two co-defendants in a five-count indictment with charges stemming from the poaching of fruit bats.

The poaching occurred in 2008 on the island of Rota, in the Northern Mariana Islands, where two of the few remaining breeding colonies of the Mariana fruit bat were decimated by hunters using shotguns. There has been a moratorium on hunting fruit bats in the Mariana Islands since the 1990s and in 2005 the United States Fish and Wildlife Service listed them as threatened due to an alarming decline in their population. Biologists estimated that about ten to 14 percent of the total fruit bat population on Rota was killed during three separate poaching events over a six-month period.

This case was investigated by the Fish and Wildlife Service and the Commonwealth of the Northern Mariana Islands (C.N.M.I.) Department of Land and Natural Resources Division of Fish and Wildlife, with assistance from the C.N.M.I. Department of Public Safety; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Agency; the Federal Bureau of Investigation; the National Marine Fisheries Service; Immigration and Customs Enforcement; the Coast Guard; the Marshals Service; the Naval Criminal Investigative Service; and the National Wildlife Forensics Laboratory.

Back to Top

United States v. Anthony Sharpe et al., No. 2:10-CR-20584 (E.D. Mich.), AUSAs Jennifer Blackwell and Lynn Helland.

On September 26, 2011, Anthony Sharpe and Sharpe Environmental Testing & Consulting, Inc., were sentenced after previously pleading guilty to a mail fraud violation (18 U.S.C. § 1341) stemming from fraudulent lead hazard residential assessments. Sharpe was sentenced to serve 18 months' incarceration followed by three years' supervised release. His company will pay a $5,000 fine and complete a five-year term of probation.

From 2004 through 2006, Sharpe, acting through his company, engaged in the business of conducting and purporting to conduct lead inspections of residences in Southeast Michigan. During this period Sharpe also served as the City of Detroit's Childhood Lead Poisoning Prevention Program Manager. As a person who was trained in lead inspection, the defendant was aware that there existed a significant possibility that older residential properties contained lead paint and could pose a substantial health hazard to children and adults who lived there.

During this two-year period, Sharpe devised a scheme to obtain money by false representations. Specifically, he created documentation including lab test results to show he had performed lead inspections. He then submitted invoices for these inspections, including test results all of which were fraudulent. Because Sharpe supported his alleged lead inspections with false lab reports, neither the agency that engaged his services nor the property owners knew whether or not the properties in question created a risk of lead poisoning to their residents.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Housing and Urban Development.

Back to Top

United States v. Billy Powell, No. 6:11-CR-00059 (E.D. Tex.), AUSA Jim Noble.

On September 22, 2011, licensed deer breeder Billy Powell was sentenced to serve six months' home confinement as a condition of a three-year term of probation. Powell was also ordered to pay a $1 million fine, to be deposited into the Fish and Wildlife Lacy Act Reward Fund, as well as pay $500,000 in restitution to Texas Parks and Wildlife. During the term of probation, Powell will be prohibited from participating in any manner of commercial deer breeding. Additionally, Powell must

forfeit any illegally imported deer, any progeny of those deer, and any biological material derived from the deer, including antlers, mounts, semen, and cloned deer. Powell has already forfeited more than 1,300 straws of frozen semen valued at approximately $961,500.

After a four-year investigation, Powell pleaded guilty to smuggling approximately 37 whitetail deer in violation of the Lacey Act (16 U.S.C. §§ 3372 (a)(2)(A), 3373 (d)(2)) from Indiana, Illinois, and Ohio into Texas over a three-year period. Powell also admitted that he made a false statement and submitted a false document (18 U.S.C. § 1001) to a United States Fish and Wildlife agent.

On at least four separate occasions between October 2006 and June 2008, Powell illegally imported the deer, many of which came from captive deer farms in Indiana, to his deer breeding facility in Texas. Powell was aware that Texas law prohibits any person from possessing a deer acquired from an out-of-state source. The fair market value of these deer exceeded approximately $800,000, with the additional value of the semen and the progeny estimated to exceed $1.25 million. The defendant also lied to a Fish and Wildlife agent regarding the actual number of deer that he had brought into the state.

As an unfortunate consequence of Powell's actions, all 334 deer at his facility had to be euthanized to facilitate testing for chronic wasting disease (CWD) and bovine tuberculosis (BT), as there currently is no live-animal test for CWD. This was necessary to ensure that neither disease was present in Powell's deer breeding facility or in any deer breeding facility that had received deer from Powell's facility since October 2004. Once these diseases become established in wild populations, they are extremely difficult, if not impossible, to eradicate.

This case was investigated by the Special Operations Unit of the Texas Parks and Wildlife and United States Fish and Wildlife Service.

Back to Top

United States v. Keith Gordon-Smith et al., No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Dooher, AUSA Craig Gestring, and ECS Paralegal Lisa Brooks.

On September 21, 2011, Keith Gordon-Smith and his Rochester-based asbestos abatement company, Gordon-Smith Contracting, Inc., (GSCI) were sentenced, after previously being convicted by a jury on eight Clean Air Act violations and three false statement counts (42 U.S.C. §§ 7412, 7413(c)(1); 18 U.S.C. § 1001). Gordon-Smith will serve six years' incarceration followed by a three-year term of supervised release. The company is now defunct.

Evidence at trial proved that GSCI workers violated asbestos work practice standards at the Genesee Hospital complex, which was demolished in the summer of 2009. The first violations took place between January and May 2007, when Gordon-Smith ordered GSCI workers to tear out copper pipes, ceiling tiles, and scrap metal from the west wing, a six-story structure that contained over 70,000 square feet of asbestos. Gordon-Smith had a contract with the site owner that provided him with 50 percent of the salvage value of all copper pipe and scrap metal. When the workers removed the pipes and scrap metal, they were repeatedly exposed to asbestos, described to the jurors as falling on them "like snow." The workers were not wearing any protective clothing and often would wear their asbestos-contaminated clothing back to their homes and families. Large amounts of asbestos were left hidden in the west wing and were not properly disposed off-site.

Evidence further proved that Gordon-Smith and the company made false statements to an OSHA inspector who had received complaints from GSCI workers. The OSHA inspector visited the site three times in September and October 2007, and on each occasion Gordon-Smith lied and told the inspector that GSCI workers had not removed any copper pipes or other materials from the west wing.

Gordon-Smith and the company also were convicted of six counts of failing to provide required notice to EPA prior to commencing asbestos abatement projects at six different sites in the Rochester

area between 2005 and June 2008, including several schools. Francis Rowe, a former project manager for GSCI, was acquitted by the jury of the single CAA count charged against him.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Department of Labor Office of the Inspector General, with assistance from the Occupational Safety and Health Administration, and the New York Department of Labor Asbestos Control Bureau.

Back to Top

United States v. Stephen C. Delaney, Jr., No. 1:09-CR-10312 (D. Mass.), ECS Assistant Chief Elinor Colbourn, ECS Trial Attorney Jessica Alloway, AUSA Nadine Pellegrini, and ECS Paralegal Kathryn Loomis.

On September 21, 2011, Stephen C. Delaney, Jr., was sentenced to pay a $5,000 fine to be paid into the Magnuson-Stevens Fund. He also will complete a one year term of probation to include three months' home detention.

Delaney was previously convicted by a jury of violations stemming from the false labeling of frozen fish fillets from China. Specifically, Delaney was convicted of a felony violation of the Lacey Act (16 U.S.C. §§ 3372(c)(2), 3373(d)(3)(A)) for falsely labeling approximately $8,000 worth of frozen fillets of Pollock (a product of China) as cod loins (a product of Canada). Evidence at trial established that the price of cod is approximately $1.00 per pound higher than that for Alaskan Pollock.

In addition, Delaney was convicted of one misdemeanor violation of the Food, Drug, and Cosmetic Act for misbranding seafood (21 U.S.C. §§ 331(a), 331(a)(2), 343(1)(1)). Evidence at trial proved that the defendant introduced into interstate commerce approximately $203,000 worth of frozen fish fillets that were falsely and misleadingly labeled as products of Canada, Holland, Namibia, and the United States, when they were actually products of China. He was acquitted on the remaining two counts.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement and the Food and Drug Administration's Office of Criminal Investigations.

Back to Top

United States v. Jeffery B. Foiles et al., No. 3:10-CR-30100 (C.D. Ill.), ECS Trial Attorney Colin Black, AUSA Gregory Gilmore, and ECS Paralegal Christina Liu.

Foiles

On September 21, 2011, Jeffrey Foiles was sentenced to serve 13 months' incarceration, stemming from the illegal sale of guided waterfowl hunts. In addition to incarceration, Foiles will complete one year of supervised release during which time he may not hunt or guide hunters, and he will pay a $100,000 fine for which his company has agreed to serve as guarantor. Additionally, Foiles has also agreed to one additional year, following completion of his term of supervised release, during which he will not hunt or guide.

Foiles, a professional duck hunter, previously pleaded guilty to a misdemeanor Lacey Act violation for the unlawful sale of wildlife, as well as one misdemeanor count of unlawfully taking migratory game birds in violation of the Migratory Bird Treaty Act (16 U.S.C. §§ 3372, 3373; 16 U.S.C. §§ 703, 707). The company that operated Foiles' hunting club, the Fallin' Skies Strait

Meat Duck Club, LLC, also pleaded guilty to one felony count of unlawful sale of wildlife in violation of the Lacey Act and one felony count of making false writings in a matter within the jurisdiction of the U.S. Fish and Wildlife Service (18 U.S.C. § 1001).

Between 2003 and 2007, for $250 per day, Foiles sold and guided waterfowl hunts at the club for the purpose of illegally hunting ducks and geese in excess of hunters' individual daily bag limits. Foiles and others at the club also falsified hunting records in order to conceal the excesses.

The company remains scheduled for sentencing on October 27, 2011. This case was investigated by the United States Fish and Wildlife Service, with assistance from the Illinois Department of Natural Resources, the Iowa Department of Natural Resources, and the Canadian government.

Back to Top

United States v. John A. Mabus, No. 1:11-CR-00555 (D.S.C.), AUSA Winston Holliday.

On September 15, 2011, John A. Mabus was sentenced to serve eight months' home confinement as a condition of a five-year term or probation. He also will pay a $7,500 fine, stemming from a negligent violation of the Clean Water Act (33 U.S.C. § 1319(c)(1)(A)).

During a sewer line construction project in January of 2008, Mabus and his company, Mabus Construction Co., began digging a ditch for a sewer line near the Clearwater Finishing Industrial Facility, an abandoned textile mill. The mill is located near the Little Horse Creek, a tributary of the Savannah River, and is a water of the United States.

In January 2008, as Mabus and his crew were digging, water from a lagoon that had been contaminated with heavy metals infiltrated the ditch. Mabus instructed his employees to pump water from the lagoon into the Little Horse Creek for approximately three days. The defendant and his employees pumped approximately four million gallons of industrial wastewater and sludge into the creek, draining the lagoon and contaminating the creek.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the South Carolina Department of Health and Environmental Control.

Back to Top

United States v. Albania Deleon et al., No. 1:07-CR-10277 (D. Mass.), AUSA Lori Holik, former AUSA Jonathan Mitchell, and SAUSA Peter Kenyon.

On September 14, 2011, Albania Deleon, the former owner of one of the country's largest asbestos abatement training school, was sentenced to serve 87 months' incarceration, followed by three years' supervised release, after fleeing the United States just prior to sentencing in 2010. Deleon also will pay $1,200,939 in restitution to the Internal Revenue Service and $369,015 to AIM Mutual Insurance Company.

Deleon, owner of the Environmental Compliance Training School (ECTS), was convicted by a jury in November 2008, following a three-week trial on charges that she sold asbestos-removal training certificates to hundreds of undocumented workers who had not taken the mandatory training course and then sent them out to perform asbestos removal work, for which she paid them without withholding taxes. Deleon was convicted on 22 counts, including conspiracy to make false statements, to encourage undocumented workers to reside in the United States, and to hire them; five false statement violations; 16 counts of procuring false payroll tax returns; and five counts of mail fraud (18 U.S.C. § 371; 18 U.S.C. § 1001; 26 U.S.C § 7206; 18 U.S.C. § 1341.)

ECTS was the largest certified asbestos training school in Massachusetts. Between 2001 and 2006, Deleon routinely issued asbestos certificates to people who did not attend required training

courses or pass required tests. Many of those who received fraudulent certificates were illegal immigrants who then worked for a temporary service company, Methuen Staffing, also owned by Deleon, at demolition and construction sites overseeing asbestos removal. She sent these employees to job sites throughout Massachusetts, as well as to other states, including New Hampshire, Maine, and Connecticut.

The tax violations stem from the defendant's concealing the size of her payroll from IRS to avoid paying taxes. She did this by, among other things, maintaining two payrolls where she deducted the correct amount of tax for some of her employees, but paid the majority of them using a second payroll wherein income taxes were not withheld nor were payroll taxes paid to the IRS. Finally, the mail fraud convictions stem from Deleon's mailing workers compensation insurance documentation to insurance representatives that concealed the existence of those workers who received paychecks without taxes withheld, thereby reducing the amount of worker compensation insurance that she was required to pay.

The defendant fled to the Dominican Republic three days prior to sentencing in March 2010 and was extradited to the United States in November 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement, the Internal Revenue Service Criminal Investigation Office, the Social Security Administration Office of Inspector General, the United States Department of State, the Massachusetts Insurance Fraud Bureau, and the Massachusetts Division of Occupational Safety.

Back to Top

United States v. Simon Turola Borges, No. 1:11-CR-20606 (S.D. Fla.), AUSA Jaime Raich.

On September 14, 2011, Brazilian national Simon Turola Borges pleaded guilty to a smuggling violation (18 U.S.C. § 545) for attempting to import reptiles concealed in his clothes as he arrived at Miami International Airport (MIA) this summer. He was sentenced to time served (two weeks) followed by two years' supervised release and was ordered to pay a $400 fine.

Python found in defendant's clothing

On August 25, 2011, the defendant arrived at MIA to board a flight headed for Brazil. At the security checkpoint, the defendant was scanned with Advanced Imaging Technology. The image revealed an anomaly in his groin area. In response to the image, TSA officials directed Borges into a private room for further screening. After denying that he had anything in his pants, he subsequently emptied his cargo pants pockets and removed two hatchling pythons tightly wrapped in nylon pantyhose. The TSA officials then asked him to remove any foreign objects in his groin area. The defendant removed two nylon pantyhose containing several hatchling snakes and tortoises that were separated by knots in the nylon. The objects in his pocket also proved to be pythons wrapped in nylon pantyhose.

In total, the defendant was carrying three ball pythons, three carpet python) one children's python, one Indian star tortoise, and two leopard tortoise, all of which are protected under CITES Appendix II.

This case was investigated by the United States Transportation and Security Administration and the United States Fish and Wildlife Service.
Back to Top

United States v. Clint Martinez et al., No. 3:10-CR-00038 (M.D. La.), ECS Trial Attorneys Shennie Patel and Susan Park, and ECS Paralegal Christina Liu.

American Alligator

On September 13, 2011, two Louisiana brothers pleaded guilty to, and were sentenced for, Lacey Act violations (16 U.S.C. §§ 3372, 3373) for their role in illegally killing American Alligators in violation of the Endangered Species Act (ESA) and Louisiana law. In addition to being listed as a threatened species, the American Alligator also is listed on CITES Appendix II.

In October 2005 and in September 2006, Clint Martinez, a licensed alligator hunter, and his brother, Michael Martinez, a licensed alligator helper, guided out-of-state alligator sport hunters who were clients of an outfitter to areas for which they did not have appropriate state authorization to hunt. In October 2005, sport hunter clients killed a ten-foot, two-inch trophy-sized alligator. In September 2006, hunters killed a ten-foot trophy-sized alligator and a 12-foot, six-inch trophy-sized alligator.

The Martinez brothers each were sentenced to serve a three-year term of probation during which they will be prohibited from hunting as follows: for the first year of probation they are barred from engaging worldwide in all hunting activities, including guiding, with any kind of weapon; for the remaining two years of probation they will be prohibited from engaging worldwide in all commercial alligator hunting activities, including guiding. In addition, each defendant will pay a $5,000 fine, perform 200 hours of community service, and publish a statement in a newspaper setting forth a brief summary of the offense, the potential penalties, and an apology for their illegal conduct.

Alligator hunting has been a highly regulated activity in Louisiana since alligators were over-hunted years ago, resulting in a drastic population decline. The ESA prohibits the taking of wild American Alligators unless in compliance with Louisiana's laws and regulations. Louisiana law requires hunters and helpers to hunt only on property for which alligator tags are issued by the state. Each tag specifies an area where alligator hunting is to occur. Licensed hunters and helpers are required to hunt only in the area specified for each tag.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.
Back to Top

United States v. Hawk Field Services, LLC, No. 4:11-CR-00060 (E.D. Ark.), ECS Trial Attorney Todd Mikolop and AUSA Edward Walker.

On September 13, 2011, Hawk Field Services, LLC (HFS), was sentenced to pay a $350,000 fine and will make a $150,000 community service payment to the National Fish and Wildlife Fund. The company also will complete a three-year term of probation. HFS, a wholly-owned subsidiary of Houston-based Petrohawk Energy Corporation, previously pleaded guilty to three counts of violating the Endangered Species Act (16 U.S.C. § 1538).

The company is a natural gas operator in the Fayetteville Shale in Arkansas engaged in gathering, conditioning, and treating activities related to the development of natural gas. Between October 2008 and April 2009, the defendant failed to control erosion during pipeline construction activities, leading to excessive sedimentation in three streams of the Little Red River watershed and the associated take of at least one endangered speckled pocket book mussel from each stream.

This case was investigated by the United States Fish and Wildlife Service with assistance from the Arkansas Fish and Game Commission.

Back to Top

United States v. John A. Anderson, No. 2:11-CR-00145 (S.D. Ohio), AUSA Michael Marous and SAUSA Brad Beeson.

On September 9, 2011, John A. Anderson was sentenced serve a three-year term of probation, with the first 12 months to be served as home confinement. Anderson was ordered to pay a $2,000 fine and also will perform 104 hours of community service. As a result of this conviction the defendant is barred from operating a sewage treatment plant in the future.

Anderson previously pleaded guilty to a Clean Water Act false statement violation (33 U.S.C. § 1319(c)(4)) related to the operation of the sewage treatment plant that services the Village of Pomeroy. He had been employed as the village administrator from approximately 1989 to 2009 and was responsible for the operation of Pomeroy's wastewater treatment plant, including the filing of monthly reports with the State of Ohio.

At various times between 2006 and 2009, Anderson failed to collect and/or analyze required samples of discharge water from the plant. Instead he fabricated numbers for several pollutants, including solids and fecal coliform bacteria, and submitted those numbers to the Ohio EPA. Additionally, during site visits to the plant in 2007 and 2008, state inspectors found that large quantities of solids had been discharged into the Ohio River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Ohio Environmental Protection Agency.

Back to Top

United States v. Uniteam Marine Shipping GmbH, No. 3:11-CR-00195 (D.P.R.), ECS Trial Attorney Kenneth Nelson and AUSA Marshal Morgan.

On September 8, 2011, Uniteam Marine Shipping GmbH (Uniteam) was sentenced to pay a $600,000 fine plus make a $200,000 community service payment to the National Fish and Wildlife Foundation to fund projects aimed at the restoration of marine and aquatic resources in the District of Puerto Rico. The company also will complete a three-year term of probation and is required to implement a comprehensive advanced training and verification program to continuously monitor vessel operations and train crewmembers to prevent pollution from any ship it operates.

Overboard discharge with oily residue

The *M/V CCNI Vado Ligure* is a 16,800-ton ocean-going ship operated by Uniteam. On May 10, 2010, while the vessel was in port in San Juan,

Puerto Rico, Coast Guard inspectors located evidence that the crew had been discharging oily bilge waste from January until May 2010. The crew had manipulated the vessel's oily water separation equipment so that bilge waste would be discharged from the vessel without being processed or monitored, and they did not record these discharges in the oil record book (ORB).

Uniteam previously pleaded guilty to an APPS violation and a false statement charge (33 U.S.C. § 1908(a), 18 U.S.C. § 1001) for the presentation of a false ORB to the Coast Guard.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Van Bodden-Martinez, No. 9:11-CR-80056 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On September 2, 2011, Van Bodden-Martinez was sentenced to serve a three-year term of probation, to include a special condition prohibiting him from importing any fish or marine product harvested in Bahamian waters into the United States. The court also ordered forfeiture of the illegal catch of approximately 45 spiny lobster tails, 343.5 pounds of queen conch, 42 yellowtail snappers, and two insulated ice-chest coolers as a result of Bodden-Martinez' violation of U.S. and Bahamian law.

The defendant, a Bahamian national, previously pleaded guilty to a Lacey Act violation (16 U.S.C. § 3372) for attempting to import in February 2011 spiny lobster, queen conch, and yellowtail snapper, all of which had been harvested without the necessary permits and in violation of the possession limits for each of these species as specified in Bahamian regulations.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, Immigration and Customs Enforcement; United States Customs and Border Protection; the Florida Fish and Wildlife Conservation Commission; the United States Coast Guard; and the Palm Beach County Sheriff's Office.

Back to Top

United States v. Joseph Terranova et al., No. 2:10-CR-20013 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA Crissy Pellegrin.

On September 1, 2011, Joseph Terranova was sentenced to pay a $10,000 fine and will complete a two-year term of probation. Terranova is the final defendant to be sentenced in this case involving an illegal asbestos abatement project.

Peter DeFilippo contracted through his company, Excel Demo, Inc., to supervise the demolition of a fire-damaged building at Harbour Club Apartments, in Belleview, Michigan. Terranova was a supervisor for GFI Management Services, Inc. (the property management company for Harbour Club). David Olsen is a firefighter who also was employed by DeFilippo.

The defendants knew that the fire-damaged building contained regulated asbestos-containing materials (RACM), which needed to be properly removed during the demolition. Despite this knowledge, the RACM was removed without the presence of a certified professional and without complying with work practice standards. Terranova pleaded guilty to a false statement violation (18 U.S.C. § 1001), and DeFilippo pleaded guilty to a CAA violation (42 U.S.C. § 7413 (c)(1)). Olsen pleaded guilty to a Clean Air Act negligent endangerment violation (42 U.S.C. § 7413(c)(4)).

Olsen was sentenced in July 2011 to pay a $10,000 fine. DeFilippo was sentenced in August 2011 to serve 13 months' imprisonment, followed by two years' supervised release. He also will pay a $5,000 fine and an additional $5,000 in restitution to a worker for medical expenses. Charges against Excel, a sham corporation, were dismissed.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Kie-Con, Inc., No. 3:10-CR-00934 (N.D. Calif.), AUSAs Stacey Geis and Jeffrey Rabkin.

On September 1, 2011, Kie-Con, Inc., pleaded guilty to, and was sentenced for, one negligent violation of the Clean Water Act (33 U.S.C. §§ 1311(a), 1391(c)(1)(A)).

Kie-Con is a manufacturer of pre-stressed and pre-fabricated concrete products, such as beams and girders used in building and bridge construction. Kie-Con had a facility located in Antioch, California, which has been in operation since the early 1980s. As part of its operations, concrete was manufactured and poured into pile casting beds to create pilings used for building foundations and other purposes. As part of this process, concrete process water was generated with high pH levels.

In approximately January 2004 and continuing to April 2007, company employees routinely discharged concrete process water directly into the San Joaquin River in violation of its Clean Water Act permit. The process water was a pollutant in part because it contained significantly high pH levels that fell outside the effluent limits set for the San Joaquin River. Kie-Con admitted that employees routinely discharged the process water by using a hose that pumped the process water from sedimentation basins to a nearby storm water drain that led directly to the river.

Kie-Con was sentenced to pay a $3.5 million fine and to make a $750,000 community service payment to the National Fish and Wildlife Foundation to fund environmental projects relating to watersheds and ecosystems in the Bay Area, with an additional $750,000 payment to be paid to the Contra Costa District Attorney for funding environmental projects in the county where the violations occurred. Kie-Con and the Northern California District of Kiewit Infrastructure West Company also must implement a comprehensive environmental compliance plan.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the Contra Costa County District Attorney's Office.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Michael Solberg, No. 3:11-CR-30074 (D.S.D.), AUSA Megan Dilges.

On August 10, 2011, Michael Solberg was sentenced to pay a $1,250 fine plus make a $10,000 community service payment to the National Fish and Wildlife Fund. He previously pleaded guilty to violations of the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act (16 U.S.C. § 668(a); 18 U.S.C. §§ 703, 707(a)).

Killed Golden Eagle

Solberg owns and operates The Grand Lodge, a pheasant hunting lodge. The defendant has a hunting preserve license with the State of South Dakota for the purpose of conducting guided pheasant hunts. Since the lodge's opening in 2008, Solberg has shot and/or killed Bald and Golden Eagles and multiple species of hawks, specifically Red-Tailed Hawks and Rough-Legged Hawks. He admitted to shooting and killing at least one Golden Eagle and 20 hawks as of September 2008. The defendant stated that he shot the birds in an effort to protect his pheasants for his hunting business. The Remington Model 700 rifle he used to shoot a Golden Eagle was forfeited.

This case was investigated by United States Fish and Wildlife Service.

Back to Top

United States v. Rodger Dale DeVries, No. 2:11-CR-00026 (W.D. Mich.), ECS Senior Trial Attorney David Kehoe and USA Don Davis.

On September 8, 2011, Rodger Dale DeVries was sentenced to pay a $2,000 fine and will complete a one-year term of probation. DeVries recently pleaded guilty to a violation of the Marine Mammal Protection Act (MMPA) (16 U.S.C. §§ 1372(a)(2)(b), 1375(b)), for illegally importing a polar bear trophy mount from Canada into Michigan.

In November 2000, DeVries obtained a license from the Nunavut Territory in Canada to hunt and kill a polar bear from the Foxe Basin. Knowing that polar bears from the Foxe Basin could not be imported into the United States, the defendant had the polar bear trophy stored in Canada.

The MMPA prohibits importation of polar bear trophies or parts unless the Secretary of the Interior has made a determination that, in doing so, the region would still maintain sustainable population levels. The Secretary has not made such a determination for the Foxe River Basin.

In July 2007, DeVries travelled to Canada to retrieve the trophy. He then transported the trophy by boat from Ontario across the border to port in Raber Ray, Michigan. A few days later, the defendant moved it to his home and then sold the boat.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

[redacted]

Back to Top

United States v. Roger Cherry, No.1:11-mj-00031 (W.D. Ky.), AUSA Randy Ream.

On August 26, 2011, Roger Cherry, a retired city superintendent for Scottsville, Kentucky, was sentenced to pay a $1,350 fine and to complete a two-year term of probation for violating the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707).

In 2010, Cherry placed wheat seed on a field to bait mourning doves just prior to the beginning of the dove hunting season. He dispensed approximately 100 pounds of seed over a three-week period to draw the birds into the area.

This case was investigated by the Kentucky Department of Fish and Game and the United States Fish and Wildlife Service.

Back to Top

United States v. Marine Environmental Services et al., No. 4:10-CR-00112 (E.D. Va.), AUSA Brian Samuels and RCEC David Lastra.

On August 24, 2011, tank cleaning company Marine Environmental Services (MES) and manager Jerry R. Askew, Sr., were sentenced after previously pleading guilty to Clean Water Act and Refuse Act violations (33 U.S.C. §§ 1319(c)(2)(A), 407) stemming from the decommissioning of the *USS Pawcatuck*, a Navy tanker vessel. The company will pay a $10,000 fine and will complete a five-year term of probation. MES also will pay $60,000 toward community service projects benefiting the Elizabeth River, and will implement an environmental compliance plan. Askew will pay a $15,000 fine and serve 30 days' home confinement followed by one year of supervised release.

In October 2005, a ship dismantling company was hired to break down and dispose of the *Pawcatuck*, which was transferred to the company's facility in Chesapeake, Virginia, adjacent to the Elizabeth River. Tanks on board the vessel held approximately two million gallons of ballast water contaminated with a variety of pollutants, including oil, grease, bacteria, and heavy metals. In order to

properly dispose of the vessel, the dismantling company hired MES to remove this ballast water and to clean the tanks. MES was required to analyze the volume and contents of the tanks to determine whether it would transport the liquids to a waste treatment facility or discharge them to the sanitary sewer, after notifying and obtaining approval from POTW officials.

Askew directed, however, that MES employees discharge a portion of the dirty ballast water overboard into the river. The overboard discharges occurred on different occasions between October of 2005, and July of 2006. The defendants pleaded guilty to the knowing discharge of 500,000 gallons of dirty ballast water from a vessel into the Elizabeth River in Chesapeake, Virginia, without a permit and to the discharge of refuse matter into navigable waters of the United States without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Defense Criminal Investigative Service, the Naval Criminal Investigative Service, the Coast Guard Investigative Service, and the United States Department of Transportation Office of Inspector General.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

November 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

The dismantling of this former Navy ship caused several oil spills into the Columbia River. See *U.S. v. Simpson*, inside, for details.

AT A GLANCE:

- United States v. Thorn, ___F.3d___ 2011 WL 4978209 (2nd Cir. Oct. 20, 2011).
- United States v. King, ___F.3d ___ 2011 WL 4537801 (9th Cir. Oct. 3, 2011).
- United States v. Beau Lee Lewis, 2011 WL 4526804 (9th Cir. Sept. 30, 2011).

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Ala.	United States v. James Murray	*Jetty Construction/* False Statement
S.D. Fla.	United States v. Scott Greager	Spiny Lobster Harvest/ *Lacey Act, Conspiracy*
N.D. Ga.	United States v. Sabrina Westbrooks Arnot et al.	*ODS Venting/* Misprision, CAA, Conspiracy
S.D. Ill.	United States v. Franklin A. Bieri	*Demolition Project/* CAA
N.D. Ind.	United States v. Michael Materna d/b/a/ Materna Mint Farms	*Wastewater Discharge/* CWA
E.D. La.	United States v. Blake Mitchell United States v. Stolthaven New Orleans, LLC United State v. Freddy Langford	*Fish Sales/* Lacey Act *Wastewater Discharge/* CWA misdemeanor *Fish Transport/* Lacey Act
W.D. La.	United States v. Mike LeBleu et al. United States v. City of Pineville [redacted] United States v. Corey Ronsonet	*Oil Refinery/* CAA negligent endangerment, CAA, Obstruction *Acid Discharge/* CWA misdemeanor [redacted] *Bear Killing/* Lacey Act

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
E.D. Mich.	United States v. Daniel Clements et al.	*Demolition Project/* CAA
D. Minn.	United States v. Craig L. Staloch	*Bird Colony Destruction/* MBTA
D. Mont.	[redacted] United States v. Robert Darin Fromdahl	[redacted] *Abandoned Hazardous Waste/* RCRA Storage and Transportation
D. Nev.	United States v. William Joseph McCown	*Vehicle Emissions Testing/* CAA
N.D.N.Y.	United States v. Certified Environmental Services, Inc., et al.	*Asbestos Removal and Air Monitoring/* CAA, Mail Fraud, False Statement, Conspiracy
E.D.N.C.	United States v. Enoch Randolph Foy, Jr.	*Wetlands Filling/* CWA
E.D. Okla.	United States v. Integrated Production Services, Inc., et al.	*Natural Gas Drilling/* CWA misdemeanor
E.D. Tenn.	United States v. Lawrence C. Parawan, Jr. United States v. Donald Clark United States v. Johnny Carl Grooms	*Pesticide Use/* FIFRA, MBTA *Municipal Employee/* False Statement *Ginseng Trafficking/* Lacey Act
E.D. Tex.	United States v. Loren Willis et al.	*Fish Exports/* Lacey Act, Conspiracy
D. Utah	United States v. Bugman Pest and Lawn, Inc., et al.	*Pesticide Deaths/* FIFRA
E.D. Va.	United States v. Richard Ertel	*Sperm Whale Teeth Imports/* Lacey Act
D.V.I.	United States v. GEM Manufacturing LLC	*Black Coral Imports/* Lacey Act, ESA
S.D.W.V.	United States v. Frank Zuspan	*Sewage Dumping/* CWA Pretreatment
W.D. Wash.	United States v. Bret A. Simpson	*Ship Dismantling/* CWA Discharge, Failure to Report

Additional Quick Links:

Significant Environmental Decisions

Second Circuit

United States v. Thorn, ___F.3d___, 2011 WL 4978209 (2nd Cir. Oct. 20, 2011).

Joseph Thorn was convicted in 2000 in the Northern District of New York of Clean Air Act violations for directing nearly 700 workers to perform 1,100 asbestos "rip and run" abatements over the course of ten years and for arranging with air monitors and laboratories to falsify thousands of sample results. Thorn was further convicted of promotion money laundering related to his illegal business scheme. In multiple appeals and cross appeals of trial and sentencing issues (*see* 317 F.3d 107 (2d Cir. 2003) and 446 F.3d 378 (2d Cir. 2006)) the Second Circuit ruled favorably for the government on numerous issues, including the existence of a substantial likelihood of death or serious bodily injury, abuse of trust, and the existence of a promotion money laundering scheme that was within the heartland of such offenses.

Following the Supreme Court's fractured decision in *United States v. Santos*, 553 U.S. 507 (2008), Thorn filed a 28 U.S.C. § 2255 motion challenging his money laundering conviction and asking that his 12-year sentence be substantially reduced. The district court granted the motion, dismissed the money laundering conviction, and reduced Thorn's sentence by one year. Both parties appealed. In its third written decision in this case the Second Circuit reversed the district court and reinstated the prior sentence. Accepting the government's argument, the Circuit ruled that it need not reach the question of whether *Santos* applied to this case; it held that Thorn procedurally defaulted by not timely raising the issue of whether he laundered proceeds versus gross profits. The Circuit further found no cause for the procedural default, or actual innocence of the money laundering crime.

Back to Top

Ninth Circuit

United States v. King, ___F.3d ___, 2011 WL 4537801 (9th Cir. Oct. 3, 2011).

The defendant was the manager of a large farming and cattle operation in southern Idaho. He applied to the state's department of water resources for a permit to inject runoff from a creek passing through the facility into a well during the winter months, with the expectation that it would be pumped out in the summer to irrigate crops. However, that application was denied. Subsequently, a company employee informed an investigator for the Idaho Department of Agriculture that back-flow valves at the well had been installed in the wrong direction, which allowed water to flow into the well. The investigator subsequently visited the site and confirmed that wastewater was flowing into the well. The defendant later falsely told the investigator that the valves fed a nearby "irrigation pivot" leading out of the well, when in fact the valves led into the well.

The defendant was indicted on four counts of failing to comply with the Safe Drinking Water Act (and corresponding Idaho law) by willfully injecting water into waste disposal and injection wells without a permit, and on one count of making a materially false statement in a matter within the jurisdiction of the United States. He was convicted by a jury on all counts.

On appeal, the defendant argued, with respect to the SDWA counts: that the government should have been required to prove that the injected water had an adverse effect upon an underground source of drinking water; (2) that Idaho's permitting requirement for injection wells was not part of its "applicable underground injection program" (so that his failure to obtain a permit had not violated the SDWA); (3) and, that even if his unpermitted injections had violated the SDWA, the statute exceeded the authority of Congress under the Commerce Clause. He further argued that his materially false statement had not been in a matter within the jurisdiction of the United States because it had been made to a state agricultural inspector.

Held: The Ninth Circuit affirmed the defendant's conviction. The Court noted that, under the federally-mandated, state-administered SDWA regulatory scheme for the protection of drinking water, a permit applicant had the burden of satisfying the state in the application process that underground injection would not endanger drinking water sources, and thus the government did not have to prove in an enforcement action that such injections would have an adverse impact upon an underground source of drinking water. The court held that the government had to show only that a defendant had failed to comply with a requirement of an applicable underground injection program, in this case by willfully injecting water into a well without a permit, knowing that a permit was required under Idaho law.

The Court further held that Idaho's permit requirements under its Underground Injection Control (UIC) program were entirely within the scope of the SDWA and therefore fully enforceable by the federal government. In approving the states UIC program, the U.S. EPA specifically incorporated by reference the state's entire permitting process into the SDWA; thus a violation of the Idaho UIC permitting system constituted a violation of the federal statute.

The Court also held that federally criminalizing violations of state-administered UIC program requirements did not exceed Congressional authority under the Commerce Clause. Congress determined that the most effective way to ensure clean drinking water was to prevent pollution of underground aquifers in the first place, rather than cleaning them up after the fact, and that a cooperative federal-state program would be an appropriate means of ensuring drinking water safety. A regulatory scheme that affects the safety of underground sources of drinking water "inescapably" has

an effect upon the supply of such water and, therefore, upon interstate commerce. Clearly, the SDWA, including its permitting process under state UIC programs, regulates activities that have a substantial relation to such commerce in providing effective protection of the purity of the nation's drinking water.

Finally, the court found that the defendant had known that the Idaho Department of Agriculture had the authority to examine his wells and injection procedures and knew that that Department was trying to determine whether he was injecting water into wells, without a permit. He lied to the state inspector in order to defeat that investigation and, since injection of fluid into a well without a state permit is a federal crime, the false statement here was made "in a matter within the jurisdiction of the United States."

Back to Top

United States v. Beau Lee Lewis, 2011 WL 4526804 (9th Cir. Sept. 30, 2011).

On September 30, 2011, the Ninth Circuit issued an order affirming Beau Lee Lewis's 2005 conviction and sentencing (after a retrial) on smuggling charges related to the repeated importation of concealed reptiles from Anson Wong in Malaysia to the United States in the late 1990s. This is the fourth opinion issued by the Ninth Circuit in this case.

Following Lewis's 2001 conviction related to his involvement in a multi-year wildlife smuggling conspiracy, the Ninth Circuit, addressing only his Speedy Trial Act claims, reversed and remanded for a determination whether re-indictment was appropriate. Lewis was re-indicted, re-tried, and re-convicted, resulting in a 2005 sentence of 23 months' incarceration. Imposition of sentence was stayed pending his second appeal. The Ninth Circuit again addressed only the Speedy Trial Act issue, retaining jurisdiction over the non-Speedy Trial Act issues if the district court determined that re-indictment had been correct. In 2009, a new district court judge determined that re-indictment had been appropriate. Lewis appealed that decision to the Ninth Circuit, which affirmed without addressing any of the issues on which it had retained jurisdiction in *Lewis II*. Lewis filed a motion in the Ninth Circuit asking the court to re-open *Lewis II* for determination of the outstanding issues. The government agreed was the correct next step. The Ninth Circuit withdrew its mandate in *Lewis II* and issued the order affirming the convictions and sentence.

Lewis has not yet served any of his sentence. His co-defendants have all been incarcerated and released, except for Wong, who served 71 months in a U.S. prison, returned to Malaysia after release, and is now serving a five-year prison sentence in Malasia for more recent wildlife smuggling.

Back to Top

Trials

United States v. Loren Willis et al., Nos. 9:11-CR-00028, 1:11-CR-20676 (E.D. Tex., S.D. Fla.), AUSAs Reynaldo Morin and Jaime Raiche.

Alligator gar

On October 14, 2011, Loren Willis was convicted by a jury after a two-day trial for his role in a conspiracy to violate the Lacey Act (18 U.S.C. § 371; 16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)B)). Willis was found guilty of conspiring to illegally transport fish, alligator gar, in interstate commerce and for conspiring to illegally label this fish.

In September 2010, Willis and a co-defendant traveled from Florida to Texas to harvest alligator gar from the Trinity River for the purpose of selling the fish in Japan. Willis did not obtain a non-resident Texas fishing license before harvesting the fish. In a sealed plea agreement, a co-defendant admitted he helped to alter documentation to state that the fish were captive bred, which would have exempted them from inspection.

The fish harvested from the Trinity River were transported by the defendants to Florida, from which they later were exported to Japan. The case against a third co-defendant, Michael Rambarran, was transferred to the Southern District of Florida, where he pleaded guilty to a one count of conspiring to submit false records in interstate commerce in violation of the Lacey Act (18 U.S.C. § 371 and 16 U.S.C. §§ 3372(d)(1)(2), 3373(d)(3)(A)) and was sentenced to time served.

Alligator gar is a freshwater fish that can grow up to ten feet in length and weigh 200 pounds. According to evidence presented at trial, Willis and his co-defendants were not satisfied with taking only large brood fish. They eventually attempted to purchase thousands of alligator gar fry from undercover agents, but were unsuccessful.

This case was investigated by the United States Fish and Wildlife Service, the Texas Parks and Wildlife Department, and the Florida Fish and Wildlife Service.

Back to Top

Informations and Indictments

United States v. James Murray, No. 1:11-CR-00295 (S.D. Ala.), ECS Trial Attorney Patrick Duggan and AUSA Gina Vann.

On October 26, 2011, an indictment was returned charging James Murray with a false statement violation stemming from the illegal construction of a jetty into Mobile Bay (18 U.S.C. §1001).

In 1996, Murray applied to the Army Corps of Engineers (Corps) for a permit to build two jetties (amongst other structures) into the Bay. When he was told that the approval process would require an additional permit from the Alabama Department of Environmental Management (which

does not typically allow private jetties due to impacts on coastal resources), he withdrew any mention of the jetty from his permit application. After a Corps inspection, and their approval of his project, Murray immediately built one of the jetties.

In 2000, Murray's neighbor sued, alleging that the jetty was causing erosion to his property. In November of 2006, prior to civil litigation, Murray gave defense counsel a falsified permit from the Corps purporting to authorize the construction of the jetty. Murray also testified at a deposition and at trial that the Corps had authorized construction of the jetty.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Frank Zuspan, No. 3:11-CR-00235 (S.D.W.V.), AUSAs Eric Goes and Perry McDaniel.

On October 4, 2011, commercial waste hauler Frank Zuspan was indicted on a Clean Water Act pretreatment violation (33 U.S.C. §§1371, 1319 (c)(2)(A)) for illegally dumping sewage and portable toilet waste in February 2011.

Zuspan was in the business of cleaning residential and commercial septic systems. He is alleged to have illegally discharged untreated sewage into a pipe leading to the City of Mason's POTW, causing an equipment malfunction and a temporary shutdown of the plant. Zuspan was convicted on similar charges in 2003 and spent 20 days in jail followed by six months' home confinement.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Bret A. Simpson, No. 3:11-CR-05472 (W.D. Wash.), AUSA James Oesterle and SAUSA USCG Lt. Cdr. Marianne Gelakoska.

On September 29, 2011, Bret A. Simpson, the owner of Principle Metals, LLC, was charged with two violations of the Clean Water Act (33 U.S.C. §§1321(b)(3), 1319(c)(2)(A), 1321(b)(5)).

Simpson is alleged to have unlawfully discharged oil into the Columbia River and to have failed to report the discharge during the dismantling of a former Navy ship.

***M/V* Davy Crockett**

Simpson knew when he purchased the *M/V Davy Crockett* in June 2010, that the vessel contained tanks holding several thousands of gallons of fuel oil and diesel fuel. When the scrapping operation began in October 2010, no arrangements had been made to remove these tanks from the ship. By December, the crew had cut into a structural beam and the ship began to break apart and leak oil where it was moored on the Columbia River. The scrapping operation was briefly halted, but authorities were not notified of the spill. By January 2011, additional oil leaked into the river and the Coast Guard responded with an

administrative order. Simpson satisfied the requirements of the order; however, additional oil was released from the vessel, initiating a state and federal clean up response.

Trial is scheduled to begin on December 12, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard, the United States Coast Guard Investigative Service, the Washington State Department of Ecology, and the Oregon Department of Environmental Quality.

Back to Top

[redacted]

Back to Top

United States v. Blake Mitchell (E.D. La.), No. 2:11-CR-00238, AUSA Jordan Ginsberg.

On September 21, 2011, Blake Mitchell was charged in a one-count information with a felony Lacey Act violation (16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(1)(B)).

According to the information, in January 2010, Mitchell transported and sold red fish in interstate commerce, by providing guiding services to individuals outside the state of Louisiana, knowing that the redfish had been taken in violation of Louisiana state law. Trial is scheduled to begin on December 5, 2011.

The case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Craig L. Staloch, No. 11-mj-00382 (D. Minn.), AUSA Kevin Ueland.

Crushed pelican eggs

On September 14, 2011, farmer Craig L. Staloch was charged with a Migratory Bird Treaty Act violation (16 U.S.C. §§ 703, 707) for allegedly destroying a large colony of American White Pelicans, which are protected under federal law.

In May 2011, a state inspector visited farmland rented by Staloch that was known to have approximately 3,000 pelicans and almost 1,500 active nesting sites. The following day inspectors returned to make an accurate count and found that the colony had been destroyed. Staloch rents acreage next to Minnesota Lake and grows corn and soybeans. This colony of pelicans used to reside on

an island in the lake, but after losing their nesting site they moved to an area by the lake that also happened to be where Staloch planted his crops. Staloch had complained that the birds' feet and droppings had ruined his crops, causing him a loss of $20,000.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

Plea Agreements

United States v. Mike LeBleu et al., Nos. 2:11-CR-00130, 00227, 00266 (W.D. La.), ECS Trial Attorney Christopher Hale, ECS Senior Trial Attorney Richard Udell, USA Stephanie Finley, and ECS Paralegal Ben Laste.

Kiddie pool filled with oil

On October 31, 2011, Mike LeBleu pleaded guilty to an information charging him with one count of negligent endangerment under the Clean Air Act (42 U.S.C. § 7413(c)(4)). LeBleu was the asphalt facilities manager at the Pelican Refinery (PRC) in Lake Charles, Louisiana. During August and September 2007, LeBleu oversaw the treatment and testing of 39,438 barrels of PG 64-22 asphalt that was emitting high levels of hydrogen sulfide (H2S), an extremely hazardous substance.

The high H2S asphalt was stored in an unpermitted tank that was vented to the atmosphere so that fumes containing H2S were released to the outside air. LeBleu stated that he saw "blue smoke" emitting from the tank's elbow joints. During the treatment process, he ordered subordinates to conduct tests of the asphalt without proper protective equipment. In doing so, these people were exposed to unsafe levels of the gas and placed in imminent danger of death and serious bodily injury. PRC previously pleaded guilty to two CAA violations and one obstruction charge (42 U.S.C. §§ 7661a(a), 7413(c)(1); 18 U.S.C. § 1519). PRC knowingly operated the refinery without properly functioning pollution prevention equipment, as required by its Title V permit. The company admitted that due to the pollution prevention equipment not working, pollutants including benzene, toluene, ethyl benzene, and xylene (collectively known as "BTEX") and the H2S, were illegally released into the atmosphere from the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified and fitted. The obstruction charge stems from false statements made in a 2006 report submitted to the Louisiana Department of Environmental Quality. Company Vice President Byron Hamilton pleaded guilty in July of this year to two CAA negligent endangerment violations (42 U.S.C. § 7413(c)(4)).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana State Police, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

United States v. Daniel Clements et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA Jim Cha.

On October 24, 2011, Daniel Clements pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from his involvement in an illegal asbestos removal project. Co-defendant Brian Waite remains charged in a three-count indictment with conspiracy to violate the CAA and substantive CAA violations, with trial set to begin on November 14, 2011.

Between December 2010 and February 2011, Clements failed to have workers wet regulated asbestos-containing materials (RACM) that were removed from a former Ford plant in Utica, Michigan, during renovation of the building. According to an asbestos survey of the plant, the building contained over 60,000 linear feet of RACM. During the removal, the defendants allegedly directed workers to tear down the RACM while it was dry and to place it into plastic bags without wetting it. To speed up the process Clements instructed workers to meet a daily goal of removing 1,000 feet of material. The workers sometimes kicked or threw the RACM to the ground, causing larger pieces to break apart and fit more easily into bags.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. City of Pineville, No. 1:11-CR-00265 (W.D. La.), AUSA Joseph Jarzabek.

On October 21, 2011, the City of Pineville pleaded guilty to a misdemeanor Clean Water Act 33 U.S.C. §§ 1311(a), 1319(c)(1)(A)) violation stemming from an illegal discharge from a pumping station in September 2008. Following heavy rainfall from Hurricane Gustav, the City of Pineville's Huffman Creek Pumping Station illegally discharged hydraulic fluid over the levee and into Bayou Maria, which ultimately empties into the Red River.

Investigation confirmed that the source of the discharge was equipment at the City of Pineville's Huffman Creek Pumping Station, which was known by city personnel to be in disrepair. Sentencing is scheduled for January 4, 2012.

This case was investigated by the Louisiana Environmental Crimes Task Force, which is comprised of the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police.

Back to Top

United States v. Enoch Randolph Foy, Jr., No. 4:11-CR-00100 (E.D.N.C.) AUSA Banu Rangarajan.

Corps inspector near contaminated dirt

On October 18, 2011, Enoch Randolph Foy, Jr., pleaded guilty to illegally filling a wetlands (33 U.S.C. §§ 1311(a), 1319(c)(2)(A), and 1344). Foy operated a farm in Trenton, North Carolina. The defendant and a co-conspirator used 60 dump truck loads of dirt (that was actually contaminated with petroleum) to fill in a wetlands, which are adjacent to a tributary of the Trent River, a water of the United States. At the time of the violation, Foy and his farm participated in a state and federal wetland conservation program for which they received funds.

This case was investigated by the North Carolina State Bureau of Investigation, the United States Department of Agriculture Office of Inspector General, the Naval Criminal Investigative Service, the United States Army Corps of Engineers, and the United States Environmental Crimes Protection Agency Criminal Investigation Division.

Back to Top

United States v. Lawrence C. Parawan, Jr., No. 4:11-CR-00023 (E.D. Tenn.), AUSA James T. Brooks.

On October 17, 2011, Lawrence C. Parawan, Jr., pleaded guilty to a two-count information charging him with a FIFRA and an MBTA violation (7 U.S.C. § 136, 16 U.S.C. §§ 703, 707) stemming from the illegal use of carbofuran, also known as Furadan. Parawan admitted to lacing a chicken carcass with the pesticide in December 2010, and placing it in an open field, which resulted in the deaths of opossums, coyotes, a skunk, a neighbor's dog, and a Northern Harrier hawk, a migratory bird.

Sentencing is scheduled for January 30, 2012. This case was investigated by the Bedford County Sheriff's Department, the Tennessee Wildlife Resource Agency, the United States Fish and Wildlife Service, the United States Environmental Protection Agency Criminal Investigation Division, and the Tennessee Department of Agriculture Regulatory Services.

Back to Top

United States v. Stolthaven New Orleans, LLC, No. 2:11-CR-00169 (E.D. La.), AUSA Dorothy Taylor.

On October 13, 2011, Stolthaven New Orleans pleaded guilty to a misdemeanor Clean Water Act violation (33 U.S.C. § 1319(c)(1)(A)) for the negligent discharge of acid into the Mississippi River in March 2008.

Stolthaven operates a bulk liquid storage and transfer terminal that is adjacent to the Mississippi River. It receives and stores a variety of both hazardous and non-hazardous products in fixed-roof tanks. In 2005, the company contracted to store fluorosilicic acid (FSA), a toxic chemical used in the manufacture of circuit boards and chips. Due to its corrosivity, the owners of the FSA advised Stolthaven that the chemical must be stored in a quarter-inch rubber-lined stainless steel tank.

Additionally, all hosing, tubes, valves, and couplings were to be lined with high-density polyethylene. Stolthaven altered the contract, however, and used a tank lined with Plastite 4100 instead of a rubber-lined tank. The Plastite product was supposed to be comparable to rubber, just cheaper. As a result, however, numerous intermittent releases of FSA were recorded from the Stolthaven facility in 2007 and continued until the tank experienced a catastrophic rupture in March 2008, causing the spill of approximately 468,000 gallons of the chemical into the Mississippi River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Integrated Production Services, Inc., et al., Nos. 6:11-CR-00050 and 00068 (E.D. Okla.), ECS Senior Trial Attorney Dan Dooher and AUSA Doug Horn.

On October 11, 2011, Integrated Production Services, Inc. (IPS), pleaded guilty to a negligent violation of the Clean Water Act 33 U.S.C. § 1319(c)(1)(A)), stemming from natural gas well drilling operations.

Clean up from breach of berm

In 2007, this oil and natural gas well drilling contractor was performing work at the Pettigrew natural gas well site in Atoka County, Oklahoma. The company's operations included fracking, which entails the use of drills and hydrochloric acid to penetrate through bedrock and deeper layers under the earth's crust. On May 2007, a tank leaked hydrochloric acid onto the surface of the well site, which also was flooded due to a recent heavy rain event. Rather than taking the necessary steps to properly remove the rainwater from the site, Gabriel Henson, an IPS supervisor, drove a company pickup truck through the earthen berm, causing the discharge of the rainwater and an estimated 400-700 gallons of hydrochloric acid into Dry Creek, a tributary of Boggy Creek.

Henson previously pleaded guilty to a misdemeanor CWA violation and has not yet been scheduled for sentencing.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office of Inspector General.

Back to Top

United States v. Scott Greager, No. 4:11-CR-10012 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On October 12, 2011, Scott Greager pleaded guilty to a Lacey Act conspiracy violation (18 U.S.C. § 371, 16 USC §§ 3372(a)(1), (a)(2)(a), 3373 (c)(1) and (2)) for his involvement in the sale and transport of spiny lobster in violation of harvest requirements, licensing provisions, and bag and trip limits.

From May 2007 through March 2009, Greager was the owner of Holiday Seafood Key West (Holiday Seafood). Using a Florida Wholesale Dealer's License issued in the name of Conch Republic Seafood Company, Greager knowingly made numerous purchases of spiny lobster in excess of the legal daily limit of 250. Greager also admitted that he made payments from an account in the name of Holiday Seafood to co-conspirators for lobster they harvested, and he attempted to conceal the illegal

activity from the State of Florida by issuing required trip tickets in the name of another individual. On seven separate occasions in August 2008, Greager purchased more than 5,000 pounds of lobster with a wholesale value of almost $40,000.

Wholesale dealers, such as Greager and Holiday Seafood, were prohibited from purchasing lobster without first confirming that the seller possessed all required licenses and endorsements, and thereafter making truthful and accurate reports of the transactions to the State.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement.

Back to Top

United States v. Bugman Pest and Lawn, Inc., et al., Nos. 2:11-CR-00017 and 00295 (D. Utah), AUSA Jared Bennett.

On October 11, 2011, Bugman Pest and Lawn, Inc. and employee Coleman Nocks each pleaded guilty to a single FIFRA violation (7 U.S.C. §§ 136*l*(b)(1)(B), 136j(a)(2)(G)). Coleman admitted to misapplying the pesticide Fumitoxin in August 2009 at a residence in which two young children subsequently died and four other family members became ill. He admitted to applying Fumitoxin pellets into a burrow system within 15 feet of Nathan and Brenda Toone's home, which was inconsistent with the product's labeling and exceeded the required dosage.

Employee Raymond Wilson, Jr., and the company remain charged in a separate indictment with five FIFRA violations for the mis-application of Fumitoxin in four additional homes.

Nocks is scheduled for sentencing on December 20, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Layton City Police Department.

Back to Top

United States v. Franklin A. Bieri, No. 3:11-CR-30174 (S.D. Ill.), AUSA Kevin Burke.

On October 5, 2011, salvage business owner Franklin Bieri pleaded guilty to an information charging him with two counts of violating the Clean Air Act (42 U.S.C. §7413(c)(1)).

Bieri was the owner of a demolition and salvage business known as Mississippi River Construction Company. Sometime prior to March, 2010, Bieri arranged to purchase the former Emerson Electric facility in Washington Park, Illinois. The facility consisted of seven buildings located on approximately seven acres. The defendant intended to salvage the metal from pipes, boilers, wires, and other components from the buildings at the site, after which the buildings were to be demolished.

Bieri admitted that he was aware of the presence of asbestos-containing material in the buildings. Nevertheless, he hired and directed untrained workers to remove the material who failed to use proper removal and disposal procedures, such as wetting the asbestos, properly labeling the bagged material to alert others, and ensuring its proper disposal within the appropriate section of the landfill. Bieri also admitted that he failed to provide written notification to the Illinois Environmental Protection Agency at least ten working days prior to beginning the asbestos stripping and removal work.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Richard Ertel, No. 3:11-CR-00227 (E.D. Va.), ECS Trial Attorney Gary Donner and AUSA Dave Maguire.

Sperm whale teeth

On October 3, 2011, Richard Ertel pleaded guilty to a two-count information charging him with violating the Lacey Act (16 U.S.C. §§3372 and 3373) for the illegal importation and trafficking of sperm whale teeth.

According to the plea agreement, from April 2002 to June 2007, Ertel was in the business of buying and selling sperm whale teeth that he purchased from sources in the Ukraine and then sold to customers in Virginia and elsewhere in the United States. Much of this business was conducted via the Internet.

Sentencing is scheduled for January 9, 2012. This case was investigated by the National Oceanic and Atmospheric Administration and the United States Customs and Boarder Protection.

Back to Top

United States v. Donald Clark, No. 1:11-CR-00063 (E.D. Tenn.), AUSA Matthew Morris.

On September 27, 2011, municipal sewage treatment plant operator Donald Clark pleaded guilty to 12 of the 72 false statement violations (18 U.S.C. §1001) charged in connection with the operation of the City of Niota, Tennessee's, sewage treatment plant.

As the sewage treatment plant operator, Clark admitted to creating 12 discharge monitoring reports covering the period from January 2008 through December 2010, in which he falsely represented that the wastewater had been treated with chlorine and tested for residual chlorine prior to discharge to the Little North Mouse Creek. Sentencing is scheduled for January 9, 2012.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the EPA Inspector General's Office.

Back to Top

[redacted]

United States v. Corey Ronsonet, No. 6: 11-CR-00164 (W.D. La.), AUSA Joseph T. Mickel.

Defendant and bear hide

On August 17, 2011, Corey Ronsonet pleaded guilty to a misdemeanor violation of the Lacey Act (16 U.S.C. §§ 3372, 3373) for illegally acquiring and transporting a Louisiana black bear, an endangered species.

On May 2011, wildlife agents were notified by a citizen that the remnants of a black bear had been discovered in Iberia Parish, Louisiana. Follow-up investigation led to the discovery of the cape and other bear remains on property adjacent to Ronsonet's residence. When interviewed by agents, the defendant admitted that he shot the bear on Weeks Island in February 2009. He further stated that he had brought the bear home intending to make a rug from it, but changed his mind and buried the animal's remains to avoid detection by authorities.

A sentencing date has not yet been scheduled. This case was investigated by the United States Fish and Wildlife Service, with assistance from the Louisiana Department of Wildlife and Fisheries.

Back to Top

Sentencings

United States v. GEM Manufacturing LLC, No. 2:11-CR-00019 (D.V.I.), ECS Trial Attorney Christopher Hale and AUSA Nelson Jones.

Black coral bracelet

On October 26, 2011, GEM Manufacturing LLC was sentenced to pay a $1.8 million fine, plus fund an additional $500,000 in community service projects, complete a 42-month term of probation, and forfeit jewelry and sculptures valued at $1.4 million, along with 13,655 pounds of raw black coral valued at $751,000 to $1.02 million. GEM also will implement an environmental compliance plan.

The company previously pleaded guilty to Lacey Act and Endangered Species Act counts (16 U.S.C. §§ 3372(d), 3373 (d)(3(A), 1538 (c), 1540(b)) stemming from the company's purchase of thousands of pounds of CITES Appendix II black coral in 2009 that were falsely labeled and lacked required certificates. The coral was then used in the manufacture of

high-end jewelry and art figurines. Black coral is polished to a high sheen, worked into artistic sculptures, and used in inlaid jewelry. It is typically found in deep waters, and many species have long life spans and are slow-growing. In the last few decades, pressures from overharvesting and the introduction of invasive species have threatened this group of coral. Recent seizures of illegal black coral around the world have led many to believe that black coral poaching is on the rise.

In a related case Gloria and Ivan Chu previously were sentenced to serve 20 months' and 30 months' incarceration, respectively, for their role in illegally providing black coral to GEM. They each also were ordered to pay $12,500 fines.

These cases were investigated by the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, with support from Immigration and Customs Enforcement and the FWS National Forensics Laboratory.

Back to Top

United States v. Certified Environmental Services, Inc., et al., No. 5:09-CR-00319 (N.D.N.Y.), ECS Trial Attorneys Todd Gleason and former ECS Attorney Jessica Alloway, AUSA Craig Benedict, and ECS Paralegal Katherine Loomis.

On October 21, 2011, Certified Environmental Services, Inc. (CES), an asbestos air monitoring company and laboratory, along with managers Nicole Copeland and Elisa Dunn, and employee Sandy Allen, were sentenced for conspiring to violate the Clean Air Act, to commit mail fraud, and to defraud the United States. They also were convicted by a jury of substantive CAA violations and mail fraud, while CES and Dunn in addition, were convicted of making false statements to federal law enforcement (18 U.S.C. §§371, 1341, 1001; 42 U.S.C. §7413(c)(1)).

CES will pay a $20,000 fine, pay $117,000 in restitution, and complete a five-year term of probation. Copeland will pay $23,000 in restitution and complete a five-year term of probation with special conditions to include 12 consecutive weekends of incarceration and the performance of 200 hours of community service. Dunn and Allen were sentenced to time served, followed by three years' supervised release. They each were ordered to pay $5,000 in restitution and will perform 200 hours of community service. All defendants are prohibited from engaging in any asbestos-related air monitoring activities, with the restitution to be paid to fraud victims and for reimbursement of cleanup costs.

The convictions stem from a decade-long scheme in which asbestos was illegally removed and left behind in numerous buildings and homes in Syracuse and other upstate New York locations, while CES gave the abatement contractors false air results to use to convince building owners that the asbestos had been properly removed. Frank Onoff, who previously pleaded guilty to conspiracy to defraud the United States, to violate the CAA, to violate the Toxic Substances Control Act, and to commit mail fraud, was sentenced to time served, followed by three years' supervised release. He will pay $5,000 in restitution, perform 200 hours of community service, and is prohibited from engaging in any asbestos-related air monitoring.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation.

Back to Top

United States v. Robert Darin Fromdahl, No. 4:11-CR-00033 (D. Mont.), AUSA Kris McLean.

On October 19, 2011, Robert Darin Fromdahl was sentenced to complete a three-year term of probation to include 180 days in community confinement. He also will pay $51,594 in restitution to EPA for cleanup costs and perform 200 hours of community service. Fromdahl pleaded guilty to RCRA storage and transportation violations (42 U.S.C. §§ 6928(d)(1), (d)(2)(A)) stemming from the discovery of 45 drums containing hazardous waste on property owned by a Native American tribe.

Abandoned drums

In June 2010, a rancher discovered the drums on property he was leasing from the Ft. Peck tribe. The owner of the property stated that Fromdahl (the owner of an electroplating business) paid him $500 in 2009 to store the drums, but did not indicate that the drums contained anything hazardous.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Sabrina Westbrooks Arnot et al., Nos. 2:11-CR-00032 and 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones (404) 581-6270.

On October 14, 2011, Sabrina Westbrooks Arnot was sentenced to serve a three-year term of probation after previously pleading guilty to misprision of a felony (18 U.S.C. § 4). In August 2008 Arnot and co-defendants were involved in a scheme to dismantle commercial-sized air conditioners for scrap metal causing the venting of hydrochlorofluorocarbon 22 (HCFC-22) into the environment.

Arnot's husband Daniel was previously sentenced along with co-defendants Justin Joyner and Corey Beard to time served, concurrent with prior sentencing for state-level charges. Joyner and Arnot were each sentenced to serve 21 months' incarceration, followed by 36 months of supervised release. Beard was sentenced to serve 14 months' incarceration, followed by 36 months of supervised release. All three will perform 240 hours of community service and were held jointly and severally liable for the payment of $13,000 in restitution to Dunlap Stainless, Inc.

Beginning in early August 2008, the defendants targeted businesses in several counties with commercial-sized air conditioners. They dismantled the units so that they could steal the copper and aluminum parts for sale to scrap metal recycling businesses. This required that they cut through a copper coil to remove the copper parts, causing the venting of the HCFC-22. All together, the defendants dismantled 37 air conditioning units from 14 locations. Beard pleaded guilty to conspiracy and to nine CAA counts (18 U.S.C. §371; 42 U.S.C. §§ 7671g(c)(1), 7413(c)(1)); Joyner pleaded guilty to conspiracy and to a single CAA charge; Arnot pleaded guilty to all conspiracy and CAA counts charged.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Freddy Langford, No. 2:11-CR-00158 (E.D. La.), AUSA Jordan Ginsberg (504) 680-3000.

On October 13, 2011, Freddy Langford was sentenced to pay a $2,000 fine and will complete a one-year term of probation. Langford previously pleaded guilty to a felony Lacey Act violation (16 U.S.C. §§3372(a)(2)(A), 3373(d)(2)) for knowingly transporting and selling tilapia, a species of fish not native to Louisiana.

Langford was the president of Langford Aquatics, based in Lakeland, Florida, which was in the business of raising and selling fish for stocking private ponds. In July 2006, Langford sold and transported a truck-load of tilapia from Florida to a buyer in Louisiana in violation of Louisiana state regulations.

This case was investigated by the United States Fish and Wildlife Service and Louisiana Department of Wildlife and Fisheries.

Back to Top

United States v. Michael Materna d/b/a Materna Mint Farms, No.11-CR-00069 (N.D. Ind.), AUSA Donald Schmid.

On October 5, 2011, Michael Materna was sentenced to serve eight months' home confinement as a condition of a two-year term of probation. Materna also was ordered to pay a $20,000 fine. Materna d/b/a Materna Mint Farms, pleaded guilty to knowingly discharging pollutants without a permit in violation of the Clean Water Act (33 U.S.C. §1319(c)(2)). In this case, water was discharged into a stream last summer at a temperature hot enough to scald a dog to death in front of the dog's owner.

The defendant is a mint farmer who operates a still that boils down mint leaves into mint oil using water heated to temperatures between 160 and 190 degrees. The wastewater discharged was not cooled before it was discharged from the facility into a roadside ditch, which then flowed into the stream. After the dog's owner brought the incident to the attention of authorities it was determined that Materna was operating the still without a permit and discharging water that was well over the 90 degree standard set by the state.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Indiana Department of Environmental Management.

Back to Top

United States v. Johnny Carl Grooms, No. 2:10-CR-00087 (E.D. Tenn.), AUSA Neil Smith.

On October 3, 2011, Johnny Carl Grooms was sentenced to serve 54 months' incarceration followed by three years' supervised release. A fine was not assessed. Grooms previously was convicted by a jury of charges that included Lacey Act violations (16 U.S.C. §3372) for illegally trafficking in ginseng. Specifically, he was found guilty of conspiring to distribute oxycodone and cocaine, interstate travel to further drug trafficking, possession of oxycodone with the intent to distribute, distribution of cocaine, possession of firearms by a convicted felon, and illegally trafficking in ginseng.

Evidence at trial established that the U.S. Fish and Wildlife Service received reports in the fall of 2008 that the defendant was illegally trafficking in wild American ginseng, a protected plant. An agent posing as a ginseng dealer contacted Grooms in September 2008 at his business, the Park Entrance Grocery in Cosby. In addition to discussing the illegal trafficking in ginseng, Grooms also

was observed selling drugs, including oxycodone, hydrocodone, and Xanax, from the counter at the store.

Grooms delivered multiple pounds of wild ginseng to the undercover agent on four occasions in November and December 2009, and January and February 2010. He had not obtained a dealer permit or kept records of ginseng sales as required by Tennessee state law. Ginseng roots that had been marked by the National Park Service in the Great Smoky Mountains National Park also were found in the ginseng sold by Grooms. He acknowledged in recorded conversations that he knew this ginseng had been illegally taken from the Park.

This case was investigated by the United States Fish and Wildlife Service; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Cocke County Sheriff's Office; the National Park Service; the Tennessee Wildlife Resources Agency; the Tennessee Bureau of Investigation; and the Federal Bureau of Investigation.

Back to Top

United States v. William Joseph McCown, No. 2:10-CR-00007 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe and AUSA Roger Yang.

On September 21, 2011, William Joseph McCown was sentenced to pay a $4,000 fine and serve four years' probation. McCown was the final defendant to be sentenced out of ten who pleaded guilty to violating the Clean Air Act (42 U.S.C. § 7413 (c)(2)(A)). All were involved in a "clean scanning scheme" causing false vehicle emission test results to be transmitted to the Nevada Department of Motor Vehicles (DMV). The testers used a vehicle they knew would pass the emissions test to produce a false result for a vehicle that could not otherwise pass the test.

The cases came to the attention of Nevada authorities in 2008 when the DMV hired a contractor to create a vehicle identification database to uncover possible emissions testing fraud. The project revealed that, in 2008 alone there were more than 4,000 false vehicle emissions certificates issued in Las Vegas. The database allowed investigators to check the vehicle identification number that the emissions tester enters against the vehicle actually tested. Ultimately, ten inspectors were targeted for prosecution based upon the number of clean-scans performed. Of these, nine had more than 200 falsifications with McCown having the most at 758.

These cases were investigated by the Environmental Protection Agency and the Nevada Department of Motor Vehicles.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

December 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Old ammunition stored in defendant's backyard caused the evacuation of neighborhood after a major explosion. See U.S. v. Wyman, inside, for more details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Alaska	United States v. Michael Duby United States v. George Dongdong Jia	*Sales of Bird Parts/* MBTA felony *Wildlife Sales/* Lacey Act
S.D. Fla.	United States v. Daniel Parker	*Wastewater Discharge/* CWA
N.D. Ind.	United States v. NH Environmental Group, Inc. d/b/a Tierra Environmental and Industrial Services, Inc. et al. United States v. Charles D. Woodworth	*Wastewater Discharge/* CWA, Conspiracy *Aluminum Recycler/* CAA, Conspiracy
E.D. La.	United States v. Oakmont Environmental, Inc.	*Wastewater Discharge/* CWA
W.D. La.	United States v. Jason Bruno	*Dry Cleaner/* CWA misdemeanor
D. Md.	United States v. Rodney R. Hailey	*Bio-diesel Fuel Fraud/* Wire Fraud, CAA, Money Laundering
E.D Mich.	United States v. Douglas V. Mertz	*ODS Sales/* Making a False Writing
N.D.N.Y.	United States v. Mark Desnoyers	*Asbestos Removal and Air Monitoring/* CAA, Mail Fraud, False Statement, Conspiracy
W.D.N.Y.	United States v. Acquest Transit, LLC, et al.	*Wetlands Filling/* Conspiracy, CWA, Obstruction, False Statements, Contempt
W.D.N.C.	United States v. Jack B. Haney et al.	*Emissions Testing/* Conspiracy, CAA
S.D. Ohio	United States v. Columbus Steel Castings	*Steel Foundry/* CAA
D. Ore.	United States v. A.E. Nomikos Shipping Inv. Ltd et al.	*Vessel/ APPS, False Statement*
E.D. Va.	United States v. Julie Jennings	*Striped Bass Fishing/* Magnuson-Stevens Act
W.D. Wash.	United States v. Reid Johnston	*Tree Harvest/* Theft of Govt. Property, Damage to Govt. Property

Additional Quick Links:

Informations and Indictments

United States v. Reid Johnston, No. 1:11-CR-05539 (W.D. Wash.), AUSA Matthew Diggs.

On November 10, 2011, Reid Johnston was charged in a two-count indictment in connection with the theft of maple, cedar, and Douglas fir trees from the Olympic National Forest, from between October 2007 and January 2010. Specifically, Johnston is charged with theft of government property and damage to government property (18 U.S.C. §§ 641, 1361).

In January 2010, officials seized multiple large Douglas fir logs that had been illegally harvested from the area, one of which with a trunk that was approximately eight feet in diameter, and estimated to have been more than 300 years-old. Some of the maple trees that were stolen were cut into blocks and sold for the manufacture of musical instruments such as cellos and guitars. Trial is scheduled to begin on January 17, 2012.

This case was investigated by the United States Forest Service.

Back to Top

United States v. Acquest Transit, LLC, et al., No. 1:11-CR-00347 (W.D.N.Y.), ECS Trial Attorney Todd Gleason, AUSA Aaron Mango, and ECS Paralegal Lisa Brooks.

On November 9, 2011, a New York developer and his companies were charged with violations stemming from the illegal filling of wetlands in Amherst, New York. William L. Huntress and his companies, Acquest Transit, LLC, and Acquest Development, LLC, are charged in a seven-count indictment with conspiracy to defraud the United States and to violate the Clean Water Act, substantive CWA counts violations, obstruction of justice, false statements, concealment of material

facts, and contempt of court (18 U.S.C. §§ 371, 1001(a)(2), 1519, and 401(3); 33 U.S.C. §§ 1319(c)(2)(A) and 1311).

The indictment describes a five-year scheme to illegally fill wetlands situated on a 96-acre parcel sitting upstream from Tonawanda and Ransom Creeks. As alleged in the indictment, the defendants purchased the property with the intent to commercially develop the site and were aware of the presence of the wetlands at the time of that purchase. After the sale, and despite knowing that wetlands were present, the defendants filled a portion of these wetlands by installing both a roadway and a "fill pad" on the site.

Huntress and other co-conspirators are further alleged to have covered-up the illegal filling by concealing documents from the Environmental Protection Agency, making false statements to federal law enforcement officers, and disregarding both administrative and judicial orders instructing the defendants from further earth-moving activities on the site.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Rodney R. Hailey, No. 1:11-CR-00540 (D. Md.), AUSA Stefan Cassella and RCEC David Lastra.

On November 8, 2011, a 45-count indictment was returned charging Rodney R. Hailey with eight wire fraud counts, 32 money laundering violations, and five Clean Air Act counts (18 U.S.C. §§ 1343, 1957; 42 U.S.C. § 7413(c)(2)(A)), stemming from the fabrication of documentation related to the production of bio-diesel fuel.

In March, 2009, Hailey registered his business, Clean Green Fuel (CGF), with the EPA as a producer of bio-diesel fuel, claiming that CGF would produce bio-diesel fuel in a production facility located in Maryland. The registration was part of EPA's Renewable Fuel Standards regulations mandated by the Energy Policy Act of 2005. This Act amended the Clean Air Act to require EPA to promulgate regulations to increase the amount of renewable fuels used in motor vehicles in the United States.

Among other things, the Energy Policy Act required oil companies that market petroleum products in the United States to either (1) produce a given quantity of renewable fuel themselves or (2) purchase credits called renewable identification numbers (RINs) from producers of renewable fuels to satisfy their renewable fuel quota requirements. Pursuant to the RIN credit program, when a producer of renewable fuel produces a given quantity of product, it can generate a RIN (a unique 38-digit number that identifies the production of a specific quantity of renewable fuel by a specific producer). When the producer distributes the renewable fuel the producer is entitled to sell the RIN to a broker or a major oil company, which could then use the RIN to satisfy its EPA obligation.

According to the indictment, Hailey, who claimed to be a bio-diesel fuel producer, only generated false RINs on his computer and marketed them to brokers and oil companies. Hailey allegedly sold more than 32 million RINs to a variety of companies for more than $9 million. The RINS that Hailey sold to the brokers were resold as often as two or three times at increased prices.

When investigators attempted to inspect his facility they were directed to an empty warehouse containing no biodiesel production equipment. The defendant further claimed that he had sold all of his biodiesel equipment but was unable to identify the equipment buyer or produce any records of the sale.

This case was investigated by the United States Environmental Criminal Investigation Division, EPA Office of the Inspector General, the Internal Revenue Service Criminal Investigation Division, the United States Postal Inspection Service, and the United States Marshalls Service.

Back to Top

United States v. NH Environmental Group, Inc. d/b/a Tierra Environmental and Industrial Services, Inc. et al., No. 2:11-CR-00177 (N.D. Ind.), ECS Senior Counsel James Morgulec, AUSA Toi Houston, and SAUSA RCEC David Mucha.

On November 3, 2011, a seven-count indictment was returned charging NH Environmental Group, Inc. d/b/a Tierra Environmental and Industrial Services, Inc. (Tierra), company owner Ronald Holmes, and project manager Stewart J. Roth, with conspiracy to violate the Clean Water Act and six substantive CWA counts (18 U.S.C. § 371; 33 U.S.C. § 1319 (c)(2)(A)) for illegally discharging wastes to the local POTW without a permit or authorization from the POTW.

Tierra was in the business of collecting liquid wastes from customers, treating the wastes, and then transporting them to proper disposal facilities. Between January and June 2008, to avoid the expense of lawfully treating and disposing of these wastes, the defendants are alleged to have hauled them to a closed-down treatment facility and dumped the wastes into the sewer system that led to the POTW.

This case was investigated by the Northern District of Indiana Environmental Crimes Task Force, including the United States Environmental Protection Agency Criminal Investigation Division, the Indiana Department of Environmental Management Office of Criminal Investigations, the United States Department of Transportation, Office of Inspector General, and the United States Coast Guard Criminal Investigative Service.

Back to Top

Plea Agreements

United States v. Jack B. Haney et al., Nos. 3:11-CR-00340 and 00342 (W.D.N.C.), AUSA Steven Kaufman.

On November 17, 2011, Jack Bard Haney and Ronald Eugene Kinard each pleaded guilty to informations charging them with conspiracy to violate the Clean Air Act (18 U.S.C. § 371; 42 U.S.C. § 7413 (c)(2)(A)), stemming from false vehicle emission inspections. Haney also pleaded guilty to a false statement violation (18 U.S.C. § 1001).

Kinard is the owner and operator of Autoworks where Haney was employed. From approximately January 2010 through August 2011, the defendants submitted false vehicle emissions test results on almost 1,300 occasions, by connecting a different vehicle to the onboard diagnostics system, an activity referred to as "clean scanning." When questioned by investigators, Haney claimed to have only given 20 "clean scanning scores" to family and friends, when in fact he had conducted more than 100.

As of April 2011, nine individuals have been prosecuted in this district for conducting false emissions inspections.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation Environmental Crimes Unit.

Back to Top

United States v. Douglas V. Mertz, No. 2:11-CR-20403 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On November 9, 2011, Douglas V. Mertz pleaded guilty to knowingly making and delivering a false writing (18 U.S.C. § 1018), after being charged with a Clean Air Act violation for illegally selling and offering for sale a Class II substance for use as a refrigerant.

In August 2009, EPA received an e-mail complaint regarding an advertisement that had been placed on the Internet offering refrigerants for sale. Specifically, the complaint stated that someone had posted an ad on Craigslist in the Metro-Detroit area, offering to sell refrigerants to un-certified individuals. Investigation revealed that Mertz and his company, Frontier Mechanical Systems, were responsible for the posting.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Oakmont Environmental, Inc., No. 2:11-CR-00213 (E.D. La.), AUSA Dorothy Taylor.

On November 9, 2011, Oakmont Environmental, Inc. pleaded guilty to a one-count information charging this waste treatment facility with knowingly violating the Clean Water Act (33 U.S.C. § 1319 (c)(2)(A)).

Oakmont was in the business of receiving waste oil from a variety of sources and was responsible for separating the water from the oil, shipping the oil to a recycling plant, and discharging the treated waste water to the local POTW. From September 2007 through May 2009, the company discharged approximately 3.6 million gallons of oily waste water directly into the Harvey Canal, a navigable water.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jason Bruno, No. 6:10-CR-00244 (W.D. La.), AUSA Myers P. Namie.

On November 3, 2011, Jason Bruno, the former owner and manager of One Low Price Cleaners, pleaded guilty to a one-count information charging a misdemeanor violation of the Clean Water Act (33 U.S.C. § 1319 (c)(1)(B)) stemming from the dumping of a chemical into the local POTW.

In May 2009, the local fire department responded to an emergency call regarding individuals who were overcome by noxious fumes emanating from a local shopping center, several of whom were transported to a local emergency room. Investigators subsequently determined that tetrachloroethylene (also known as PERC) had been dumped into the drains from Bruno's cleaners business, which was located in this shopping center, from December 2007 through May 2009.

Equipment with hose draining PERC into bucket

At one point in time, the cleaners had been using a hazardous waste disposal company to properly dispose of the wastewater; however, it stopped using the service to avoid paying the pickup and disposal fees.

This case was investigated by the Louisiana Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police.

Back to Top

United States v. Michael Duby, No. 1:11-CR-00010 (D. Alaska), ECS Senior Counsel Bob Anderson and AUSA Aunnie Steward.

On October 31, 2011, Micheal Duby pleaded guilty to a felony Migratory Bird Treaty Act violation (16 U.S.C. §§ 703(a), 707(b)(2)) admitting that he illegally sold Magpie feathers and skins on Ebay and by other means for a number of years.

From October 2007 through approximately June 2009, the defendant posted on Ebay a variety of migratory birds and bird parts for sale. In February 2008, Duby was warned by Ebay that he might be in violation of federal law. Over the following year, however, he continued to sell migratory birds on the auction website. Sentencing is scheduled for January 6, 2012.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Daniel Parker, No. 11-CR-60226 (S.D. Fla.), AUSA Jose Bonau.

Defendant pumping into sewer using car to block view

On October 26, 2011, Daniel Parker pleaded guilty to a CWA violation (33 U.S.C. § 1317(d), 1319(c)(2)(A)) for discharging wastewater into a POTW at an unlawful location.

Parker was employed by a Broward County septic hauling and plumbing contractor from late 2008 through October 2009, as the company's primary septic hauling truck driver. Parker regularly pumped commercial grease traps and septic tanks, and residential septic tanks for customers.

The company was licensed to discharge the septic hauling truck's contents at the Broward County Water and Wastewater Services facility in Pompano Beach, which was the only lawful discharge point in Broward County. Parker was also working side jobs side jobs of which the company was unaware. To ensure that his primary employer did not know about these other jobs, Parker would dump those loads directly into the City of Ft. Lauderdale's sewer system. In September 2009, a detective conducting surveillance of the defendant's activities witnessed Parker pumping out the contents of a septic truck into the sewer.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the City of Ft. Lauderdale Police Department, the Broward County Sheriff's Office, and the State of Florida Department of Environmental Protection.

Back to Top

Sentencings

United States v. Julie Jennings, No. 1:11-mj-00928 (E.D. Va.), ECS Trial Attorney Susan L. Park and AUSA G. Zachary Terwilliger.

On November 22, 2011, Julie Jennings pleaded guilty to, and was sentenced for, a violation of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1857(1)(I)),1859(a)(1)). Jennings gave false information to a NOAA agent when questioned about whether a charter boat captain took her into the Exclusive Economic Zone where it is illegal to catch Atlantic Striped Bass. She was sentenced to pay a $1,000 fine, perform 100 hours of community service, and will complete a one-year term of probation.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Columbus Steel Castings, No. 2:11-CR-00180 (S.D. Ohio), AUSA Michael Marous.

On November 18, 2011, Columbus Steel Castings (CSC) was sentenced to pay a $660,000 fine and $165,000 in community service payments to the Grange Insurance Audubon Center and the Physicians Free Clinic. One project will fund a program that provides environmental education to students. The other project will provide medical services for residents of the south side of Columbus with ailments related to respiratory illnesses. The company also will complete a one-year term of probation and was further ordered to install interlock devices designed to shut down emission sources when the associated air pollution control equipment is not in operation.

CSC owns and operates a steel foundry in Columbus, Ohio, that manufactures steel castings for various industries, including the railroad industry. The company has a Title V permit for several emission sources that require air pollution control devices. In 2007, the Central Ohio Environmental Crimes Task Force began investigating the company due to the significant number of NOVs issued to the facility, the repeated nature of the violations, and the significant number of complaints being made to the Ohio EPA regarding emissions from the facility.

In pleading guilty to six Clean Air Act violations (42 U.S.C. § 7413(c)), the company admitted to, among other things, knowingly failing to report malfunctions of air pollution control equipment; knowingly operating emission units on one or more occasion while the associated air pollution control technology was not in operation; and knowingly failing to conduct emission testing within six months prior to the permit expiration.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Edward Wyman, No. 09-CR-00577 (C.D. Calif.), AUSAs Mark Williams and Dorothy Kim.

Defendant's backyard

On November 15, 2011, Edward Wyman was sentenced to serve 60 months' incarceration, followed by three years' supervised release, stemming from a RCRA conviction for the storage of explosive hazardous wastes in his backyard, including thousands of rounds of corroded ammunition and hundreds of pounds of decades-old gunpowder.

A jury convicted Wyman of a RCRA storage violation (42 U.S.C. § 6928(d)(2)) after a fire at his residence in June 2009 caused the evacuation of the surrounding community. The jury further made a special finding that the defendant's conduct knowingly placed nearby residents in imminent danger of death or serious bodily injury (42 U.S.C. § 6928(e)). He was ordered to pay $800,000 to the United States Environmental Protection Agency for costs associated with the 47-day clean-up response.

Due to the ammunition that was being "cooked off" in the fire, first responders had to wear bullet proof vests upon arrival to the defendant's residence as the blast sent thousands of bullets into nearby yards and burned down a neighbor's barn. Wyman, a self-described former shooting enthusiast, had stored an estimated 1 million rounds of corroded ammunition dating back to World War II in four sea-cargo containers, as well as multiple five-gallon buckets throughout his jumbled yard. He had also packed two refrigerators full of gunpowder, including powder for military howitzers, and stored hazardous industrial solvents that contained 1,1,1-trichloroethane and tetrachloroethylene without a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Los Angeles Police Department, the California Department of Toxic Substances Control, and the Los Angeles Department of Building and Safety. Emergency Responders included the Los Angeles City Fire Department, the Los Angeles Police Department Bomb Squad, and the Federal Bureau of Investigation.

Back to Top

United States v. Vassili Samoilenko et al., Nos. 3:11-CR-00786, 00828 (N.D. Calif.), AUSA Stacey Geis.

On November 15, 2011, Dianik Bross Shipping Corp., S.A., (Dianik Bross) and chief engineer Vassili Samoilenko, were sentenced after pleading guilty to obstruction and APPS violations (18 U.S.C. § 1519; 33 U.S.C.§ 1908(a)) stemming from the illegal overboard discharge of oily bilge waste from the *M/V Kostas N*. The company was ordered to pay $650,000, with $150,000 to be paid as community service in support of environmental projects in the Bay Area, and will implement an environmental compliance plan. Samoilenko was sentenced to serve approximately three months of community confinement, with credit for time served. He was sent back to his home in Estonia to complete a three-year term of unsupervised probation.

Specifically, Samoilenko pleaded guilty to two counts of obstructing justice arising from his falsification of an oil record book that was presented to Coast Guard inspectors. Dianik Bross pleaded guilty to an APPS violation for the ORB falsification.

Investigation began in August 2011, after a crew member passed a note to a Coast Guard inspector during an inspection alleging that the ship's chief engineer had caused the dumping of oily bilge wastewater and sludge without proper treatment. It was further determined that the chief engineers aboard the ship, including Samoilenko, regularly tricked the pollution control equipment to facilitate the illegal overboard discharges. It also was determined that Samoilenko caused the discharge of sludge directly into the ocean. None of these unlawful discharges were recorded in the ORB.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and United States Coast Guard Investigative Service.

Back to Top

United States v. Patricia Guzman et al., No. 5:10-CR-00683 (W.D. Tex.), AUSA Tracy Thompson.

On November 8, 2011, the last two defendants were sentenced in this case involving the dumping of thousands of gallons of restaurant grease into local sewer lines from 2005 through 2008. Patricia Guzman and Julie Perez were each sentenced to serve five-year terms of probation and were held jointly and severally liable for $11,300 in restitution to the San Antonio Water System.

Five employees with now defunct A&F Industrial Services Inc. (A&F) were variously charged in a 12-count indictment with conspiracy, Clean Water Act, falsification of records, and removal of property to prevent seizure charges (18 U.S.C. §§ 371,1519, and 2232; 33 U.S.C. §1319). A&F held permits with the San Antonio Water System requiring the company to submit manifests showing it had properly disposed of grease waste collected from restaurants. The company was supposed to take the waste to one of three disposal sites, but instead dumped loads of grease into the sewer lines leading to the local POTW as well as into a local creek.

Investigators videotaped A&F tankers dumping grease into sewer lines in November 2007, December 2007, and April 2008. In March 2008, another truck was videotaped dumping 2,000 gallons of grease into Huebner Creek. Driver Tom Ojeda was sentenced to serve 13 months' incarceration followed by three years' supervised release and driver Ivan Garcia was sentenced to complete a two year term of probation. Ojeda was held jointly and severally responsible for the restitution.

Guzman, the company controller, pleaded guilty to conspiracy to violate the CWA and to a removal of property to prevent seizure charge for attempting to get rid of a rubber stamp used to fabricate dumping manifests during the execution of a search warrant. Perez, the office manager pleaded guilty to the conspiracy charge. Both drivers pleaded guilty to conspiracy and to a felony CWA violation. Charges were dismissed against a fifth defendant.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Seaside Aquaculture Inc. et al., No. 6:11-CR-00031 (S.D. Tex.), AUSA Hugo R. Martinez.

Pelican remains

On November 8, 2011, Seaside Aquaculture Inc., and its owner, Khanh Vu, were each sentenced to complete 18-month terms of probation. They both will pay $5,000 fines to be deducted from a $50,000 bond held by the court. The remaining $40,000 will go to the Texas Parks and Wildlife Foundation to fund programs protecting migratory birds.

The two were convicted by a jury in August 2011 of the single Migratory Bird Treaty Act (MBTA) violation charged (16 U.S.C. §§703, 707(a)), stemming from the killing of approximately 90 brown pelicans in 2010.

Evidence at trial established that in October 2010, the Fish and Wildlife Service received a letter from a former Seaside worker alleging that he had witnessed several employees, including Vu, illegally killing many species of birds. In December 2010, an agent inspected the area around the fish farm and photographed several empty shot gun shells and bird carcasses. As a result of the execution of a search warrant in February 2011, agents seized the carcasses of approximately 90 brown pelicans, 17 great blue herons, five great egrets, four black-crowned night herons, four turkey vultures, two osprey, two gulls and one scaup (a small diving duck). Company employees denied shooting any birds; however, Vu did admit to shooting six pelicans to prevent them from eating his fish. At trial, the defense unsuccessfully attempted to convince the jury that the birds had died as a result of running into power lines.

This case was investigated by the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department.

Back to Top

United States v. Leslie W. Hardwick, Jr., No. 3:11-CR-00127 (W.D. La.), AUSA Cytheria Jernigen.

On November 7, 2011, Leslie W. Hardwick, Jr., was sentenced to pay a $5,000 fine and complete a three-year term of probation with a special condition of six months' home confinement. Hardwick previously pleaded guilty to FIFRA and MBTA violations (7 U.S.C. §§ 136j (a)(2)(G) and 136*l* (b)(1)(B); 16 U.S.C. §§ 703 and 707(a)) stemming from the illegal application of a pesticide resulting in the killing of several animals, including migratory birds.

In January 2011, state wildlife officials were notified that Aldicarb (aka "Temik") had been mixed with meat and illegally used as bait that was then placed around a 600-acre hunting preserve known as Bosco Lodge (Bosco). Investigators determined that Leslie Hardwick, a Bosco employee, was responsible for mixing the pesticide with the meat and for distributing the contaminated meat on Bosco property as well as adjacent property. When questioned, Hardwick stated that he was trying to kill coyotes.

Agents located approximately 60 dead animals and birds including 17 coyotes, 16 raccoons, 12 opossums, four Bobcats, and four migratory birds (a hawk, an owl, and two sparrows).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, and the Louisiana Department of Wildlife and Fisheries Law Enforcement Division.

Back to Top

United States v. A.E. Nomikos Shipping Inv. Ltd. et al., No. 3:11-CR-00439 (D. Ore.), AUSA Stephanie Beckerman, SAUSA Patrick Flanagan, with assistance from ECS Trial Attorney Todd Mikolop.

On November 2, 2011, A.E. Nomikos Shipping Inv. Ltd. (Nomikos) and Lounia Shipping Co. Ltd. (Lounia) the owner and operator of a Cyprus-based ship, pleaded guilty to, and were sentenced for, APPS and false statement violations (33 U.S.C. § 1908(a); 18 U.S.C. § 1001) stemming from the illegal discharge of oily wastes into the ocean. The companies were sentenced to pay a $750,000 fine with $375,000 allocated as a community service payment to go into the Oregon Governor's Fund for the Environment. They also will complete three-year terms' of probation and are required to implement an environmental compliance plan.

Nomikos was the operator and technical manager of the *Arion SB,* a bulk carrier that operated under the flag of Cyprus. Nomikos provided management services pursuant to a contract with Lounia, the ship's registered owner. Nomikos is headquartered in Piraeus, Greece, and Lounia is headquartered in Cyprus.

Investigation revealed that, from June 2011 through October 2011, the defendant companies, acting through their employees, caused the ship's crew to trick the oil content meter by piping clean water through it. None of this activity was noted in the oil record book, as required.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Charles D. Woodworth, No. 2:10-CR-00165 (N.D. Ind.), ECS Trial Attorney Gary Donner, AUSA Toi Houston, SAUSA Dave Mucha, and ECS Paralegal Kathryn Loomis.

On November 1, 2011, Charles D. Woodworth was sentenced to complete a three-year term of probation with a special condition of six months' home detention. He will also pay a $2,500 fine and perform 100 hours of community service after previously pleading guilty to a Clean Air Act conspiracy charge.

Woodworth was the maintenance manager for Jupiter Aluminum Corporation, an aluminum recycling facility. Over the course of the five-year conspiracy, the defendant directed and caused workers to illegally falsify baghouse reports, which reflect operation of the company's pollution control equipment

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Indiana Department of Environmental Management.

Back to Top

United States v. Mark Desnoyers, No. 1:06-CR-00494 (N.D.N.Y.), ECS Trial Attorney Colin Black and AUSA Craig Benedict.

On October 28, 2011, Mark Desnoyers was resentenced to serve a five-year term of probation and was held jointly and severally responsible for $45,398 in restitution to victims. The Second Circuit previously remanded the case to the district court for reinstatement of the verdict, for entry of a judgment of conviction on the conspiracy count, and for resentencing.

Desnoyers was the owner of Adirondack Environmental Associates, an air monitoring company that took samples required to document the purported full and safe removal of asbestos from numerous

commercial buildings and private homes. Evidence at trial established that Desnoyers secretly entered into agreements with the owners of asbestos removal companies to falsify his results. He was convicted in 2008 on five of the six counts charged: conspiring to violate the mail fraud statute and the Clean Air Act, aiding and abetting CAA violations, mail fraud, and two false statement violations. He was acquitted of a remaining false statement charge. Co-defendants John Wood and Curt Collins previously pleaded guilty and were sentenced in this matter.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. George Dongdong Jia, No. 3:11-CR-00002 (D. Alaska), AUSA Steven Skrocki.

On October 26, 2011, George Dongdong Jia was sentenced to pay a $30,000 fine and will complete a three-year term of probation for illegally selling a polar bear hide, a black rhinoceros foot, and a raw walrus tusk to an undercover agent in 2010. Jia previously pleaded guilty to a felony Lacey Act violation and two misdemeanor Lacey Act counts.

Bear skin

Investigation revealed that in 2008 Jia posted ads on the Internet to purchase and sell whole animals and parts from rhinos, hippos, elephants, tigers, leopards, and polar bears. After wildlife agents were notified, they initiated an undercover investigation, corresponding with the defendant and ultimately selling a rhino foot (confirmed as being from a black rhino, an endangered species) to the agent for $1,500.

This case was investigated by the United States Fish and Wildlife Service.

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

January 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Taxidermy pieces constructed from parts of endangered and protected wildlife. See U.S. v. De Molina inside, for more details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Alaska	United States v. Jesse J. Leboeuf et al. United States v. Richard H. Yates United States v. BP Exploration (Alaska), Inc.	*Walrus Tusk Sales/* MMPA, Firearms Violations *Otter Pelt Sales/* MMPA *Probation Revocation Hearing/*CWA
N.D. Calif.	United States v. Steven Robinson	*Angelfish Imports/* Lacey Act
D.D.C.	United States v. Sanford Ltd.	*Vessel/* APPS, Conspiracy, Obstruction
M.D. Fla.	United States v. John L. Yates	*Undersize Fish Harvest/* Evidence Destruction, Obstruction
S.D. Fla.	United States v. Alejandro Gonzalez United States v. Enrique Gomez De Molina United States v. Elias Garcia Garcia et al. United States v. Sea Food Center, LLC, et al.	*Vessel Classification/* Conspiracy, False Statement, Obstruction *Wildlife Smuggling and Sales/* Lacey Act *Jaguar Skin Imports/* Conspiracy, Lacey Act *Shrimp Mislabeling/* Lacey Act, FDCA
N.D. Ga.	United States v. Donald Lee Vaughn	*Deer Transport/* Lacey Act
D. Idaho	United States v. Christopher Conk et al. United States v. Howell Machine United States v. Sidney Davis et al.	*Coral Trafficking/* Lacey Act, Smuggling, ESA *Ammunition Refurbisher/* CWA misdemeanor *Deer Outfitter/* Lacey Act, Bankruptcy omission

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
C.D. Ill.	United States v. Fallin' Skies Strait Meat Duck Club, LLC et al.	*Duck Hunting/* Lacey Act, False Statement, MBTA
S.D. Ind.	United States v. Michael Jochem et al.	*Pesticide Application/* FIFRA, False Statement
W.D. Ky.	United States v. Canal Barge Company, Inc. et al.	*Benzene Spill/* PWSA
E.D. La.	United States v. Ilios Shipping Company S.A. et al. United States v. Blake Mitchell	*Vessel/* APPS, Obstruction *Red Fish Sales/* Lacey Act
W.D. La.	United States v. Corey Ronsonet United States v. Pelican Refining Company, LLC et al.	*Black Bear Hunt/* Lacey Act *Oil Refinery/* CAA, Obstruction
D. Md.	United States v. Efploia Shipping Co. S.A. et al.	*Vessel/* APPS, Obstruction, False Statement
D. Mass.	United States v. Daniel B. Birkbeck United States v. Josimar Ferreira	*Striped Bass Overharvesting/* Lacey Act *Pesticide Application/* FIFRA, False Statement
E.D. Mich.	United States v. Brian Waite et al. United States v. Aramais Moloian	*Asbestos Removal/* CAA *Chemical Manufacturer/* RCRA
N.D. Miss.	United States v. Mari Leigh Childs d/b/a S&L Aqua Operations	*Drinking Water Operator/* CWA, False Statement
W.D. Mo.	United States v. Indian Ridge Resort d/b/a Indian Ridge Resort Community et al. United States v. Scott Allen Beckman	*Home Developer/* CWA *Mayor and Municipal Employee/* False Statement, Misprision

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D.N.J.	United States v. D.C. Air & Seafood Inc., et al.	*Scallop Overharvesting/* Conspiracy, Lacey Act, Obstruction
D.N.M.	United States v. Martin Aguilar	*Eagle Shooting/* BGEPA
E.D.N.Y.	United States v. Lin Fen Xu	*Ivory Imports/* Smuggling, ESA
N.D.N.Y.	United States v. Lieze Associates, d/b/a Eagle Recycling et al. United States v. Paul Mancuso et al.	*Wetlands/* CWA, Conspiracy *Asbestos Removal/* CERCLA, CAA, Mail Fraud, Conspiracy
W.D.N.Y.	United States v. Kenneth Horan et al.	*Asbestos Removal/* CAA
[redacted]	[redacted]	[redacted]
D. Ore.	United States v. Clifford R. Tracy United States v. Robert H. Block, Jr., et al.	*Gold Mining/* Unlawful Mining Operation *Stream Diversion and Habitat Degradation/* CWA misdemeanor, ESA
E.D. Tenn.	United States v. Johnny Carl Grooms	*Ginseng Sales/* Lacey Act, Drug Violations
E.D. Tex.	United States v. Blake Powell et al. United States v. Clinton Promise	*Deer Breeder/* Lacey Act *Truck Cleaning/* RCRA
E.D. Va.	United States v. William Avery et al.	*Ship Scrapping/* CWA, OPA, Conspiracy
W.D. Wash.	United States v. Darigold, Inc., et al.	*Dairy Cooperative/* CWA misdemeanor, ESA

Additional Quick Links:

Trials

United States v. Clifford R. Tracy, No. 1:11-CR-30027 (D. Ore.), AUSA Doug Fong.

Sediment plume

On December 12, 2011, gold miner Clifford R. Tracy was found guilty by a jury of conducting an unlawful mining operation (43 C.F.R. § 3809), but was acquitted of a misdemeanor Clean Water Act violation 33 U.S.C. § 1311(a)). The charges stem from a mining operation involving the Stray Dog placer claim, which is a surface mining operation involving the extraction of gold from surface soil and gravel. The claim was located in the Bureau of Land Management's Medford District on Galice Creek, which flows into the Rogue River.

In June 2011, the defendant was told by BLM officers that he needed to shut down his operation after a sediment plume was discovered in the creek. Tracy, who represented himself at trial, ignored authorities and essentially argued that he could do what he wanted since this was public land, even if he was breaking the law. This particular creek provides critical habitat for endangered Coho salmon.

This case was investigated by the United States Bureau of Land Management and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Informations and Indictments

United States v. Alejandro Gonzalez, No. 1:11-CR-20868 (S.D. Fla.), ECS Trial Attorney Ken Nelson and AUSA Jaime Raich.

On December 20, 2011, Alejandro Gonzalez was charged in a five-count indictment stemming from his issuing false safety documents in 2009 to two cargo vessels, the *M/V Cala Galdana*, later rechristened the *M/V New Wave*, and the *M/V Cossette*. Gonzalez, a vessel classification surveyor, is charged with conspiracy, false statements, and obstruction of justice violations (18 U.S.C. §§ 371, 1505, 1001(a)(2)).

As a naval engineer and a classification surveyor, the defendant was responsible for surveying the safety and seaworthiness of merchant vessels on behalf of foreign countries. The indictment alleges that on several occasions, Gonzalez told Coast Guard officials that the *Cala Galdana* had undergone maintenance work at a drydock when in fact this never had occurred. The indictment further alleges that Gonzalez obstructed the Coast Guard's port state control examination of the *Cossette* by issuing a fraudulent safety certificate without conducting a proper survey

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

United States v. D.C. Air & Seafood Inc., et al., No. 2:11-mj-06213 (D.N.J.), AUSA Kathleen O'Leary.

On December 16, 2011, a Maine seafood company, one of its owners, and four fishermen were charged in a complaint with conspiracy to falsify records and to obstruct justice in connection with the overharvesting of Atlantic Sea Scallops off the coast of New Jersey.

Seafood wholesaler D.C. Air & Seafood Inc.; company owner Christopher Byers; and fishermen George Bamford, Robert E. Hersey, Jr., Daniel Mahoney, and Michael McKenna are charged with conspiring to prepare false reports to conceal their overfishing from March 2007 through March 2008 (16 U.S.C. § 3372(d); 18 U.S.C. §§ 371, 1519).

According to the complaint, Byers owned a wholesale seafood business that purchased Atlantic Sea Scallops harvested by federally-permitted vessels in a large sea scallop fishing ground managed by NOAA off the mid-Atlantic coast and open to limited scallop fishing by permitted vessels for two-week periods. During those periods, individual vessels are restricted to harvesting no more than 400 pounds of scallops per vessel per trip.

It is alleged that, during the two-week periods in 2007 and 2008, vessels operated by the four fishermen harvested thousands of pounds of scallops over the legal limit, which were subsequently purchased by D.C. Air & Seafood. The scallops were off-loaded in Atlantic City, New Jersey, from the vessels to trucks used by Byers and his company. The defendants are alleged to have conspired to conceal the overharvesting by preparing reports that falsely represented the amount of scallops harvested to be 400 pounds or less.

This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Sanford Ltd., No. 1:11-CR-00352 (D.D.C.), ECS Trial Attorney Ken Nelson, AUSA Frederick Yette, and ECS Paralegal Jessica Egler.

On December 6, 2011, a seven-count indictment was returned charging Sanford Ltd. with APPS, obstruction, and conspiracy violations, as well as a forfeiture allegation. (18 U.S.C. §§ 371, 1908(a), 1519, 1505, 981(a)(1)(C); 33 U.S.C. §§ 1907(a), 1908(a).)

F/V San Nikunau

Sanford Ltd. is the New Zealand-based operator of the fishing vessel *San Nikunau*, which routinely delivers tuna to a cannery in American Samoa. During a Coast Guard inspection of the vessel in July 2011, it was discovered that, from at least 2007, the vessel routinely dumped bilge wastes over the side of the ship without first processing it through a properly functioning oil water separator and oil content monitor. Coast Guard personnel also witnessed two illegal discharges of bilge waste directly into Pago Pago harbor. The company also is charged with failing to accurately maintain an oil record book and with obstruction of justice for presenting false documents and deceiving inspectors.

In addition to a fine, the government is seeking criminal forfeiture of over $24,000,000. This case was investigated by the United States Coast Guard.

Back to Top

United States v. Efploia Shipping Co. S.A. et al., Nos. 11-CR-00651, 00652 (D. Md.), ECS Senior Trial Attorney Richard Udell and ECS Trial Attorney David O'Connell.

On December 1, 2011, informations were filed charging Efploia Shipping Co. S.A and Chief Engineer Andreas Konstantinidis with violations stemming from the illegal dumping of sludge, plastics, and oily waste water from the *M/V Aquarosa*, a 623 foot-long 33,005 gross-ton ship.

In February 2011, the ship arrived in Baltimore, Maryland, after a voyage from Europe and was slated for inspection. During the inspection, a crew member informed Coast Guard personnel that senior engineers had directed the crew to discharge waste oil overboard through bypass equipment. This person further alleged that plastic bags filled with oily rags had been deliberately discharged overboard. Shipping manager Efploia Shipping Co. S.A. was charged with an obstruction, a false statement, and two APPS violations (18 U.S.C. §§ 1001(a), 1505; 33 U.S.C. § 1908(a)). Chief Engineer Andreas Konstantinidis was charged with an obstruction count.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. William Avery et al., No. 2:11-CR-00190 (E.D. Va.), AUSA Joseph Kosky.

On November 16, 2011, an eight-count indictment was returned charging a Chesapeake-based ship-scrapping company, its vice president, and its treasurer with charges related to the scrapping of the *M/V Snow Bird* while it was docked on the Elizabeth River, in Chesapeake, Virginia. Steven E. Avery and his father, William J. Avery, along with S.E.A. Solutions, are charged with conspiracy, negligent and knowing violations of both the Clean Water Act and the Oil Pollution Act, and Refuse Act violations (18 U.S.C. § 371; 33 U.S.C. §§ 407, 1311(a), 1319(c)(2)(A), 1321(b)(3). Steven Avery additionally is charged with making a false statement (18 U.S.C. § 1001(a)).

According to the indictment, from February through October 2010, contaminated water was pumped overboard during the scrapping process to keep the ship afloat and to remove excess waste water from the ship. In addition, petroleum products were allowed to leak into the river from the ship as they were not removed prior to scrapping.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard Investigative Service, and the Chesapeake Fire Marshal Office.

Back to Top

Plea Agreements

United States v. Christopher Conk et al., No. 1:11-CR-00279 (D. Idaho), AUSA George Breitsameter.

Corals

On December 19, 2011, Christopher Conk, a board member for the newly opened Idaho Aquarium in Boise, Idaho, pleaded guilty to smuggling, Lacey Act trafficking, and an Endangered Species Act violation (18 U.S.C. § 554; 16 U.S.C. §§ 3372(a)(1), 1538(d)(1)) for illegally shipping protected live corals to buyers around the world. Conk's ex-wife Deidra Davison pleaded guilty to an ESA violation and to a misdemeanor Lacey Act trafficking charge.

Investigators became aware of Conk and Davison after one of their suppliers was found to be illegally harvesting coral in the Florida Keys National Marine Sanctuary. The two operated a web-based business called Coral Fanatics LLC, which was in the business of selling a mix of aqua-cultured and "wild caught" colonies. Davison packaged and shipped to customers in the Netherlands and Great Britain between May and September 2008 coral that were mislabeled as "minerals," "aquacultured zoa fragments," and "aquacultured ricordea fragments," and which did not have the required wildlife import/export licenses.

Conk was arrested when, in July and September 2010, an undercover U.S. Immigration and Customs Enforcement agent contacted Conk regarding three separate orders to ship corals to Vienna, Austria. When the agent received the package, the enclosed shipping documents mischaracterized the contents and it was not properly labeled as containing wildlife.

This case was investigated by United States Immigration and Customs Enforcement, the National Oceanic and Atmospheric Administration Office of Law Enforcement, and the United States Fish and Wildlife Service.
Back to Top

United States v. Mari Leigh Childs d/b/a S&L Aqua Operations, No. 3:11-CR-00135 (N.D. Miss.), AUSA Robert Mims.

On December 15, 2011, Mari Leigh Childs pleaded guilty to a false statement offense and to a Clean Water Act violation (18 U.S.C. § 1001 (a)(3); 33 U.S.C. §§ 1318(a)(4)(A), 1319(c)(2)(A)) stemming from the falsification of lab data and discharge monitoring reports (DMRs) between December 2007 and January 2008.

Childs and her husband were private wastewater and drinking water operators doing business as S&L Aqua Operations. Childs admitted to falsifying information and reports collected on behalf of the Rising Sun Subdivision Waste Water Treatment Plant and the Chapman Subdivision WWTP. The falsified data included false results for BOD, TSS, Ammonia, Chlorine, and pH. These data in turn were used to prepare DMRs that were submitted to Mississippi Department of Environmental Quality. The company oversees operations at ten local wastewater treatment facilities and 12 public water systems.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Ilios Shipping Company S.A. et al., Nos. 2:11-CR-00262, 00263, 00286 (E.D. La.), ECS Trial Attorney Ken Nelson, AUSA Emily Greenfield, and ECS Paralegal Jessica Egler.

On December 13, 2011, Ilios Shipping Company S.A., pleaded guilty to APPS and Obstruction violations (33 U.S.C. § 1908(a); 18 U.S.C. §§ 1505, 1519) stemming from its routine illegal discharge of oily bilge wastes from the *M/V Agios Emilianos* between April 2009 and April 2011.

M/V Agios Emilianos

Ilios was the operator of this 738-foot bulk carrier cargo ship that hauled grain from New Orleans to various ports around the world. Crew members also falsified entries that were made in the oil record book (ORB) for those illegal discharges.

Ship's master Valentino Mislang and chief engineer Romulo Esperas previously pleaded guilty to conspiracy to obstruct justice. Specifically, Mislang admitted to his role in destroying evidence and instructing crewmembers to lie to the Coast Guard during the vessel's inspection in April 2011. Esperas admitted to falsifying the ORB and to directing the illegal discharges. Both men stated that they were ordered to carry out these activities by one of the company's senior managers. Esperas further stated that this senior manager refused to provide funding for the proper discharge of the oily waste to shore-side facilities.

Mislang and Esperas each recently were sentenced to serve three-year terms of probation. Fines were not assessed.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Blake Powell et al., No. 6:11-CR-00117 (E.D. Tex.), AUSA Jim Nobles.

On December 12, 2012, Blake Powell pleaded guilty to a three-count information charging misdemeanor Lacey Act violations (16 U.S.C. § 3372(a)(2)(A)) stemming from the unlawful operation of a deer-breeding facility.

Powell owned and operated the Rockin' P White Tails, a high-fence deer breeding facility. In February 2007, the defendant sold a live white-tail deer that was acquired from an out-of-state source, in violation of Texas law. In March 2007 and November 2007, Powell purchased additional live deer from an out-of-state source. The fair market value for all the illegally imported whitetail deer, exceeded approximately $208,500. Additionally, through this activity, the defendant accumulated white-tail deer semen valued at approximately $85,000 along with progeny valued at approximately $172,500.

After a four-year investigation, Powell's grandfather, Billy Powell, pleaded guilty to four felony Lacey Act transportation violations (16 U.S.C. §§ 3372(a)(2)(A), 3373 (d)(2)) and two false statement charges (18 U.S.C. §§ 1001(a)(2), 1001 (a)(3)). He was sentenced to serve three years' probation with a condition of six months' home confinement. Billy Powell also was ordered to pay a $1 million fine as well as $500,000 in restitution.

This case was investigated by the Special Operations Unit of the Texas Parks and Wildlife and the United States Fish and Wildlife Service.

Back to Top

United States v. Indian Ridge Resort, Inc., d/b/a Indian Ridge Resort Community et al., No. 10-CR-05026 (W.D. Mo.), AUSA Robyn McKee.

On December 9, 2011, two companies pleaded guilty to Clean Water Act violations (33 U.S.C. § 1319(c)) stemming from the development of Indian Ridge Resort Community in Branson West, Missouri. Indian Ridge Resort, Inc., d/b/a Indian Ridge Resort Community, and North Shore Investments, LLC, admitted that they failed to prevent storm water runoff at the construction site from discharging silt into Table Rock Lake.

Construction activities at the site, including clearing, grading and excavation, disturbed approximately 600 acres of land between August 2006 and June 2009. During this period, the defendants violated their NPDES permit by, among other things, failing to control erosion from the site, which persisted through at least the end of August 2011.

This case was investigated by the United States Environmental Protection Agency and the Missouri Department of Natural Resources

Back to Top

United States v. Lin Feng Xu, No. 1:11-mj-00940 (E.D.N.Y), ECS Senior Trial Attorney Richard Udell and AUSA William Sarratt.

On December 6, 2011, Lin Feng Xu pleaded guilty to a smuggling and an Endangered Species Act violation (18 U.S.C. § 545; 16 U.S.C. § 1538) in connection with the illegal export of African elephant ivory in his carry-on luggage.

In September 2011, Xu was apprehended at J.F.K. Airport in New York before boarding a flight to China. When questioned about several carved objects apparently made of ivory found in his luggage, Xu initially stated that he did not know what they were made from and that they had been purchased for approximately $3,000 to $4,000 at U.S. auction houses. In pleading guilty, Xu has admitted that he knew that the carvings were ivory and that they were worth approximately $50,000. Xu also had packed the ivory carvings in aluminum foil in order to conceal their outline from x-ray screening.

This case was investigated by the United States Fish and Wildlife Service, Immigration and Customs Enforcement, and the Transportation Safety Administration.

Back to Top

United States v. Enrique Gomez De Molina, No.1:11-CR-20808 (S.D. Fla.), ECS Trial Attorney Shennie Patel and AUSA Tom Watts-FitzGerald.

Dead wooly stork

On December 6, 2011, Enrique Gomez De Molina pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372(a)(1), 3373(d)(1)(B)) for smuggling from Indonesia into the United States wildlife, which was used in taxidermy pieces and offered for sale in galleries and on the Internet.

De Molina's illegal wildlife trafficking activities extended from late 2009 through February 2011, and included numerous other species and shipments, involving contacts in Bali, Indonesia, Thailand, the Philippines, Canada, and China. Among the animals De Molina possessed are the parts, skins, and remains of species, including among others, whole cobras, pangolins, hornbills, and the skulls of babirusa and orangutans, skins of a Java kingfisher, and a carcass remnant of a Slow Loris, none of which were properly declared when imported into the United States or accompanied by the required CITES permits.

De Molina incorporated the various animal parts into taxidermy pieces at a studio in downtown Miami. He offered these pieces through galleries and on the Internet for prices ranging up to $80,000. Despite the interception of two shipments in late 2009, which ultimately were forfeited and abandoned by the defendant, he continued to solicit protected wildlife from his suppliers via the Internet.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Daniel B. Birkbeck, No. 1:11-CR-10224 (D. Mass.), ECS Trial Attorneys Gary Donner and Jim Nelson, and ECS Paralegal Christina Liu.

On November 30, 2011, Daniel B. Birkbeck pleaded guilty to wildlife trafficking in violation of the Lacey Act (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B)), stemming from his illegal harvest of striped bass.

Commercial fishing for striped bass in both Massachusetts and Rhode Island is governed by a quota system overseen by the Atlantic States Marine Fisheries Commission. This quota system was enacted in response to declining fish populations. Since 2003, Rhode Island's commercial striped bass quota has been 243,625 pounds and Massachusetts' commercial striped bass quota has been 1,159,750 pounds. As a result, the Massachusetts commercial striped bass season is open longer than the Rhode Island season.

Birkbeck, a licensed commercial fisherman in both states, harvested striped bass that he took from Rhode Island waters after the Rhode Island commercial fishing season had closed in 2009. He then transported 10,163 pounds of fish to a dealer in Massachusetts where he sold it for approximately $27,347 without properly identifying the fish with Rhode Island commercial striped bass tags.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Elias Garcia Garcia et al., No. 1:11-CR-20525 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On November 22, 2011, Elias Garcia Garcia and Maria Angela Plancarte each pleaded guilty to conspiracy to violate the Lacey Act (16 U.S.C. § 1538; 18 U.S.C. § 371) for their involvement in the interstate sale of jaguar skins illegally imported into the United States from Mexico in 2010.

Jaguar skin

The defendants offered to sell jaguar skins in person to potential customers in Texas and by electronic means elsewhere. Additionally, they made repeated trips to South Florida, carrying jaguar skins in their car to sell to Florida customers, while purporting to do business for the plant seed company that they jointly operated.

In November 2010, they sold two jaguar pelts to undercover agents in Texas for a total of $3,000 and offered the agents up to ten jaguar skins at a time for any future sale. A second sale of skins allegedly was made to undercover agents in Homestead, Florida, resulting in a payment of $4,000, of which $1,000 was a deposit against the future sale of up to ten jaguar skins.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

Back to Top

United States v. Martin Aguilar, No. 1:10-CR-03101(D. N.M.), AUSA Fred J. Federici.

On November 16, 2011, Martin Aguilar, a member of the Kewa Pueblo, formerly known as Santo Domingo Pueblo, pleaded guilty to violating the Bald and Golden Eagle Protection Act (16 U.S.C. § 668).

In February 2010, Aquilar and his son each shot a bald eagle. The defendant took the eagles to his home where he removed the feathers and kept the feathers. He told agents a few days later that he had killed the birds and that he did not possess a required license. Aguilar further stated that he is a medicine man at the Santo Domingo Pueblo, and that he has shot and killed five bald eagles since 1992. Sentencing is scheduled for February 14, 2012.

This case was investigated by the United States Fish and Wildlife Services.

Back to Top

United States v. Brian Waite et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On November 15, 2011, Brian Waite pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from his involvement in an illegal asbestos removal project. Co-defendant Daniel Clements previously entered a similar plea. Between December 2010 and February 2011, the defendants failed to have workers wet the regulated asbestos-containing materials that were removed from a former Ford plant in Utica, Michigan, during renovation of the building.

According to an asbestos survey of the plant, the building contained more than 60,000 linear feet of RACM. During the removal, the defendants directed workers to tear out the RACM while it was dry and to place it into plastic bags without wetting it. To speed up the process they instructed workers to meet a daily goal of removing 1,000 feet of material. The workers sometimes kicked or threw the material to the ground, causing larger pieces to break apart and fit more easily into bags.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Blake Mitchell, No. 2:11-CR-00238 (E.D. La.), AUSA Jordan Ginsberg.

On November 10, 2011, Blake Mitchell pleaded guilty to a one-count information charging a felony Lacey Act violation (16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(1)(B)). In January 2010, Mitchell transported and sold red fish in interstate commerce by providing guiding services to individuals outside the state of Louisiana, knowing that the redfish had been taken in violation of Louisiana state law.

The case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Kenneth Horan et al., No. 11-CR-0671(W.D.N.Y.), AUSA John J. Field.

On November 7, 2011, Kenneth Horan pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) for the illegal removal and disposal of regulated asbestos-containing material (RACM).

In October 2009, Horan supervised a crew that removed more than 375 linear feet of boiler pipe wrapped in RACM, which was not properly wetted. Additionally, the individuals on the crew were not licensed asbestos abatement contractors.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Corey Ronsonet, No. 6: 11-CR-00164 (W.D. La.), AUSA Joseph T. Mickel.

On December 21, 2011, Corey Ronsonet was sentenced to pay a $3,000 fine and will complete a three-year term of probation during which he will be banned from hunting. Ronsonet previously pleaded guilty to a misdemeanor violation of the Lacey Act (16 U.S.C. §§ 3372, 3373) for illegally acquiring and transporting a Louisiana black bear, an endangered species, in 2009.

In May 2011, wildlife agents were notified by a citizen that the remnants of a black bear had been discovered in Iberia Parish, Louisiana. Follow-up investigation led to the discovery of the cape and other bear remains on property adjacent to Ronsonet's residence. When interviewed by agents, the defendant admitted that he shot the bear on Weeks Island in February 2009. He further stated that he had brought the animal home intending to make a rug from it, but changed his mind and buried the animal's remains to avoid detection by authorities.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Louisiana Department of Wildlife and Fisheries.

Back to Top

United States v. Fallin' Skies Strait Meat Duck Club, LLC et al., Nos. 3:10-CR-30100, 30036 (C.D. Ill.), ECS Trial Attorney Colin Black, AUSA Gregory Gilmore, and ECS Paralegal Christina Liu.

On December 20, 2011, hunting club Fallin' Skies Strait Meat Duck Club, LLC, was sentenced to serve a two-year term of probation. A fine was not assessed. Company owner and professional duck hunter Jeffrey Foiles previously was sentenced to serve 13 months' incarceration for the illegal sale of guided waterfowl hunts from between 2003 and 2007. The hunting club pleaded guilty to a felony count of unlawful sale of wildlife in violation of the Lacey Act and a false statement violation (16 U.S.C. §§ 3372, 3373; 18 U.S.C. § 1001). Foiles pleaded guilty to a misdemeanor Lacey Act violation and a Migratory Bird Treaty Act count (16 U.S.C. §§ 3372, 3373; 16 U.S.C. §§ 703, 707) and further was ordered to pay a $100,000 fine for which his company has agreed to serve as guarantor. Foiles is prohibited from hunting for two years after he completes his term of incarceration.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Illinois Department of Natural Resources, the Iowa Department of Natural Resources, and the Canadian government.

Back to Top

United States v. Lieze Associates, d/b/a Eagle Recycling et al., No. 5:11-CR-00142 (N.D.N.Y.), ECS Trial Attorney Todd Gleason, AUSA Craig Benedict, and ECS Paralegal Christina Liu.

On December 19, 2011, Lieze Associates, d/b/a Eagle Recycling (Eagle Recycling) was sentenced to pay a $500,000 fine and $70,000 in restitution and cleanup costs. The company also will complete a three-year term of probation to include the implementation of an environmental compliance plan.

Aerial view of farm

Eagle Recycling pleaded guilty to conspiring to violate the Clean Water Act and to defraud the United States (18 U.S.C. §§ 371, 1343; 33 U.S.C. §§ 1311(a), 1319(c)(1)(A)) for its role in the creation of a massive, asbestos-contaminated dumpsite that has been designated a Superfund site. This unpermitted dumpsite was located on a farmer's open field, which also contained wetlands, and is adjacent to the Mohawk River.

Eagle Recycling and other co-conspirators engaged in a multi-year scheme to illegally dump 8,100 tons of pulverized construction and demolition debris that was processed at its facility in New Jersey and then transported to a farmer's property in Frankfort, New York.

The defendants concealed the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forged the name of a DEC official on the fraudulent permit. Eagle Recycling admitted that once DEC and the Environmental Protection Agency (EPA) learned of the illegal dumping, the company began a systematic pattern of document concealment, alteration, and destruction including destroying documents during the execution of a federal search warrant, secreting documents responsive to grand jury subpoenas, falsifying certifications submitted to the grand jury, and falsifying and submitting environmental sampling provided to the EPA.

This case was investigated by the New York State Environmental Conservation Police Bureau of Environmental Crimes, the United States Environmental Protection Agency Criminal Investigation Division, the Internal Revenue Service, the New Jersey State Police Office of Business Integrity Unit, the New Jersey Department of Environmental Protection, and the Ohio Department of Environmental Protection.

Back to Top

United States v. Aramais Moloian, No. 2:10-CR-20666 (E.D. Mich.), AUSA Jennifer Blackwell, SAUSA Crissy Pellegrin, with assistance from ECS Senior Counsel Jim Morgulec.

Drums of hazardous waste

On December 16, 2011, Aramais Moloian was sentenced to one day of time served and two months' home confinement, followed by ten months' supervised release to be spent in a residential re-entry center. He also will pay $2,786,062 in restitution to the Environmental Protection Agency for reimbursement of clean-up costs and publish a public apology in a local trade journal.

Moloian, the president and owner of Chem-Serve, a chemical soaps and dyes business, previously pleaded guilty to a RCRA violation (42 U.S.C. § 6928(d)(3)) stemming from the illegal storage and disposal of hazardous waste over an approximately three-year period.

The defendant was the subject of numerous inspections and warnings by the Michigan Department of Environmental Quality (now the Michigan Department of Natural Resources and Environment), from October 2005 through March 2008, when the MDEQ issued a cease and desist order. Numerous inspections revealed that some of the warehouses on the approximately five-acre site were severely dilapidated with caved-in roofs and missing walls. Many of the drums stored at Chem-Serve were rusted and leaking, with some of them were found in a partially-roofless warehouse. Some drums were unlabeled or had unreadable labels, while others were un-sealed and open to the elements. Many of the deteriorating drums were stored three-high in areas of the facility where they had remained for several years.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Natural Resources and Environment.

Back to Top

United States v. Steven Robinson, No. 11-CR-00513 (N.D. Calif.), AUSA Stacey Geis.

On December 15, 2011, Steven Robinson was sentenced to serve 45 days' incarceration followed by one year of supervised release. He also will pay a $2,000 fine. Robinson previously pleaded guilty to one Lacey Act violation (16 U.S.C. §§ 3372 (a)(2)(A), 3383(d)(2)) for illegally importing 52 Clipperton Angelfish in May 2009.

Robinson, a tropical fish dealer, admitted that in late April 2009, he took a four-day voyage to the Clipperton atoll for the purpose of finding and collecting Clipperton Angelfish without a permit. Robinson further admitted that in May 2009, he imported through his company, Cortez Marine International, 52 of the fish, but labeled them as a more common species of angelfish known as *Holacanthus passer* or "Blue passer," which are found in Mexican waters where Robinson was permitted to fish. The defendant further admitted that once the fish were brought into the United States, he deceived federal wildlife authorities for several days by continuing to claim the fish were Blue passer when he knew they actually were Clipperton Angelfish.

The Clipperton Angelfish (*Holacanthus limbaughi*) is a rare species of fish found only in the waters of Clipperton Island, an uninhabited atoll under French authority. Fishing for the Clipperton

Angelfish in the Clipperton atoll requires permission from the French government. Because the fish are so rare, each live fish can command several thousand dollars in U.S. markets and up to $10,000 in Asian markets.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Pelican Refining Co. LLC et al., No. 2:11-CR-00227 (W.D. La.), ECS Senior Trial Attorney Richard Udell, ECS Trial Attorney Christopher Hale, USA Stephanie Finley, and ECS Paralegal Ben Laste.

On December 15, 2011, Pelican Refining Co. (PRC) was sentenced to pay a $10 million fine plus $2 million in community service payments and is further required to implement an environmental compliance plan during a five-year term of probation. The company previously pleaded guilty to two felony Clean Air Act violations and one obstruction charge (42 U.S.C. §§ 7661a(a) and 7413 (c)(1)); 18 U.S.C. § 1519) stemming from its operation of the Pelican Refinery in Lake Charles, Louisiana, from August 2005 to March 2007.

Pelican Refinery

The company operated the refinery without properly functioning pollution prevention equipment, as required by its Title V permit. It admitted that, due to this equipment not working, pollutants including benzene, toluene, ethyl benzene, xylene, and hydrogen sulfide, were illegally released into the atmosphere from the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified and fitted. The obstruction charge stems from false statements made in a 2006 report submitted to the Louisiana Department of Environmental Quality. Two employees, including a company vice president, previously have pleaded guilty to similar violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana State Police, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

United States v. Howell Machine, Inc., No. 3:11-CR-00288 (D. Idaho), AUSA Nancy Cook.

On December 14, 2011, Howell Machine pleaded guilty to, and was sentenced for, a misdemeanor Clean Water Act violation (33 U.S.C. § 1319(c)(1)(A)) stemming from the negligent disposal of wastewater containing hazardous levels of lead from its ammunition refurbishment facility between May and August 2009. The company will pay a $10,000 fine and will complete a two-year term of probation.

In late 2009, the investigators received information that the defendant was discharging hazardous waste into a drain at its shop in Lewiston, Idaho. The rinsing and recycling of brass cartridges for resale generated rinse wastewater containing hazardous levels of lead. Howell subsequently discharged the hazardous rinse wastewater into the local sewer system without a permit.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Robert H. Block, Jr., et al., No. 3:11-CR-00164 (D. Ore.), AUSA Stacie Beckerman and SAUSA Patrick Flanagan.

On December 13, 2011, Robert H. Block, Jr., was sentenced to complete a five-year term of probation, pay a $1,250 fine, and make a $1,250 community service payment to the Oregon Governor's Fund for the Environment.

Block previously pleaded guilty to a misdemeanor violation of the Clean Water Act and an Endangered Species Act violation (33 U.S.C. §§ 1311(a), 1319(c)(l)(A); 16 U.S.C. §§ 1538(a)(1)(G) and 1540(b)(l)) stemming from the diversion of Gales Creek by illegally dumping 100,000 pounds of earthen material into the creek without a permit. This activity significantly modified and degraded the habitat of Upper Willamette River Steelhead trout.

The defendant owns property abutting Gales Creek in Gales Creek, Oregon. In October 2009, he used an excavator to move earthen materials within the creek, diverting the flow of the stream. This activity impacted an area approximately 700 feet long and 50 to 90 feet wide.

Block, together with the help of David Dober, Sr., moved approximately 100,000 pounds of material in and around the creek. The alteration of the stream channel significantly modified and degraded the trout's habitat. Dober remains scheduled for trial to begin on February 7, 2012.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. John L. Yates, No. 2:10-CR-00066 (M.D. Fla.), AUSAs Jeffrey Michelland and Tama Koss Caldarone.

On December 8, 2011, John L. Yates was sentenced to serve 30 days' incarceration followed by three years' supervised release. A fine was not assessed.

Yates previously was convicted by a jury of disposing of evidence to prevent seizure and destroying evidence to impede or obstruct a federal investigation (18 U.S.C. §§ 2232(a), 1519). He was acquitted of a false statement violation (18 U.S.C. § 1001(a)(2)).

In August 2007, National Marine Fisheries Service officers boarded the defendant's fishing boat in the Gulf of Mexico and discovered 72 undersized red grouper on board. The officers instructed Yates to leave the fish onboard the vessel and report back to Cortez, Florida, so that the fish could be confiscated. Yates instructed his crew to throw the fish overboard.

This case was investigated by the National Marine Fisheries Service, the United States Coast Guard, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Paul Mancuso et al., Nos. 5:08-CR-00548 and 00611 (N.D.N.Y.), ECS Trial Attorney Todd Gleason and AUSA Craig Benedict.

On December 7, 2011, Paul and Steven Mancuso were resentenced, after the Second Circuit remanded in June 2011. Paul Mancuso will serve 54 months' incarceration (versus 78 months) followed by three years' supervised release, and he will pay a $20,000 fine. Steven Mancuso was resentenced to serve 41 months' incarceration (versus 44 months), followed by three years' supervised release. The two brothers previously were convicted by a jury of conspiracy to defraud the United

States, to violate the Clean Air Act, to violate CERCLA, and to commit mail fraud along with substantive CAA and CERCLA violations (18 U.S.C. § 371; 42 U.S.C. §§ 7412, 9603) for the illegal removal of asbestos from numerous locations throughout central and upstate New York. Their father, Lester Mancuso, was sentenced to serve 36 months in prison followed by three years' supervised release. Another brother, Ronald Mancuso was sentenced to complete a three-year term of probation.

Paul Mancuso previously was convicted of CAA violations related to illegal asbestos removal and disposal in 2003, and he was convicted in 2004 of insurance fraud also related to his asbestos business. As a result of those prior convictions, he was prohibited from either directly or indirectly engaging in any asbestos abatement activities or associating with anyone who was violating any laws. Evidence from the recent case proved that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities that left a variety of businesses and homes contaminated with asbestos. On multiple occasions Paul also dumped asbestos from his removal jobs on roadsides and in the woods.

In his capacity as an attorney, Steven Mancuso aided his family in its illegal asbestos enterprises by preparing false and fraudulent documents to make it appear that their activities were legitimate and that they were entitled to payment for their work.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Sidney Davis et al., Nos. 4:10-CR-00211, 4:11-CR-00002 and 00083 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe, ECS Trial Attorney Jim Nelson, AUSA Michael Fica, Bank Fraud Coordinator David Newman, and ECS Paralegal Christina Liu.

On December 7, 2011, Sidney Davis was sentenced to serve 30 months' incarceration followed by three years' supervised release. Davis also will be prohibited from hunting, accompanying anyone hunting, or providing any services related to hunting anywhere in the world during the supervised release period. He previously pleaded guilty to a Lacey Act violation and to making a false declaration in a bankruptcy proceeding (16 U.S.C. § 3372(a)(2)(A); 18 U.S.C. § 152(3)).

Davis admitted to guiding or outfitting a mule deer hunt in October 2008 despite not having an outfitters license after he lost it in 1996. This was the result of his being issued approximately 20 citations by state authorities between 1993 (when he was first licensed) and 1996. An agreement was subsequently reached whereby the defendant voluntarily forfeited his license for life in exchange for not facing criminal prosecution on those citations.

After losing his license Davis employed several guides to assist him in performing illegal outfitting and guiding services for his clients. Jeffrey Dickman, who also did not possess a valid outfitters license in Idaho, pleaded guilty to a misdemeanor Lacey Act violation. Peter Balestracci pleaded guilty to a Lacey Act misdemeanor.

Davis further admitted to falsely omitting certain material information from a Chapter 7 bankruptcy filing in October 2005.

This case was investigated by the Idaho Department of Fish and Game and the United States Fish and Wildlife Service, with assistance from the Office of the United States Trustee.

Back to Top

United States v. Scott Allen Beckman et al., No. 2:10-CR-04021 (W.D. Mo.), AUSAs Daniel M. Nelson and Jane Pansing Brown.

On December 2, 2011, Scott Allen Beckman was sentenced to pay a $10,000 fine, and will complete a ten-year term of probation to include five months' home confinement plus 30 days in a half-way house. Beckmann, the mayor of Stover, Missouri, was convicted by a jury of charges related to the falsification of information about the city's water supply that was then submitted to the Missouri Department of Natural Resources (MDNR). Beckmann was found guilty of misprision of a felony and of making a false statement to a federal agent (18 U.S.C. §§ 4, 1001). Richard Sparks, the superintendent of the city's public works department, admitted that he submitted a public water supply record to the MDNR that contained a false sampling location. Sparks was previously sentenced to pay a $5,000 fine and to complete a five-year term of probation, after pleading guilty to making a false statement (18 U.S.C. § 1001).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

Back to Top

United States v. Darigold, Inc., et al., Nos. 2:11-CR-00196 and 00199 (W.D. Wash.), AUSA Jim Oesterle.

On December 1, 2011, Darigold, Inc., was sentenced to pay a $10,000 fine plus a community service payment of $60,000 to be paid to the National Fish and Wildlife Foundation to fund a variety of environmental projects in the Puget Sound area. Darigold also will complete a three-year term of probation, implement an environmental compliance plan, and publish a public apology in the *Isaaquah Herald*, a local weekly newspaper. Former plant engineer Gerald Marsland was sentenced to pay a $2,000 fine, to complete a two-year term of probation, and to perform 70 hours of community service.

Darigold, the nation's fourth largest dairy cooperative, previously pleaded guilty to a misdemeanor violation of the Clean Water Act (33 U.S.C. §§1311(a), 1319 (c)(1)(A)), in connection with the discharge of an ammonia solution in October 2009, from the company's dairy processing plant into the East Fork of Issaquah Creek. The company further pleaded guilty to an Endangered Species Act violation (16 U.S.C. §§1538(a)(1)(G), 1540 (b)(1)) as the release killed a significant number of fish, including several adult Chinook salmon, a threatened species. Marsland previously pleaded guilty to a misdemeanor CWA violation (33 U.S.C. §§ 1311(a), 1319 (c)(1)(A)).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration Office of Law Enforcement, with assistance from the Washington State Department of Ecology and the Washington State Department of Fish and Wildlife.

Back to Top

United States v. Donald Lee Vaughn, No. 1:11-CR-00242 (N.D. Ga.), ECS Trial Attorney Shennie Patel and AUSA Mary Roemer.

Confiscated deer

On November 30, 2011, Donald Lee Vaughn pleaded guilty to, and was sentenced for, a Lacey Act violation (16 U.S.C. §§ 3372 (a)(1), 3373 (d)(2)) for illegally transporting deer from Pennsylvania. Vaughn will pay a $20,000 fine, which will go into the Lacey Act Reward Fund. He also will complete a six-month term of probation.

In March 2009, Vaughn admitted to arranging for two of his employees to transport deer that he had purchased from a dealer in Pennsylvania to his ranch in Georgia. Local wildlife law enforcement stopped the two employees who were transporting six deer (five live and one dead) through North Carolina to Georgia. They were arrested and later pleaded guilty to state misdemeanor charges for unlawfully possessing and transporting white-tailed deer.

Vaughn failed to have the deer tested or certified, as required by federal law, before arranging for their interstate transport outside of Pennsylvania. The State of Georgia prohibits any importation of deer. In July 2010, Vaughn entered into a consent decree with the Georgia Department of Natural Resources, agreeing to pay $31,142 to the United States Department of Agriculture, Animal and Plant Health Inspection Services for reimbursement for the removal and disposal of the entire herd of white-tailed deer from inside his 440-acre complex in Broxton, Georgia.

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Georgia Department of Natural Resources and the North Carolina Wildlife Resources Commission.

Back to Top

United States v. Josimar Ferreira, No. 1:10-CR-10245 (D. Mass.), AUSA Lori Halik and RCEC Peter Kenyon.

On November 30, 2011, Josimar Ferreira was sentenced to pay a $3,000 fine and will complete a two-year term of probation to include four months of home confinement. Ferreira also was ordered to comply with an order issued by the Massachusetts Department of Agricultural Resources in July 2009. The order requires, among other things, that he stop using any and all pesticides until further notice, provide a list of all customers who received pesticide treatments, and employ the services of a certified company to provide decontamination services to all customers who received indoor pest treatment from the defendant.

Ferreira, a Brazilian native, previously pleaded guilty to 16 FIFRA violations and one false statement count (7 U.S.C. §§ 136j(a)(2)(G), 136*1*(b)(2); 18 U.S.C. § 1001) stemming from the illegal indoor application of the insecticide Malathion as a treatment for bedbugs. From 2007 through 2010, Ferreira sprayed the insecticide on surfaces including baby cribs, mattresses, bed frames, baseboards, closets, and furniture.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Massachusetts Department of Agricultural Resources.

Back to Top

United States v. Jesse J. Leboeuf et al., No. 3:11-CR-00043 (D. Alaska), AUSA Yvonne Lamoureux.

Walrus tusks

On November 29, 2011, three individuals were sentenced for conspiracy and felony Lacey Act violations (18 U.S.C. § 371, 16 U.S.C. §§ 3372 (a)(1), 3373 (d)(1)(B)), for illegally selling and transporting walrus ivory and polar bear hides between July 2010 and April 2011. The defendants participated in a scheme that involved the purchase of marine mammal parts in Alaska that were then illegally sold to non-Alaska-Native buyers in Alaska, Colorado, and other states and countries. One of the defendants also was sentenced as a felon in possession of firearms (18 U.S.C. § 922(g)(1)) and the other two were sentenced for illegal possession of machine guns (18 U.S.C. § 922(o)(1)) and possession of unregistered machine guns and silencer (26 U.S.C. § 5841).

Jesse J. Leboeuf, also known as Wayne Gerrard Christian, was sentenced to serve 108 months' incarceration. Loretta A. Sternbach was sentenced to serve 42 months' incarceration. Both defendants also will complete three-year terms of supervised release during which they are prohibited from hunting, any guiding related to wildlife, or conducting any business related to wildlife. Richard B. Weshenfelder was sentenced to complete a three-year term of probation during which he will be subject to the same hunting prohibitions.

Leboeuf, Sternbach, and Weshenfelder conspired to illegally sell and transport walrus tusks and polar bear hides from between July 2010 to April 2011. They then used the money from these sales to purchase items including firearms, ammunition, marijuana, and cigarettes. Between September 2010 and March 2011, the defendants illegally sold and transported to a non-Alaska-native buyer approximately 230 pounds of walrus tusks valued at $22,000 and two polar bear hides for $2,700.

This case was investigated by the United States Fish and Wildlife Service and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Back to Top

United States v. Johnny Carl Grooms, No. 2:10-CR-00087 (E.D. Tenn.), AUSA Neil Smith.

On November 28, 2011, Johnny Carl Grooms was sentenced to serve 292 months' incarceration, followed by eight years' supervised release, for his May 2011 jury convictions of conspiring to distribute oxycodone and cocaine, interstate travel to further drug trafficking, possession of oxycodone with the intent to distribute, distribution of cocaine, possession of firearms by a convicted felon, and illegally trafficking in ginseng (21 U.S.C. §§ 841, 846; 18 U.S.C. §§ 922, 1952; 16 U.S.C. § 3372).

Evidence at trial established that Grooms delivered multiple pounds of wild ginseng to an undercover agent on four occasions between November 2009 and February 2010. In addition to discussing the illegal trafficking in ginseng, Grooms also was observed selling drugs, including oxycodone, hydrocodone, and Xanax, from the counter at his grocery store.

This case was investigated by the United States Fish and Wildlife Service; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Cocke

County Sheriff's Office; the National Park Service; the Tennessee Wildlife Resources Agency; the Tennessee Bureau of Investigation; and the Federal Bureau of Investigation.
Back to Top

United States v. Clinton Promise, No. 9:11-CR-00017 (E.D. Tex.), AUSA Jim Noble (903) 590-1400.

On November 25, 2011, Clinton Promise was sentenced to pay a $3,000 fine and will complete a three-year term of probation to include six months' home detention. Promise previously pleaded guilty to a RCRA disposal violation (42 U.S.C. § 6928 (d)(2)) for unlawfully disposing of hazardous wastes.

In March 2006, Promise was an employee at QualaWash, a truck washing and cleaning business. He was paid by HOT Transport, a chemical transportation company, to illegally dispose of approximately 45,000 pounds of tank wash wastewater, which included methyl ethyl ketone, acetone, and mineral spirits, with hazardous waste characteristics for ignitability and benzene toxicity. QualaWash was not permitted to receive, treat, or dispose of hazardous wastes. QualaWash management had no knowledge of the disposal, but another employee was terminated for allowing Promise to dispose of the wastes at the site.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Environmental Enforcement Task Force.
Back to Top

United States v. Canal Barge Company, Inc., No. 4:07-CR-00012 (W.D. Ky.), ECS Senior Trial Attorney Jennifer Whitfield and AUSA Randy Ream.

On November 23, 2011, Canal Barge Company was sentenced to pay a $150,000 fine, complete a two-year term of probation, and was ordered to provide medical monitoring for crew members and other victims who were exposed to benzene as a result of the offense. The company was additionally required to hire an independent auditor/consultant, approved by the government, to review and recommend changes to ensure compliance with applicable United States Coast Guard laws. Paul Barnes, Jeffery Scarborough, and Randolph Martin each were sentenced to pay a $3,000 fine and to complete a two-year term of probation.

The defendants were convicted by a jury in March 2008 for violating the Ports and Waterways Safety Act (33 U.S.C. § 1232(b)(1)). In November of 2008 the district court vacated the verdict for improper venue. The Sixth Circuit reversed the district court and remanded the case for further proceedings in January of 2011.

The company, Port Captain Barnes, Captain Scarborough, and Pilot Martin were involved in an incident involving benzene that leaked from a barge in June 2005, exposing crew members to benzene fumes, and requiring them to seek medical attention.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Coast Guard.
Back to Top

United States v. Corn Plus, a Minnesota Cooperative, No. 11-CR-00315 (D. Minn.), AUSA David Genrich.

On November 23, 2011, Corn Plus pleaded guilty to, and was sentenced for, a Clean Air Act false statement violation (42 U.S.C. § 7413 (c)(2)(A)). The company was sentenced to pay a $450,000 fine and will complete a three-year term of probation, to include the implementation of an environmental compliance plan and company-wide training program.

Corn Plus, an ethanol producer, utilizes multiple baghouse devices for the removal of particulate matter from its emissions. The CAA permit requires that the company monitor the air pressure readings of its baghouses, to ensure that the equipment is working properly. The company admitted that, on multiple occasions between July 1 and December 31, 2010, baghouse pressure readings were outside the permitted levels, and that false readings were submitted in reports made to authorities between 2009 and 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Minnesota Pollution Control Agency.

Back to Top

United States v. Sea Food Center, LLC, et al., No. 1:11-CR-20564 (S.D. Fla.), AUSA Norman O. Hemming, III.

On November 22, 2011, Adrian Vela was sentenced to serve a three-year term of probation. Sea Food Center, LLC, will pay a $15,000 fine and will complete a one-year term of probation.

The defendants previously pleaded guilty to conspiracy to violate the Lacey Act, a substantive Lacey Act violation, and a misbranding count in violation of the Food, Drug and Cosmetic Act (18 U.S.C. § 371; 16 U.S.C. §§ 3372(d)(2), 3373(d)(3)(A), and 21 U.S.C §§ 331,343(a)(1)), stemming from the sale of mislabeled shrimp.

In 2008 and 2009, Vela and Sea Food Center conspired with Richard Stowell and United Seafood, Inc., to violate the Lacey Act by mislabeling and selling approximately 500,000 pounds of shrimp. Specifically, they oversaw the false labeling of a less marketable substituted seafood product ("Shrimp, Product of Thailand," "Shrimp, Product of Malaysia," and "Shrimp, Product of Indonesia,") which was misbranded and marketed as "Shrimp, Product of Panama," "Shrimp, Product of Ecuador," and "Shrimp, Product of Honduras," all of which are more readily marketable seafood products. The shrimp, valued in excess of $400,000, was ultimately sold to supermarkets in the northeastern United States. Stowell and United Seafood previously pleaded guilty and have been sentenced for their role in the conspiracy.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Florida Department of Agriculture and Consumer Services.

Back to Top

United States v. Richard H. Yates, No. 1:11-CR-00009 (D. Alaska), AUSA Jack Schmidt.

On November 11, 2011, Richard H. Yates was sentenced to pay a $2,500 fine, complete a two-year term of probation, and is prohibited from hunting, possessing, and/or transporting marine mammals during his period of probation. Yates previously pleaded guilty to a violation of the Marine Mammal Protection Act (MMPA) for illegally selling otter skins to an undercover agent.

Yates, an Alaska Native, admitted that in March 2011, he agreed to sell to an undercover agent, a non-Alaska Native, raw and tanned sea otter pelts for $1,350. Under the MMPA, Alaska Natives may take sea otters and sell their pelts to non-Alaska Natives only if they are made into a Native handicraft

which substantially alters the pelt. After this sale, the defendant agreed to sell to the agent an additional 28 sea otter skins for $5,600, and ultimately provided him with eight additional tanned pelts. In an attempt to circumvent the MMPA requirements, the defendant loosely sewed the skins together and told the undercover agent that the stitching could be easily removed to separate them. Yates also made additional arrangements to sell 20 more at a later date. These additional pelts later were seized.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Michael Jochem et al., Nos. 3:11-CR-00026, 3:10-CR-00033 (S.D. Ind.) AUSA A. Brant Cook.

On October 27, 2011, Michael Jochem, David Rudolph, and John Rudolph were sentenced after previously pleading guilty to FIFRA violations (7 U.S.C. § 136) for their illegal use of carbofuran, an acutely toxic pesticide. Each defendant will pay a $5,000 fine, and Jochem also was sentenced to serve a six-month term of probation.

Investigators determined that Jochem, a licensed pesticide applicator, had illegally provided some of the concentrated pesticide to Paul Ficker, who then used it in June 2008, to kill wildlife that were interfering with his corn crop. Ficker subsequently gave the pesticide to the Rudolph brothers, who used it to kill animals on their property. Ficker was previously sentenced to pay a $10,000 fine and will complete a two-year term of probation after pleading guilty to FIFRA and false statement violations (18 U.S.C. § 1001, 7 U.S.C. § 136.)

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, and the Indiana Department of Natural Resources

Back to Top

Other Litigation Events

United States v. BP Exploration (Alaska), Inc., No. 3:07-CR-00125 (D. Alaska), ECS Senior Trial Attorney Ron Sutcliffe and AUSA Aunnie Steward.

On December 27, 2011, the court ruled, following a probation revocation hearing, that British Petroleum Exploration (Alaska), Inc. (BPXA), had not been negligent as a result of a 2009 pipeline rupture, which occurred during the time the company was serving a term of probation for a 2006 spill. This new spill involved an 18-inch pipe that became plugged with ice, creating enough pressure to cause an explosion and a three-foot long hole in the pipeline. Approximately 46,000 gallons of an oily water mixture discharged through the hole, 13,000 gallons of which were crude oil.

The court agreed with the company that workers were following normal procedures and, therefore, that they were not negligent. The court, however, rejected the company's argument that a wetland impacted by the spill was not a water of the United States. As a result of the court's ruling this week, BPXA was released from the term of probation.

The company was sentenced in November 2007 to pay $20 million in fines, restitution and community service, after previously pleading guilty to a Clean Water Act violation for leaks of crude oil from a pipeline onto the tundra as well as into a frozen lake in Alaska.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

February 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

~~~NOTICE~~~

THE 2012 DOJ ENVIRONMENTAL CRIMES SEMINAR WILL BE HELD AT THE NATIONAL ADVOCACY CENTER IN COLUMBIA, SOUTH CAROLINA, MAY 7 – 11, 2012. FOR MORE INFORMATION, DOJ EMPLOYEES MAY LOG INTO THE JUST LEARN SYSTEM http://justlearn.doj.gov/kc/login/login.asp?kc_ident=kc0001. NOMINATION REQUESTS MUST BE RECEIVED NO LATER THAN FEBRUARY 27TH .

NON DOJ EMPLOYEES MAY CONTACT ELIZABETH JANES ([redacted]) FOR MORE DETAILS.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Target Ship Management Pte. Ltd., et al.	*Vessel/* APPS, Obstruction, False Statement
N.D. Calif.	United States v. Nancy Black [redacted]	*Whale Expert/* MMPA, Obstruction, False Statement [redacted]
S.D. Fla.	United States v. Glenn Bridges et al. United States v. Americas Marine Management Services, Inc., d/b/a Antillean Marine United States v. Daniel Parker United States v. Scott Greager et al.	*Wildlife and Seafood Imports/* Lacey Act, ESA, False Statement, Conspiracy *Vessel/* APPS, Nonindigenous Aquatic Nuisance Prevention and Control Act *Municipal Contractor/* CWA *Spiny Lobster Harvest/* Conspiracy, Lacey Act
D. Hawaii	United States v. Keoje Marine Co. Ltd. et al.	*Vessel/* CWA, APPS, Obstruction
N.D. Ill.	United States v. Atlas Fibre Company	*Ivory Exports/* ESA
W.D. La.	United States v. City of Pineville	*Municipality/* CWA
D. Md.	United States v. Efploia Shipping Co. S.A. et al	*Vessel/* APPS, Obstruction, False Statement
[redacted]	[redacted]	[redacted]

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D.N.H.	United States v. Franklin Non-Ferrous Foundry et al.	*Metal Foundry/* RCRA
D.N.J.	United States v. James Robert Durr	*Turtle Habitat Degradation/* ESA
E.D.N.Y.	United States v. Chee Thye Chaw	*Asian Arowana Imports/* Smuggling
N.D.N.Y.	United States v. Leonard J. Pugh, Jr.	*Asbestos Removal/* CAA
W.D.N.Y.	United States v. Anastasios Kolokouris United States v. Michael V. Johnson	*Asbestos Removal/* CAA *Turtle Meat Facility/* Lacey Act
S.D. Ohio	United States v. Bruce Haffner United States v. Kinder Caviar, et al.	*Bird Hunts/* Lacey Act *Paddlefish Harvesting/* Lacey Act
W.D. Ok.	United States v. Tuhtaka Neshoba Wilson et al.	*Eagle Parts Sale/* MBTA, Conspiracy, Lacey Act, BGEPA
E.D. Penn.	United States v. Nupro Industries Corporation et al.	*Oil Manufacturer/* CWA
[redacted]	[redacted]	[redacted]
D. Utah	United States v. Bugman Pest and Lawn Inc., et al.	*Pesticide Deaths/* FIFRA
E.D. Va.	United States v. Richard Ertel	*Sperm Whale Teeth Imports/* Lacey Act
D. Vt.	United States v. Jon Goodrich et al.	*Tear Gas Manufacturer/* RCRA
W.D. Wash.	United States v. Timothy Barger	*Developer/* False Statement

Additional Quick Links:

Trials

[redacted]

Back to Top

Informations and Indictments

United States Nupro Industries Corporation et al., No. 2:12-CR-00011 (E.D. Penn.), AUSA Sarah L. Grieb.

On January 12, 2012, Nupro Industries Corporation (Nupro), d/b/a Neatsfoot Oil Refineries Corp. and Advance Technologies, and operations director Peter Shtompil, were charged with tampering with a monitoring method under the Clean Water Act (33 U.S.C. § 1391(c)(4)).

Nupro manufactures oils (at its Neatsfoot plant) and esters (at the Advance Technologies facility). Both processes generate wastewater that is classified as a hazardous waste and is required to be sampled and treated before being discharged to the Philadelphia POTW. The information alleges that, from November 2006 to June 2007, Nupro and Shtompil watered down samples taken of the wastewater before it was discharged into the Philadelphia sewer system.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Glenn Bridges et al., No. 2:12-CR-14002 (S.D. Fla.), AUSA Norman O. Hemming, III.

On January 5, 2012, Glenn Bridges, Gregory Johnson, and Sharon Vollmer were charged in a ten-count indictment with conspiracy, Lacey Act, and ESA violations (18 U.S.C. § 371; 16 U.S.C. §§ 1538, 3372). Bridges also is charged with a false statement violation (18 U.S.C. § 1001).

In November 2011, the defendants allegedly attempted to import spiny lobster and queen conch, along with Hawksbill, Loggerhead, and Green sea turtle shells into Port St. Lucie, Florida, that had been taken in violation of Bahamian laws and regulations. Specifically, the three attempted to conceal 155 spiny lobster tails, seven sea turtle shells, and 34 conchs hidden in various compartments on their sportfishing vessel. When questioned, Bridges told a Coast Guard officer that he only had a few fish on board the boat.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Coast Guard, Customs and Border Protection, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Nancy Black, No. 5:12-CR-00002 (N.D. Calif.), ECS Trial Attorney Christopher Hale and AUSA Jeffrey Schenk.

On January 4, 2012, marine biologist Nancy Black was charged in a four-count indictment with violations of the Marine Mammal Protection Act, making a false statement, and obstruction of justice (16 U.S.C. § 1372; 18 U.S.C. §§ 1001, 1519), all stemming from her illegal activities involving killer whales in 2004 and 2005.

The indictment includes two allegations that she fed whales in the Monterey Bay National Marine Sanctuary, in violation of NOAA regulations. The defendant is further accused of providing an altered video and of making false statements to a sanctuary officer related to a whale watching expedition involving possible illegal contact with a humpback whale in the bay. Black has been

featured on programs such as Animal Planet and National Geographic for her expertise on killer whales and other species.

This case was investigated by the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Anastasios Kolokouris, No. 6:12-CR-06015 (W.D.N.Y.), AUSA Craig Gestring.

Warehouse location

On January 2, 2012, warehouse owner Anastasios Kolokouris, was charged in a two-count indictment with violating the Clean Air Act asbestos work practice standards (42 U.S.C. § 7412).

Acting on a complaint in December 2011, a state inspector visited the defendant's warehouse and observed people working in a large dumpster next to a loading dock, with significant quantities of what appeared to be asbestos-containing material in and around the dumpster. Further investigation resulted in the seizure of more than 90 bags of dry, friable asbestos from inside the warehouse. Kolokouris is alleged to have hired several civilian workers without any asbestos training or experience to clean out the dumpster and load it into bags.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the New York State Department of Environmental Conservation Bureau of Environmental Crimes Investigations; the New York State Department of Labor, Asbestos Control Bureau; and the City of Rochester, Office of Public Integrity.

Back to Top

United States v. Target Ship Management Pte. Ltd., et al., No. 1:11-CR-00368 (S.D. Ala.), ECS Trial Attorney David O'Connell, AUSA Mike Anderson, and ECS Paralegal Jessica Egler.

On December 28, 2011, a seven-count indictment was returned charging Target Ship Management (Operator), Prastana Taohim (Master), Payongyut Vongvichiankul (Chief Engineer), and Pakpoom Hanprap (Second Engineer) for the *M/V Gaurav Prem*, with obstructing an agency proceeding, obstruction and concealment of evidence, maintaining false oil record and garbage books, making false statements, and tampering with witnesses (18 U.S.C. §§ 1001, 1505, 1519, 1512; 33 U.S.C. § 1908).

In July and August of 2011, senior engineers allegedly ordered crewmembers on several occasions to illegally pump oil-contaminated bilge waste directly into the ocean using a bypass connection. Additionally, the ship's master allegedly ordered the crew to discharge plastic overboard. The defendants are further charged with falsifying documents for the purpose of concealing these discharges from port inspectors.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Plea Agreements

United States v. Bruce Haffner, No. 1:11-CR-00176 (S.D. Ohio), ECS Trial Attorney Jim Nelson, AUSA Laura Clemmens, and ECS Paralegal Rachel Van Wert.

On January 25, 2012, Bruce Haffner pleaded guilty to Lacey Act trafficking violations (16 U.S.C. § 3372), stemming from illegal hunts of Canadian geese and Mourning Doves.

Haffner is the owner and operator of Face to Face Outdoors Guide Service. He provided guide services for Canada goose hunts in January 2010, and Mourning Dove hunts in September 2010. During those hunts, Haffner admitted to encouraging the hunters to take more than their daily bag limits of both geese and doves.

This case was investigated by the United States Fish and Wildlife Service and the Ohio Department of Natural Resources, Division of Wildlife.

Back to Top

United States v. Michael V. Johnson, No. 1:12-mj -01034 (W.D.N.Y.), AUSA Aaron Mango.

On January 24, 2012, Michael V. Johnson pleaded guilty to a misdemeanor Lacey Act trafficking violation (16 U.S.C. §3372) for the purchase of the Common Snapping Turtle, a protected species.

In 2007 and 2008, Johnson operated a business known as Turtle Deluxe, Inc., a turtle meat processing facility located in Millington, Maryland. As part of the operation, he purchased live turtles from people located in various states. On two occasions in 2007 and 2008, the defendant bought turtles from undercover law enforcement officers and resold the meat, with a market value of approximately $8,400.

As part of the plea, the defendant already has made donations to the following organizations to support their turtle research and education efforts: $7,500 to the Buffalo Zoo, $7,500 to Teatown Lake Reservation, and $5,000 to the Tifft Nature Preserve (Buffalo Museum of Science). Sentencing is scheduled for May 12, 2012.

This case was investigated by the United States Fish and Wildlife Service and the New York State Department of Environmental Conservation.

Back to Top

United States v. Steve T. Kinder, et al., No. 1:11-CR-00035 (S.D. Ohio), ECS Trial Attorney Jim Nelson, AUSA Laura Clemmens, and ECS Paralegal Rachel Van Wert.

On January 17, 2011, Steve T. Kinder, Cornelia J. Kinder, Kinder Caviar, Inc., and Black Star Caviar Company, pleaded guilty to trafficking in and falsely labeling illegally harvested paddlefish. The two companies pleaded guilty to one felony Lacey Act false labeling violation (16 U.S.C. § 3372(d)(1)), and Steve Kinder and Cornelia Joyce Kinder pleaded guilty to one misdemeanor Lacey Act trafficking violation (16 U.S.C. § 3372(a)(2)(A)).

Paddlefish eggs, which are marketed as caviar, are protected by both federal and Ohio law. It is illegal to harvest paddlefish in Ohio waters, but

Agents with paddlefish

they can be harvested legally in Kentucky waters. Kinder and his wife owned and operated Kinder Caviar, Inc. At some point in April 2010, the Kinders formed the Black Star Caviar Company after they became aware of the investigation against them. They then ceased to do business through Kinder Caviar. Steve Kinder illegally harvested paddlefish from Ohio waters and falsely reported to the Kentucky Department of Fish and Wildlife Resources that he caught the fish in Kentucky. Cornelia Kinder provided false information about the paddlefish eggs to federal agents (including the amount of eggs to be exported, the names of the fishermen who harvested the paddlefish, and the location where the paddlefish were harvested) in order to obtain permits to export the eggs to foreign customers. These violations occurred between March 2006 and December 2010.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement, the Ohio Department of Natural Resources Division of Wildlife, and the Kentucky Department of Fish and Wildlife Resources.

Back to Top

United States v. Jon Goodrich, et al., No. 5:10-CR-00147 (D. Vt.), AUSA Joseph Perrella.

On January 10, 2012, Jon Goodrich, president of Mace Security International, Inc. (Mace), a pepper spray and tear gas manufacturer, pleaded guilty to a RCRA storage violation (42 U.S.C.§ 6928). The company previously entered a similar plea and was sentenced to pay a $100,000 fine.

The violations stem from an emergency removal action in January 2008 of several thousand pounds of hazardous waste that had been stored on the premises for approximately a decade. More than 80 drums of unlabeled chemicals were found in factory mill buildings without any signs indicating the storage of hazardous waste. In the buildings, inspectors ultimately identified more than 2,200 pounds of hazardous waste, which included spent solvents, 2-chlorobenzalmalononitrile or chloroacetophenone, and oleoresin capsicum.

This case was investigated by the United States Environment Protection Agency Criminal Investigation Division.

Back to Top

United States v. Franklin Non-Ferrous Foundry et al., No. 1:10-CR-00112 (D.N.H.), AUSA Mark Zuckerman.

On January 6, 2012, metal parts manufacturer Franklin Non-Ferrous Foundry and company president John Wiehl pleaded guilty to a RCRA storage violation (42 U.S.C.§ 6928).

The company manufactures metal parts for various industrial applications. A byproduct of the foundry's operation is the generation of waste containing hazardous or toxic concentrations of lead and cadmium. In April and August 2009, two OSHA workplace inspections revealed that the company was illegally storing hazardous waste. Investigators determined that the company had been illegally storing hazardous waste since July 2005.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Occupational Safety and Health Administration.

Back to Top

United States v. Timothy Barger, No. 3:11-CR-05567 (W.D. Wash.), AUSAs Jim Oesterle and Matthew Diggs.

On January 4, 2012, Timothy Barger pleaded guilty to a false statement violation (18 U.S.C. § 1001) stemming from his submittal of false discharge monitoring reports (DMRs) and other required documents associated with stormwater discharges.

As the designated site monitor for a developer, Barger was responsible for erosion control and storm water discharge issues on site, and the paperwork required to track them. Between 2007 and 2011, Barger falsified data recorded on monthly DMRs. He also falsely claimed that the site was in compliance with its general permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. James Robert Durr, No. 1:10-CR-00098 (D.N.J.), ECS Assistant Chief Elinor Colbourn, ECS Trial Attorney Mary Dee Carraway, and ECS Paralegal Rachel Van Wert.

Bog turtle

On January 3, 2012, James Robert Durr pleaded guilty to an Endangered Species Act violation (16 U.S.C. § 1538) stemming from his clear cutting trees near a stream, which impacted the habitat of the bog turtle, a threatened species.

Durr purchased property in December 2005 that he knew contained habitat for a significant population of the bog turtle. Immediately upon taking possession of the property, the defendant clear-cut the buffer zone around the stream and ditched it just upstream of, and including part of, the bog turtle habitat. Subsequent surveys for bog turtles revealed that there is no longer a viable population in this habitat. Sentencing is scheduled for April 9, 2012.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

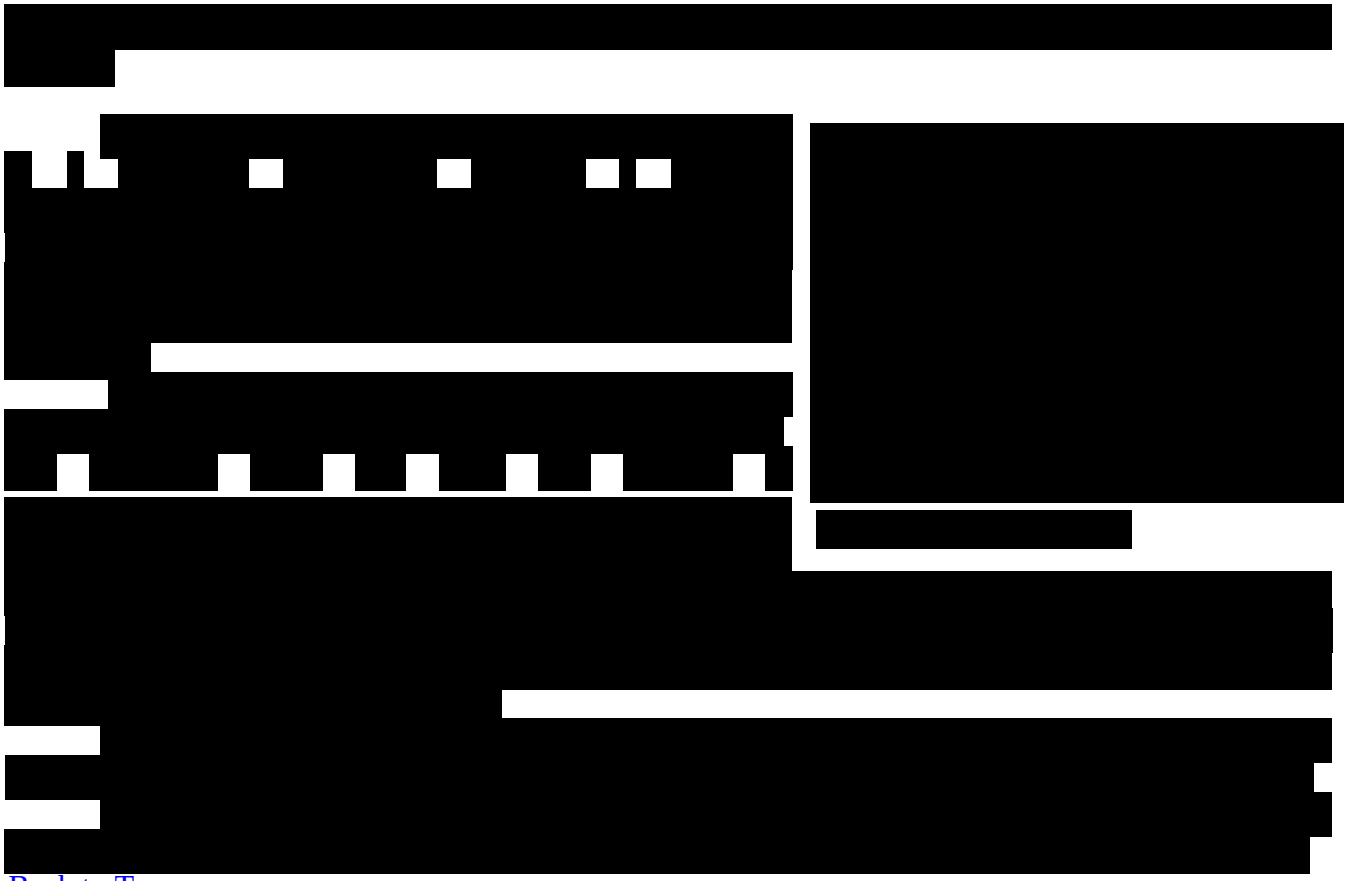
United States v. Tuhtaka Neshoba Wilson et al., Nos. 5:11-CR-00166 - 00168 (W.D. Okla.), AUSA Robert Gifford.

On December 2, 2011, Tuhtaka Neshoba Wilson was sentenced to complete a five-year term of probation, to included 60 days' home confinement, after previously pleading guilty to a Migratory Bird Treaty Act violation. Wilson, along with co-defendants William Creepingbear, Michael J. Yount, and Brandon Roberts, were variously charged with conspiring to transport and sell a bald eagle carcass and feathers, in violation of the Bald and Golden Eagle Protection Act, the Lacey Act, and the MBTA (18 U.S.C. § 371; 16 U.S.C. §§ 3372; 703; 707). Creepingbear pleaded guilty to conspiracy, Lacey Act, and MBTA violations and will complete a four-year term of probation plus perform 104 hours of community service. Yount pleaded guilty to a MBTA violation and will complete a five-year term of probation plus perform 104 hours' community service. Roberts was acquitted at trial.

Wilson admitted to stealing a bald eagle carcass in June 2008 from his sister and brother-in-law and then selling it to Creepingbear for $300. Yount took possession of some of the feathers and transported them for sale.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top



Back to Top

Sentencings

United States v. Efploia Shipping Co. S.A. et al., Nos. 11-CR-00651, 00652, 00671 (D. Md.), ECS Senior Trial Attorney Richard Udell and ECS Trial Attorney David O' Connell.

On January 25, 2012, Efploia Shipping Co. S.A., and Aquarosa Shipping A/S pleaded guilty to APPS, obstruction, and false statement violations (18 U.S.C. §§ 1001(a), 1505; 33 U.S.C. § 1908(a)), stemming from the illegal dumping of sludge, plastics, and oily waste water from the *M/VAquarosa*, a bulk carrier cargo ship. The companies each were sentenced to pay a total of $1.2 million. Of that amount, each defendant was ordered to pay $275,000 in community service payments to the National Fish and Wildlife Foundation for a total of $550,000 earmarked for projects involving the Chesapeake Bay. They also will complete three-year terms of probation and implement environmental compliance plans.

In February 2011, the vessel arrived in Baltimore, Maryland, and was slated for inspection after a voyage from Europe. During the inspection, an engineer informed Coast Guard personnel that senior engineers had directed the crew to discharge waste oil overboard through bypass equipment. The crew member also alleged that plastic bags filled with oily rags had been deliberately thrown

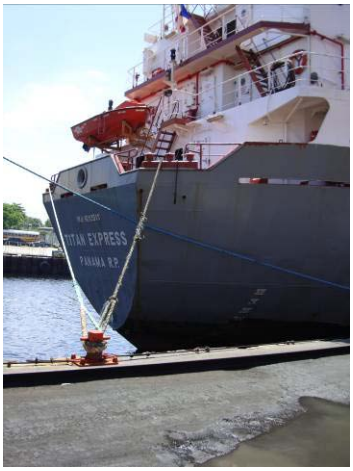
overboard. This crew member turned over 300 pictures to the Coast Guard that he had taken with his cell phone depicting the pipe that was used to discharge sludge and oily waste overboard.

The ship's chief engineer, Andreas Konstantinidis, currently is serving a three-month term of incarceration after pleading guilty to obstruction violations.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Americas Marine Management Services, Inc., d/b/a Antillean Marine, No. 1:11-CR-20348 (S.D. Fla.), AUSA Jaime Raich.



Titan Express

On January 20, 2012, Americas Marine Management Services, Inc. (AMMS), a cargo ship vessel operator d/b/a Antillean Marine, was sentenced to pay a $1,000,000 fine. As recommended by the parties, the court suspended $500,000 of the fine and ordered that it be paid as community service into the South Florida National Parks Trust. The company also will complete a five-year term of probation to include the implementation of an environmental compliance plan covering all eight vessels in the fleet.

AMMS previously pleaded guilty to an APPS oil record book violation (33 U.S.C. § 1908(a)) and one count of failing to submit reports to the National Ballast Information Clearinghouse (NBIC), the latter in violation of the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4711(g)(2)).

AMMS operated the *Titan Express* from a terminal on the Miami River. During an inspection in August 2010, the Coast Guard found evidence of illegal overboard discharges and false records in the oil record book. The company also failed to submit reports to the NBIC in advance of the ship's arrival to the Port of Miami.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Daniel Parker, No. 11-CR-60226 (S.D. Fla.), AUSA Jose Bonau.

On January 20, 2012, Daniel Parker was sentenced to serve 15 months' incarceration, followed by a one-year term of supervised release. A fine was not assessed. He previously pleaded guilty to a Clean Water Act violation (33 U.S.C. §§ 1317(d), 1319(c)(2)(A)) for discharging wastewater into a POTW at an unlawful location.

Defendant emptying septic tank

Parker was employed by a Broward County septic hauling and plumbing contractor from late 2008 through October 2009 as the company's primary septic hauling truck driver. The defendant regularly pumped commercial grease traps and septic tanks, and residential septic tanks for customers.

The company was licensed to discharge the septic hauling truck's contents at the Broward County Water and Wastewater Services facility in Pompano Beach, which was the only lawful

discharge point in Broward County. Parker was also working side jobs of which the company was unaware. To ensure that his primary employer did not know about these other jobs, Parker dumped those loads directly into the City of Ft. Lauderdale's sewer system. In September 2009, a detective conducting surveillance of the defendant's activities witnessed Parker pumping out the contents of a septic truck into the sewer.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the City of Ft. Lauderdale Police Department, the Broward County Sheriff's Office, and the State of Florida Department of Environmental Protection.

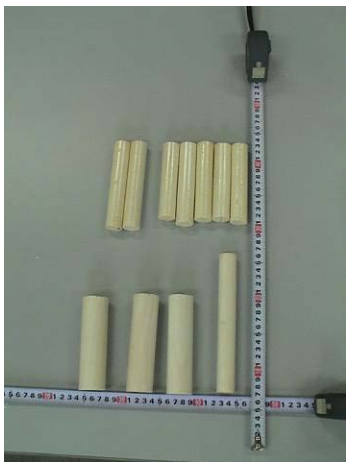
Back to Top

[redacted]

United States v. Atlas Fibre Company, No. 1:11-CR-00897 (N.D. Ill.), AUSA Tim Chapman.

On January 10, 2012, Atlas Fibre Company (AFC) pleaded guilty to and was sentenced for violating the Endangered Species Act (16 U.S.C. §§ 15389(c)(1); 1540(b)(1)) by unlawfully exporting wildlife products, including African elephant ivory, between 2002 and 2009. The company was ordered to pay a $150,000 fine to be paid into the Lacey Act Reward Fund and will complete a one-year term of probation. AFC also will pay $13,700 in restitution to the Fish and Wildlife Service for investigative costs.

AFC, which primarily manufactures and distributes fiber, plastic, and other materials for industrial applications, had a division called Atlas Billiard Supplies that sold parts involved in fabricating billiard cue sticks. Several billiard products were made from wildlife, including African elephant ivory, shell products, and leathers made from the hides of elephants, monitor lizards, kangaroo, ostrich and shark.



Billiard parts

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Leonard J. Pugh, Jr., No. 5:11-CR-00379 (N.D.N.Y.), AUSA Craig Benedict.

On January 10, 2012, Leonard Pugh was sentenced to pay a $5,000 fine and will complete a one-year term of probation after pleading guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from the illegal removal of asbestos.

Pugh is an owner of a business that was located in a building containing approximately 6,000 square feet of asbestos. Pugh admitted to hiring an unlicensed individual in 2006 to demolish the building and he did not provide notice to the EPA of the demolition activity. Pugh further failed to ensure that the asbestos was kept wet during the removal nor did he ensure that it was properly disposed of in an authorized landfill.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation, with assistance from the New York State Department of Labor.

Back to Top

United States v. Keoje Marine Co. Ltd. et al., No. 11-CR-01258 (D. Hawaii), ECS Trial Attorney Ken Nelson, AUSA Marshall Silverberg, and ECS Paralegal Jessica Egler.

On January 10, 2012, Keoje Marine Co. Ltd., chief engineer Bong Seob Bag, and first assistant engineer Dwintoro, pleaded guilty to and were sentenced for violations stemming from the unlawful discharges of oil from the *M/T Keoje Tiger* in October 2011. The company was sentenced to pay a $900,000 fine plus make a $250,000 community service payment to be paid to the National Fish and Wildlife Foundation. It also will implement an environmental compliance plan during a three-year term of probation.

Keoje Marine owned and operated a vessel that served as a floating gas station for fishing vessels in the South Pacific. It pleaded guilty to one Clean Water Act violation for discharging oil into the Exclusive Economic Zone near the big island of Hawaii. The company further pleaded guilty to one APPS oil record book (ORB) charge and to obstruction of justice for using the falsified ORB during a Coast Guard inspection (18 U.S.C. § 1519; 33 U.S.C. §§ 1319(c)(2)(A); 1321(b)(3);1908(a)).

Bag and Dwintoro pleaded guilty to APPS violations for covering up the illegal discharges. They each will complete a three-year term of probation.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Richard Ertel, No. 3:11-CR-00227 (E.D. Va.), ECS Trial Attorney Gary Donner and AUSA Dave Maguire.

Sperm whale teeth

On January 9, 2012, Richard Ertel was sentenced to serve one month of incarceration followed by two years' supervised release. He also will pay a $40,000 fine. Ertel pleaded guilty to a two-count information charging him with violating the Lacey Act (16 U.S.C. § 3372) for the illegal importation and trafficking of sperm whale teeth.

From April 2002 to June 2007, Ertel was in the business of buying and selling sperm whale teeth that he purchased from sources in the Ukraine and then sold to customers in Virginia and elsewhere in the United States. Much of this business was conducted via the Internet.

This case was investigated by the National Oceanic and Atmospheric Administration and the United States Customs and Border Protection.

Back to Top

United States v. Bugman Pest and Lawn, Inc., et al., Nos. 2:11-CR-00017 and 00295 (D. Utah), AUSA Jared Bennett.

On January 6, 2012, Bugman Pest and Lawn, Inc. and employee Coleman Nocks were each sentenced to complete three-year terms of probation. The company also will pay a $3,000 fine and Nocks will perform 100 hours of community service. The defendants previously pleaded guilty to a single FIFRA violation (7 U.S.C. §§ 136*l*(b)(1)(B), 136j(a)(2)(G)). Coleman admitted to misapplying the pesticide Fumitoxin in August 2009 at a residence in which two young children subsequently died and four other family members became ill. Employee Raymond Wilson, Jr., and the company remain scheduled for trial to begin on May 15, 2012, on five FIFRA violations for the misapplication of Fumitoxin in four additional homes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Layton City Police Department.

Back to Top

United States v. City of Pineville, No. 1:11-CR-00265 (W.D. La.), AUSA Joseph Jarzabek.

On January 4, 2012, the City of Pineville was sentenced to pay a $15,000 fine and will complete a one-year term of unsupervised probation. The city previously pleaded guilty to a misdemeanor Clean Water violation (33 U.S.C. § 1311(a)) stemming from an illegal discharge from a pumping station in September 2008.

Following heavy rainfall from Hurricane Gustav, the City of Pineville's Huffman Creek Pumping Station illegally discharged hydraulic fluid over the levee and into Bayou Maria, which ultimately empties into the Red River. Investigation confirmed that the source of the discharge was equipment at the pumping station, which city personnel knew to be in disrepair.

This case was investigated by the Louisiana Environmental Crimes Task Force, which is comprised of the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police.

Back to Top

United States v. Scott A. Greager et al., No. 4:11-CR-10012 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

Defendants removing illegal casitas

On January 3, 2012, Scott A. Greager was sentenced to serve 90 days' incarceration, followed by one year of home detention as a condition of two years' supervised release. Greager previously pleaded guilty to a Lacey Act conspiracy violation (18 U.S.C. § 371, 16 USC § 3372) for his involvement in the sale and transport of spiny lobster in violation of harvest requirements, licensing provisions, and bag and trip limits.

From May 2007 through March 2009, Greager was the owner of Holiday Seafood Key West (Holiday Seafood). Using a Florida Wholesale Dealer's License issued in the name of Conch Republic Seafood Company, Greager knowingly made numerous purchases of spiny lobster in excess of the legal daily limit of 250. Greager also admitted that he made payments from an account in the name of Holiday Seafood to co-conspirators for lobster they harvested, and he attempted to conceal the illegal activity from the state officials by issuing trip tickets in the name of another individual. On seven separate occasions in August 2008, Greager purchased a total of more than 5,000 pounds of lobster with a wholesale value of almost $40,000. Wholesale dealers, such as Greager and Holiday Seafood, are prohibited from purchasing lobster without first confirming that the seller possessed all required licenses and documentation.

Co-defendants Rush C. Maltz and Titus A. Werner also have pleaded guilty for their roles in this Lacey Act conspiracy. As part of their plea agreements, they are required to remove hundreds of artificial habitats known as "casitas" (that are used to harvest the lobster) from the Florida Keys National Marine Sanctuary. Maltz and Werner are scheduled to be sentenced on March 27, 2012.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement.

Back to Top

United States v. Chee Thye Chaw, No. 10-CR-00039 (E.D.N.Y.), AUSA Vamshi Reddy.

On December 14, 2011, Chee Thye Chaw was sentenced to serve one year and a day incarceration followed by two years' supervised release for smuggling Asian Arowana fish. A fine was not assessed.

Chaw previously pleaded guilty to smuggling (18 U.S.C. § 545) 20 Asian Arowana fish into the United States from Asia. The black market value of these fish is estimated to be over $100,000. The Asian Bonytongue fish, which is commonly referred to as the Asian Arowana fish, are highly desired by the Asian community due to the belief that the fish will bring good fortune to the owner. The species is listed in CITES Appendix I.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

March 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

In Memory of Raymond W. Mushal:

On Thursday, March 8, 2012, our friend, colleague, and mentor, Ray Mushal died after a long battle with cancer. Ray's influence on the Environmental Crimes Program and environmental crimes prosecutors cannot be overstated. His insight, breadth of knowledge, and wisdom were overshadowed only by his kindness.

We will miss him dearly.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Alexander Alvarez	*Feather Sales*/MBTA
D. Alaska	United States v. Arne Fuglvog	*Fisheries/* Lacey Act
C.D. Calif.	United States v. Peter X. Lam et al. United States v. Chau-Shing Lin et al.	*Mislabeled Seafood*/Lacey Act; Food, Drug, and Cosmetic Act
N.D. Calif.	United States v. Horizon Lines LLC	*Vessel/* False Statement
D. Kan.	United States v. Hugh A. Barker	*Demolition Project/* CAA
E.D. Ky.	United States v. Danny Gayheart	*Hawk Capture/* MBTA
E.D. La.	United States Edward Hannan et al. United States v. Blake Mitchell United States v. Oakmont Environmental, Inc., et al. United States v. Stolthaven New Orleans, LLC	*Wastewater Facility/* CWA *Illegal Fish Transport/* Lacey Act *Waste Oil Facility/* CWA *Liquid Storage Terminal/* CWA misdemeanor
M.D. La.	United States v. Gregory K. Dupont	*Alligator Hunting*/ Lacey Act
[redacted]	[redacted]	[redacted]
D. Maine	United States v. Stephen Voisine	*Bald Eagle Killing/* BGEPA, Firearm Possession

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
E.D. Mich.	United States v. Daniel Clements et al.	*Renovation Project/* CAA
[redacted]	[redacted]	[redacted]
W.D. Mo.	United States v. William M. Threatt, Jr., et al.	*Renovation Project/* CAA
E.D.N.C.	United States v. Freedman Farms, Inc., et al.	*CAFO/* CWA
N.D.N.Y.	United States v. Julius DeSimone et al.	*Superfund Dumpsite/* Conspiracy, CWA
W.D.N.Y.	United States v. Kenneth Horan	*Asbestos Abatement/* CAA
S.D. N.Y.	United States v. Jai Ping Cheng et al.	*Mislabeled Pesticides/* FIFRA
S.D. Ohio	United States v. Scotts Miracle-Gro	*Mislabeled Pesticides/* FIFRA
D. Ore.	United States v. Clifford R. Tracy	*Gold Mining/* Unlawful Mining Operation
[redacted]	[redacted]	[redacted]
E.D. Tenn.	United States v. Watkins Street Project, LLC et al. United States v. Lawrence C. Parawan, Jr.	*Demolition Project/* Conspiracy, CAA, Obstruction, False Statements *Pesticide Use/*MBTA, FIFRA
S.D. Tex.	United States Clifton Lynn Everts	*Alligator Killing/* Lacey Act
W.D. Wash.	United States v. Patrick Dooley	*Chemical Disposal/* CWA, Witness Tampering

Additional Quick Links:

Trials

United States v. Watkins Street Project, LLC, et al., No. 1:09-CR-00144 (E.D. Tenn.), ECS Trial Attorney Todd Gleason, AUSA Matthew Morris, and ECS Paralegal Kathryn Loomis.

Asbestos-covered demo debris

On January 30, 2012, three men and a demolition company were convicted by a jury of charges related to the illegal demolition of a Chattanooga factory that contained large amounts of asbestos. David Wood, Donald Fillers, James Mathis, and Watkins Street Project LLC, a salvaging business, all were convicted of conspiracy, Clean Air Act, obstruction, and false statement offenses (18 U.S.C. §§ 371, 1001, 1519; 42 U.S.C. § 7413(c)). James Mathis was found guilty of conspiracy and three other substantive CAA counts, and acquitted on one CAA charge. All charges were dismissed against Mathis Companies, Inc.

The evidence proved that, from August 2004 to September 2005, the former Standard Coosa Thatcher Plant was illegally demolished while still containing large amounts of asbestos. Asbestos that had been removed was left in open piles on the property. During the demolition, visible emissions engulfed surrounding businesses, residences, and a day-care center. The defendants attempted to conceal their illegal activities by falsifying documents and by lying to federal authorities.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Chattanooga-Hamilton County Air Pollution Control Bureau.

Back to Top

United States v. Patrick Dooley, No. 2:11-CR-00252 (W.D. Wash.), AUSA Jim Oesterle.

On January 27, 2012, a jury convicted Patrick Dooley of three Clean Water Act violations (33 U.S.C. § 1319 (c)(2)(A) and (B)) and one count of witness tampering (18 U.S.C. § 1512(b)(3)) related to an August 2010 hazardous materials dumping incident.

Dooley is the president and owner of a business that purchases overstock from other companies, including chemical cleaning products. In August 2010, a 17-year-old employee, following Dooley's instructions, was overcome by deadly chlorine gas while disposing of two chemicals down a toilet. The chemicals reacted to produce chlorine gas of a sufficient concentration to cause the employee to become sick. He recovered from the exposure after being taken by paramedics to an emergency room.

Pallet of chemicals that produced chlorine gas

Sentencing is scheduled for April 27, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from Seattle Public Utilities and the Washington State Department of Ecology.

Back to Top

Plea Agreements

United States v. Scotts Miracle-Gro, No. 2:12-CR-00024 (S.D. Ohio), ECS Senior Trial Attorney Jeremy Korzenik, AUSA Mike Marous, RCEC Michael McClary and former ECS Paralegal Rachel Cook.

On February 21, 2012, Scotts Miracle-Gro, (Scotts) the world's largest marketer of branded consumer lawn and garden products, pleaded guilty to 11 FIFRA violations (7 U.S.C. § 136). The company admitted to illegally applying pesticides toxic to birds to wild bird food products, to falsifying pesticide registration documents, to distributing pesticides with misleading and unapproved labels, and to distributing unregistered pesticides. At sentencing, Scotts has agreed to pay a $4 million fine, and will pay $500,000 for community service projects.

According to the plea agreement, Scotts admitted that, in an effort to protect its bird food from insect infestation, the company applied to its line of wild bird foods the pesticides *Storcide II* and *Actellic 5E*, neither of which were approved by the Environmental Protection Agency for use in bird foods, the former bearing the warning, "Storcide II is extremely toxic to fish and toxic to birds and other wildlife." Scotts continued to sell the products for six months after employees warned management of the dangers of these pesticides. Until its voluntary recall of these treated bird foods in March 2008, Scotts illegally sold over 70 million units of insecticide-treated bird food.

Scotts also pleaded guilty for the fraudulent conduct of its Federal Registration Manager who submitted false documents to the EPA and to state regulatory agencies in an effort to deceive them into believing that the pesticides were registered with EP when they were not. Scotts pleaded guilty to

illegally selling these unregistered pesticides and to marketing pesticides bearing labels containing false and misleading claims not approved by the EPA.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Environmental Enforcement Unit of the Ohio Attorney General's Office Bureau of Criminal Identification and Investigation.

Back to Top

United States v. Julius DeSimone et al., No. 5:11-CR-00264 (N.D.N.Y.), ECS Trial Attorney Todd Gleason, AUSA Craig Benedict, and ECS Paralegal Christina Liu.

Waste dumped on open field

On February 17, 2012, Julius DeSimone pleaded guilty to conspiring to violate the Clean Water Act and to defrauding the United States (18 U.S.C. § 371) for his role in the creation of a massive, asbestos-contaminated dumpsite that has been designated a Superfund site. This unpermitted dumpsite was located on a farmer's open field, which also contained wetlands, and is adjacent to the Mohawk River.

Co-defendants Mazza & Sons, Inc. (a New Jersey solid waste management company), company owner Dominick Mazza, and his associates Donald Torriero and Cross Nicastro II, remain charged in a seven-count indictment for their participation in a multi-year scheme to illegally dump thousands of tons of pulverized construction and demolition debris that was processed at Lieze Associates, d/b/a Eagle Recycling, and Mazza & Sons solid waste management facilities. This debris was then transported to and dumped at Nicastro's farm in Frankfort, New York, much of which contained federally-regulated wetlands. The dumping and excavating operations were managed on-site by DeSimone.

According to court documents, Torriero and other conspirators concealed the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forging the name of a DEC official on the fraudulent permit. Once the conspirators learned that they were under investigation, they began a systematic pattern of document concealment, alteration, and destruction by destroying and secreting documents responsive to grand jury subpoenas and falsifying and submitting environmental sampling to the U.S. Environmental Protection Agency.

The indictment charges the defendants with conspiracy to defraud the U.S., to violate the Clean Water Act and CERCLA, and to commit wire fraud. Torriero also is charged with wire fraud for his fabrication and transmission of the fake permit the conspirators used to conceal the dumping. Mazza & Sons and Dominick Mazza are charged with violating the CERCLA requirement to report the release of toxic materials, along with obstruction of justice. Mazza is additionally charged with making false statements to EPA agents (18 U.S.C. §§ 371, 1001, 1343, 1519; 42 U.S.C. § 9603(b)) .

This case was investigated by the New York State Environmental Conservation Police, Bureau of Environmental Crimes; the United States Environmental Protection Agency Criminal Investigation Division; the Internal Revenue Service; the New Jersey State Police, Office of Business Integrity Unit; the New Jersey Department of Environmental Protection; and the Ohio Department of Environmental Protection.

Back to Top

United States v. Alexander Alvarez, No. 1:12-CR-00027 (S.D. Ala.), ECS Senior Trial Attorney Georgiann Cerese and AUSA Michael Anderson.

On February 15, 2012, Alexander Alvarez pleaded guilty to a three-count information charging Lacey Act and felony Migratory Bird Treaty Act violations (16 U.S.C. §§ 703, 707(b)(2), 3372, 3373(d)(1)(b)). The defendant admitted to illegally selling migratory bird parts including feathers from red-tailed hawks, peregrine falcons, and anhingas from between January 2007 and March 2009.

According to court documents, Alvarez communicated via email with an individual in Louisiana and eventually exchanged two anhinga tails for a crested caracara tail, a Harris's Hawk tail and $400. Alvarez later sent 14 sets of anhinga tail feathers to this individual and asked him to photograph and offer the tails for sale. Alvarez received payment from the Louisiana individual for the anhinga tail feathers that were sold. After the execution of a search warrant at Alvarez's home, feathers from several migratory bird species were seized.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement and the Navajo Nation Department of Fish and Wildlife.

Back to Top

[redacted]

Back to Top

United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., No. 3:10-CR-00140 (M.D. La.), ECS Trial Attorneys Shennie Patel and Sue Park, and ECS Paralegal Christina Liu.

Deceased alligator

On February 10, 2012, Gregory Dupont pleaded guilty to a felony Lacey Act violation (16 U.S.C. §§ 3372(a)(1), 3373(d)(2)) for illegally guiding out-of-state sport hunters to unauthorized areas to hunt American alligators.

In September 2006, Dupont, a licensed alligator hunter and owner of Louisiana Hunters, Inc., guided clients to an area for which he did not have the appropriate CITES tags. During this illegal hunt, the defendant took his clients to a property where one of his clients killed an American alligator. Dupont tagged the alligator illegally with a tag for another hunting area.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property

specific and hunters may only hunt in the areas designated by the tags. Louisiana regulations also prohibit alligator hunters, like Dupont, from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

Sentencing is scheduled for June 20, 2012. This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.

Back to Top

United States v. Philsynergy Maritime Inc. et al., No. 2:12-CR-00044 (E.D. La.), AUSA Dee Taylor.

On February 9, 2012, Philsynergy Maritime Inc., the owner of the *M/V Golden Sakura*, pleaded guilty to an APPS violation (33 U.S.C. § 1908(a)) stemming from false entries made in an oil record book presented to Coast Guard inspectors in August 2011.

M/V Golden Sakura

Investigation confirmed that, from February 2011 through August 2011, the crew routinely discharged oily bilge water overboard without using the oily water separator (OWS). The OWS was used only when an oily sheen was visible on the water. Chief engineer Wilfredo Sombra remains charged with APPS and false statement violations and is scheduled for trial to begin on April 2, 2012. The company is scheduled to be sentenced on May 5, 2012.

This case was investigated by the United States Coast Guard with assistance from the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jai Ping Cheng et al., Nos. 1:12-CR-00032 and 1:11-CR-01100 (S.D.N.Y.), AUSA Janis Echenberg.

On February 3, 2012, Jai Ping Chen pleaded guilty to two FIFRA violations (7 U.S.C. § 136). On September 19, 2011, after 12 arrests and the seizure of thousands of packages containing illegal pesticides, Cheng and Cheng Yan Huang were charged with conspiracy and FIFRA violations for their roles in the illegal distribution and sale of unregistered and misbranded pesticides.

These pesticides, which were seized from dozens of locations throughout Manhattan, were particularly dangerous because the packaging could lead people to mistake them to contain cookies or cough medicine. The chemicals were not registered with the EPA and were missing required label warnings, thus providing consumers no way of knowing how dangerous the products were or how best to protect themselves from harmful exposure. A woman was hospitalized after accidentally ingesting one of the pesticides, believing it to be medicine.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, United States Immigration and Customs Enforcement's Homeland Security Investigations, and the United States Postal Inspection Service.

Back to Top

United States v. William M. Threatt, Jr., et al., No. 4:10-CR-00191(W.D. Mo.), AUSA David Ketchmark.

Dilapidated home

On February 1, 2012, William Threatt pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from the illegal removal of asbestos during a renovation project involving multiple buildings. Anthony Crompton pleaded guilty to a similar charge.

Threatt was the president and owner of The Citadel Plaza Redevelopment Site, a 250,000 square foot tract of land. From April 2001 to July 2006, the defendants violated the CAA by illegally removing and disposing of asbestos from more than two hundred structures, most of which were older, dilapidated residences. As a site operator, Crompton directed the workers who performed the demolition work.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Hugh A. Barker, No. 6:11-CR-10160 (D. Kan.), AUSA Alan Metzger.

On January 23, 2012, Hugh A. Barker pleaded guilty to one count of violating the NESHAPS provisions for asbestos under the Clean Air Act (42 U.S.C. §7413(c)(2)(B)). In October 2008, Barker and his company, Barker Sand and Gravel, began demolishing a building in Harper, Kansas. The defendant failed to file a required notification of plans for the demolition. An inspection by the Kansas Department of Health and Environment determined that debris from the building included floor tile containing asbestos.

Barker previously pleaded guilty in 2008 to a felony Clean Water Act violation. He is scheduled to be sentenced on April 9, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Daniel Clements et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On February 17, 2012, Brian Waite was sentenced to serve a year and a day of incarceration after pleading guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from his involvement in an illegal asbestos removal project. Co-defendant Daniel Clements previously entered a similar plea and was sentenced on February 13th to pay a $3,000 fine, and to a two-year term of probation that includes six months' home confinement. Between December 2010 and February 2011,

the defendants failed to have workers wet regulated asbestos-containing materials (RACM) that were removed from a former Ford Motor Company plant in Utica, Michigan, during renovation.

According to an asbestos survey of the plant, the building contained more than 60,000 linear feet of RACM. During the removal, the defendants directed workers to tear out the RACM while it was dry and to place it into plastic bags without wetting it. To speed up the process they instructed workers to meet a daily goal of removing 1,000 feet of material. The workers sometimes kicked or threw the material to the ground, causing larger pieces to break apart.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Blake Mitchell, No. 2:11-CR-00238 (E.D. La.), AUSA Jordan Ginsberg.

On February 16, 2012, Blake Mitchell was sentenced to pay a $1,000 fine, and will complete a three-year term of probation to include two months' home detention. He also will pay $529.40 in restitution to the Louisiana Department of Wildlife and Fisheries.

Mitchell previously pleaded guilty to a one-count information charging a felony Lacey Act violation (16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(1)(B)). In January 2010, Mitchell transported and sold red fish in interstate commerce by providing guiding services to individuals outside the state of Louisiana, knowing that the redfish had been taken in violation of Louisiana state law.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Kenneth Horan et al., No. 6:11-CR-06171(W.D.N.Y.), AUSA John J. Field.

On February 15, 2012, Kenneth Horan was sentenced to serve a year and a day of incarceration followed by two years' supervised release. He also will pay a $10,000 fine. Horan previously pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) for illegally removing and disposing of regulated asbestos-containing material (RACM).

In October 2009, Horan supervised a crew that removed more than 375 linear feet of boiler pipe wrapped in RACM, which was not properly wetted. Additionally, the individuals on the crew were not licensed asbestos abatement contractors.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Horizon Lines LLC, No. 3:12-CR-00055 (N.D. Calif.), AUSA Owen Martikan.

On February 14, 2012, Horizon Lines LLC pleaded guilty to, and was sentenced for, false statement violations (18 U.S.C. § 1001) stemming from false entries made in the *SS Horizon Enterprise* oil record book.

The Coast Guard boarded the vessel in October 2010 when it docked at the port of Oakland. Ship's engineers had tricked the pollution control equipment and false entries had been made in the oil record book that was presented to inspectors omitting mention of these bypasses. The company will pay a $1 million fine and will make a $500,000 community service payment to the National Fish and Wildlife Foundation. Horizon was further ordered to conduct a fleet-wide audit and implement an environmental compliance plan during a three-year term of probation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigative Division and the United States Coast Guard Investigative Services.
Back to Top

United States v. Freedman Farms, Inc., et al., No. 7:10-CR-00015 (E.D.N.C.), ECS Trial Attorney Mary Dee Carraway, AUSA J. Gaston Williams, and ECS Paralegal Rachel Van Wert.

Freedman Farms lagoon

On February 13, 2012, Freedman Farms, Inc. was sentenced to pay a $500,000 fine and $925,000 in restitution (with recipients to be determined in 30 days). The company also will make a $75,000 community service payment to the Southern Environmental Enforcement Network and implement an environmental compliance plan to include an annual training program. William "Barry" Freedman was sentenced to serve six months' incarceration followed by six months' home confinement. After a week of trial, the company pleaded guilty in July 2011 to a felony Clean Water Act violation and Freedman pleaded guilty to a misdemeanor CWA charge (33 U.S.C. §§ 1311(a); 1319 (c)(1)(A) and (c)(2)).

Freedman and the family-owned company are in the business of raising hogs for market. This farm housed approximately 4,800 hogs. The waste from the hogs was directed to two nearby lagoons for treatment and disposal. In December 2007, witnesses observed hog waste in the stream known as Browder's Branch that leads from the farm. State officials were notified and pumps and tanker trucks were brought in to remove approximately 169,000 gallons of hog waste from the stream. Investigators determined that more than 332,000 gallons of waste had been discharged into Browder's Branch over a five-day period. Officials did not find evidence of pumping system failure, vandalism, or accidental discharge. Documents provided by Freedman falsely stated that he had properly disposed of the waste during some of this period using the approved methods of applying treated hog waste to crops located on other parts of Freedman Farms' land.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the North Carolina State Bureau of Investigation, with assistance from the Environmental Protection Agency Science and Ecosystem Support Division.
Back to Top

United States v. Danny Gayheart, No. 5:11-CR-00055 (E.D Ky.), AUSA Roger West.

On February 13, 2012, Danny Gayheart was sentenced to serve a three-year term of probation to include 100 hours of community service and $1,655.50 in restitution. He previously pleaded guilty to two felony violations of the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707 (b)(2)) stemming from his capture of three red tail hawks in March 2011, causing harm to one bird and breaking the leg on a second bird that had to be euthanized. The restitution will be paid to the Raptor Rehabilitation of Kentucky to cover the expense of rehabilitating the two surviving birds and releasing them back into the wild.

This case was investigated by the United States Fish and Wildlife Service and the Kentucky Department of Fish and Wildlife Resources.
Back to Top

United States v. Stephen Voisine, No. 1:11-CR-00017 (D. Maine), AUSA Todd Lowell.

On February 13, 2012, Stephen Voisine was sentenced to serve a year and a day of incarceration, followed by two years' supervised release, for the killing of a bald eagle and possession of a firearm (16 U.S.C. § 668 (a); 18 U.S.C. § 922(g)(9)) after a 2004 conviction on a misdemeanor domestic violence charge. Investigation confirmed that the defendant shot the eagle in October 2009 with a high power rifle.

This case was investigated by the United States Fish and Wildlife Service; the Maine Warden Service; and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Back to Top

United States v. Peter X. Lam et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Assistant Chief Elinor Colbourn, ECS Trial Attorney Mary Dee Caraway, and AUSA Joe Johns.

On February 13, 2012, Peter X. Lam was resentenced to serve 41 months' incarceration (versus 63 months from the prior sentencing) and must forfeit $12 million, which was the same amount previously ordered. The Ninth Circuit previously affirmed Lam's convictions stemming from the sale of illegally imported fish (Vietnamese catfish falsely labeled as sole, among other things), but remanded him for sentencing.

Lam and co-defendant Arthur Yavelberg were convicted by a jury in October 2008 for their roles in a scheme to import misbranded Vietnamese catfish (*Pangasius hypophthalmus*). Lam was found guilty of conspiring to import mislabeled fish in order to avoid paying federal import tariffs. He also was convicted on three counts of dealing in fish that he knew had been illegally imported (18 U.S.C. §§ 371, 545(2)(b)). Yavelberg was convicted of a misdemeanor conspiracy for trading in misbranded food.

Two Virginia-based companies, Virginia Star Seafood Corp., of which Lam was president, and International Sea Products Corporation, illegally imported more than ten million pounds, or $15.5 million worth, of frozen fish fillets from Vietnamese-owned companies Binh Dinh, Antesco, and Anhaco between May 2004 and March 2005. These companies were affiliated with Cafatex, one of the largest producers in Vietnam of Vietnamese catfish. Although the fish imported by Virginia Star and International Sea Products was labeled and imported as sole, grouper, flounder, snakehead, channa and conger pike (a type of eel), DNA tests revealed that the frozen fish fillets were in fact *Pangasius hypophthalmus*, aka catfish.

This case was investigated by the Department of Homeland Security Immigration and Customs Enforcement, the National Oceanic and Atmospheric Administration National Marine Fisheries Service, and the United States Food and Drug Administration.

Back to Top

United States v. Chau-Shing Lin et al., No. 2:11-CR-00297 (C.D. Calif.), ECS Assistant Chief Elinor Colbourn, AUSA Joe Johns, and ECS Paralegal Kathryn Loomis.

On February 13, 2012, Chau-Shing (aka Duke) Lin was sentenced to pay a $60,000 fine, to complete a three-year term of probation, and to perform 100 hours of community service. Christopher Ragone will pay a $5,000 fine, complete a three year term of probation, and perform 100 hours of community service. The defendants previously pleaded guilty to Lacey Act trafficking (16 U.S.C. §§ 3372(a)(1), 3373(d)(2)) and misbranding violations (21 U.S.C. §§ 331(c)(a), 333(a)(1)) for the marketing, sale, and mislabeling of catfish between June 2004 and February 2006. Seafood Solutions,

Inc. was recently sentenced to pay a $700,000 fine and will make a community service payment of $300,000 to the National Fish and Wildlife Foundation. In addition, the company will complete a three-year term of probation, forfeit all remaining inventory of the falsely labeled fish, and implement a corporate compliance plan.

Duke Lin is the president and founder of Ocean Duke Corporation, a seafood importer located in Torrance, California. Ragone purchased, marketed, and sold frozen seafood products, including frozen catfish fillets. Seafood Solutions, Inc., is affiliated with Ocean Duke Corporation.

In June 2004, Lin's company began to sell a fish it declared to customs as "ponga." The fish being imported at this time as ponga was *Pangasius hypophthalmus*, a species in the catfish family. The fish was then sold under brand names and in boxes labeled in part as "Paradise Grouper" and "Falcon Baie Grouper" with the sole listed ingredient of "ponga."

Between July 2005 and February 2006, a wholesale distributor that had purchased the fish returned approximately $411,000 worth of the product labeled as "Paradise Grouper" and "ponga" or "Falcon Baie Grouper" and "ponga" after it had determined that the product was not grouper. Seafood Solutions agreed to be invoiced for and received the returned product, knowing that it had been inaccurately labeled. Defendants Lin, Ragone and Seafood Solutions, resold and transported the fish in interstate commerce even after its return from the customer, knowing that it was misleadingly labeled. From February 2006 to April 2006, Ragone sold approximately $2 million worth of *Pangasius* fillets knowing that the product was misleadingly labeled.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Department of Homeland Security Immigration and Customs Enforcement.

Back to Top

United States v. Edward Hannan et al., Nos. 2:09-CR-00217, 2:11-CR-00148 (E.D. La.), AUSA Dorothy Taylor.

On February 9, 2012, Edward Hannan was sentenced to pay a $15,000 fine and will complete a three-year term of probation with a special condition of six months' home detention. Hannan also will perform 100 hours of community service.

Illegal discharge of water into Breton Sound

The defendant was the manager of St. Bernard Well Service, a company in the business of handling process waste water from other facilities. One of these facilities was Linder Oil Company (Linder), an offshore oil and gas platform operator. In July 2007, a Louisiana Department of Environmental Quality inspector observed two discharges from the Linder facility. Further investigation disclosed that the facility accumulated approximately 600 barrels per month of process wastewater, which was illegally discharged in the Breton Sound once a month for approximately six months through an unpermitted discharge pipe. Hannan pleaded guilty to a felony Clean Water Act violation (33 U.S.C. § 1319 (c)(2)A)) stemming from those discharges Linder was sentenced in 2009 to pay a $50,000 fine and $20,000 in community service after pleading guilty to a violation of the Rivers and Harbors Act (33 U.S.C. § 407).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Oakmont Environmental, Inc. et al., Nos. 2:11-CR-00212 and 00213 (E.D. La.), AUSA Dorothy Taylor.

Oakmont Environmental facility

February 8, 2012, Oakmont Environmental, Inc. was sentenced to pay a $5,000 fine and will complete a three-year term of probation. Company owner Clifton Karr was sentenced to serve three months' home confinement as a condition of a three-year term of probation. He also will pay a $3,000 fine.

Oakmont was in the business of receiving waste oil from a variety of sources and was responsible for separating the water from the oil, shipping the oil to a recycling plant, and discharging the treated waste water to the local POTW. From September 2007 through May 2009, the company discharged approximately 3.6 million gallons of oily waste water directly into the Harvey Canal, a navigable water. The company previously pleaded guilty to a felony Clean Water Act violation (33 U.S.C. § 1319 U.S.C. (c)(2)(A)) and Karr pleaded guilty to a misdemeanor CWA violation33:1319(c)(1)(A).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Arne Fuglvog, No. 3:11-CR-00067 (D. Alaska), AUSA Aunnie Steward.

On February 7, 2012, Arne Fuglvog was sentenced to serve five months' incarceration followed by one year of supervised release. He also was ordered to pay a $50,000 fine. Fuglvog previously pleaded guilty to a Lacey Act misdemeanor charge (16 U.S.C. § 3373(d)(3)(B)) for a fisheries violation. At the time of the violation, Fuglvog was a fisheries advisor to Alaska Senator Lisa Murkowski and was a member of the North Pacific Fishery Management Council.

From 2001 to 2006, as the owner and operator of the *F/V Kamilar*, Fuglvog had permits to fish in the Gulf of Alaska for sablefish and halibut. On several occasions during this period, Fuglvog fished in one regulatory area and then falsely reported that the fish were caught in a different area. Specifically, in 2005, the defendant possessed a permit for sable fish in the area designated as "Western Yakatat." His permit allowed him to catch approximately 30,000 pounds of sablefish in the Western Yakatat area in 2005; however, he actually caught more than twice that amount of sablefish (approximately 63,000 pounds) in the Western Yakatat in 2005. Fuglvog concealed this illegal catch

by submitting documents stating that he had landed the additional fish in a different area. The value of the illegally caught fish was approximately $100,000.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Back to Top

United States v. Donald Clark, No. 1:11-CR-00063 (E.D. Tenn.), AUSA Matthew Morris.

On February 6, 2012, Donald Clark was sentenced to serve six months' incarceration, followed by six months' home confinement, and a two-year term of supervised release. He also will perform 150 hours of community service. A fine was not assessed. Clark, a municipal sewage treatment plant operator, previously pleaded guilty to 12 of the 72 false statement violations charged (18 U.S.C. § 1001) in connection with the operation of the City of Niota, Tennessee's, sewage treatment plant.

As the sewage treatment plant operator, Clark admitted to creating 12 discharge monitoring reports covering the period from January 2008 through December 2010, in which he falsely represented that the wastewater had been treated with chlorine and tested for residual chlorine prior to discharge to the Little North Mouse Creek.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the EPA Inspector General's Office.

Back to Top

United States v. Clifford R. Tracy, No. 1:11-CR-30027 (D. Ore.), AUSA Doug Fong.

Illegal mining operation

On February 6, 2012, gold miner Clifford Tracy was sentenced to serve 12 months' incarceration and will pay $4,360 in restitution to the Bureau of Land Management. Tracy was convicted by a jury of conducting an unlawful mining operation (43 C.F.R. § 3809), but was acquitted of a misdemeanor Clean Water Act violation (33 U.S.C. § 1311(a)). The charges stemmed from a mining operation involving the Stray Dog placer claim, which is a surface mining operation involving the extraction of gold from surface soil and gravel. The claim was located in the Bureau of Land Management's Medford District on Galice Creek, which flows into the Rogue River. This particular creek provides critical habitat for endangered Coho salmon.

In June 2011, the defendant was told by BLM officers that he needed to shut down his operation after a sediment plume was discovered in the creek. Tracy, who represented himself at trial, ignored authorities and essentially argued that he could do what he wanted even if he was breaking the law because this was public land.

This case was investigated by the United States Bureau of Land Management and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Lawrence C. Parawan, Jr., No. 4:11-CR-00023 (E.D. Tenn.), AUSA James T. Brooks.

On January 30, 2012, Lawrence C. Parawan, Jr., was sentenced to complete a two-year term of probation, pay a $500 fine, and perform 80 hours of community service. Parawan previously pleaded guilty to a two-count information charging him with a FIFRA and an MBTA violation (7 U.S.C. § 136; 16 U.S.C. §§ 703, 707) stemming from the illegal use of Carbofuran, also known as Furadan. Parawan admitted to lacing a chicken carcass with the pesticide in December 2010, and placing it in an open field, which resulted in the deaths of opossums, coyotes, a skunk, a neighbor's dog, and a Northern Harrier hawk, a migratory bird.

This case was investigated by the Bedford County Sheriff's Department, the Tennessee Wildlife Resource Agency, the United States Fish and Wildlife Service, the United States Environmental Protection Agency Criminal Investigation Division, and the Tennessee Department of Agriculture Regulatory Services.

Back to Top

[redacted]

Back to Top

United States v. Clifton Lynn Everts, No. 6:12-CR-00004 (S.D. Tex.), AUSA Hugo Martinez.

Agent with alligator

On January 23, 2012, Clifton Lynn Everts was sentenced to pay a total of $14,000 after pleading guilty to a Lacey Act violation (16 U.S.C. §§ 3372, 3373) for transporting an illegally killed American alligator. Everts was ordered to pay a $10,000 fine to go into the Lacey Act Reward Fund, and make an additional $4,000 payment toward the Texas Parks and Wildlife Operation Game Thief Program. He also will complete a one-year term of probation.

The defendant owns and operates Twisted Forks, an alligator hunting guide service. He came under investigation after an issue of *Texas Fish and Game* magazine featured an article that described Everts' hunting alligators at night, which is illegal.

Further investigation confirmed that the defendant illegally killed an alligator in May 2010 by forging the tag that was attached to the animal, and then transporting the animal to a taxidermist.

This case was investigated by the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department.

Back to Top

United States v. Stolthaven New Orleans, LLC, No. 2:11-CR-00169 (E.D. La.), AUSA Dorothy Taylor.

On January 17, 2012, Stolthaven New Orleans, LLC, was sentenced to pay a $200,000 fine, complete a two-year term of probation, and make a $150,000 community service payment to be divided between several agencies. The company previously pleaded guilty to a misdemeanor Clean Water Act violation (33 U.S.C. § 1319(c)(1)(A)) for the negligent discharge of acid into the Mississippi River in March 2008.

Stolthaven operates a bulk liquid storage and transfer terminal that is adjacent to the Mississippi River. It receives and stores a variety of both hazardous and non-hazardous products in fixed-roof tanks. In 2005, the company contracted to store fluorosilicic acid (FSA), a toxic chemical used in the manufacture of circuit boards and chips. Due to its corrosivity, the owners of the FSA advised Stolthaven that the chemical must be stored in a quarter-inch rubber-lined stainless steel tank. Additionally, all hosing, tubes, valves, and couplings were to be lined with high-density polyethylene. Stolthaven altered the contract, however, and used a tank lined with Plastite 4100 instead of a rubber-lined tank. The Plastite product was supposed to be comparable to rubber, just cheaper. As a result, numerous intermittent releases of FSA were recorded from the Stolthaven facility in 2007 and continued until the tank experienced a catastrophic rupture in March 2008, causing the spill of approximately 468,000 gallons of the chemical into the Mississippi River.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Stanley Littleboy et al., Nos. 5:11-CR-50024 and 50025 (D.S.D.), AUSA Eric Kelderman.

On January 5, 2012, Stanley Littleboy was sentenced to serve five months' incarceration followed by one year of supervised release. A fine was not assessed. Littleboy previously pleaded guilty to two violations of the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 (a)) for unlawfully selling parts of a Bald Eagle and a Golden Eagle in June 2009 and May 2010. Ernie Stewart entered a similar plea on January 10th and is scheduled to be sentenced on March 30, 2012. Stewart admitted to illegally selling eagle feathers, a set of wings, and a tail in June 2010.

This case was investigated by the United States Fish and Wildlife Service.

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

April 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning *state or local cases*, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Large eagle's nest before cottonwood tree was cut down. *See U.S. v. Gardner et al.*, inside, for more details.

AT A GLANCE:

DISTRICT	CASES	*CASE TYPE/* STATUTES
N.D. Ala.	United States v. Preston C. Minus, Jr.	*Field Baiting/* MBTA
S.D. Ala.	United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al.	*Vessel/*APPS, Obstruction, Conspiracy
D. Alaska	United States v. Victor A. Buchanan	*Sewage Discharge/* CWA, Refuse Act
C.D. Calif.	United States v. Jin Zhao Feng et al. United States v. Henry Dao et al.	*Rhino Horn Trafficking/* Smuggling, Lacey Act, Money Laundering, Conspiracy *Wildlife Sales/* Lacey Act, Endangered Species Act, Migratory Bird Treaty Act
N.D. Calif.	[redacted]	[redacted]
S.D. Calif.	United States v. We Lend More, Inc., et al.	*Pawn Shop/* RCRA
D. Colo.	[redacted] United States v. Marvin T. Ellis et al.	[redacted] *Big Game Hunts/* Lacey Act, Conspiracy

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Fla.	United States v. Culinary Specialties, Inc., et al.	*Shrimp Mislabeling/* Lacey Act; Food, Drug, and Cosmetics Act; Conspiracy
	United States v. Robert Fortunato et al.	*Conch Imports/* Lacey Act, Conspiracy
	United States v. Michael W. Kimbler	*Spiny Lobster Harvest/* Conspiracy, Lacey Act
	United States v. Glenn Bridges et al.	*Wildlife Imports/* Lacey Act, Conspiracy, False Statement
	United States v. Rush C. Maltz et al.	*Spiny Lobster Harvest/* Conspiracy, Lacey Act
	United States v. Elias Garcia Garcia et al.	*Jaguar Skin Imports/* Lacey Act, Conspiracy
	United States v. Enrique Gomez De Molina	*Wildlife Smuggling and Sales/* Lacey Act
D. Guam	[redacted]	[redacted]
D. Idaho	United States v. Christopher Conk et al.	*Coral Imports/* Lacey Act, Smuggling, Endangered Species Act
D. Kan.	[redacted]	[redacted]
W.D. Ky.	United States v. Logsdon Valley Oil Company, et al. [redacted]	*Brine Injection/* SDWA, Conspiracy [redacted]

DISTRICT	CASES	*CASE TYPE/* STATUTES
E.D. La.	[redacted] United States v. Odysea Carriers, S.A., et al. United States v. Ilios Shipping Company S.A., et al.	[redacted] Vessel/ APPS, PWSA, Obstruction *Vessel/* APPS, Obstruction
W.D. La.	United States v. John Tuma et al. United States v. Jason Bruno	*Wastewater Facility/* CWA, Obstruction, Conspiracy *Dry Cleaner/* CWA Misdemeanor
D. Mass.	United States v. Daniel B. Birkbeck	*Striped Bass Harvest/* Lacey Act
D. Minn.	United States v. Craig L. Staloch	*Pelican Colony Destruction/* MBTA
W.D. Mo.	United States v. Teddy J. Gardner et al.	*Eagle Nest Destruction/* BGEPA
W.D. Mont.	United States v. Randy T. McDougall United States v. Seville Colony, Inc., et al. United States v. Richard Weiner et al.	*Tiger Skull Smuggling/* Endangered Species Act *Pesticide Application/* FIFRA, False Statement *Big Game Hunts/* Lacey Act, Conspiracy
D.N.J.	United States v. Vele Bozinoski	*Asbestos Removal/* CAA, Conspiracy
D.N.M.	United States v. Martin Aguilar	*Bald Eagle Killing/* BGEPA
E.D.N.Y.	United States v. Lin Feng Xu	*Ivory Imports/* Endangered Species Act, Smuggling
E.D.N.C.	United States v. Timothy T. Smither	*Mislabeled Pesticides/*, Conspiracy, FIFRA, Mail Fraud, Wire Fraud
W.D.N.C.	United States v. Stephen Dickinson et al.	*Emissions Testing/* CAA
S.D. Ohio	United States v. Allan Wright	*White-Tailed Deer Trafficking/* Lacey Act

DISTRICT	CASES	*CASE TYPE/* STATUTES
N.D. Okla.	[redacted]	[redacted]
E.D. Penn.	United States v. Nupro Industries Corporation et al.	*Oils Manufacturer/* CWA
N.D. Tex.	United States v. Belvan Corporation et al.	*Natural Gas Producer/* CAA
D.V.I.	United States v. Ashu Bhandari	*Black Coral Imports/* False Statement

Additional Quick Links:

Trials

United States v. John Tuma et al., No. 5:11-CR-00031 (W.D. La.), ECS Trial Attorney Leslie Lehnert and AUSA Mignonne Griffing.

Pipe discharging into river

On March 21, 2012, a jury convicted John Tuma of discharging untreated wastewater directly into the Red River without an NPDES permit, discharging untreated wastewater into the city of Shreveport sewer system in violation of its industrial user's permit, and of obstructing an Environmental Protection Agency (EPA) inspection.

John and Cody Tuma, father and son, were each charged in a five-count indictment with Clean Water Act, conspiracy, and obstruction of justice violations (18 U.S.C. §§ 371, 1505; 33 U.S.C. §§ 1311(a), 1319(c)(2)(A)) related to illegal discharges from the Arkla Disposal Services facility from 2005 through 2007. The Arkla facility received off-site wastewater from oilfield exploration and production operations and other industrial processes for treatment.

Cody Tuma pleaded guilty in February 2012 to a misdemeanor CWA violation for negligently discharging pollutants into the Red River and has been scheduled to be sentenced on June 20, 2012. John Tuma is scheduled to be sentenced on July 25, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. We Lend More, Inc., et al., No. 3:11-CR-003327 (S.D. Calif.), AUSA Melanie Pierson.

On March 1, 2012, We Lend More, Inc., a pawn shop, and its owner, Marc Vogel, were convicted by a jury of violations stemming the dumping of hazardous wastes at a local landfill in March 2011. The defendants were convicted of RCRA transportation and disposal violations, along with transportation of hazardous waste without a manifest (42 U.S.C. §§ 6928 (d)(1), (d)(2)(A), (d)(5)), for the dumping of potassium cyanide and concentrated nitric acid. When these two chemicals are combined they create a deadly hydrogen cyanide gas.

Site where chemicals were dumped

In March 2011, Vogel contracted with a trash hauler to dispose of items from the pawn shop that included cyanide and acids. Co-defendant Raul Gonzalez-Lopez brought a truck to the shop and removed various objects including two seven-pound containers of potassium cyanide and a gallon of nitric acid. No manifests were prepared for either of these hazardous wastes. Gonzalez-Lopez

subsequently disposed of this load including the chemicals at a landfill that was not permitted to receive hazardous waste. Workers at the landfill promptly discovered the chemicals and took precautionary measures, including hiring a hazardous waste disposal company. Vogel admitted that he knew that these chemicals could not be disposed of as ordinary waste. Gonzalez-Lopez is currently a fugitive and remains charged with three RCRA violations.

Sentencing is scheduled for May 29, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division and the Federal Bureau of Investigation.

Back to Top

Informations/Indictments

United States v. Victor A. Buchanan, No. 3:12-CR-00036 (D. Alaska), AUSA Retta Randall.

On March 22, 2012, Victor A. Buchanan was charged in a two-count indictment with Clean Water Act and Refuse Act violations (33 U.S.C. §§ 407, 411, 1319(b)(2)(A),1321(b)(3)) stemming from the illegal discharge of pollutants into the St. Paul Harbor in Kodiak, Alaska.

According to the indictment, Buchanan is the owner of the *F/V Chisik Island*, an 86-foot commercial fishing vessel. Between September 30 and October 4, 2011, the defendant allegedly discharged oily bilge water and raw sewage directly into the harbor.

This case was investigated by the United States Coast Guard.

Back to Top

[redacted]

Back to Top

United States v. Jin Zhao Feng et al., No. 12-CR-00202 (C.D. Calif.), ECS Trial Attorney Shennie Patel and AUSAs Joseph Johns and Dennis Mitchell.

On March 15, 2012, a 32-count superseding indictment was filed against several members of an alleged U.S.-based trafficking ring involved in the black market trade of endangered rhinoceros horn. The indictment charges the defendants with conspiracy, smuggling, Lacey Act export, Lacey Act false

labeling, and money laundering violations (16 U.S.C. §§ 3372(a)(1) and (d)(1); 3373 (d)(3) and (d)(1)(A); 18 U.S.C. §§ 371, 554, and 1956(a)(1)(A)(i)).

This case is the West Coast arm of "Operation Crash," which is primarily focused on the illegal trade and export of endangered or CITES-protected rhinoceros horn. The defendants were arrested in February 2012 in Los Angeles, Newark, and New York City, on charges of trafficking in endangered black rhinoceros horn. Search warrants were executed and arrests were made in five states.

Charged in the indictment are: Jin Zhao Feng, a Chinese national who allegedly oversaw dozens of rhino horn shipments from the United States to China; Vinh Chuong Kha, Felix Kha, Nhu Mai Nguyen, Jin Zhao Feng, and the Win Lee Corporation are named as West Coast buyers; and Jarrod Wade Steffen is alleged to be a Texas supplier. Among the items seized during the execution of the search warrants were more than $2 million in cash, gold bars, diamonds and Rolex watches, and 37 rhinoceros horns.

Operation Crash is a continuing investigation by the United States Fish and Wildlife Service, with assistance from other federal and local law enforcement agencies including Immigration and Customs Enforcement Homeland Security Investigations, and the Internal Revenue Service.

Back to Top

United States v. Logsdon Valley Oil Company, et al., No. 1:12-CR-00012 (W.D. Ky.), AUSA Joshua Judd.

On March 14, 2012, Logsdon Valley Oil Company and company employees Charles Stinson and Ralph Dowell were charged in a six-count indictment with conspiracy and violations of the Safe Drinking Water Act (18 U.S.C. §371, 42 U.S.C. §300h-2(b)(2)), stemming from the injection of brine water into sinkholes from March 2008 to June 2010.

Trial is scheduled to begin on May 30, 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division.

Back to Top

[redacted]

Back to Top

United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala.), ECS Trial Attorneys Todd Mikolop and Gary Donner, and Paralegal Jessica Egler.

On March 5, 2012, the Italian-based Giuseppe Bottiglieri Shipping Company S.P.A., the owner and operator of the *M/V Bottiglieri Challenger*, and chief engineer Vito La Forgia, were charged in a four-count indictment with APPS, conspiracy, and obstruction of justice violations (18 U.S.C. §§ 371, 1519; 33 § U.S.C. 1908(a)).

During an inspection of the ship at the port of Mobile in January 2012, Coast Guard inspectors allegedly found evidence of false entries made in the oil record book, along with evidence that a bypass pipe had been removed prior to the ship's arrival at port. The defendants are further alleged to have obstructed the investigation by ordering the crew to rinse out one of waste tanks with sea water prior to reaching port.

Trial is scheduled to begin on June 4, 2012. This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Vele Bozinoski , No. 1:12-CR-00141 (D.N.J.), AUSA Kathleen P. O'Leary.

On March 2, 2012, Vele Bozinoski was charged in a seven-count indictment with conspiracy and Clean Air Act violations (18 U.S.C. 371; 42 U.S.C. §§ 7412(b), 7413(c)(1)) for the alleged improper removal of insulation from piping at the former Garden State Paper Mill in Garfield, New Jersey, in February 2007.

Trial is scheduled for May 7, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Culinary Specialties, Inc., et al., No. 1:12-CR-20117 (S.D. Fla.), AUSA Norman O. Hemming, III.

On February 23, 2012, Culinary Specialties, Inc., and company owners Walter Schoepf and Karl Degiacomi, were charged in a three-count indictment with violations stemming from the false labeling and misbranding of shrimp. Specifically, they are charged with conspiracy; Lacey Act; and Food, Drug, and Cosmetics Act violations (18 U.S.C. § 371; 16 U.S.C. §§ 3372(d)(1), 3372(d)(2), 3373(d)(3)(A); 21 U.S.C. §§ 331(a), 333(a)(2), 343(a)(1), 343(b)).

According to the indictment, from June 2008 through July 2009, the defendants conspired with Richard Stowell, United Seafood, Inc., Adrian Vela, and Sea Food Center, to violate the Lacey Act by mislabeling and selling approximately 500,000 pounds of shrimp. The shrimp, valued at more than $400,000, was ultimately sold to supermarkets in the northeastern United States.

This case was investigated by the National Oceanic and Atmospheric Association Office of Law Enforcement.

Back to Top

Plea Agreements

United States v. Marvin T. Ellis et al., No. 12-CR-00097 (D. Colo.), ECS Senior Trial Attorney Ron Sutcliffe, Trial Attorney Mark Romley, and AUSA Suneeta Hazra.

On March 27, 2012, Marvin T. Ellis pleaded guilty to one count of conspiring to violate the Lacey Act (18 U.S.C. § 371) for his role in assisting out-of-state hunters to kill mountain lions and bobcats in violation of Colorado and Utah laws.

From approximately 2006 to 2010, Ellis and his five co-conspirators guided clients on hunts for animals that had been caged, trapped, or shot in the legs or feet. The group also had a practice of taking hunters (who only were licensed for hunting mountain lions in Colorado) on hunts in Utah. They also guided unlicensed hunters on bobcat hunts in both states.

Sentencing is scheduled for July 6, 2012. This case was investigated by the United States Fish and Wildlife Service, Colorado Parks and Wildlife, and the Utah Division of Wildlife Resources.

Back to Top

United States v. Robert Fortunato et al., No. 9:12-CR-80037 (S.D. Fla.), AUSAs Norman O Hemming, III, and Antonia Barnes.

On March 27, 2012, Robert Fortunato pleaded guilty to conspiracy and to a Lacey Act violation (18 U.S.C. § 371; 16 U.S.C §§ 3371(a)(2)(A), 3373(d)(1)(A)) stemming from the import of queen conch into the United States that was taken in violation of Bahamian law. As part of his plea, Fortunato will forfeit approximately 1,500 pounds of queen conch and a 26-foot vessel.

In February 2012, the defendant and a co-conspirator attempted to import 53 bags of queen conch, which the Coast Guard found after searching the vessel. Neither defendant possessed the required documents to legally export this seafood from the Bahamas.

Sentencing has been scheduled for June 5, 2012. This case was investigated by the National Oceanic and Atmospheric Administration, the United States Coast Guard, Customs and Border Protection, Immigration and Customs Enforcement, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Timothy T. Smither, No. 5:11-CR-00371 (E.D.N.C.), AUSA Banu Rangarajan.

Mislabeled pesticide

On March 14, 2012, Timothy T. Smither pleaded guilty to conspiring to commit mail fraud, wire fraud, and to violating FIFRA, (18 U.S.C. § 371) stemming from his involvement in the mislabeling and misapplication of a pesticide.

Smither was an employee of Miller Trophy Room. In 2000, the company decided to use a pesticide known as Termidor SC to treat animal trophy mounts, which is not authorized for indoor use. After purchasing significant amounts of the chemical, the defendant and others proceeded to re-label the product with the company's

name and address. From 2004 through 2009, the illegally labeled Termidor SC was shipped to customers nationwide. The defendant and others took an additional step of creating false Material Safety Data Sheets to conceal the actual ingredients of the product. While treating their trophy mounts, several customers reported adverse reactions when their arms and hands came into contact with the chemical.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina Department of Agriculture Structural Pest Control and Pesticides Division, and the North Carolina State Bureau of Investigation.

Back to Top

[redacted]

Back to Top

United States v. Ashu Bhandari, No. 3:11-CR-00028 (D.V.I.), ECS Trial Attorney Christopher Hale and AUSA Nelson Jones.

On March 12, 2012, Ashu Bhandari pleaded guilty to six false statement violations (18 U.S.C. § 1001(a)(3)).

Bhandari is the former president and CEO of GEM Manufacturing, a company that makes black coral jewelry. The defendant participated in a scheme to illegally import this CITES-protected species into St. Thomas during 2008 and 2009. The coral was used to make high-end jewelry and art objects that were subsequently sold through GEM-operated retail galleries. Because the company's coral supplier could not obtain the required export permits, the defendants falsely labeled the boxes that were shipped with coral as containing plastics. GEM was previously sentenced to pay $2.3 million in fines and community service.

Raw black coral

Bhandari is scheduled to be sentenced on June 14, 2012. This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

Back to Top

United States v. Michael W. Kimbler et al., No. 4:12-CR-10002 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On March 12, 2012, Michael W. Kimbler and Michael Bland pleaded guilty to conspiring to illegally harvest spiny lobsters (18 U.S.C. § 371) from artificial habitat placed in the Florida Keys National Marine Sanctuary.

The defendants were involved in the illegal harvest of spiny lobster from April 2007 through approximately September 2011. Placing any artificial structure on the seabed within the Sanctuary is prohibited. Under NOAA supervision, they have begun removing these artificial structures, using their own vessels and at their own expense.

Kimbler and Bland, along with other unnamed individuals, made multiple landings of lobster that exceeded the daily harvest and possession limit of 250 lobsters, and concealed the excess harvest by failing to report their catch as well as fraudulently using another person's documentation. Kimbler's involvement in the scheme was valued at more than $200,000 in retail value, while Bland's exceeded $70,000. The two will be forfeiting two vessels and equipment used to commit this crime. They also will surrender dive endorsements, navigation equipment, and location data for all their artificial habitat sites.

Sentencing is scheduled for June 19, 2012. This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Odysea Carriers, S.A. et al., Nos. 2:12-CR-00056 and 105 (E.D. La.), AUSAs Emily Greenfield and Dorothy Manning Taylor.

On March 8, 2012, Odysea Carriers, S.A., (Odysea) pleaded guilty to obstruction, and to APPS and Ports and Waterways Safety Act (PWSA) violations (18 U.S.C. §1519; 33 U.S.C. §§ 1908(a), 1232(b)(1)). The charges stem from the illegal overboard discharges of sludge and oily water in 2011 from the *M/V Polyneos*, an Odysea-operated cargo ship.

From June 2011 through October 2011, crew members used a bypass hose to pump the contents of the vessel's bilge tank, bilge oil tank, and sludge tank directly overboard. The chief engineer Pedro Guerrero falsified the oil record book by omitting these discharges, and by stating that the incinerator had been used to handle with these wastes, which was untrue. Guerrero previously pleaded guilty to a false statement violation (18 U.S.C. § 1001(a)(3)) and is scheduled to be sentenced on May 2, 2012. The PWSA violation stems from the company's failure to notify authorities of cracks found in the ballast tanks. Odysea is scheduled to be sentenced on July 25, 2012.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Nupro Industries Corporation et al., No. 2:12-CR-00011 (E.D. Penn.), AUSA Sarah L. Grieb.

On March 2, 2012, Nupro Industries Corporation (Nupro), d/b/a Neatsfoot Oil Refineries Corp., and Advance Technologies, pleaded guilty to tampering with a monitoring method under the Clean Water Act (33 U.S.C. § 1391(c)(4)).

Nupro manufactures oils (at its Neatsfoot plant) and esters (at the Advance Technologies facility). Both processes generated wastewater that was classified as a hazardous waste and was

required to be sampled and treated before being discharged to the Philadelphia POTW. From November 2006 to June 2007, Nupro and operations director Peter Shtompil watered down samples that were taken of the wastewater before it was discharged into the city's sewer system. Shtompil pleaded guilty in January 2012 to a similar violation, and he is scheduled to be sentenced on April 27, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Glenn Bridges et al., No. 2:12-CR-14002 (S.D. Fla.), AUSA Norman O. Hemming, III.

Turtle shells

On March 1, 2012, Glenn Bridges pleaded guilty to a Lacey Act conspiracy and to a substantive Lacey Act violation, along with a false statement charge (18 U.S.C. §§ 371, 1001; 16 U.S.C. § 3372) for his involvement in the illegal import of wildlife in violation of Bahamian laws and regulations.

In November 2011, Bridges and co-defendants attempted to import spiny lobster and queen conch, along with Hawksbill, Loggerhead, and Green sea turtle shells into Port St. Lucie, Florida. Specifically, the three attempted to conceal 155 spiny lobster tails, seven sea turtle shells, and 34 conchs hidden in various compartments on their sport-fishing vessel. When questioned, Bridges told a Coast Guard officer that he only had a few fish on board the boat. Gregory Johnson and Sharon Vollmer remain charged in a ten-count indictment. Bridges is scheduled to be sentenced on May 21, 2012.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Coast Guard, Customs and Border Protection, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Randy T. McDougall, No. 4:11-CR-00038 (D. Mont.), AUSA Jessica Betley.

On March 1, 2012, Randy T. McDougall pleaded guilty to a violation of the Endangered Species Act (16 U.S.C §§ 1538(a)(1)(A) and 1540(b)(1)) stemming from the smuggling of a tiger skull. The skull was found in the defendant's luggage as he crossed the border from Canada into Montana in September 2010.

Sentencing is scheduled for June 18, 2012. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Allan Wright, No. 1:11-CR-00103 (S.D. Ohio), ECS Trial Attorney Jim Nelson and ECS Paralegal Rachel Van Wert.

On February 24, 2012, Allan Wright pleaded guilty to four misdemeanor Lacey Act violations (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(2)), for trafficking in illegally harvested white-tailed deer and making false records while employed as a wildlife officer for the Ohio Department of Natural Resources Division of Wildlife.

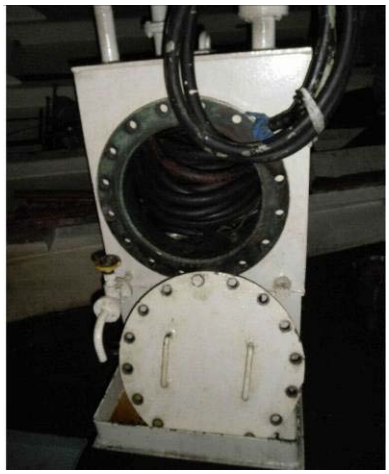
The defendant knowingly sold an Ohio resident hunting license to a South Carolina resident who then illegally shot three deer during the 2006 white-tailed deer season. Using his authority as a wildlife officer, Wright seized white-tailed deer antlers from a hunter who had illegally killed a deer during the 2009 season. Rather than dispose of the antlers through court proceedings, he facilitated the transport of the antlers to another individual in Michigan.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

Sentencings

United States v. Ilios Shipping Company S.A. et al., Nos. 2:11-CR-00262, 00263, 00286 (E.D. La.), ECS Trial Attorney Ken Nelson, AUSA Emily Greenfield, and ECS Paralegal Jessica Egler.



Tank used to conceal illegal hoses

On March 27, 2012, Ilios Shipping Company S.A. was sentenced to pay a $2 million criminal penalty, and will complete a three-year term of probation. Of this amount, $250,000 will be used to fund community service projects aimed at the restoration of marine and aquatic resources in the Eastern District of Louisiana. The company previously pleaded guilty to APPS and obstruction violations (33 U.S.C. § 1908(a); 18 U.S.C. §§ 1505, 1519) stemming from the routine illegal discharge of oily bilge wastes from the *M/V Agios Emilianos* between April 2009 and April 2011.

Ilios was the operator of this 738-foot bulk carrier cargo ship that hauled grain from New Orleans to various ports around the world. Crew members also falsified entries that were made in the oil record book (ORB) for those illegal discharges.

Ship's master Valentino Mislang and chief engineer Romulo Esperas previously pleaded guilty to conspiracy to obstruct justice. Specifically, Mislang admitted to his role in destroying evidence and instructing crewmembers to lie to the Coast Guard during the vessel's inspection in April 2011. Esperas admitted to falsifying the ORB and to directing the illegal discharges. Both men stated that they were ordered to carry out these activities by one of the company's senior managers. Esperas further stated that this senior manager refused to provide funding for the proper discharge of the oily waste to shore-side facilities. They each were sentenced to serve three-year terms of probation.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Rush C. Maltz et al., No. 4:11-CR-10012 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

Artificial habitat removed from Sanctuary

On March 27, 2012, Rush C. Maltz and Titus A. Werner were sentenced for their involvement in a conspiracy (18 U.S.C. § 371) to illegally sell and transport spiny lobster. Maltz will serve an 18 month-term of incarceration followed by a two-year term of supervised release. Maltz also will forfeit $62,000, which represents the proceeds from the sale of the two vessels used to commit the offenses. Werner will serve one year and one day of incarceration followed by a one-year term of supervised release. Neither was ordered to pay a fine.

From May 2007 through March 2009, co-defendant Scott A. Greager was the owner of Holiday Seafood Key West (Holiday Seafood). Using a Florida Wholesale Dealer's License issued in the name of Conch Republic Seafood Company, Greager knowingly made numerous purchases of spiny lobster from Maltz and Weiner in excess of the legal daily limit of 250. The three defendants also admitted that Greager made payments from an account in the name of Holiday Seafood to his co-conspirators for lobster they harvested, and he attempted to conceal the illegal activity from state officials by issuing trip tickets under another person's name. In August 2008, on seven separate occasions, Greager purchased a total of more than 5,000 pounds of lobster with a wholesale value of almost $40,000. Greager was previously sentenced to serve 90 days' incarceration, followed by one year of home detention as a condition of two years' supervised release, for his role in this Lacey Act conspiracy.

Under the plea agreement Maltz and Werner will complete the removal of over 200 "casitas" that they illegally placed in the Florida Keys National Marine Sanctuary that were used to capture the lobsters.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement.

Back to Top

United States v. Belvan Corporation et al., Nos. 6:11-CR-00050, 6:12-CR-00001 - 03 (N.D. Tex.), AUSA Paulina Jacobo.

On March 23, 2012, Belvan Corporation was sentenced to pay a $500,000 fine and will complete a five-year term of probation to include the initiation of an employee environmental awareness training program.

The company previously pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7412(c)(2)(B)) stemming from equipment failure at the Belvan Midway Lane Gas Processing Plant, a natural gas processing facility. The company failed to notify officials that its sulfur recovery unit (SRU) had shut down from October 2005 through December 2008 allowing excessive levels of sulfur dioxide and other pollutants to be released to the atmosphere.

Three company executives were previously sentenced after each pleaded guilty to a negligent endangerment violation under the CAA (42 U.S.C. § 7413 (c)(4)). Michael Davis, vice president of engineering and operations, was sentenced to pay a $50,000 fine; Daniel Valmer Meacham, operations manager, was ordered to pay a $22,000 fine; and Robert Mark Stewart, the environmental coordinator,

was sentenced to pay a $15,000 fine. In addition, they each were sentenced to serve a one-year term of probation during which they will undergo environmental awareness training.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality, and the Texas Parks and Wildlife Department.

Back to Top

United States v. Martin Aguilar, No. 1:10-CR-03101(D. N. M.), AUSA Fred J. Federici.

On March 16, 2012, Martin Aguilar was sentenced to serve a two-year term of probation. A fine was not assessed. Aguilar, a member of the Kewa Pueblo, previously pleaded guilty to violating the Bald and Golden Eagle Protection Act (16 U.S.C. § 668).

In February 2010, Aquilar and his son each shot a bald eagle. The defendant took the eagles to his home where he removed and kept the feathers. He told agents a few days later that he had killed the birds, but that he did not have the required license.

Aguilar further stated that he is a medicine man at the Santo Domingo Pueblo, and that he has shot and killed five bald eagles since 1992.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Christopher Conk et al., Nos. 1:11-CR-00279, 286 (D. Idaho), AUSA George Breitsameter.

On March 14, 2012, Christopher Conk was sentenced to complete a two-year term of probation and will perform 100 hours of community service. A fine was not assessed.

Conk, a board member for the Idaho Aquarium in Boise, Idaho, previously pleaded guilty to smuggling, Lacey Act trafficking, and an Endangered Species Act violation (18 U.S.C. § 554; 16 U.S.C. §§ 3372(a)(1), 1538(d)(1)) for illegally shipping protected live corals to buyers around the world. The defendant's ex-wife Deidra Davison pleaded guilty to an ESA violation and to a misdemeanor Lacey Act trafficking charge. Davison also was sentenced to serve a two-year term of probation and will perform 80 hours of community service.

Investigators became aware of Conk and Davison after one of their suppliers was found to be illegally harvesting coral in the Florida Keys National Marine Sanctuary. The two operated a web-based business called Coral Fanatics LLC, which was in the business of selling a mix of aqua-cultured and "wild caught" colonies. Between May and September 2008, Davison packaged and shipped coral that were mislabeled as "minerals," "aquacultured zoa fragments," and "aquacultured ricordea fragments," to customers in the Netherlands and Great Britain. None of these shipments were accompanied by the required paperwork.

Conk was arrested after an undercover agent contacted Conk and made arrangements for three shipments of coral to Vienna, Austria, in 2010. When the agent received the packages, the documents mischaracterized the contents and they were not properly labeled as containing wildlife.

This case was investigated by United States Immigration and Customs Enforcement, the National Oceanic and Atmospheric Administration Office of Law Enforcement, and the United States Fish and Wildlife Service.

Back to Top

United States v. Lin Feng Xu, No. 1:11-mj-00940 (E.D.N.Y), ECS Senior Trial Attorney Richard Udell and AUSA William Sarratt.

Ivory carving concealed in defendant's luggage

On March 13, 2012, Lin Feng Xu was sentenced to time served, followed by four years of supervised release, and was ordered to pay a $50,000 criminal fine. Xu also will forfeit 18 pieces of ivory.

The defendant previously pleaded guilty to smuggling and to violating the Endangered Species Act (18 U.S.C. § 545; 16 U.S.C. § 1538) in connection with the illegal export of African elephant ivory in his carry-on luggage.

In September 2011, Xu was apprehended at J.F.K. Airport in New York, before boarding a flight to China. When questioned about several carved objects found in his luggage that were apparently made of ivory, Xu initially stated that he did not know what they were made from and that they had been purchased for approximately $3,000 to $4,000 at U.S. auction houses. In pleading guilty, the defendant subsequently admitted to knowing that the carvings were ivory and that they were worth approximately $50,000. Xu also had packed the ivory carvings in aluminum foil to conceal their outline from x-ray screening.

This case was investigated by the United States Fish and Wildlife Service, Immigration and Customs Enforcement, and the Transportation Safety Administration.

Back to Top

United States v. Jason Bruno, No. 6:10-CR-00244 (W.D. La.), AUSA Myers P. Namie.

On March 12, 2012, Jason Bruno was sentenced to complete a one-year term of probation and will perform 300 hours of community service. A fine was not assessed.

Bruno, the former owner and manager of One Low Price Cleaners, previously pleaded guilty to a one-count information charging a misdemeanor violation of the Clean Water Act (33 U.S.C. § 1319 (c)(1)(B)) for his dumping a chemical into the local POTW.

Chemicals dumped into sewer

In May 2009, the local fire department responded to an emergency call regarding individuals who were overcome by noxious fumes emanating from a local shopping center, several of whom were transported to a local emergency room. Investigators subsequently determined that tetrachloroethylene (also known as PERC) had been dumped into the drains from Bruno's cleaners business, which was located in this shopping center, from December 2007 through May 2009.

At one point in time, the cleaners had been using a hazardous waste disposal company to properly dispose of the wastewater; however, it stopped using the service to avoid paying the pickup and disposal fees.

This case was investigated by the Louisiana Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police.

Back to Top

[redacted]

Back to Top

United States v. Stephen Dickinson et al., Nos. 3:11-CR-00101 and 102 (W.D.N.C.) AUSA Steven Kaufman.

On March 7, 2012, Stephen Dickinson and Alexander Edwards were sentenced after previously pleading guilty to Clean Air Act violations (42 U.S.C. § 7213 (c)(2)(A)). Both will pay $1,000 fines. Edwards also will serve 60 days' incarceration, followed by four months' home confinement, and two years' supervised release. Dickinson will complete a two-year term of probation.

The defendants formerly worked as service technicians for Hendrick BMW. From June 2010 through March 2011, several technicians were found to be using equipment known as an OBDII simulator that enabled them to falsify emissions test results and bypass the State of North Carolina's vehicle emissions program. Illegal inspections were performed on the defendants' personal vehicles and those of family and friends; arrangements often included cash payments to the defendants.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the North Carolina Division of Motor Vehicles License and Theft Bureau.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Henry Dao et al., Nos. 2:12-CR-00011, 124, and 158 (C.D. Calif.), AUSA Amanda Miller Bettinelli.

Red-whiskered Bulbul

On March 5, 2012, Henry Dao was sentenced to pay a $1,750 fine and will complete a one-year term of probation for posting two live Red-whiskered Bulbul birds for sale on a website used to trade and sell "softbills." Dao previously pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372 (A)(4), 3373 (d)(3)(B)) for illegally selling an invasive or injurious species, which had also been transported in interstate commerce. On March 8th, Dan Tram Huynh was sentenced to pay a $2,500 fine, complete a two-year term of probation, and perform 300 hours of community service. Huynh previously pleaded guilty to an Endangered Species Act violation (16 U.S.C. §§ 1538(a)(1)(F),1540(b)(1)) for attempting to sell Asian arowana fish to an undercover agent after offering the fish for sale on Craigslist. On March 15th, Karla Trejo was sentenced to pay a $390 fine plus $242 in restitution, perform 50 hours of community service, and complete a one-year term of probation. Trejo previously pleaded guilty to a violation of the Migratory Bird Treaty Act (16 U.S.C. § 703) for selling a live Western Scrub-Jay after posting an ad on Craigslist.

Western Scrub-Jay

These cases are the result of Operation Cyberwild, a task force that focused on Internet advertisements placed by sellers of wildlife in Southern California and Southern Nevada. During the investigation, officials recovered live endangered fish, protected migratory birds, an elephant foot, and pelts from a tiger, a polar bear, a leopard and a bear. A total of nine people have been charged.

These cases were investigated by the United States Fish and Wildlife Service and the California Fish and Wildlife Game, with substantial assistance from the Humane Society.

Back to Top

United States v. Elias Garcia Garcia et al., No. 1:11-CR-20525 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

Jaguar skin

On March 5, 2012, Elias Garcia Garcia and Maria Angela Plancarte were each sentenced to serve a year and a day of incarceration, followed by two-year terms' of supervised release. A fine was not assessed and the defendants each face deportation from the United States upon completion of their term of imprisonment. They previously pleaded guilty to a Lacey Act conspiracy violation (16 U.S.C. § 3372; 18 U.S.C. § 371) for their involvement in the interstate sale of jaguar skins illegally imported into the United States from Mexico in 2010.

The defendants offered to sell jaguar skins in person to potential customers in Texas and by electronic means elsewhere. Additionally, they made repeated trips to South Florida, transporting jaguar skins in their car to sell to Florida customers, while purporting to do business for the plant seed company that they jointly operated.

In November 2010, they sold two jaguar pelts to undercover agents in Texas for a total of $3,000 and offered the agents up to ten jaguar skins at a time for any future sale. A second sale of skins allegedly was made to undercover agents in Homestead, Florida, resulting in a payment of $4,000, of which $1,000 was a deposit against the future sale of up to ten skins.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Enrique Gomez De Molina, No.1:11-CR-20808 (S.D. Fla.), ECS Trial Attorney Shennie Patel and AUSA Tom Watts-FitzGerald.

Slow Loris

On March 2, 2012, Enrique Gomez De Molina was sentenced to serve 20 months' incarceration, followed by one year of supervised release. De Molina also will pay a $6,000 fine and will forfeit all smuggled wildlife in his possession.

The defendant previously pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372(a)(1), 3373(d)(1)(B)) for smuggling wildlife from Indonesia into the United States, which was used in taxidermy pieces and offered for sale in galleries and on the Internet.

De Molina's illegal wildlife trafficking activities extended from late 2009 through February 2011, included numerous species and shipments, and involved contacts in Bali, Indonesia, Thailand, the Philippines, Canada, and China. Among the animals he possessed were the parts, skins, and remains of whole cobras, pangolins, hornbills, and the skulls of babirusa (a species of pig) and orangutans, skins of a Java kingfisher, and a carcass remnant of a Slow Loris, none of which were properly declared when imported into the United States or accompanied by the required CITES permits.

De Molina incorporated the various animal parts into taxidermy pieces at a studio in downtown Miami. He offered these pieces through galleries and on the Internet for prices ranging up to $80,000. Despite the interception of two shipments in late 2009, which ultimately were forfeited and abandoned by the defendant, he continued to solicit protected wildlife from his suppliers via the Internet.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Daniel B. Birkbeck, No. 1:11-CR-10224 (D. Mass.), ECS Trial Attorneys Gary Donner and Jim Nelson, and ECS Paralegal Christina Liu.

On February 29, 2012, Daniel Birkbeck was sentenced to pay a $10,000 fine and will complete a one-year term of probation. He previously pleaded guilty to a Lacey Act wildlife trafficking violation (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B)) for illegally harvesting striped bass in 2009. Birkbeck also was ordered to forfeit $5,000 in lieu of the truck and boat used in the offense.

Commercial fishing for striped bass in both Massachusetts and Rhode Island is governed by a quota system, which was enacted in response to declining fish populations. As of 2003, Rhode Island's commercial striped bass quota has been 243,625 pounds and Massachusetts' quota has been 1,159,750 pounds. As a result, the Massachusetts commercial striped bass season is open longer than the Rhode Island season.

Birkbeck, a licensed commercial fisherman in both states, harvested striped bass that he took from Rhode Island waters after the state's commercial fishing season had closed in 2009. He then transported 10,163 pounds of fish to a dealer in Massachusetts where he sold it for approximately $27,347 without properly identifying the fish with Rhode Island commercial striped bass tags.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Craig L. Staloch, No. 11-mj-00382 (D. Minn.), AUSA Kevin Ueland.

On February 27, 2012, farmer Craig L. Staloch was sentenced to pay a $12,300 fine, complete a two-year term of probation, and perform 100 hours of community service. Staloch previously pleaded guilty to a violation of the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707) for destroying a large colony of American White Pelicans in May 2011.

Surviving Pelican chick

The defendant rented acreage next to Minnesota Lake and grew corn and soybeans. In May 2011, a state inspector visited this farmland that was home to approximately 3,000 pelicans with almost 1,500 active nesting sites. Inspectors made a second visit to make an accurate count and found that the colony had been destroyed. This colony of pelicans used to reside on an island in the lake, but after losing their nesting site they moved to where Staloch planted his crops. The defendant complained that the birds' feet and droppings had ruined his crops, causing him to lose $20,000.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Preston C. Minus, Jr., No. 7:12-CR-00051 (N.D. Ala.), AUSA Henry Cornelius.

On February 22, 2012, Preston C. Minus, Jr., pleaded guilty to, and was sentenced for a Migratory Bird Treaty Act violation (16 U.S.C. §§ 703, 707) for illegally placing bait on his property in order to attract mourning doves for hunters. Minus was ordered to pay a $5,775 fine and complete a three-year term of probation, during which he is banned from any hunting activity.

The defendant was observed in 2009 illegally baiting a field. In September 2009, on the opening day of mourning dove season, agents identified 37 hunters who paid a total of approximately $3,700 to hunt on the defendant's property. Approximately 84 mourning doves were killed over the baited area.

This case was investigated by the United States Fish and Wildlife Service and the Alabama Division of Wildlife and Freshwater Fisheries.

Back to Top

Back to Top

Back to Top

United States v. Seville Colony, Inc., et al., No. 4:11-CR-00084 (D. Mont.), AUSAs Kris McLean and Laura Weiss.

Poisoned horse

On January 30, 2012, Seville Colony, Inc., Thomas Wipf, and Edward Waldner were sentenced following convictions related to the illegal application of a pesticide.

In April 2011, two horses were found to have been poisoned with oats laced with strychnine on the Blackfeet Indian Reservation. Investigators determined that pesticide had been added to oats that were spread around gopher holes and subsequently eaten by the horses. Approximately 300 acres were cleaned up, and eight-55-gallon drums of poisoned oats and soil were removed.

Seville Colony and Thomas Wipf (the pesticide applicator) pleaded guilty to FIFRA violations (7 U.S.C. §§ 1361(b)(2);136j(a)(2)(G)), and Edward Waldner (the Seville treasurer) pleaded guilty to a false statement violation (18 U.S.C §10019a)(2)). Seville was sentenced to pay $90,274 in restitution to EPA for cleanup costs and will complete a one-year term of probation. Waldner and Wipf will each pay $1,000 in restitution and also will complete one-year and six-month terms, respectively, of unsupervised probation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Teddy J. Gardner, et al., No. 4:11-CR-00195 (W.D. Mo.), AUSA Jess E. Michaelsen.

On January 24, 2012, four individuals were sentenced after pleading guilty to a violation of the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 (a)), for the destruction of two Bald Eagle's nest.

During the course of logging timber in March and April 2010, Teddy J. Gardner (d/b/a Joe Gardner Logging and Sawmill Company) and Michael G. Gardner cut down cottonwood trees containing clearly visible Bald Eagle nests. The owners of the property, Ronald L. Gibson, and his son Todd A. Gibson, had contracted with the Gardners to cut down the trees.

Bald eagle nest

The larger nest (*pictured*) had been on the property for at least a decade and was quite a draw for people who came every spring to watch the mating pair and their offspring. The nest was described as being approximately ten-feet wide and bigger than the bed of a pick-up truck.

The Gibsons were each sentenced to pay a $5,000 fine and will complete two-year terms of probation. They also will perform 100 hours of community service in the Big Muddy National

Wildlife Refuge located in Columbia, Missouri. The Gardners will each complete two-year terms of probation and perform 100 hours of community service. Fines were not assessed.

This case was investigated by the Missouri Department of Conservation and the United States Fish and Wildlife Service.

Back to Top

United States v. Richard Weiner et al., Nos. 1:11-CR-00077 and 00102 (D. Mont.), AUSA Kris McLean.

On January 6, 2012, Richard Weiner and Matt Weiner were sentenced after pleading guilty to conspiracy and Lacey Act violations (18 U.S.C. § 371; 16 U.S.C. §§ 3372, 3373(d)(2)) for unlawfully guiding nonresident hunters on hunts in Montana. Numerous big game animals were killed and then transported to Oregon from 2007 through 2010. Richard Weiner was sentenced to pay a $40,000 fine and Matt Weiner will pay a $20,000 fine. Both are jointly and severally responsible for $20,000 in restitution to the state of Montana. They are banned from hunting anywhere in the world during a three-year term of probation and banned from hunting in Montana for life.

David "Bud" LaRoche was a hunter who participated in a hunt guided by the Weiners. He was sentenced to pay a $2,500 fine, plus $8,000 in restitution to Montana, and will complete a three-year term of probation. LaRoche also is prohibited from hunting anywhere in the world during the term of probation and is banned for life from any hunting in Montana.

These cases were investigated by the United States Fish and Wildlife Service and the Montana Department of Fish, Wildlife, and Parks.

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

May 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning *state or local cases*, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Photos from *U.S. v. Garcia*, below, involving the illegal smuggling of ozone depleting substances.

AT A GLANCE:

DISTRICT	CASES	*CASE TYPE/* STATUTES
C.D. Calif.	United States v. Lisa Naumu et al.	*Endangered Species Sales/* ESA
D.D.C.	United States v. Rolando Ong Vano et al.	*Vessel/* APPS, Obstruction, Conspiracy
S.D. Fla.	United States v. Carlos A. Garcia et al.	*ODS Sales/* Smuggling
N.D. Ind.	[redacted] United States v. Daniel Olson	[redacted] *Treatment Plant Operator/* CWA
S.D. Ind.	United States v. North American Green, Inc.	*Pesticide Application/* FIFRA
D. Kan.	United States v. Hugh A. Barker	*Building Demo/* CAA
W.D. Ky.	United States v. Daniel Evanoff	*Aluminum Products/* CAA, Conspiracy
E.D. La.	United States v. Cedyco Corporation United States v. Donald Hudson	*Oil and Gas Facilities/* CWA Misdemeanor *Drilling Rig Tests/* False Statement
M.D. La.	United States v. CTCO Shipyard of Louisiana, LLC	*Barge Repair Facility/* CWA
W.D. La.	United States v. Byron Hamilton et al.	*Oil Refinery/* CAA, Obstruction

DISTRICT	CASES	*CASE TYPE/* STATUTES
E.D. Mich.	United States v. Jose "Joey" Ramos et al.	*Asbestos Removal/* CAA
[redacted]	[redacted]	[redacted]
W.D. Mo.	United States v. Indian Ridge Resort, Inc., d/b/a Indian Ridge Resort Community et al.	*Construction Site/* CWA
D. Mont.	United States v. Steven Patrick Garcia, Jr.	*Feather Sales/* MBTA, Lacey Act
D.N.J.	United States v. James Robert Durr	*Turtle Habitat Destruction/* ESA
E.D.N.C.	United States v. Angel Dario Rodriguez Nunez	*Emissions Tests/* CAA, Conspiracy
E.D. Okla.	United States v. Integrated Production Services, Inc., et al.	*Oil and Gas Driller/* CWA
[redacted]	[redacted]	[redacted]
D.S.D.	United States v. Tilden Reddest	*Eagle and Hawk Sales/* MBTA, BGEPA
E.D. Va.	United States v. Steven E. Avery et al.	*Ship Scrapping/* Refuse Act
E.D. Wash.	United States v. Tom David White et al.	*Wolf Killing/* Lacey Act, ESA, Conspiracy
W.D. Wash.	United States v. Stowe Construction et al.	*Construction Site/*CWA
W.D. Wis.	United States v. Faling Yang et al.	*Duck Hunting/* Lacey Act

Additional Quick Links:

Informations/Indictments

United States v. Cedyco Corporation, No. 12-CR-00167 (E.D. La.), ECS Trial Attorney Christopher Hale, AUSA Dee Taylor, and ECS Paralegal Ben Laste.

On April 20, 2012, a three-count information was filed charging Cedyco Corporation with three misdemeanor Clean Water Act violations (33 U.S.C. §§ 1319(c)(1)(A), 1321 (b)(3)) for negligent discharges of oil.

Cedyco was in the oil and gas business and operated several hydrocarbon facilities. According to the information, on several occasions between February and May 2008, the defendant allegedly discharged oil from its Bayou Dupont facility into navigable waters of the U.S.

This case was investigated by United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard Investigative Service, and the Louisiana Department of Environmental Quality.

Back to Top

United States v. Steven Patrick Garcia, Jr., No. 12-CR-00039 (D. Mont.), ECS Senior Trial Attorney Georgiann Cerese, AUSA Mark Smith, and ECS Paralegal Christina Liu.

On April 18, 2012, a two-count indictment was returned charging Steven Patrick Garcia, Jr., with violations of the Lacey Act and Migratory Bird Treaty Act (16 U.S.C. §§ 3372 (a)(1), 3373 (d)(1)(B), 707(a), 707(b)(2)) for offering for sale golden eagle and hawk feathers in December 2008 and for selling golden eagle feathers in February 2009.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

[redacted]

Back to Top

Plea Agreements

United States v. Tom David White et al., No. 2:11-CR-00094 (E.D. Wash.), AUSA Timothy Ohms.

Defendant with deceased wolf

On April 17, 2012, Tom David White and his wife, Erin Jill White, pleaded guilty to violations stemming from their attempting to ship a gray wolf pelt via FedEx in December 2008. Tom White pleaded guilty to the taking of two gray wolves in violation of the Endangered Species Act (16 U.S.C. § 1538(a)(1)(B)). Erin pleaded guilty to conspiracy to export an endangered species and to a substantive count of export of an endangered species (18 U.S.C. § 371; 16 U.S.C. § 1538(a)).

Authorities were contacted after a woman dropped off a package for shipment that was leaking blood and found to contain a fresh hide from a gray wolf. Investigation confirmed that Erin White had dropped off the package, and her husband subsequently admitted to agents that he had killed a gray wolf approximately one week prior to their attempting to ship the skin to Canada.

William White, Tom White's father, pleaded guilty on April 4th to conspiracy to take an endangered species, conspiracy to export an endangered species, and to illegally importing wildlife that had been unlawfully taken in Canada. (18 U.S.C. § 371; 16 U.S.C §§ 1538(a)(1)(B), 1538 (a)(1)(A), 3372(a)(2)(A)). A Canadian hunting associate pleaded guilty to charges in Canada relating to his participation in William White's illegal taking of a deer and moose.

Public hunting or trapping of wolves is not allowed in Washington. Gray wolves remain on the endangered species list in Central and Western Washington.

Sentencing is scheduled for July 11, 2012. This case was investigated by the United States Fish and Wildlife Service, the Washington Department of Fish and Wildlife, the Washington Department of Agriculture, Immigrations and Customs Enforcement, and the United States Forest Service.

Back to Top

United States v. Rolando Ong Vano et al., No. 1:11-CR-00352 (D.D.C.), ECS Trial Attorney Ken Nelson, AUSA Fred Yette, and ECS Paralegal Jessica Egler.

On April 17, 2012, Rolando Ong Vano pleaded guilty to an APPS violation for concealing overboard discharges of oily bilge waste from the *F/V San Nikunau*. Sanford Ltd., the New Zealand-based owner and operator of the vessel, and another chief engineer remain charged with APPS, obstruction, and conspiracy violations (18 U.S.C. §§ 371, 1505, 1519; 33 U.S.C. §§ 1907(a), 1908(a)) and are awaiting trial.

Vano admitted to making fraudulent entries in the oil record book and to telling Coast Guard inspectors that the oil water separator was in use on the ship, when in fact, it was not. Officials discovered the violations during an inspection of the vessel in American Samoa in July 2011. Vano is scheduled to be sentenced on September 7, 2012.

This case was investigated by the United States Coast Guard.

Back to Top

[redacted]

Back to Top

United States v. Steven E. Avery et al., No. 2:11-CR-00190 (E.D. Va.), AUSAs Joseph Kosky and Melissa O'Boyle.

Vessel with boom to absorb oil spill

On April 13, 2012, a Chesapeake-based ship-scrapping company, its vice president, and its treasurer pleaded guilty to charges related to the scrapping of the M/V Snow Bird while it was docked on the Elizabeth River, in Chesapeake, Virginia, in 2010.

Steven E. Avery and Billy J. Avery operated Sea Solutions, Inc. In February 2010, the company purchased the M/V Snow Bird for the purpose of scrapping with the knowledge that it contained petroleum products and other pollutants. Despite this knowledge, the defendants commenced scrapping operations with the pollutants onboard. Over the course of several months, witnesses complained of chemicals leaking from the ship. In October 2010, the

defendants caused a major spill from the ship of oil, oily water, and other pollutants into the Elizabeth River. During the ensuing cleanup, several thousand gallons of oily waste was removed from the Elizabeth River and the shoreline at a cost of over $66,000.

The defendants had been charged with conspiracy, negligent and knowing violations of both the Clean Water Act and the Oil Pollution Act, and Refuse Act violations. Steven Avery had also been charged with making a false statement. The company pleaded guilty to a felony Clean Water Act violation (33 U.S.C. §§ 1311(a), 1319(c)(2)(A)) and the individuals pleaded guilty to a Refuse Act violation (33 U.S.C. § 407).

Sentencing is scheduled for July 12, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard Investigative Service, the Virginia Department of Environmental Quality, and the Chesapeake Fire Marshal's Office.

Back to Top

United States v. Angel Dario Rodriquez Nunez, No. 5:12-CR-00083 (E.D.N.C), AUSA Banu Rangarajan.

On April 9, 2012, Angel Dario Rodriquez Nunez pleaded guilty to conspiring to violate the Clean Air Act, and a CAA violation (18 USC § 371; 42 USC § 7413(c)(2)(A)), stemming from the falsification of vehicle emissions tests.

Nunez worked as a licensed North Carolina emissions inspector for two different dealerships. From May 2009 to July 2010, the defendant conspired with others to pass more than 800 vehicles that would normally have failed the emissions inspection in exchange for $150 to $225 per car. Nunez personally passed more than 350 vehicles.

The scheme involved entering the VIN for the vehicle to be inspected but then another car was scanned, generally one that was manufactured between 1996 and 1999 and would not generate a VIN when connected to the analyzer.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the North Carolina State Bureau of Investigations; and the North Carolina Department of Motor Vehicles, License, and Theft Bureau.

Back to Top

United States v. Donald Hudson, No. 2:12-CR-00115 (E.D. La.), AUSAs Dorothy Manning Taylor and Emily K. Greenfield.

On April 5, 2012, Donald Hudson pleaded guilty to a one-count information charging him with a false statement violation (18 U.S.C. §1001). Hudson admitted that he lied to agents about blowout preventer system testing on a drilling rig located in the Gulf of Mexico.

In May 2010, the Bureau of Safety and Environmental Enforcement (BSEE) was notified that a crew on a rig operated by Helmerich & Payne, Inc., had falsified the rig's blowout preventer system tests by falsely reporting that every valve on the choke manifold was successfully pressure tested. From January through May of 2010, however, the crew supervised by Hudson deliberately did not test a number of valves on the choke manifold because they knew that the valves would leak. During this period, the defendant was aware of what his crew was doing on a few occasions and personally authorized those few falsified test results.

The BSEE is one of three agencies created after the Minerals Management Service was reorganized in April 2010. The MMS is now known as the Bureau of Ocean Energy Management, Regulation, and Enforcement, with the BSEE acting as its environmental enforcement arm.

Sentencing is scheduled for August 8, 2012. This case was investigated by the Department of Interior Office of Inspector General, in cooperation with the BSEE.
Back to Top

United States v. Daniel Olson, No. 2:12-CR-00045 (N.D. Ind.), ECS Trial Attorney Richard Powers and AUSA Wayne Ault.

Treatment plant clarifiers

On April 5, 2012, Daniel Olson pleaded guilty to a three-count information charging him with Clean Water Act false statement violations and tampering with a monitoring method (33 U.S.C. § 1319(c)(4)).

From October 2000 through June 2010, Olson was the superintendent and certified operator of the J.B. Gifford Wastewater Treatment Plant, which is owned and operated by the Michigan City Sanitary District. From February 2002 through June 2010, the defendant variously failed to report bypasses, recorded false chlorine sample test results, and tampered with sampling methods, specifically for *E. coli* levels. Sentencing is scheduled for June 20, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division
Back to Top

United States v. Stowe Construction et al., Nos. 3:11-CR-05567, 3:12-CR-0521 (W.D. Wash.), AUSAs Matthew Diggs and Jim Oesterle.

Roadway cleanup after mudslide

On April 12, 2012, a prominent developer and his construction company pleaded guilty to felony violations of the Clean Water Act (33 U.S.C. § 1319(c)(2)(A)). Bryan Stowe and Stowe Construction are the first defendants to be charged with criminal storm water pollution violations in this district.

Between 2007 and 2011, the defendants failed to prepare and implement practices as required under the construction general storm water permit that would minimize storm water discharges to nearby waters. These permit violations led to significant discharges of pollutants from the site to adjacent wetlands and streams, as well as contributing to two major landslides at the project site in the winter of 2011, forcing the closure of the West Valley Highway. Employee Timothy Barger previously pleaded guilty to false statement violations. All defendants are scheduled to be sentenced on September 14, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division, with assistance from the Washington State Department of Ecology and the City of Sumner, Washington.

Back to Top

United States v. Carlos A. Garcia et al., No. 1:11-CR-20653 (S.D. Fla.), AUSA Tom Watts-FitzGerald and SAUSA Jodie Mazer.

On April 11, 2012, Carlos A. Garcia pleaded guilty to a smuggling violation (18 U.S.C. § 545) for his involvement in the illegal transport, sale, and receipt of ozone-depleting substances (ODS). Garcia's case previously went to trial, but a mistrial was declared after a juror refused to deliberate. Prior to a re-trial, the defendant entered his guilty plea.

Ozone depleting substances in warehouse

Garcia was the Senior Vice President for the Heating and Cooling Division of Mar-Cone Appliance Parts Co. Between July 2007 and April 2009, Garcia negotiated the sale and transport of approximately 55,480 kilograms of black market HCFC-22, with a fair market value of approximately $639,458.

The company previously pleaded guilty to and was sentenced for a smuggling violation. Mar-Cone was ordered to pay a $500,000 fine, plus a $400,000 community service payment, and forfeited $190,534 in illegal proceeds. To date, a dozen defendants have been prosecuted as a result of this investigation. Sentencing is scheduled for June 26, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

Back to Top

United States v. Daniel Evanoff, No. 1:11-CR-00022 (W.D. Ky.), AUSA Joshua Judd.

Furnace used for melting aluminum

On April 11, 2012, Daniel Evanoff pleaded guilty to conspiracy and to a Clean Air Act violation (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(C)) for tampering with a monitoring device.

Evanoff was the North American alloy manager for J.L. French, a Wisconsin-based company that makes die-cast aluminum products for the automobile industry. In February, 2010, the defendant admitted that he installed equipment to make it appear that the plant was operating in compliance with its permit, when in fact it was not. Sentencing is scheduled for July 2, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal

Investigation Division.
Back to Top

United States v. CTCO Shipyard of Louisiana, LLC, No. 2:12-CR-00139 (M.D. La.), AUSA Dorothy Taylor.

On March 27, 2012, CTCO Shipyard of Louisiana, LLC, pleaded guilty to violating the Clean Water Act (33 U.S.C. § 1319(c)(2)(A)) for failing to properly sample discharges, as well as for failing to submit monthly reports to the Louisiana Department of Environmental Quality.

The defendant owned and operated a marine towing and barge repair facility. Under its permit, it was required to monitor its effluent discharges, take samples, and provide discharge monitoring reports to local regulators. Investigation confirmed that between June 2008 and January 2010, the company failed to do any of this and was responsible for the discharge of raw sewage into the facility's storm water system, which ultimately discharged into the Intracoastal Waterway Canal, a water of the United States.

Sentencing is scheduled for June 28, 2012. This case was investigated by the Louisiana Department of Environmental Quality and the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Faling Yang et al., No. 3:12-mj-00019 (W.D. Wis.), AUSA Paul W. Connell.

On March 23, 2012, Faling Yang and Corrie Korn pleaded guilty to Lacey Act violations (16 U.S.C. § 3372) stemming from their operation of a commercial guiding company located on a National Wildlife Refuge near the Mississippi River.

Undercover investigation confirmed that Yang and Korn, both local police officers, illegally killed and transported ducks in October 2009, by exceeding the permissible bag limits. The officers were placed on administrative leave pending resolution of the case. Sentencing is scheduled for May 16, 2012.

This case was investigated by the United States Fish and Wildlife Service and the Wisconsin Department of Natural Resources.
Back to Top

Sentencings

United States v. Integrated Production Services Inc., et al., Nos. 6:11-CR-00050 and 00068 (E.D. Okla.), ECS Senior Trial Attorney Dan Dooher and AUSA Doug Horn.

On April 26, 2012, Integrated Production Services Inc. (IPS), a Houston-based natural gas and oil drilling contractor, was sentenced to pay a $140,000 fine for violations of the Clean Water Act (33 U.S.C. § 1319(c)(1)(A)) at its hydraulic fracturing operation in Atoka County, Oklahoma. Crew supervisor Gabriel Henson will pay a $2,500 fine and will complete a two-year term of probation.

Cleanup of acid spill

In 2007, IPS was performing work at a natural gas well site. A tank leaked hydrochloric acid near the site, which was flooded due to recent heavy rains. In order to remove the rainwater, Henson drove a truck through an earthen berm, causing the discharge of an estimated 400-700 gallons of hydrochloric acid into Dry Creek, a tributary of Boggy Creek and a navigable water.

The company also was ordered to make a $22,000 community service payment to the Oklahoma Department of Wildlife Conservation for ecological studies and remediation of Boggy Creek. IPS will complete a two-year term of probation, during which it will be required to implement an environmental compliance program to include employee training on the proper handling of hazardous waste and spill response procedures.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office of Inspector General.

Back to Top

United States v. Jose "Joey" Ramos et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On April 20, 2012, Jose "Joey" Ramos was sentenced after previously pleading guilty to knowingly violating the Clean Air Act (42 U.S.C. § 7413(c)(1)) for his role in an illegal asbestos removal project. Ramos will complete a two-year term of probation with a special condition of four months' community confinement.

Ramos worked as an on-site foreman under the supervision of co-defendant Brian Waite on the renovation of a former Ford Motor Company plant, which took place from December 2010 through February 2011. The defendants directed workers to tear out more than 60,000 square feet of asbestos-containing material while it was dry and put it into plastic bags without wetting it.

Waite and co-defendant Daniel Clements pleaded guilty to and were sentenced for similar violations. Jeffrey Walworth and his company Bonus Environmental, LLC, previously pleaded guilty to making a false statement under the CAA and are scheduled to be sentenced on June 1, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. James Robert Durr, No. 1:10-CR-00098 (D.N.J.), ECS Assistant Chief Elinor Colbourn, ECS Trial Attorney Mary Dee Carraway, and ECS Paralegal Rachel Van Wert.

On April 17, 2012, James Robert Durr was sentenced to pay a $1,000 fine, complete a one-year term of probation, and will perform 50 hours of community service. The court reserved ruling on mandatory restitution, setting it for hearing on July 17, 2012.

Durr previously pleaded guilty to an Endangered Species Act violation (16 U.S.C. § 1538) stemming from his clear-cutting trees near a stream, which impacted the habitat area of the bog turtle, a threatened species. The defendant purchased property in December 2005, that he knew contained habitat for a significant population of the bog turtle. Upon taking possession of the property, the defendant clear cut the buffer zone around the stream and ditched it just upstream of, and including part of, the turtle's habitat. Subsequent surveys for bog turtles revealed that there is no longer a viable population in this area.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Lisa Naumu et al., Nos. 2:12-CR-00014, 00123, 00173 (C.D. Calif.), AUSAs Rupa Goswami and Amanda Miller Bettinelli.

On April 12, 2012, Lisa Naumu was sentenced to pay a $4,000 fine and ordered to complete a two-year term of probation after pleading guilty to an Endangered Species Act (ESA) violation (16 U.S.C. § 1538). The court further stated that $2,500 of the fine will be waived if the defendant pays $1,500 immediately, and performs 500 hours of community service during the first 18 months of probation. Naumu sold an $8,000 leopard skin coat after placing an ad on Craigslist that offered three of such coats for sale.

Leopard skin coat

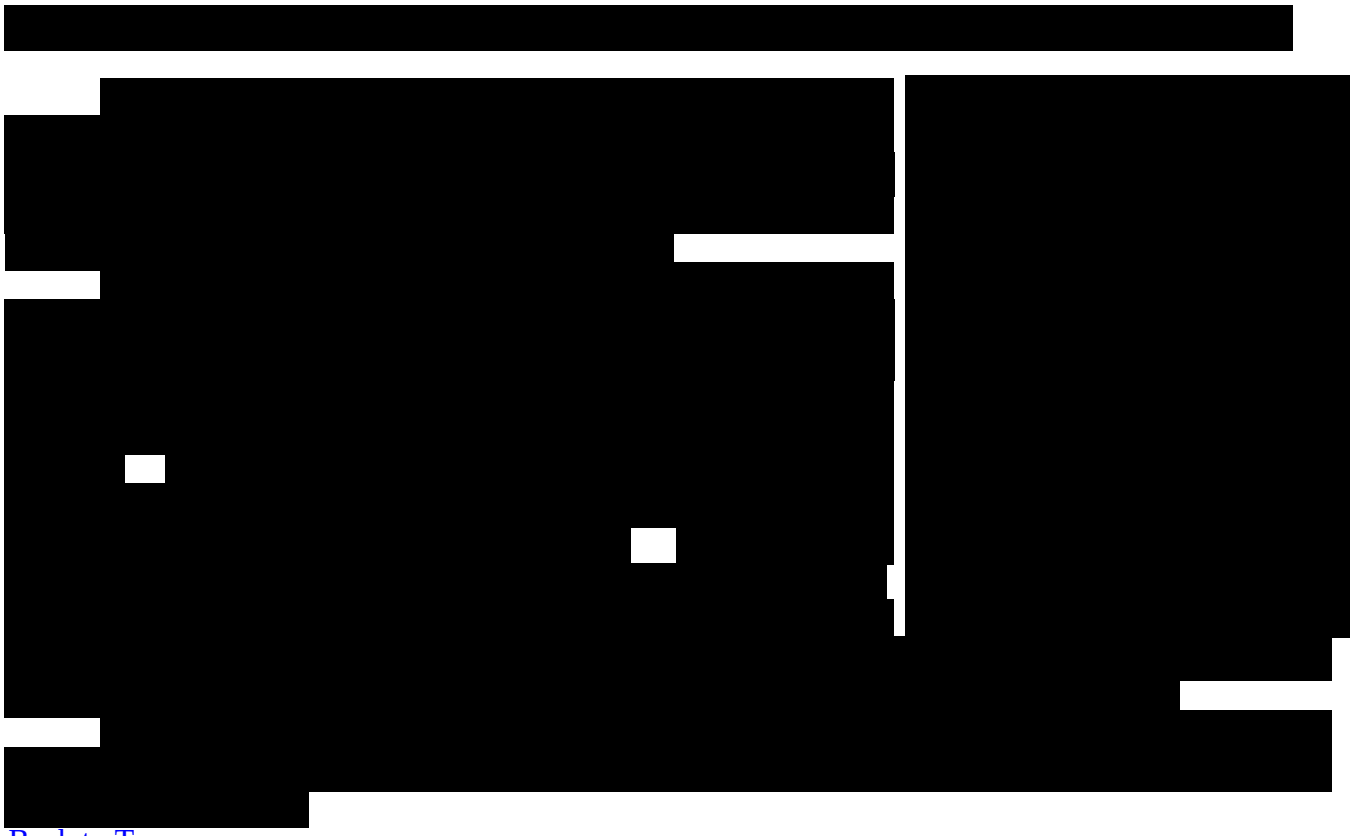
On March 21, 2012, George Lovell was sentenced after previously pleading guilty to an ESA violation. Lovell attempted to sell a pair of Loggerhead sea turtle leather boots on Craigslist for $1,000. He was ordered to pay a $1,000 fine and to complete a one-year term of probation.

Hawksbill shell

On March 15, 2012, Kamipeli Piuleini pleaded guilty to an ESA violation for selling a Hawksbill sea turtle shell on eBay. Piuleini was sentenced on the same day to pay a $500 fine and to complete a two-year term of probation.

These cases are a result of Operation Cyberwild, a task force that focused on Internet advertisements placed by sellers of wildlife in Southern California and Southern Nevada. During the investigation, officials recovered live endangered fish, protected migratory birds, an elephant foot, and pelts from a tiger, a polar bear, a leopard and a bear. A total of nine people have been charged.

These cases were investigated by the United States Fish and Wildlife Service and the California Fish and Wildlife Game, with substantial assistance from the Humane Society.
Back to Top



Back to Top

United States v. Hugh A. Barker, No. 6:11-CR-10160 (D. Kan.), AUSA Alan Metzger.

On April 9, 2012, Hugh A. Barker was sentenced to pay a $1,000 fine and will complete a one-year term of probation. Barker previously pleaded guilty to one count of violating the NESHAPS provisions for asbestos under the Clean Air Act (42 U.S.C. § 7413(c)(2)(B)).

In October 2008, Barker and his company, Barker Sand and Gravel, began demolishing a building in Harper, Kansas. The defendant failed to file a required notification of plans for the demolition. An inspection by the Kansas Department of Health and Environment determined that debris from the building included floor tile containing asbestos.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Byron Hamilton et al., No. 2:11-CR-00227 (W.D. La.), ECS Senior Counsel Rocky Piaggione, ECS Senior Trial Attorney Richard Udell, ECS Trial Attorney Christopher Hale, USA Stephanie Finley, and ECS Paralegal Ben Laste.

On April 4, 2012, Pelican Refining Co. (PRC) vice president Byron Hamilton and manager Mike LeBleu were sentenced. Hamilton will serve one day in jail, followed by one year of supervised

release. He also was ordered to pay a $5,000 fine. LeBleu will serve one day in jail, followed by 90 days' home confinement, and one year of supervised release. He was ordered to pay a $4,000 fine.

From August 2005 to March 2007, PRC operated the Pelican Refinery in Lake Charles, Louisiana, without properly functioning pollution prevention equipment. As a result, pollutants including benzene, toluene, ethylbenzene, xylene, and hydrogen sulfide, were illegally released into the atmosphere from a variety of sources, including the main refinery stack, leaks at pipes and joints, the barge loading dock, and tanks with roofs that were improperly certified and fitted.

Hamilton previously pleaded guilty to two Clean Air Act negligent endangerment violations, and LeBleu pleaded guilty to a single CAA negligent endangerment count (42 U.S.C. § 7413(c)(4)). The company was sentenced to pay a $10 million fine plus $2 million in community service payments and is further required to implement an environmental compliance plan during a five-year term of probation. The company previously pleaded guilty to two felony Clean Air Act violations and one obstruction charge (42 U.S.C. §§ 7661a (a) and 7413 (c)(1)); 18 U.S.C. § 1519.)

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Louisiana State Police, with assistance from the Louisiana Department of Environmental Quality.

Back to Top

United States v. Everett Blatche et al., Nos. 5:06-CR-00474, 5:08-CR-00171 (N.D.N.Y.), AUSA Craig Benedict.

On April 4, 2012, Everett Blatche was sentenced to serve seven days' incarceration followed by three years of supervised release. A fine was not assessed. Blatche previously pleaded guilty to conspiracy to violate the Clean Water Act, Clean Air Act, and CERCLA (18 U.S.C § 371).

Blatche was a supervisor for Aapex Environmental Services, Inc., (Aapex), an asbestos removal company. From June through November 2006, the defendant supervised numerous individuals who removed approximately 220,000 square feet of fire-proofing asbestos material from a large building. The material was then illegally dumped onto the ground and into nearby storm drains leading to the Erie Canal system. Aapex previously pleaded guilty to conspiracy and to a mail fraud violation (18 U.S.C §§ 371, 1341). It was sentenced to pay a $63,000 fine, $75,000 in restitution, and will complete a two-year term of probation. Co-defendant John Leathley remains scheduled for sentencing on August 21, 2012.

This case was investigated by the United States Environmental Protection Agency and the New York State Departments of Environmental Conservation and Labor, Asbestos Control Bureau.

Back to Top

United States v. Indian Ridge Resort, Inc., d/b/a Indian Ridge Resort Community et al., No. 3:10-CR-05026 (W.D. Mo.), AUSA Robyn McKee.

On March 29, 2012, Indian Ridge d/b/a North Ridge Resort Community and North Shore Investments, LLC, were sentenced. Indian Ridge Resorts was ordered to pay a $215,000 fine and North Shore will pay a $100,000 fine. Both will complete five-year terms of probation and must comply with the provisions of a consent decree entered into with the state, which includes an erosion control and compliance program.

The two companies previously pleaded guilty to Clean Water Act violations (33 U.S.C. § 1319(c)) stemming from the failure to control storm water runoff from a 600-acre construction site. Between August 2006 and June 2009, the defendants violated their NPDES permit by, among other things, failing to control erosion from the site, which persisted through at least the end of August 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.
Back to Top

United States v. North American Green, Inc., No. 3:11-CR-00050 (S.D. Ind.), AUSAs Todd Shellenbarger and Steve DeBrota.

On March 21, 2012, agricultural materials company North American Green, Inc. (NAG) pleaded guilty to and was sentenced for 150 FIFRA violations (7 U.S.C.§ 1361(b)(2)) for the illegal use of a registered pesticide.

The company sold erosion and sediment control mats for use on construction sites. These were routinely fumigated with a product called "Meth-O-Gas," a heavily regulated pesticide that has been found to cause serious acute illness or death. Between May 2006 and April 2007, the company admitted to misusing and misapplying the pesticide in a variety of ways, including using the name of a licensed applicator-turned-whistleblower on documentation related to the fumigations without this person's knowledge.

NAG was ordered to pay a $910,000 fine and will complete a three-year term of probation. It will implement an environmental compliance plan (to include an employee training program) and will issue a public apology in a number of local newspapers.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Tilden Reddest, No. 5:11-CR-50026 (D.S.D.), AUSA Eric Kelderman.

On February 24, 2012, Tilden Reddest was sentenced to complete a five-year term of probation to include the special condition of community confinement on weekends for one year, plus the performance of 400 hours of community service.

The defendant pleaded guilty to two violations of the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 (a)) after being charged in a 32-count indictment with BGEPA and Migratory Bird Treaty Act violations for unlawfully trafficking in eagles, hawks, and parts from these animals from April 2009 through December 2009.

This case was investigated by the United States Fish and Wildlife Service.
Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

June 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning *state or local cases*, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org

Workers illegally dumping plastics at sea. Go to *U.S. v. Taohim*, below, for more details.

AT A GLANCE:

- **United States v. OceanPro Industries et al., 674 F.3d 323 (4th Cir. 2012).**
- **United States v. Gannaway, 2012 WL 1859528, slip opinion, (11th Cir. May 23, 2012).**

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Prastana Taohim et al. United States v. Target Ship Management Pte. Ltd., et al. United States v. Alexander Alvarez	*Vessel/* Obstruction *Vessel/* APPS *Feather Sales/* MBTA, Lacey Act
D. Alaska	United States v. Fred E. Sims United States v. Ronald Monsen United States v. Theodore A. Nugent	*Brown Bear Baiting/* Lacey Act *Tugboat Grounding/* CWA *Black Bear Hunting/* Lacey Act
C.D. Calif.	United States v. Atsushi Yamagami et al.	*Turtle Imports/* Smuggling
S.D. Calif.	United States v. Eliodoro Soria Fonseca	*Iguana Meat/* Smuggling
D. Conn.	United States v. John Scheerer	*Lead Abatement/* False Statement
M.D. Fla.	United States v. Harris David Spicer United States v. Todd Alan Benfield	*Dove Baiting/* MBTA *Florida Panther Killing/* Endangered Species Act

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Fla.	United States v. Alejandro Gonzalez United States v. David Feltenberger et al. United States v. Dale Leblang et al. United States v. Artistides Lorenzo Rodriquez United States v. Glenn Bridges et al.	*Vessel/* False Statement, Obstruction Turtle Farms/ *Conspiracy, Lacey Act* *Quarantined Plant Shipments/* Conspiracy, Plant Protection Act Manatee Zone/ *ESA* *Wildlife Importing/* Conspiracy, Lacey Act, False Statement
N.D. Ind.	United States v. Stewart J. Roth et al.	*Treatment Plant Operator/* CWA
E.D. La.	United States v. Cedyco Corporation [redacted] United States v. Pedro Guerero et al.	*Oil and Gas Facilities/* CWA Misdemeanor [redacted] *Vessel/* APPS, Obstruction, False Statement, PWSA
E.D. Mich.	United States v. Douglas v. Mertz et al. [redacted]	*ODS Sales/* Making a False Writing [redacted]
W.D. Mo.	United States v. Reckitt Benckiser, Inc. United States v. Anthony Crompton	*Cleaning Products Manufacturer/* RCRA *Building Renovation/* CAA
[redacted]	[redacted]	[redacted]
D.N.H.	United States v. Franklin Non-Ferrous Foundry et al.	*Metal Parts Manufacturer/* RCRA

DISTRICT	CASES	*CASE TYPE/* STATUTES
N.D.N.Y.	United States v. Martin S. Kimber	*Mercury Dispersal/* Use of Chemical Weapon, Consumer Product Tampering
E.D.N.C.	United States v. Enoch Randolph Foy, Jr.	*Wetlands Filling/* CWA
N.D. Ohio	United States v. William Zirkle	*Tool Manufacturer/* CWA Misdemeanor
S.D. Ohio	United States v. Shelia Kendrick	*Pesticide Registration/* FIFRA, False Statement
[redacted]	[redacted]	[redacted]
E.D. Tenn.	United States v. Eric Gruenberg	*Demolition and Salvage Operations/* CAA, Conspiracy
E.D. Tex.	United States v. Blake Powell	*Deer Breeding/* Lacey Act
D. Utah	United States v. HP Boston Building United States v. Bugman Pest and Lawn, Inc., et al.	*Asbestos Removal/* CAA *Pesticide Application/* FIFRA
D. Vt.	United States v. Jon Goodrich et al.	*Tear Gas Manufacturer/* RCRA
[redacted]	[redacted]	[redacted]
W.D. Wash.	United States v. Patrick Dooley	*Chemical Disposal/* CWA, Witness Tampering
W.D. Wis.	United States v. Faling Yang et al.	*Duck Hunting/* Lacey Act

Additional Quick Links:

Significant Environmental Decisions

Fourth Circuit

United States v. OceanPro Industries et al., 674 F.3d 323 (4th Cir. 2012).

On March 23, 2012, the Fourth Circuit Court of Appeals affirmed the district court's venue determination and restitution award of $300,000. OceanPro Industries and two of its employees, Timothy Lydon and Benjamin Clough, were convicted of conspiring to violate the Lacey Act and other substantive offenses in connection with the sale of striped bass that were harvested from the Potomac River in violation of Maryland and Virginia fishing regulations. OceanPro and Clough also were convicted of giving false statements to federal law enforcement officers.

On appeal, the defendants argued: (1) that venue was not proper in the District of Maryland for the prosecution of Count 5, which charged a false statement made to investigating agents in the District of Columbia; and (2) that the district court improperly awarded restitution to the States of Maryland and Virginia because they lacked "property" interest in the unlawfully harvested fish.

As to venue, the Fourth Circuit held that venue was proper in the district of Maryland where the "effects" of the false statement were felt, because Congress defined the offense in terms of its effects by requiring "materiality." The Court determined that proof of an investigation in Maryland was necessary to prove the materiality of the charged false statement. As to restitution, the Court held that the United States was not required to show the states had a "property" interest in the fish to prove that the states were victims for purposes of a discretionary restitution award under the Victim Witness Protection Act or the probation and supervised-release statutes. The Court further held that Maryland and Virginia had "property" interests in the illegally harvested fish by virtue of State forfeiture statutes, which was sufficient to trigger mandatory restitution under the Mandatory Victim Restitution Act.

Back to Top

Eleventh Circuit

United States v. Gannaway, 2012 WL 1859528, slip opinion, (11th Cir. May 23, 2012).

On May 23, 2012, the Eleventh Circuit Court of Appeals issued an unpublished *per curiam* opinion affirming the convictions of Guy Gannaway and Stephen Spencer. The defendants were convicted of conspiracy to violate the Clean Air Act and various CAA charges regarding the mishandling of regulated asbestos-containing material (RACM) in connection with a condominium demolition and renovation project in Indian Shores, Florida. Gannaway was also convicted of making a material false statement to the Pinellas County's Air Quality Division in violation of 18 U.S.C. § 1001.

On appeal, Gannaway raised three arguments: (1) the government violated his Fifth Amendment privileges against self-incrimination by admitting his statements accepting civil liability for the RACM violations; (2) the admission of his statement of civil liability failed the balancing test in Rule 403 of the Federal Rules of Evidence; and (3) the evidence was insufficient to convict him of making a false statement.

Rejecting all three arguments, the Court first held that Gannaway's Fifth Amendment right against self-incrimination had not been violated during negotiations of an administrative penalty with the air quality division because Gannaway could not show that his subjective belief that he was compelled to make incriminating statements was objectively reasonable. Second, the Court held that the admission into evidence of Gannaway's statements of civil liability made during the county's administrative proceedings was not plain error under F.R.E. 403, because the evidence's probative value was not substantially outweighed by any prejudice that resulted. Third, the court held that the evidence was sufficient to support Gannaway's false statement conviction and that his statements to the county were within the jurisdiction of EPA because the agency was able to exercise power over the county's investigation by bringing its own civil or criminal enforcement action.

Spencer challenged the sufficiency of the evidence supporting his convictions. The court held that the evidence at trial was sufficient to show that Spencer knew the building contained asbestos, that he knowingly and voluntarily agreed with Gannaway to encapsulate the walls (attaching drywall to the ceiling with screws) without the presence of an on-site supervisor trained in RACM handling, and that Spencer acted in furtherance of the conspiracy by researching the encapsulation method and determining the details of encapsulation.

Back to Top

Trials

United States v. Alejandro Gonzalez, No. 1:11-CR-20868 (S.D. Fla.), ECS Trial Attorney Ken Nelson and AUSA Jaime Raich.

M/V Cosette

On May 25, 2012, a jury convicted Alejandro Gonzalez of three false statement violations and one obstruction charge (18 U.S.C. §§ 371, 1505, 1001(a)(2)) in connection with the issuance of false safety documents in 2009 for two cargo vessels, the *M/V Cala Galdana* and the *M/V Cosette*.

As a naval engineer and a vessel classification surveyor, Gonzalez was responsible for surveying the safety and seaworthiness of merchant vessels on behalf of foreign countries. On several occasions, the defendant told Coast Guard officials that the *Cala Galdana* had undergone maintenance work at a drydock when in fact this had never occurred. Gonzalez further obstructed the Coast Guard's port state control examination of the *Cosette* by issuing a fraudulent safety certificate without conducting a proper survey. Sentencing is scheduled for August 2, 2012.

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

United States v. Prastana Taohim et al., No. 1:11-CR-00368 (S.D. Ala.), ECS Trial Attorney David O'Connell, AUSA Mike Anderson, and ECS Paralegal Jessica Egler.

On May 17, 2012, Captain Prastana Taohim was found guilty by a jury of two counts of obstruction (18 U.S.C. §§1505 and 1519), for dumping plastic at sea and then ordering that the ship's garbage record book be falsified to conceal the dumping.

The plastic pipes had previously contained insecticide and were used to fumigate a shipment of grain being transported by the *M/V Gaurav Prem*. The pipes were dumped in August 2011, somewhere between South Korea and the Panama Canal. Taohim is scheduled to be sentenced on August 15, 2012.

Plastic pipes on deck

The corporate defendant, Target Ship Management, Chief Engineer Payongyut Vongvichiankul, and Second Engineer Pakpoom Hanprap, pleaded guilty on May 30th. (*See U.S. v. Target Ship Management et al., below, for more details*).

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency's Criminal Investigation Division. Additional

assistance was provided by the Coast Guard Sector Mobile, and Coast Guard Eighth District Legal Office.

Back to Top

United States v. Harris David Spicer, No. 8:11-CR-00527 (M.D. Fla.), AUSA Cherie Krigsman.

On May 8, 2012, Harris David Spicer was found guilty after a bench trial of a Migratory Bird Treaty Act violation (16 U.S.C. § 704) for unlawfully placing bait for the purpose of shooting migratory birds.

According to evidence presented at trial, sometime in September or early October 2009, Spicer placed sorghum (otherwise known as milo) seeds in the vicinity of a horse track located on his property. This type of seed is traditionally used as a lure for certain species of birds. In October 2009, Spicer hosted several hunters for a dove shoot around the horse track.

The defendant engaged in similar activity in October 2003 and had been advised at that time of the prohibitions against hunting doves over a baited field. Sentencing is scheduled for June 28, 2012.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

Informations/Indictments

United States v. David Feltenberger et al., Nos. 2:12-CR-14036 and 20362 (S.D. Fla.), AUSA Jaime Raiche.

Florida soft shell turtle

On May 17, 2012, David Feltenberger, Chris Craig, and James Cheung were variously charged with conspiracy and Lacey Act violations (18 U.S.C. § 371; 16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(2)) for the illegal sale of freshwater turtles in interstate and foreign commerce.

The Florida Fish and Wildlife Conservation Commission recently instituted an aquaculture permitting system (or "turtle farms") in response to the decline of the wild freshwater turtle population in Florida, due to overharvesting. Farm owners are permitted to have a certain number of wild-caught turtles strictly for breeding purposes.

According to the indictment, Feltenberger's permit allowed him to collect more than 15,000 turtles of various species from the wild for use as brood stock from May 2011 through April 2012. In the fall of 2011, Feltenberger, along with employee Chris Craig, allegedly purchased wild-caught turtles that were then illegally shipped to China.

Cheung was permitted to collect more than 500 wild-caught turtles for use as brood stock from March 2011 through April 2012. Cheung allegedly sold those turtles to buyers in California.

The allegations in the indictment are mere accusations and all persons are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Martin S. Kimber, No. 1:12-CR-00232 (N.D.N.Y.), AUSAs Richard Belliss and Craig Benedict.

On May 16, 2012, a three-count indictment was filed charging Martin S. Kimber with allegedly dispersing elemental mercury (a known hazardous substance) in several places around Albany Medical Center, including the cafeteria, in March, April, and June of 2011 and March 2012. The indictment charges two counts of use of a chemical weapon and one count of consumer product tampering (18 U.S.C. §§ 229, 1365).

The allegations in the indictment are mere accusations and all persons are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

This case is being investigated by the United States Environmental Protection Agency's Criminal Investigation Division, the Food and Drug Administration Office of Criminal Investigations, and the Federal Bureau of Investigation, with assistance provided by the Towns of Albany and Ulster Police Departments.

Back to Top

Back to Top

United States v. Fred E. Sims, No. 3:12-CR-00049 (D. Alaska), AUSA Steven Skrocki.

On April 18, 2012, Fred E. Sims was charged with two felony violations of the Lacey Act (16 U.S.C. §§ 3372 (a)(2)(A); 3373 (d)(1)(B)) for illegally killing a moose to use as bait for brown bears that were subsequently killed by hunters who had been illegally guided to the area by the defendant.

In May 2007, and again in May 2009, Sims is alleged to have killed a total of three moose, all of which were taken out of season. The defendant then waited until brown bears were feeding on the moose carcasses, and brought clients to those sites in order to kill the bears.

The allegations in the indictment are mere accusations and all persons are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement and the Alaska Wildlife Troopers

Back to Top

Plea Agreements

United States v. Sheila Kendrick, No. 2:12-CR-00101 (S.D. Ohio) ECS Senior Trial Attorney Jeremy Korzenik and AUSA Mike Marous.

On May 25, 2011, Sheila Kendrick pleaded guilty to a FIFRA violation and a false statement violation (7 U.S.C. § 136j (a)(2); 18 U.S.C. §1001), stemming from her falsification of pesticide registration documents.

Kendrick was the Federal Registration Manager for the Scotts Miracle-Gro (Scotts) regulatory affairs department. She admitted to fabricating registrations for five different pesticide products between August 2004 and October 2007.

Scotts, which previously pleaded guilty to 11 FIFRA counts, has admitted to illegally applying pesticides (that are toxic to birds) to wild bird food products, falsifying pesticide registration documents, distributing pesticides with misleading and unapproved labels, and distributing unregistered pesticides.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, and the Environmental Enforcement Unit of the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation.

Back to Top

United States v. Cedyco Corporation, No. 12-CR-00167 (E.D. La.), ECS Trial Attorney Christopher Hale, AUSA Dee Taylor, and ECS Paralegal Ben Laste.

On May 23, 2012, Cedyco Corporation pleaded guilty to a three-count information charging it with three misdemeanor Clean Water Act violations (33 U.S.C. §§ 1319(c)(1)(A), 1321 (b)(3)) for negligent discharges of oil.

Oiled outfall at Bayou St. Denis facility

Cedyco owned and operated several hydrocarbon facilities, including fixed barges, platforms, and wells, in the brackish bayous of South Louisiana. The company's negligent operation and poor maintenance of three of its facilities in Jefferson Parish led to harmful discharges of oil in 2008 into the navigable waters of the United States. The three facilities are the tank battery known as the "Bayou St. Denis facility," the production and storage facility known as the "Bayou Dupont facility," and the production well adjacent to the Bayou Dupont facility known as "Well #10."

Sentencing is scheduled for August 15, 2012. This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, the United States Coast Guard Investigative Service, and the Louisiana Department of Environmental Quality.

Back to Top

United States v. Todd Alan Benfield, No. 1:12-CR-00060 (M.D. Fla.), AUSA Jeffrey Michelland.

On May 18, 2012, Todd Alan Benfield pleaded guilty to killing a Florida Panther, in violation of the Endangered Species Act (16 U.S.C. § 1538).

In October 2009, while bow hunting for deer, Benfield knowingly shot and killed a Florida Panther. The following day, the defendant and another person moved the panther in order to conceal it. Local inspectors found the animal, and subsequent forensic analysis confirmed that the carcass was that of an endangered Florida Panther.

The Florida Panther is the last subspecies of Puma still surviving in the eastern United States. Historically occurring throughout the southeastern United States, an estimated 100 to 160 panthers are found in south Florida, which is less than five percent of their historic range. Sentencing is scheduled for July 26, 2012.

This case was investigated by the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, the Collier County Sheriff's Office, and the Florida Department of Law Enforcement, all of which are members of the Joint Wildlife Crime Scene Response Team.

Back to Top

United States v. William Zirkle, No. 3:12-mj-08005 (N.D. Ohio) AUSA Thomas Karol.

On May 14, 2012, William Zirkle pleaded guilty to a misdemeanor violation of the Clean Water Act (33 U.S.C. § 1319(c)(1)(A)) for negligently failing to ensure that wastewater was pretreated prior to being discharged to the local POTW.

Zirkle worked at the former SK Hand Tool Corporation manufacturing facility in Defiance, Ohio. As the result of an accident, approximately 210 gallons of chrome plating solution spilled into a cement pit near the pretreatment system in April 2008. The defendant attempted to treat the spill by adding chemicals into the pit, instead of having it pumped back through the system. As a result, improperly treated wastewater with a high concentration of chrome was discharged into the sewer system, causing subsequent damage.

This case was investigated by the Northwest Ohio Environmental Task Force, which includes the United States Environmental Protection Agency's Criminal Investigation Division, the Ohio Environmental Protection Agency, and the Ohio Attorney General's Office Bureau of Criminal Investigation Environmental Crimes Section.

Back to Top

United States v. Reckitt Benckiser, Inc., No. 6:12-CR-03041(W.D. Mo.), AUSA Randall Eggert.

On May 7, 2012, Reckitt Benckiser, Inc., pleaded guilty to a RCRA violation (42 U.S.C. §6928(d)(2)(A)) for illegally disposing of hazardous waste over a three-day period in September 2008.

Reckitt Benckiser, Inc. (RB) is a billion dollar global producer of consumer goods, including household cleaning products and pharmaceuticals. RB operates a distribution center in Springfield, Missouri. In September 2008, employees at the Springfield facility caused the illegal disposal of more than 22,000 pounds of hazardous waste at an unpermitted municipal landfill using a non-hazardous waste manifest. The company was notified by an employee after the illegal disposal, prompting an internal waste audit by an outside environmental company.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

United States v. Eric Gruenberg, No. 2:11-CR-00082 (E.D. Tenn.), ECS Trial Attorney Todd Gleason and AUSA Matt Morris.

Aerial view of the Liberty Fibers industrial complex

On May 7, 2012, Eric Gruenberg pleaded guilty to conspiracy to violate the Clean Air Act (18 U.S.C. §371), stemming from the illegal removal of asbestos. Gruenberg and four co-defendants were previously charged in a five-count indictment for their involvement in demolition and salvage operations at an industrial complex known as the Liberty Fibers Plant in Morristown, Tennessee, between May 2006 and April 2010.

The buildings on-site contained extensive amounts of asbestos-containing materials in the form of pipe wrap, insulation, and floor tile. The indictment charges, among other things, that the defendants failed to properly remediate the asbestos before demolishing the buildings, violated the work-practice standards relevant to the safe-handling of asbestos, and misled regulatory authorities and law enforcement agents concerning these activities. Gruenberg is scheduled for sentencing on March 4, 2013, and defendants Newell Lynn Smith, Armida J. Di Santi, Mark C. Sawyer, and Milto Di Santi are scheduled for trial to begin on February 6, 2013.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

United States v. John Scheerer, No. 3:12-CR-00086 (D. Conn.), SAUSA Neeraj Patel and EPA RCEC Peter Kenyon.

On May 4, 2012, John Scheerer pleaded guilty to making a false statement (18 U.S.C. § 1001) in connection with home improvement projects funded by the United States Department of Housing and Urban Development (HUD).

Scheerer was hired to perform home improvement and lead abatement work on several residential properties throughout Connecticut. His work was partially funded by HUD in connection with a residential revitalization. Upon completion of each job, the defendant was required to hire an independent lead inspector to test for lead hazards and to submit a final lead clearance report.

From March 2006 to March 2010, the defendant falsified and fraudulently submitted approximately 30 lead abatement clearance reports for properties where he performed work funded by HUD. Instead of hiring a lead inspector, he prepared falsified reports using the letterhead of a third-party lead inspection company, creating the erroneous impression that the inspections had been conducted. Subsequent testing confirmed that no significant lead hazards remained.

Sentencing is scheduled for August 2, 2012. This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Stewart J. Roth et al., Nos. 2:10-CR-00126, 2:11-CR-00177 (N.D. Ind.), ECS Senior Counsel James Morgulec, AUSA Toi Houston, and SAUSA RCEC David Mucha.

On May 1, 2012, Stewart J. Roth pleaded guilty to a felony violation of the Clean Water Act (33 U.S.C. § 1319 (c)(2)(A)) for knowingly discharging wastewaters to a POTW in violation of a national pretreatment standard.

A seven-count indictment previously charged NH Environmental Group, Inc. d/b/a Tierra Environmental and Industrial Services, Inc. (Tierra), company owner Ronald Holmes, and project manager Roth, with conspiracy to violate the Clean Water Act and six substantive CWA counts for illegally discharging wastes to the local POTW without a permit or authorization from the POTW.

Tierra was in the business of collecting liquid wastes from customers, treating the wastes, and then transporting them to proper disposal facilities. Between January and June 2008, to avoid the expense of lawfully treating and disposing of these wastes, the defendants are alleged to have hauled them to a closed-down treatment facility and dumped the wastes into the sewer system that led to the POTW. Former employee Thomas Grad earlier pleaded guilty to a felony CWA violation for his role in the illegal discharges.

This case was investigated by the Northern District of Indiana Environmental Crimes Task Force, including the United States Environmental Protection Agency's Criminal Investigation Division, the Indiana Department of Environmental Management Office of Criminal Investigations, the United States Department of Transportation Office of Inspector General, and the United States Coast Guard Criminal Investigative Service.

Back to Top

[redacted]

Back to Top

United States v. Dale Leblang et al., No. 12-CR-60015 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On April 23, 2012, four defendants pleaded guilty to a conspiracy charge (18 U.S.C. § 371) for the illegal transport and sale in interstate commerce of a species of citrus plant that has been under quarantine in Florida for many years.

Calomondin is a known carrier of both Citrus Canker Disease and the Citrus Greening Disease. From 1995 through 2006, government costs to control and eradicate these diseases exceeded $1.4 billion, including over $700 million for compensation to the owners of commercial citrus groves that had to be destroyed.

In March 2011, USDA inspectors discovered that *Calomondin* was being sold from nurseries in Ohio and Illinois. Those plants were traced back to Allied Growers (Allied) in Ft. Lauderdale, which was owned and operated by Dale Leblang and David Peskind. Valico Nurseries (owned and operated by Randall Linkous and his daughter Andrea Moreira) provided the plants to Allied. All four defendants were aware of the quarantine and took various steps to conceal the true identity of the plants, including falsely labeling the plants when they were shipped out of Florida. All defendants pleaded guilty to conspiracy to violate the Plant Protection Act and are scheduled to be sentenced on July 27, 2012.

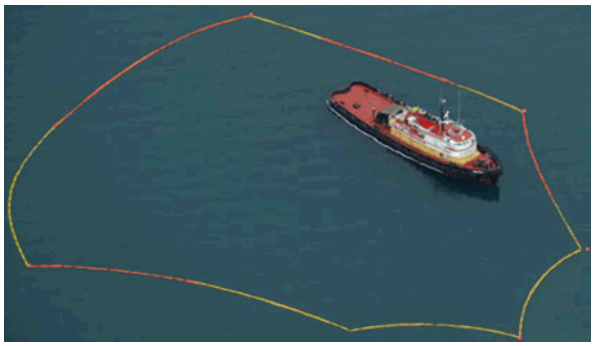
This case was investigated by the United States Food and Drug Administration.

Back to Top

United States v. Ronald Monsen, No. 3:12-CR-00027 (D. Alaska), RCEC Karla Perrin and AUSA Kevin Feldis.

On April 3, 2012, Captain Ronald Monsen pleaded guilty to a Clean Water Act violation (33 U.S.C. §§ 1319(c)(1)(A); 1321 (b)(3)) for discharging oil into a water of the United States.

In December 2009, the *Pathfinder*, a 136-foot tugboat, ran aground on Bligh Reef in Prince William Sound, Alaska. One of the vessel's fuel tanks was ruptured when Monsen powered it off the reef, causing approximately 6,000 gallons of diesel fuel to be spilled into the Sound.



Tugboat with oil containment boom

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency's Criminal Investigation Division.

Sentencings

United States v. Aristides Lorenzo Rodriguez, No. 1:11-CR-20820 (S.D. Fla.), AUSA Jose Bonau.

On May 31, 2012, Aristides Lorenzo Rodriguez was sentenced for Endangered Species Act violations (16 U.S.C. §§ 1538(a)(1)(B), 1540(b)(1)) for violating the speed limits in a manatee zone in October 2011. Rodriguez is an eight-time repeat manatee zone violator.

The defendant was sentenced to pay a $7,500 fine to be paid into the Lacey Act Reward Fund, and will serve one year of probation to include the following special conditions: perform 100 hours of community service with an organization engaged in protecting the manatee and complete a safe boating course. Rodriguez also is barred from any boating activities in federal, state, or local waters within the Southern District of Florida, other than that which is related to his commercial business activity (repairing motorized water vessels).

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Target Ship Management Pte. Ltd., et al., No. 1:11-CR-00368 (S.D. Ala.), ECS Trial Counsel David O'Connell, AUSA Mike Anderson, and ECS Paralegal Jessica Egler.

On May 30, 2012, Target Ship Management Pte., Ltd. pleaded guilty and was sentenced for an APPS violation (33 U.S.C. § 1908) for failing to properly maintain an oil record book. Chief Engineer Payongyut Vongvichiankul and Second Engineer Pakpoom Hanprap pleaded guilty to APPS violations and are scheduled to be sentenced on July 19, 2012. Target will pay a $1 million fine and will make a $200,000 community service payment to the National Fish and Wildlife Foundation. The company also will complete a three-year term of probation and implement an environmental compliance plan.

Target employees were involved in the overboard discharge of oily bilge waste from the *M/V Gaurav Prem* on multiple occasions as the vessel sailed from South Korea to Mobile. These discharges were not recorded in the oil record book that was presented to inspectors when the ship reached Mobile, Alabama, in September 2011. The illegal overboard discharges were made through a bypass pipe connecting the ship's bilge system to its ballast system.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency's Criminal Investigation Division. Additional assistance was provided by the Coast Guard Sector Mobile, and Coast Guard Eighth District Legal Office.

Back to Top

United States v. HP Boston Building LLP, No. 2:12-CR-00252 (D. Utah), AUSAs Jared Bennett and Karen Fojtik.

On May 26, 2012, HP Boston Building LLP was sentenced to pay a $500,000 fine, complete a three-year term of probation, and provide asbestos training to all of its employees. The company pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from the illegal removal of asbestos during a building renovation in 2007. Specifically, the company admitted to violating NESHAPS requirements for failing to notify workers who performed the demolition and renovation that there was asbestos contamination in the ventilation system.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division

Back to Top

United States v. Patrick Dooley, No. 2:11-CR-00252 (W.D. Wash.), AUSA Jim Oesterle.

Overstock chemicals

On May 25, 2012, Patrick Dooley was sentenced to serve 33 months' incarceration, followed by three years of supervised release. A fine was not assessed. Dooley was convicted by a jury in January 2012 of three Clean Water Act violations (33 U.S.C. § 1319 (c)(2)(A) and (B)) and one count of witness tampering (18 U.S.C. § 1512(b)(3)) related to an August 2010 hazardous materials dumping incident.

Dooley is the president and owner of a business that purchases overstock from other companies, including chemical cleaning products. In August 2010, a 17-year-old employee, following Dooley's instructions, was overcome by deadly chlorine gas while disposing of two chemicals down a toilet. The chemicals reacted to produce chlorine gas of a sufficient concentration to cause the employee to become sick. He recovered from the exposure after being taken by paramedics to an emergency room. Dooley later told a second young employee to deny his employment relationship when questioned by federal investigators in an effort to further discredit the injured employee and mislead investigators."

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division with assistance from Seattle Public Utilities and the Washington State Department of Ecology.

Back to Top

United States v. Glenn Bridges et al., No. 2:12-CR-14002 (S.D. Fla.), AUSA Norman O. Hemming, III.

Lobster tails

On May 23, 2012, Glenn Bridges was sentenced to serve six months' incarceration followed by two years' supervised release for importing endangered and threatened wildlife from the Bahamas, in violation of the Lacey Act, and for making a false statement (18 U.S.C. §§ 371, 1001; 16 U.S.C. § 3372). Bridges also will perform 100 hours of community service. No fine was assessed.

In November 2011, Bridges attempted to import spiny lobster and queen conch, along with Hawksbill, Loggerhead, and Green sea turtle shells into Port St. Lucie, Florida. Specifically, he tried to conceal 155 spiny lobster tails, seven sea turtle shells, and 34 conchs hidden in various compartments on his sport-fishing vessel. When questioned, Bridges told a Coast Guard officer that he only had a few fish on board the boat. The charges against co-defendants were dismissed as part of Bridges' plea agreement.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Coast Guard, United States Customs and Border Protection, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Alexander Alvarez, No. 1:12-CR-00027 (S.D. Ala.), ECS Senior Trial Attorney Georgiann Cerese and AUSA Michael Anderson.

On May 22, 2012, Alexander Alvarez was sentenced to pay $31,000 in restitution and will complete a three-year term of probation. Alvarez previously pleaded guilty to a three-count information charging Lacey Act and felony Migratory Bird Treaty Act violations (16 U.S.C. §§ 703, 707(b)(2), 3372, 3373(d)(1)(b)). The defendant admitted to illegally selling migratory bird parts including feathers from red-tailed hawks, peregrine falcons, and anhingas from between January 2007 and March 2009.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement and the Navajo Nation Department of Fish and Wildlife.

Back to Top

[redacted]

Back to Top

United States v. Faling Yang et al., Nos. 3:12-mj-00019 and 00020 (W.D. Wis.), AUSA Paul W. Connell.

On May 18, 2012, Faling Yang was sentenced to pay a $5,000 fine and will be barred from hunting and guiding for a two-year period. Probation was not ordered.

Yang and Corrie Korn previously pleaded guilty to Lacey Act violations (16 U.S.C. § 3372) stemming from their operation of a commercial guiding company located on a National Wildlife Refuge near the Mississippi River.

Undercover investigation confirmed that the defendants, both local police officers, illegally killed and transported ducks in October 2009, by exceeding the permissible bag limits. The officers were placed on administrative leave pending resolution of the case. Korn is scheduled for sentencing on July 17, 2012.

This case was investigated by the United States Fish and Wildlife Service and the Wisconsin Department of Natural Resources.
Back to Top

United States v. Jon Goodrich et al., No. 5:10-CR-00147 (D. Vt.), AUSA Joseph Perrella.

On May 16, 2012, Jon Goodrich, president of Mace Security International, Inc. (Mace), a pepper spray and tear gas manufacturer, was sentenced to pay a $100,000 fine. Goodrich and Mace previously pleaded guilty to a RCRA storage violation (42 U.S.C. § 6928), with the company also being sentenced to pay a $100,000 fine.

Hazardous waste drums found in buildings

The violations stem from an emergency removal action in January 2008 of several thousand pounds of hazardous waste that had been stored on the premises for approximately a decade. More than 80 drums of unlabeled chemicals were found in factory mill buildings. Inspectors ultimately identified more than 2,200 pounds of hazardous waste in the drums, including spent solvents, 2-chlorobenzalmalononitrile or chloroacetophenone, and oleoresin capsicum.

This case was investigated by the United States Environment Protection Agency's Criminal Investigation Division.
Back to Top

[redacted]

Back to Top

United States v. Anthony Crompton et al., No. 4:10-CR-00191(W.D. Mo.), AUSA David Ketchmark.

Demolished houses

On May 15, 2012, Anthony Crompton was sentenced to complete a three-year term of probation, with a special condition of five months' community confinement. A fine was not assessed.

Crompton previously pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) stemming from the illegal removal of asbestos during a renovation project involving multiple buildings. Co-defendant William M. Threat, Jr., pleaded guilty to a similar charge.

Threatt was the president and owner of the Citadel Plaza Redevelopment Site, a 250,000 square foot tract of land. From April 2001 to July 2006, the defendants violated the CAA by illegally removing and disposing of asbestos from more than two hundred structures, most of which were older, dilapidated residences. As a site operator, Crompton directed the workers who performed the demolition work.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

United States v. Franklin Non-Ferrous Foundry et al., No. 1:10-CR-00112 (D.N.H.), AUSA Mark Zuckerman.
CORRECTION

Stored hazardous waste

On May 10, 2012, metal parts manufacturer Franklin Non-Ferrous Foundry and company president John Wiehl each were sentenced to serve a two-year term of probation. **Wiehl also will complete six months of home confinement and will publish a public apology*. A fine was not assessed. The defendants previously pleaded guilty to RCRA storage violations (42 U.S.C. § 6928).

The company manufactures metal parts for various industrial applications. A byproduct of the foundry's operation is the generation of waste containing hazardous or toxic concentrations of lead and cadmium. OSHA workplace inspections in April and August 2009 revealed that the company had been illegally storing hazardous waste since July 2005.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, with assistance from the Occupational Safety and Health Administration.

Back to Top

United States v. Douglas V. Mertz et al., No. 2:11-CR-20403 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On May 3, 2012, Douglas V. Mertz was sentenced to pay a $5,000 fine, $750 in restitution, and will complete a one-year term of probation. Mertz previously pleaded guilty to knowingly making and delivering a false writing (18 U.S.C. § 1018). He had been charged with a Clean Air Act violation for illegally selling and offering for sale a Class II substance for use as a refrigerant.

In August 2009, EPA received a complaint regarding an advertisement that had been placed on the Internet offering refrigerants for sale. Specifically, the complaint stated that someone had posted an ad on Craigslist in the Metro-Detroit area, offering to sell refrigerants to uncertified individuals. Investigation revealed that Mertz and his company, Frontier Mechanical Systems, were responsible for the posting.

Co-defendant Wasim Ibrahim Bony previously pleaded guilty to a similar charge. He also was ordered to pay a $1,500 fine and was held jointly and severally responsible for payment of the restitution.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

United States v. Pedro Guerero et al., Nos. 2:12-CR-00056, 00105 (E.D. La.), AUSAs Emily Greenfield and Dorothy Manning Taylor.

M/V Polyneos

On May 2, 2012, Pedro Guerero, chief engineer for the *M/V Polyneos*, was sentenced to pay a $2,000 fine and complete a three-year term of probation. He previously pleaded guilty to a false statement violation (18 U.S.C. § 1001(a)(3)). The ship's operator Odysea Carriers, S.A., previously pleaded guilty to an APPS violation, obstruction, and a PWSA violation (18 U.S.C. §1519; 33 U.S.C. §§ 1908(a), 1232(b)(1)), stemming from the illegal overboard discharges of sludge and oily water in 2011, and for failing to notify authorities of cracks found in the ballast tanks.

From June 2011 through October 2011, crew members used a bypass hose to pump the contents of the bilge tank, bilge oil tank, and sludge tank directly overboard into the ocean. Guerrero falsified the oil record book by omitting these discharges, and by stating that the incinerator had been used to dispose of the wastes, which was untrue. Odysea is scheduled for sentencing on July 25, 2012.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency's Criminal Investigation Division.

Back to Top

United States v. Bugman Pest and Lawn, Inc., et al., Nos. 2:11-CR-00017 and 00295 (D. Utah), AUSA Jared Bennett.

On May 1, 2012, Bugman Pest and Lawn, Inc. (Bugman) was sentenced in connection with the illegal application of a pesticide that led to the deaths of two young girls in February 2010. Bugman pleaded guilty to a FIFRA violation (7 U.S.C. §§ 136*l*(b)(1)(B), 136j(a)(2)(G)) and will complete a three-year term of probation during which it is prohibited from operating. The company also will pay a $600 fine, which is in addition to a $3,000 fine imposed in a related case, *U.S. v. Nocks et al.* The probation will run concurrently with the previous term imposed in the above referenced case. Employee Raymond Wilson, Jr., entered into a 12-month pretrial diversion agreement, and will complete 100 hours of community service.

Coleman Nocks was previously sentenced to complete a three-year term of probation and will perform 100 hours of community service after pleading guilty to a FIFRA violation. Coleman admitted to misapplying the pesticide Fumitoxin at the residence in which the two children subsequently died and where four other family members became ill. Wilson and the company were charged with the misapplication of Fumitoxin in four additional homes.

This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division and the Layton City Police Department.

Back to Top

United States v. Atsushi Yamagami et al., No. 2:11-CR-00082 (C.D. Calif.), AUSA Dennis Mitchell.

On April 30, 2012, Japanese national Atsushi Yamagami was sentenced to serve 21 months' incarceration followed by three years' supervised release. He also will pay a $18,400 fine, which will be paid into the Lacey Act Reward Fund.

Smuggled turtles

Yamagami previously pleaded guilty to smuggling violations (18 U.S.C. §545) for smuggling more than 50 live turtles and tortoises into the United States on a flight from Japan in January 2011. The turtles and tortoises were hidden in snack food boxes found in a suitcase. Among the species found were Fly River turtles, Indian Star tortoises, Chinese Big Headed turtles, and Malayan Snail-eating turtles, all of which are CITES-protected species. During the investigation, agents discovered that Yamagami was a leader of an organized group of Japanese nationals who were responsible for smuggling CITES-protected turtles, tortoises, chameleons, and lizards into and out of the United States, primarily through airports in Honolulu and Los Angeles. The investigation determined that from 2004 through 2011, Yamagami and his couriers took 42 trips to and from the United States.

Two of his couriers, Norihide Ushirozako and Hiroki Uetsuki, both Japanese citizens, were prosecuted for smuggling violations in 2011. Ushirozako was previously sentenced to time served, which was approximately seven months' incarceration. Uetsuki also was previously sentenced to approximately six months' time served in the district of Hawaii.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. Enoch Randolph Foy, Jr., No. 4:11-CR-00100 (E.D.N.C.) AUSA Banu Rangarajan.

On April 30, 2012, Enoch Randolph Foy, Jr., was sentenced to pay a $15,000 fine, and will complete a three-year term of probation to include six months' home confinement. Foy previously pleaded guilty to a Clean Water Act violation (33 U.S.C. §§ 1311(a), 1319(c)(2)(A), and 1344) for filling a wetlands in April 2010.

The defendant and a co-conspirator used 60 dump truck loads of dirt (that was contaminated with petroleum) to fill in a wetlands, which are adjacent to a tributary of the Trent River, a water of the United States. At the time of the violation, Foy and his farm participated in a state and federal wetland conservation program for which they had received funds.

This case was investigated by the North Carolina State Bureau of Investigation, the United States Department of Agriculture Office of Inspector General, the Naval Criminal Investigative Service, the United States Army Corps of Engineers, and the United States Environmental Crimes Protection Agency's Criminal Investigation Division.

Back to Top

United States v. Blake Powell et al., No. 6:11-CR-00117 (E.D. Tex.), AUSA Jim Nobles.

On April 30, 2012, Blake Powell was sentenced to pay a $243,000 fine plus $157,000 in restitution. Powell also will complete a two-year term of probation. The defendant previously pleaded guilty to a three-count information charging misdemeanor Lacey Act violations (16 U.S.C. § 3372(a)(2)(A)) stemming from the unlawful operation of a deer-breeding facility in 2007.

Powell owned and operated the Rockin' P White Tails, a high-fence deer breeding facility. In February 2007, the defendant sold a live white-tail deer that was acquired from an out-of-state source, in violation of Texas law. In March 2007 and November 2007, Powell purchased additional live deer from an out-of-state source. The fair market value for all the illegally imported whitetail deer, exceeded approximately $208,500. Additionally, through this activity, the defendant accumulated white-tail deer semen valued at approximately $85,000 along with progeny valued at approximately $172,500.

This case was investigated by the Special Operations Unit of the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service.

Back to Top

United States v. Eliodoro Soria Fonseca, No. 3:11-CR-03328 (S.D. Calif.), AUSA Melanie Pierson.

Iguana carcasses

On April 26, 2012, Eliodoro Soria Fonseca was sentenced to serve 24 months' incarceration followed by three years' supervised release for smuggling (18 U.S.C. § 545) iguana meat into the United States. In June 2011, Fonesca admitted to bringing several coolers containing the beheaded, skinned, and deboned bodies of 115 iguanas, weighing almost 160 pounds, into the United States from Mexico. The iguana parts had been concealed under fish.

The green iguana is listed on CITES Appendix II. According to conservationists, the defendant's

removal of more than 100 iguanas from the Nyarit area in Mexico technically "…[meant] that the local population was technically wiped out."

Iguana meat, which the defendant imported for the purpose of human consumption, frequently carries Salmonella bacteria.

This case was investigated by the United States Customs and Border Protection and the United States Fish and Wildlife Service.

Back to Top

United States v. Theodore A. Nugent, No. 5:12-CR-00001 (D. Alaska), AUSA Jack Schmidt.

On April 24, 2012, Theodore A. Nugent pleaded guilty to and was sentenced for a misdemeanor Lacey Act violation (16 U.S.C. §§ 3372(a)(1); 3373(d)(2)) for possessing and transporting a black bear that was taken in violation of state law.

In May 2009, Nugent, who stars in and produces the outdoor hunting show, "Ted Nugent Spirit of the Wild," was filming a black bear bow hunt on Sukkwan Island, on United States Forest Service Land. On May 22, 2009, Nugent shot and wounded a black bear at one of the registered bait sites. The defendant failed to harvest the wounded black bear, and continued hunting in violation of Alaska state law, which counts a wounded black bear towards the hunter's regulatory bag limit, which is one bear a year.

Nugent will complete a two-year term of probation and will pay a $10,000 fine and $600 restitution to the State of Alaska for the illegally taken bear. He is prohibited from hunting or fishing in Alaska and on any United States Forest Service land for a term of one year. The defendant is also required to produce and broadcast at his own expense a 30 to 60 second public service announcement (PSA) discussing a hunter's responsibility for knowing the rules and regulations of hunting activities. The PSA is subject to prior approval by a representative of the United States Attorney's Office in the District of Alaska, and once approved will air for one year, every other week on the "Ted Nugent Spirit of the Wild" television show.

This case was investigated by the United States Forest Service Investigations and the United States Fish and Wildlife Service.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

July 2012

EDITOR'S NOTE:

Please mark your calendars for the upcoming Environmental Crimes Seminar scheduled for May 7-10, 2013.

See *U.S. v. Blachford* for details regarding this case involving Whooping Cranes.

AT A GLANCE:

Southern Union Co. v. United States, ___S. Ct. ___, 2012 WL 2344465 (June 21, 2012).

United States v. Pruett et al., 681 F.3d 232 (5th Cir. 2012).

DISTRICT	CASES	*CASE TYPE/* STATUTES
D. Alaska	United States v. Ronald Monsen	*Tugboat Grounding/* CWA
C.D. Calif.	[redacted] United States v. Jarrod Wade Steffen et al.	[redacted] *Rhino Horn Trafficking/* Conspiracy, Smuggling, Lacey Act, Money Laundering
S.D. Calif.	United States v. We Lend More, Inc., et al.	*Pawn Shop/*RCRA
N.D. Ind.	United States v. Daniel Olson	*WWTP Operator/* CWA
S.D. Fla.	United States v. Carlos A. Garcia et al. United States v. Robert Fortunato et al.	*Ozone Depleting Substances/* Smuggling *Conch Imports/* Lacey Act, Conspiracy
D. Kansas	United States v. A-1 Barrel Company, LLC	*Drum Refurbisher/* CWA misdemeanor
M.D. La.	United States v. Gregory D. Dupont d/b/a/ Louisiana Hunters, Inc.	*Alligator Hunts/* Lacey Act
W.D. La.	United States v. Cody Tuma et al.	*Wastewater Facility/* CWA, Obstruction, Conspiracy
D. Md.	United States v. Cephus Murell	*Lead-Based Paint/* TSCA

DISTRICT	CASES	*CASE TYPE/* STATUTES
E.D. Mich.	United States v. Jeff Walworth et al.	*Asbestos Abatement/* CAA
[redacted]	[redacted]	[redacted]
D. Minn.	United States v. Spectro Alloys Corporation	*Aluminum Processor*/ False Statement
N. D. Miss.	United States v. Nature's Broom of America, Inc.	*Absorbent Materials Manufacturer/* CWA misdemeanor
[redacted]	[redacted]	[redacted]
N.D.N.Y.	United States v. Riccelli Fulton LLC United States v. Sun H. Park et al.	*Rock Salt Storage/* CWA misdemeanor *Asbestos Abatement/* Mail Fraud, Tax Violations, Conspiracy
S.D.N.Y.	United States v. Chen Yan Huang et al.	*Pesticide Packaging/* FIFRA
M.D.N.C.	United States v. House of Raeford Farms, Inc., et al.	*CAFO/* CWA
S.D. Ohio	United States v. Bruce Haffner	*Geese and Dove Hunts/* Lacey Act
D. Ore.	United States v. Robert H. Block, Jr., et al.	*Stream Diversion/* RHA, ESA
E.D. Penn.	United States v. Blue Marsh Labs et al.	*Lab Fraud/* Conspiracy, False Statement, CWA
D.S.D.	United States v. Jeff Blachford	*Whooping Crane Death/* MBTA, Witness Tampering

Additional Quick Links:

Significant Environmental Decisions

Supreme Court

Southern Union Co. v. United States, ___S. Ct. ___, 2012 WL 2344465 (June 21, 2012).

On June 21, 2012, the Supreme Court reversed the criminal fine imposed upon Southern Union and remanded the case for further proceedings. The case must now be sent back to the district court for resentencing. A number of issues are likely to be disputed at resentencing, including the maximum fine and whether the Supreme Court's decision impacts the community service portion of the original sentence.

Southern Union was convicted of storing liquid mercury, a RCRA hazardous waste, without a permit. The company argued at sentencing that the maximum fine was $50,000 (the daily fine amount) unless the facts supporting an alternative fine were alleged in the indictment and determined by a jury. The government argued that since the company violated the law for 762 days, the maximum fine was $38 million and that this could be determined by the sentencing judge rather than the jury. The district court agreed with the government, and ordered the company to pay a $6 million fine and $12 million in community service payments. The Court of Appeals affirmed the sentence and the defendants appealed.

The Supreme Court reversed, and remanded the case to the district court. The Court held that criminal fines should be treated the same as sentences of incarceration, and that the rule of Apprendi v. New Jersey, 530 U.S. 466 (2000), therefore was applicable. Apprendi held that the Sixth Amendment's jury trial guarantee requires that any fact (other than the fact of a prior conviction) that increases the maximum punishment authorized for a crime must be proved to a jury beyond a reasonable doubt.

Back to Top

Fifth Circuit

United States v. Pruett et al., 681 F.3d 232 (5th Cir. 2012).

On May 15, 2012, the Fifth Circuit Court of Appeals affirmed the Clean Water Act convictions and sentences entered against J. Jeffrey Pruett and his two corporations (the Louisiana Land & Water Co., and LWC Management Co.,).

Pruett owned and operated several small wastewater treatment plants ("WWTPs") in northwestern Louisiana. The jury convicted Pruett of: six Clean Water Act counts of knowingly failing to provide access to monitoring records during inspections at six WWTPs, one count of knowingly discharging effluent in violation of permit limits at the "Love Estates" WWTP, and one count of negligently failing to maintain and operate the "Pine Bayou" WWTP. On the recordkeeping counts, Pruett argued that he had provided access to records, as required by the permits, by informing inspectors that the records had been subpoenaed in a civil action and were with his attorney. The court rejected Pruett's claim that the "rule of lenity" controlled interpretation of the relevant permit requirement and found the evidence sufficient to support the guilty verdicts, principally because Pruett failed to follow-up on inspectors' requests.

As to the knowing discharge violation, Pruett argued that the government's evidence consisted almost entirely of sampling results from samples that Pruett himself collected and self-reported on discharge monitoring reports. The Fifth Circuit deemed this evidence sufficient to prove that Pruett knowingly discharged in violation of permit limits, given the near constancy of the violations during a three-year period and Pruett's knowledge of operational conditions. As to the negligence count, the court followed the Ninth and Tenth Circuits in holding that the standard for misdemeanor convictions under the CWA is ordinary negligence. Although the Fifth Circuit has held that the CWA is not a "public welfare" statute, the court found this ruling to be irrelevant for interpreting the misdemeanor provision of the CWA, because Congress expressly provided a mental state standard ("negligently") that unambiguously refers to ordinary negligence. The court also affirmed various evidentiary rulings and the district court's application of the sentencing guidelines, including the granting of an enhancement, under the sentencing Guidelines.

Back to Top

Informations/Indictments

United States v. House of Raeford Farms, Inc., et al., No. 1:12-CR-00248 (M.D.N.C.), ECS Trial Attorney Mary Dee Carraway and ECS Senior Trial Attorney Daniel Dooher.

On June 26, 2012, a second superseding indictment was returned, charging House of Raeford (HOR) and Gregory Steenblock with 14 felony Clean Water Act violations (33 U.S.C. § 1319(c)(2)(A)). The court dismissed the previous indictment without prejudice after finding a technical violation of the Speedy Trial Act.

HOR is a turkey slaughtering and processing facility located in Raeford, North Carolina. The facility processes approximately 40,000 turkeys per day and its operations generate approximately 1,000,000 gallons of wastewater each day. On 14 occasions in 2005 and 2006, the company and plant manager Steenblock knowingly caused employees to bypass the facility's pretreatment system and send untreated wastewater directly to the local POTW in violation of its pretreatment permit. Trial is scheduled to begin on August 13, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

[redacted]

Back to Top

United States v. Jeff Blachford, No. 3:12-30075 (D.S.D.), AUSA Meghan Dilges.

Whooping Cranes

On June 18, 2012, Jeff Blachford was charged in a three-count indictment with Migratory Bird Treaty Act violations and allegations of witness tampering (16 U.S.C §§ 703 and 707(a); 18 U.S.C. § 1512(b)(3)).

The indictment states that in April 2012, Blachford shot and killed an endangered Whooping Crane and a hawk approximately 17 miles southwest of Miller, South Dakota. He is further alleged to have persuaded a witness to withhold information when questioned by law enforcement officials. Whooping Cranes are one of the rarest bird species in the world with a known population of approximately 600 birds. The Whooping Crane killed in this investigation was

one of approximately 300 endangered cranes that migrate from wintering grounds along the gulf coast of Texas to the Woods Buffalo State Park located in Alberta and the Northwest Territories of Canada. This population of Whooping Cranes is the only self-sustaining population in the world.

This case was investigated by the United States Fish and Wildlife Service and South Dakota Game Fish and Parks.

Back to Top

Plea Agreements

United States v. Jarrod Wade Steffen et al., No. 2:12-CR-00202 (C.D. Calif.), ECS Trial Attorney Shennie Patel and AUSAs Joseph Johns and Dennis Mitchell.

Evidence seized in Operation Crash—USFWS photo

On June 14, 2012, Jarrod Wade Steffen pleaded guilty to four counts charging conspiracy, smuggling, Lacey Act trafficking, and money laundering violations (16 U.S.C. §§ 3372(a)(1), 3373 (d)(1)(b); 18 U.S.C. §§ 371, 554, and 1956(a)(1)(A)(i)).

Steffen was involved in the West Coast arm of "Operation Crash," a trafficking ring that focused primarily on the illegal trade and export of endangered or CITES-protected rhinoceros horn. There are six co-defendants who remain charged in a 32-count superseding indictment: Jin Zhao Feng, a Chinese national who allegedly oversaw dozens of rhino horn shipments from the United States to China; Vinh Chuong Kha, Felix Kha, Nhu Mai Nguyen, Jin Zhao Feng, and the Win Lee Corporation are named as West Coast buyers. They are scheduled for trial to begin on September 11, 2012.

In the plea agreement, Steffen stipulated to the market value of the wildlife as being between $1 million and $2.5 million. He also will be required to forfeit items including two trucks and approximately $500,000 in cash. Steffen is scheduled to be sentenced on October 15, 2012.

This case was investigated by the United States Fish and Wildlife Service, with assistance from other federal and local law enforcement agencies including Immigration and Customs Enforcement Homeland Security Investigations, and the Internal Revenue Service.

Back to Top

United States v. Blue Marsh Labs et al., Nos. 5:11-CR-00259, 00364 (E.D. Pa.), AUSA Thomas Moshang.

On June 11, 2012, Blue Marsh Labs and owner Michael McKenna each pleaded guilty to conspiracy, a false statement, and a Clean Water Act false statement violation (18 U.S.C. §§ 371, 1001; 33 U.S.C. §1391(c)(4)) for causing environmental test reports to be prepared and mailed falsely stating that the proper EPA methods for analysis had been performed.

The defendants were previously charged in an 84-count indictment with charges stemming from the falsification of environmental laboratory testing from 2005 through 2007. Among the tests

falsified were results from Hurricane Katrina flood water samples that were to be tested for a variety of contaminants, including cyanide. Other tests falsified included those required by the USDA for fruit imported from South America that was suspected of being contaminated with pesticides. Former lab manager Debbie Wanner previously pleaded guilty to three counts of making false statements under the Clean Water Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Food and Drug Administration Office of Criminal Investigations, and the Department of Defense Criminal Investigative Service.

Back to Top

United States v. A-1 Barrel Company, LLC, No. 2:12-CR-20067 (D. Kansas), AUSA Scott Rask.

On June 6, 2012, A-1 Barrel Company, LLC, (A-1 Barrel) pleaded guilty to a misdemeanor violation of the Clean Water Act (33 U.S.C. §§ 1317, 1319 (c)(1)(A)) for discharging effluent to the local POTW that exceeded permitted levels for pH.

A-1 Barrel was in the business of refurbishing used industrial barrels and drums, some of which contained residual liquid that had to be rinsed out. Over the course of several days in May and June of 2007, officials sampled wastewater that had been discharged from the facility into the sewer and found that pH levels were not within permitted limits.

The company is scheduled to be sentenced on September 6, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cheng Yan Huang et al., Nos. 1:12-CR-00032 and 1:11-CR-01100 (S.D.N.Y.), AUSA Janis Echenberg.

Misleadingly labeled pesticide

On May 14, 2012, Cheng Yan Huang pleaded guilty to a FIFRA violation for his involvement in the distribution and sale of more than 2,000 packages of unregistered and unauthorized pesticides in the New York City area.

The pesticides, which were seized from dozens of locations throughout Manhattan, were particularly dangerous because the packaging could lead people to mistake them to contain cookies or cough medicine. The chemicals were not registered with the EPA and were missing required label warnings, thus providing consumers no way of knowing how dangerous the products were or how best to protect themselves from harmful exposure. A woman was hospitalized after accidentally ingesting one of the pesticides, believing it to be a medicine.

Jai Ping Chen, a delivery driver charged with Huang, previously pleaded guilty to a FIFRA charge. An additional ten people were charged in state court. Chen is scheduled for sentencing on August 8 and Huang is scheduled for August 14, 2012.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, United States

Immigration and Customs Enforcement's Homeland Security Investigations, and the United States Postal Inspection Service.

Back to Top

Sentencings

United States v. Carlos A. Garcia et al., No. 1:11-CR-20653 (S.D. Fla.), AUSA Tom Watts-FitzGerald and SAUSA Jodie Mazer.

On June 26, 2012, Carlos A. Garcia was sentenced to serve 13 months' incarceration followed by four months' home detention and two years of supervised release, after previously pleading guilty to a smuggling violation (18 U.S.C. § 545). A fine was not assessed.

Mar-Cone Appliance Parts Company

Garcia was the Senior Vice-President for the Heating and Cooling Division of Mar-Cone Appliance Parts Company. Between July 2007 and April 2009, Garcia negotiated the sale and transport of approximately 55,488 kilograms of black market HCFC-22, with a fair market value of approximately $639,460.

Mar-Cone previously pleaded guilty to and was sentenced for a smuggling violation. Mar-Cone was ordered to pay a $500,000 fine, plus a $400,000 community service payment, and forfeit $190,534 in illegal proceeds. To date, a dozen defendants have been prosecuted as a result of this investigation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

Back to Top

United States v. We Lend More, Inc., et al., No. 3:11-CR-003327 (S.D. Calif.), AUSA Melanie Pierson.

Hazardous waste

On June 25, 2012, We Lend More, Inc., a pawn shop, and its owner, Marc Vogel, each were sentenced to complete three-year terms of unsupervised probation. Vogel also will pay a $25,000 fine.

The defendants were convicted by a jury in March of this year of violations stemming from the dumping of hazardous wastes at a local landfill in March 2011. They were convicted of RCRA transportation and disposal violations (42 U.S.C. §§ 6928 (d)(1), (d)(2)(A), (d)(5)), along with transportation of hazardous waste without a

manifest for the dumping of potassium cyanide and concentrated nitric acid. When these two chemicals are combined they create a deadly hydrogen cyanide gas.

In March 2011, Vogel contracted with a trash hauler to dispose of items from the pawn shop that included cyanide and acids. Co-defendant Raul Gonzalez-Lopez brought a truck to the shop and removed various objects including two seven-pound containers of potassium cyanide and a gallon of nitric acid. No manifests were prepared for either of these hazardous wastes. Gonzalez-Lopez subsequently disposed of this load including the chemicals at a landfill that was not permitted to receive hazardous waste. Workers at the landfill promptly discovered the chemicals and took precautionary measures, including hiring a hazardous waste disposal company. Vogel admitted that he knew that these chemicals could not be disposed of as ordinary waste. Gonzalez-Lopez is currently a fugitive (believed to be in Mexico) and remains charged with three RCRA violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., No. 3:10-CR-00140 (M.D. La.), ECS Trial Attorneys Shennie Patel and Sue Park, and former ECS former Paralegal Christina Liu.

On June 21, 2012, Gregory Dupont was sentenced to serve six months' incarceration, followed by four months in a half-way house and two years' supervised release. Dupont also will pay a $3,000 fine. He previously pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372(a)(1), 3373(d)(2)). This is the first ever felony conviction and prison sentence resulting from the illegal hunting of American alligators, in violation of the Lacey Act, the Endangered Species Act, and Louisiana state law.

Alligator with beer can

In September 2006, Dupont, a licensed alligator hunter and owner of Louisiana Hunters, Inc., guided clients to an area for which he did not have the appropriate CITES tags. During this illegal hunt, the defendant took his clients to a property where one of his clients killed an American alligator. Dupont tagged the alligator illegally with a tag for another hunting area.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property specific and hunters may only hunt in the areas designated by the tags. Louisiana regulations also prohibit alligator hunters, like Dupont, from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.

Back to Top

United States v. Cody Tuma et al., No. 5:11-CR-00031 (W.D. La.), ECS Trial Attorney Leslie Lehnert and AUSA Mignonne Griffing.

On June 20, 2012, Cody Tuma was sentenced to complete a five-year term of probation. Tuma previously pleaded guilty to a misdemeanor Clean Water Act violation (33 U.S.C. §§ 1311,

1319(c)(1)(A)), for negligently discharging pollutants into the Red River. John Tuma, Cody's father, was convicted by a jury in March of this year of discharging untreated wastewater directly into the river without a NPDES permit, discharging untreated wastewater into the City of Shreveport sewer system in violation of its industrial user's permit, and of obstructing an Environmental Protection Agency inspection (18 U.S.C. §§ 371, 1505; 33 U.S.C. §§ 1311(a), 1319(c)(2)(A)). These discharges were made from the Arkla Disposal Services facility from 2005 through 2007. The Arkla facility received off-site wastewater from oilfield exploration and production operations and other industrial processes for treatment.

John Tuma is scheduled to be sentenced on August 28, 2012. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

United States v. Daniel Olson, No. 2:12-CR-00045 (N.D. Ind.), ECS Trial Attorney Richard Powers and AUSA Wayne Ault.

On June 20, 2012, Daniel Olson was sentenced to complete a two-year term of probation, with a special condition of 12 months' home confinement. He also was ordered to pay a $15,000 fine. Olson previously pleaded guilty to a three-count information charging him with false statement violations and tampering with a monitoring method in violation of the Clean Water Act (33 U.S.C. § 1319(c)(4)).

From October 2000 through June 2010, Olson was the superintendent and certified operator of the J.B. Gifford Wastewater Treatment Plant, which is owned and operated by the Michigan City Sanitary District. From February 2002 through June 2010, the defendant variously failed to report bypasses, recorded false chlorine sample test results, and tampered with sampling methods, specifically for *E. coli* levels.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division

Back to Top

United States v. Ronald Monsen, No. 3:12-CR-00027 (D. Alaska), RCEC Karla Perrin and AUSA Kevin Feldis.

On June 15, 2012, Captain Ronald Monsen was sentenced to complete a three-year term of probation, including six months' home confinement. Monsen also will pay a $15,000 fine and perform 50 hours of community service.

In December 2009, Monsen was the captain for the *Pathfinder*, a 136-foot tugboat that ran aground on Bligh Reef in Prince William Sound, Alaska. One of the vessel's fuel tanks was ruptured when the defendant powered it off the reef, causing approximately 6,000 gallons of diesel fuel to be spilled into the Sound. He previously pleaded guilty to a Clean Water Act violation (33 U.S.C. §§ 1319(c)(1)(A); 1321 (b)(3)) for discharging oil into a water of the United States.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Spectro Alloys Corporation, No. 12-CR-00110 (D. Minn.), AUSA David Genrich, and RCEC James Cha.

Spectro Alloys facility

On June 7, 2012, Spectro Alloys Corporation (Spectro) pleaded guilty to two false statement violations (18 U.S.C. § 1001) stemming from its failure to disclose emissions violations. The company was sentenced to pay a $500,000 fine, complete a two-year term of probation, and will implement an environmental compliance plan.

Spectro, a secondary aluminum processing facility, processes large quantities of scrap metal, which are melted in two large industrial furnaces before being processed into aluminum alloys. In May 2007, the defendant submitted a compliance report claiming that the facility was in compliance with all pollution limits, failing to disclose that its own testing revealed excessive dioxin/furans emissions. In a letter sent to the EPA in March of 2007 (which was submitted in response to a notice of violation) the company also failed to disclose its knowledge of those emissions.

Under the terms of a parallel civil settlement, Spectro is further required to install additional pollution-control equipment relating to its emissions.

The criminal case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Cephus Murrell, No. 1:11-CR-000330 (D. Md.), AUSA Michael Cunningham.

On June 6, 2012, Cephus Murrell was sentenced to serve 12 months and one day of incarceration followed by six months' home detention and one year of supervised release. A fine was not assessed.

Murrell, the owner of several rental units, previously pleaded guilty to three misdemeanor TSCA violations (15 U.S.C. §§ 2615(b), 2689) for failing to disclose the presence of lead-based paint to apartment tenants in Baltimore and for conducting improper lead abatement in May 2008.

Murrell is the president and owner of C. Murrell Business Consultants, Inc., and has been a Baltimore-area landlord since approximately 1974. Through his company, the defendant owns and manages approximately 68 rental properties (175 rental units) throughout the City of Baltimore. All of these properties were built before 1978 and are subject to regulations relating to the risks associated with lead-paint exposure.

In May 2008, Murrell and his company failed to disclose to tenants the presence of lead-based paint hazards found in units with a history of lead problems. Inspection records maintained by the Maryland Department of the Environment over several years document lead-based paint violations and children with elevated lead blood levels in many of the properties owned by Murrell. More than 20 notices of violation and compliance orders have been issued against Murrell and/or his company for these violations.

In September 2010, workers conducting lead-paint abatement under Murrell's direction did not follow proper procedures by, among other things, working without a supervisor on site despite Murrell's submission of certifications to local authorities that a supervisor would be present.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Maryland Department of the Environment, and the Maryland Attorney General's Office.

Back to Top

United States v. Bruce Haffner, No. 1:11-CR-00176 (S.D. Ohio), ECS Trial Attorney Jim Nelson, AUSA Laura Clemmens, and former ECS Paralegal Rachel Van Wert.

Bruce Haffner was sentenced on June 6, 2012, to complete an 18-month term of probation with a special condition of six months' home detention. Haffner also will perform 80 hours of community service. The defendant previously pleaded guilty to Lacey Act trafficking violations (16 U.S.C. § 3372) stemming from illegal hunts of Canadian geese and Mourning Doves.

Haffner is the owner and operator of Face to Face Outdoors Guide Service. He admitted to guiding Canada goose hunts in January 2010, and Mourning Dove hunts in September 2010. During those hunts, Haffner directed and encouraged hunters to take quantities of both geese and doves that exceeded daily bag limits.

This case was investigated by the United States Fish and Wildlife Service and the Ohio Department of Natural Resources Division of Wildlife.

Back to Top

United States v. Robert Fortunato et al., No. 9:12-CR-80037 (S.D. Fla.), AUSAs Norman O. Hemming, III, and Antonia Barnes.

On June 5, 2012, Robert Fortunato was sentenced to serve a one-year term of probation to include 50 hours of community service. No fine was assessed. Fortunato previously pleaded guilty to conspiracy and to a Lacey Act violation (18 U.S.C. § 371; 16 U.S.C §§ 3371(a)(2)(A), 3373(d)(1)(A)) for importing queen conch into the United States that was taken in violation of Bahamian law. As part of his plea, Fortunato will forfeit approximately 1,500 pounds of queen conch and a 26-foot vessel.

In February 2012, the defendant and a co-conspirator attempted to import 53 bags of queen conch, which the Coast Guard found after searching the vessel. Neither defendant possessed the required documents to legally export this seafood from the Bahamas.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Coast Guard, Customs and Border Protection, Immigration and Customs Enforcement, and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. Jeff Walworth et al., No. 2:11-CR-20433 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA James Cha.

On June 1, 2012, Jeff Walworth was sentenced to serve a two-year term of probation. His company, Bonus Environmental, will pay a $25,000 fine. Walworth is the final defendant to be sentenced in this case stemming from an illegal asbestos removal project at a former Ford Motor Company plant in Utica, Michigan.

According to an asbestos survey of the plant, the building contained more than 60,000 linear feet of regulated asbestos-containing material (RACM). During renovation of the plant, the defendants directed workers to tear out the material while it was dry and to place it into plastic bags without wetting it. To speed up the process they instructed workers to meet a daily goal of removing 1,000 feet of material. The workers sometimes kicked or threw the material to the ground, causing larger pieces to break apart.

Site foreman Joey Ramos was previously sentenced to serve four months in a community corrections facility, followed by two years' probation, and will pay a $2,000 fine. Supervisor Brian Waite was sentenced to serve a year and a day of incarceration and supervisor Daniel Clements was sentenced to pay a $3,000 fine, and will complete a two-year term of probation that includes six months' home confinement. All defendants pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Robert H. Block, Jr., et al., No. 3:11-CR-00164 (D. Ore.), AUSA Stacie Beckerman and SAUSA Patrick Flanagan.

On May 31, 2012, David Dober, Sr., was sentenced after pleading guilty to violating the Rivers and Harbors Act and the Endangered Species Act (16 U.S.C. §§ 1538(a)(1)(G) and 1540(b)(l); 33 U.S.C. §§ 407 and 411). He will pay a $250 fine and will make a $250 community service payment to the Oregon Governor's Fund for the Environment (Fund).

In October 2009, Dober and co-defendant Robert H. Block, Jr., used heavy machinery to divert Gales Creek, causing the destruction of Upper Willamette River Steelhead habitat. Block, the property owner, was previously sentenced to complete a five-year term of probation, pay a $1,250 fine, and make a $1,250 community service payment to the Fund. He pleaded guilty to a misdemeanor Clean Water Act violation and to an ESA charge (16 U.S.C. §§ 1538(a)(1)(G) and 1540(b)(l); 33 U.S.C. §§ 1311(a), 1319(c)(l)(A)).

Block owns property abutting Gales Creek. In October 2009, he used an excavator to move earthen materials within the creek, diverting the flow of the stream. This activity impacted an area approximately 700 feet long and 50 to 90 feet wide. Block and Dober moved approximately 100,000 pounds of material in and around the creek. The alteration of the stream channel significantly modified and degraded the trout's habitat.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Riccelli Fulton LLC, No. 5:12-CR-00228 (N.D.N.Y), AUSA Craig Benedict.

On May 24, 2012, Riccelli Fulton LLC pleaded guilty to a negligent Clean Water Act violation (33 U.S.C. §§ 1311, 1319(c)(1)(A)) for allowing rock salt to contaminate land and water surrounding its storage area in Volney, New York.

The company stores rock salt for another company that sells it to municipalities to treat their roads. Despite being notified by state officials that there was a run-off problem, the company failed to have a leak-proof barrier around the salt storage area at its facility from November 2009 to May 2010. As a result, during heavy rain and snow run-off, salt leached from the storage area into nearby wetlands and ponds.

Riccelli Fulton was sentenced to pay a $250,000 fine; however, all but $10,000 was suspended on the condition that it spend the balance on cleaning the contaminated water and land, which the company has already initiated. The company also will complete a two-year term of probation and implement an environmental compliance plan.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Nature's Broom of America, Inc., No. 4:12-CR-00043 (N.D. Miss.), AUSA Robert Mims.

On May 14, 2012, Nature's Broom of America, Inc. (Nature's Broom) pleaded guilty to a one-count information charging it with a negligent Clean Water Act violation (33 U.S.C. §§ 1311, 1319(c)(1)(A)). The company was sentenced to pay a $12,000 fine and will complete a one-year term of probation, during which it must comply with an Expedited Removal Plan and a Best Management Practices Plan.

Yazoo National Wildlife Refuge

Nature's Broom is a commercial manufacturer of cellulosic absorbent materials that are used to absorb oil spills and other hydrocarbons. During the manufacturing process, the company screened out materials that were not suitable for use in its final product. It then stockpiled those materials on property adjacent to the Yazoo National Wildlife Refuge (YNWR). In August 2011, the company began pushing those materials onto YNWR property and into Steele Bayou, a water of the United States.

The YNWR is a 12,940-acre wildlife refuge located in the Mississippi River Delta Region and is an important winter habitat for migratory birds, especially ducks and geese.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the United States Fish and Wildlife Service and the Mississippi Department of Environmental Quality.

Back to Top

United States v. Sun H. Park et al., Nos. 3:09-CR-00020, 00543, and 3:10-CR-00253, (N.D.N.Y., D.N.J.), AUSA Craig Benedict.

On April 27, 2012, Sun Park was sentenced to serve 14 months' incarceration followed by two years' supervised release. Park also will pay more than $5 million in restitution. The defendant previously pleaded guilty to mail fraud and to preparing false income tax returns in the Northern District of New York (18 U.S.C. § 1341, 26 U.S.C. § 7206(2)), and to conspiracy to commit bank fraud in the District of New Jersey (18 U.S.C. § 1349).

Park provided assistance to individuals and companies within the New York City Korean community (which supplied temporary asbestos abatement workers to other abatement companies) in falsifying insurance applications and in defrauding insurance carriers by understating the number of workers involved, and by deleting all mention of involvement with asbestos. As a result, insurance carriers were defrauded out of $1.6 million in premiums. She also prepared false tax returns for numerous individuals over a period of years. In the District of New Jersey, Park used her accounting skills to aid others in obtaining millions of dollars in home equity and business lines of credit, depriving lenders of security for the credit.

Chong Mun Chae (aka Charlie Brown) was previously prosecuted in Syracuse for his company's involvement in asbestos projects without having obtained the required permits. Park assisted Chae in obtaining fraudulent insurance policies needed for workers to participate in asbestos related work. Chae was sentenced to serve 46 months' incarceration, followed by three years' supervised release, and was ordered to pay more than $1.6 million in restitution.

The defendant provided substantial assistance to the government that was instrumental to the success of a number of other prosecutions. These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Internal Revenue Service.

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

August 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Bow and arrow used to kill endangered Florida Panther.
See *U.S. v. Benfield*, below, for more details.

AT A GLANCE:

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al.	*Vessel/* APPS
S.D. Calif.	United States v. Asgard Associates, LLC	*Laboratory/* RCRA
M.D. Fla.	United States v. Todd Alan Benfield United States v. Harris David Spicer	*Panther Hunt/* ESA *Field Baiting/* MBTA
C. D. Ill.	United States v. Duane O'Malley et al.	*Asbestos Abatement/* CAA
E.D. La.	United States v. CTCO Shipyard of Louisiana, LLC [redacted]	*Barge Repair Facility/* CWA [redacted]
D. Md.	United States v. Rodney R. Hailey	*Fuel Production Fraud/* CAA, Money Laundering, Wire Fraud
[redacted]	[redacted]	[redacted]
E.D. Mo.	United States v. Michael Terry et al.	*Emissions Testing/* Mail Fraud
D. Mont.	United States v. William E. Hugs, Sr., et al.	*Eagle Feather Sales/* MBTA, BGEPA, Conspiracy
D.N.J.	United States v. Thomas Reeves et al.	*Oyster Harvesting/* Lacey Act, Obstruction, Conspiracy

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Ohio	United States v. Ohio Valley Coal Company United States v. Steve T. Kinder et al. United States v. Allan Wright	*Slurry Spills/* CWA misdemeanor *Paddlefish Harvesting/* Lacey Act *Deer Hunt/* Lacey Act
D. S. D.	United States v. William E. Hugs, Sr., et al.	*Eagle Feather Sales/* MBTA, BGEPA, Conspiracy
E.D. Tex.	United States v. Port Arthur Chemical Environmental Services LLC United States v. Raymond Favero	*Waste Transporter/* OSHA, HMTL, RCRA, False Statement, DOT, Conspiracy *Deer Breeder/* Lacey Act
E.D. Va.	United States v. Steven E. Avery et al.	*Ship Scrapping/* CWA, Refuse Act
E.D. Wash.	United States v. Tom David White et al.	*Wolf Hunt/* Lacey Act, ESA, Conspiracy
W.D. Wash.	United States v. Bret A. Simpson	*Ship Scrapping/* CWA
[redacted]	[redacted]	[redacted]

Additional Quick Links:

Trials

United States v. Thomas Reeves, et al., No. 1:11-CR-00520 (D.N.J.), ECS Senior Trial Attorney Wayne Hettenbach, ECS Trial Attorney Patrick Duggan, AUSA Matt Smith, and former ECS Paralegal Kathryn Loomis.

Harvested oysters

On July 20, 2012, after a seven-week trial, multiple defendants were convicted on various felony counts of creating false records, trafficking in illegally possessed oysters, obstructing the Food and Drug Administration's regulation of public health and safety, and conspiring to commit those crimes. Thomas Reeves, Todd Reeves, Renee Reeves, Mark Bryan, Kenneth Bailey, Harbor House, Inc., and Shellrock, LLC, were variously convicted of the Lacey Act, obstruction, and conspiracy violations charged in a 15-count indictment (18 U.S.C. §§ 371, 1505, 1519; 16 U.S.C. §§ 3372, 3373).

From 2004 through 2007, the Reeves and their company, Shellrock, over-harvested oysters from the Delaware Bay in New Jersey and then sold them to Bryan at Harbor House in Delaware. The defendants also conspired to falsify records to conceal their illegal activities. Some of the records they falsified were federally-required shellfish sanitation records that are vital for protecting the U.S. food supply and public health. The fair-market retail value of the oyster over-harvest was in excess of $600,000. Bailey also over-harvested oysters in the same manner and falsified similar documents, involving an over-harvest of oysters of approximately $160,000.

Todd Reeves, Thomas Reeves, and Shellrock were convicted on all seven counts charged; Kenneth Bailey and Mark Bryan were found guilty of all five counts charged; Harbor House was

convicted of five of the six counts charged; and Renee Reeves was convicted on one of the three counts charged.

The indictment identified ten vessels that were used by the Reeves and/or Bailey to engage in the illegal harvest, and therefore are potentially subject to forfeiture. To ensure that the vessels are available for forfeiture and in the same condition, five of them (the *Janet R*, the *Amanda Laurnen*, the *Miss Lill*, the *Crab Daddy* and the *Conch Emperor*) were seized by U.S. Marshals. The other five vessels (the *Martha Meerwald*, the *Louise Ockers*, the *Linda W*, the *Turkey Jack* and the *Beverly Ray Bailey*) are subject to a restraining order that prohibits their use or operation pending the outcome of the case. A forfeiture hearing is scheduled for September 13, 2012.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, and the New Jersey Department of Environmental Protection Division of Fish and Wildlife.

Back to Top

United States v. Rodney R. Hailey, No. 1:11-CR-00540 (D. Md.), AUSA Stefan Cassella and RCEC David Lastra.

On June 26, 2012, a jury convicted Rodney R. Hailey of all 45 counts charged, including money laundering, wire fraud, and violations of the Clean Air Act (18 U.S.C. §§ 1343, 1957; 42 U.S.C. § 7413(c)(2)(A)) stemming from the fabrication of documentation related to the production of bio-diesel fuel.

In March, 2009, Hailey registered his business, Clean Green Fuel (CGF), with the EPA as a producer of bio-diesel fuel, claiming that CGF would produce bio-diesel fuel in a production facility located in Maryland. The registration was part of EPA's Renewable Fuel Standards regulations mandated by the Energy Policy Act of 2005. This Act amended the Clean Air Act to require EPA to promulgate regulations to increase the amount of renewable fuels used in motor vehicles in the United States.

The Energy Policy Act required oil companies that market petroleum products in the United States to either (1) produce a given quantity of renewable fuel themselves or (2) purchase credits called renewable identification numbers (RINs) from producers of renewable fuels to satisfy their renewable fuel quota requirements. Pursuant to the RIN credit program, when a producer of renewable fuel produces a given quantity of product, it can generate a RIN (a unique 38-digit number that identifies the production of a specific quantity of renewable fuel by a specific producer). When the producer distributes the renewable fuel the producer is entitled to sell the RIN to a broker or a major oil company, which could then use the RIN to satisfy its EPA obligation.

Hailey, claiming to be a bio-diesel fuel producer, only generated false RINs on his computer and marketed them to brokers and oil companies. He sold more than 32 million RINs to a variety of companies for approximately $9 million. The RINS that Hailey sold to the brokers were resold as often as two or three times at increased prices.

When investigators attempted to inspect his facility they were directed to an empty warehouse containing no biodiesel production equipment. The defendant further claimed that he had sold all of his biodiesel equipment but was unable to identify the equipment buyer or produce any records of the sale. The government is seeking forfeiture of the property, automobiles, jewelry, and bank accounts that the defendant acquired as a result of this scheme. Sentencing is scheduled for October 11, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the USEPA Office of the Inspector General, the Internal Revenue Service Criminal Investigation Division, the United States Postal Inspection Service, and the United States Marshalls Service.

Back to Top

Informations/Indictments

United States v. Port Arthur Chemical Environmental Services LLC, No. 1:12-CR-00042(E.D. Tex.), ECS Senior Counsel Rocky Piaggione, AUSA Joseph Batte, and ECS Paralegal Ben Laste.

On July 18, 2012, a 13-count superseding indictment was filed charging Port Arthur Chemical and Environmental Services LLC (PACES) and its president Matthew Bowman. The indictment charges the defendants with two counts of violating OSHA standards that caused the deaths of two employees; conspiracy to violate Department of Transportation (DOT) regulations; four counts of transportation of hazardous materials without placards; one count of treatment of hazardous waste without a permit; and five counts related to false transportation documents (18 U.S.C. §§ 371, 1001; 29 U.S.C. § 666; 42 U.S.C. § 4928; 49 U.S.C. §§ 5104 and 5124).

The company recovered hydrogen sulfide from spent caustics to create a product used by paper mills called NaSH. The production and resulting waste in this process caused the release of highly toxic hydrogen sulfide gas. The defendants are charged with failing to safeguard their employees from exposure to this gas, resulting in the deaths of two truck drivers in separate incidents. They also are alleged to have failed to properly placard and identify hydrogen sulfide wastes in transportation documents as required by the DOT. Additional charges accuse the defendants of falsifying transportation documents and improperly labeling trucks carrying other hazardous materials which were either flammable, corrosive, or high in phenols and formaldehyde. The defendants are further accused of redirecting trucks carrying ignitable hazardous waste to PACES, which did not have a RCRA permit to treat it.

This case was investigated by the United States Environmental Criminal Investigation Division, United States Department of Transportation, the Texas Commission on Environmental Quality, the Houston Police Department, the United States Department of Labor, and the United States Coast Guard.

Back to Top

Plea Agreements

United States v. Asgard Associates, LLC, No. 12-CR-02905 (S.D. Calif.), AUSA Melanie Pierson.

On July 18, 2012, Asgard Associates, LLC, pleaded guilty to a RCRA storage violation (42 U.S.C. § 6928(d)(2)(A)) for illegally storing chemicals and biological agents that are known to be a potential threat to public health and safety.

Chemicals removed from lab

Between January 2010 and March 2010, Asgard Associates was aware that a variety of chemicals were being improperly stored at its Roselle Street laboratory. Despite knowing the hazardous nature of these chemicals, the company refused to provide funds for their proper disposal. From May 2010 through June 2010, the San Diego County Department of Environmental Health Services inspected and sampled the chemicals, and in August 2010, the U.S. EPA conducted a cleanup removing more than 2,500 vials and containers from the premises.

Among the chemicals removed were Diethyl Ether, sodium chlorate, potassium borohydride, calcium hydride, potassium chlorate, and perchloric acid. The chemicals had to be detonated by the EPA and the San Diego Fire Department Bomb Squad as they were too unstable for safe transport. Sentencing is scheduled for September 17, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division, the Federal Bureau of Investigation, and the San Diego County Department of Environmental Services Hazardous Materials Management Division.

Back to Top

United States v. Bret A. Simpson, No. 3:11-CR-05472 (W.D. Wash.), AUSA James Oesterle and SAUSA USCG Lt. Cdr. Marianne Gelakoska.

M/V Davy Crockett

On July 12, 2012, Bret A. Simpson, the owner of Principle Metals, LLC, pleaded guilty to two violations of the Clean Water Act (33 U.S.C. §§1321(b)(3), 1319(c)(2)(A), 1321(b)(5)) for unlawfully discharging oil into the Columbia River, and for failing to report those discharges.

Simpson knew when he purchased the *M/V Davy Crockett*, a former Navy vessel, in June 2010, that the vessel contained several thousand gallons of fuel oil and diesel fuel. When the scrapping operation began in October 2010, no

arrangements were made to remove these tanks from the ship. By December, the crew had cut into a structural beam and the ship began to break apart and leak oil where it was moored on the Columbia River. The scrapping operation was briefly halted, but authorities were not notified of the spill. By January 2011, additional oil leaked into the river and the Coast Guard responded with an administrative order. Simpson satisfied the requirements of the order; however, additional oil was released from the vessel, initiating a state and federal clean up response. Sentencing is scheduled for October 12, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard, the United States Coast Guard Investigative Service, the Washington State Department of Ecology, and the Oregon Department of Environmental Quality.

Back to Top

United States v. Raymond Favero, No. 6:12-CR-00052 (E.D. Tex.), AUSA Jim Noble.

On July 11, 2012, Raymond Favero pleaded guilty to two Lacey Act violations (16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2)).

Favero was in the business of collecting semen from whitetail bucks and then inseminating the deer as a service for whitetail deer breeders. In February 2007, the defendant unlawfully acquired approximately 184 straws of whitetail deer semen valued at approximately $92,000, which he took from a buck that had been transported illegally from an out-of-state source. In January 2008, he unlawfully acquired another 110 straws valued at approximately $55,000 that had been taken from an illegally transported buck.

This case was investigated by the Texas Parks and Wildlife Department, and the United States Fish and Wildlife Service.

Back to Top

United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala.), ECS Trial Attorneys Todd Mikolop and Gary Donner, and Paralegal Jessica Egler.

On July 11 and 12, 2012, Giuseppe Bottiglieri Shipping Company S.P.A. and chief engineer Vito La Forgia pleaded guilty to an APPS violation (33 § U.S.C. 1908(a)). The Italian-based owner and operator of the *M/V Bottiglieri Challenger* and the engineer had been charged in a four-count indictment with APPS, conspiracy, and obstruction of justice violations.

During an inspection of the ship at the port of Mobile in January 2012, Coast Guard inspectors found evidence of false entries made in the oil record book, along with evidence that overboard discharges of oily waste had been made via a bypass pipe that had been removed prior to the ship's arrival at port.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Ohio Valley Coal Company, No. 2:12-CR-00137 (S.D. Ohio), AUSA Mike Marous and RCEC Dave Mucha.

Oil spill from creek bank into water

On July 5, 2012, Ohio Valley Coal Company (OVCC) pleaded guilty to two negligent Clean Water Act violations (33 U.S.C. §§ 1311(a), 1319(c)(1)(A)) stemming from two coal slurry spills that blackened a local stream in 2008 and 2010. The company admitted to violating its NPDES permit and to bypassing its surface impoundment treatment works.

In 2008, slurry pumped from a company settling pond polluted the Captina Creek for 22 miles to the Ohio River. The 2010 spill was caused by a ruptured slurry pipeline. There have been at least nine OVCC coal slurry spills in Captina Creek dating back to 1999. Officials consider Captina a high-quality stream, in part because it is the last known breeding ground in Ohio for the Eastern hellbender salamander, a state endangered species.

The company has already spent $6 million on the construction of a new pipeline, which is double-walled to help prevent future spills. Employees Donald Meadows and David Bartsch were previously prosecuted for their roles in the 2008 incident.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigative Division, the Ohio Environmental Protection Agency, and the Ohio Bureau of Criminal Identification and Investigation.

Back to Top

[redacted]

Back to Top

United States v. Michael Terry, et al., No. 4:12-CR-00082 (E.D. Mo.) AUSAs Dianna Collins and Michael Reap.

On June 27, 2012, Michael Terry pleaded guilty to a mail fraud violation relating to the registration of vehicles using fictitious emission certificates, sales tax documents, and insurance cards. Co-defendant Sedrix Blumingburg previously pleaded guilty to a similar charge (18 U.S.C. §1341).

Terry and Blumingburg were employees of Sure Start Battery & Tire Company, a vehicle repair shop that also offered safety and auto emissions testing. In December 2010, the defendants conducted false safety and auto emissions tests and provided erroneous safety documentation to the vehicle owners for a fee, bypassing Missouri state laws and federal EPA regulations.

In September and October 2011, they also falsified other documents including titles, bills of sale, and insurance documents, for which they received additional compensation from vehicle owners.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

Sentencings

United States v. Duane O'Malley et al., No. 2:10-CR-20042 (C.D. Ill.), AUSA Eugene Miller and RCEC James Cha.

Asbestos-laden pipe

On July 26, 2012, Duane O'Malley was sentenced to serve 120 months' incarceration, followed by a three-year term of supervised release. O'Malley also was ordered to pay a $15,000 fine and $47,086 in restitution to the U.S. Environmental Protection Agency related to the clean-up of illegally disposed asbestos. Due to his prior conviction for a "Solicitation of Murder for Hire" charge in the State of Illinois, O'Malley was sentenced using Criminal History Category II.

O'Malley was previously convicted by a jury on all five Clean Air Act counts (42 U.S.C. § 7413(c)(1)) stemming from his involvement in an illegal asbestos abatement of a five-story building. Co-defendant James Mikrut pleaded guilty to five CAA violations and Michael Pinski pleaded guilty to one CAA violation. They are scheduled to be sentenced on August 16, 2102.

In August 2009, Pinski hired O'Malley, owner and operator of Origin Fire Protection, to remove asbestos-containing insulation from pipes in the building. Neither O'Malley nor his company was trained to perform asbestos removal work. O'Malley agreed to remove the asbestos insulation for a substantially reduced cost than what a trained asbestos abatement contractor would have charged. O'Malley arranged for Mikrut to recruit five individuals to remove the asbestos insulation from the pipes inside the building during a five-day period in August 2009. The asbestos insulation was placed in approximately 100 unlabeled plastic garbage bags that later were emptied onto an open field in a residential area resulting in asbestos contamination of the soil.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Todd Alan Benfield, No. 1:12-CR-00060 (M.D. Fla.), AUSA Jeffrey Michelland.

On July 26, 2012, Todd Alan Benfield was sentenced to serve 60 days' home confinement, followed by 30 days of intermittent incarceration. Benfield also will complete a three-year term of probation, pay a $5,000 fine, and make a $5,000 community service payment to the National Fish and Wildlife Foundation. He will perform 200 hours of community service, issue a public apology in the *Naples Daily News*, complete a hunter safety course, and is banned from hunting during the term of probation. Lastly, the court ordered Benfield to forfeit the compound bow, arrows, ladder tree stand, and accessories he used to shoot a Florida Panther.

Florida Panther

On May 18, 2012, Benfeld pleaded guilty to a violation of the Endangered Species Act (16 U.S.C. § 1538). In October 2009, while bow hunting for deer, Benfield knowingly shot and killed a Florida Panther, in violation of the Act. The following day, the defendant and another person moved the panther in order to conceal it. Local inspectors found the animal, and subsequent forensic analysis confirmed that the carcass was that of an endangered Florida Panther.

This case was investigated by the Joint Wildlife Crime Scene Response Team, which includes the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, the Collier County Sheriff's Office, and the Florida Department of Law Enforcement.
Back to Top

United States v. Steve T. Kinder, et al., No. 1:11-CR-00035 (S.D. Ohio), ECS Trial Attorney Jim Nelson, AUSA Laura Clemmens, and former ECS Paralegal Rachel Van Wert.

On July 17, 2012, Steve T. Kinder, Cornelia J. Kinder, Kinder Caviar, Inc., and Black Star Caviar Company were sentenced to complete three-year terms of probation. The individuals will both perform 100 hours of community service and are subject to various fishing restrictions. Kinder Caviar will pay a $5,000 fine, which is directed to the Lacey Act Reward Account. The court found Black Star Caviar to be defunct, so no fine was assessed. A truck and boat will be forfeited.

The defendants previously pleaded guilty to trafficking in and falsely labeling illegally harvested paddlefish. They also variously admitted to making false statements on required paperwork in 2007 and to illegally harvesting paddlefish in 2010 (16 U.S.C. §§ 3372(a)(2)(A), 3372(d)(1) and 3373(d)(3)(A)).

Paddlefish eggs, which are marketed as caviar, are protected by both federal and Ohio law. It is illegal to harvest paddlefish in Ohio waters, but they can be harvested legally in Kentucky waters. Kinder and his wife owned and operated Kinder Caviar, Inc. At some point in April 2010, the Kinders formed the Black Star Caviar Company after they became aware of the investigation against them. They then ceased to do business through Kinder Caviar. Steve Kinder illegally harvested paddlefish from Ohio waters and falsely reported to the Kentucky Department of Fish and Wildlife Resources that he caught the fish in Kentucky. Cornelia Kinder provided false information about the

paddlefish eggs to federal agents (including the amount of eggs to be exported, the names of the fishermen who harvested the paddlefish, and the location where the paddlefish were harvested) in order to obtain permits to export the eggs to foreign customers. These violations occurred between March 2006 and December 2010.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement, the Ohio Department of Natural Resources Division of Wildlife, and the Kentucky Department of Fish and Wildlife Resources.

Back to Top

United States v. Allan Wright, No. 1:11-CR-00103 (S.D. Ohio), ECS Trial Attorney Jim Nelson and former ECS Paralegal Rachel Van Wert.

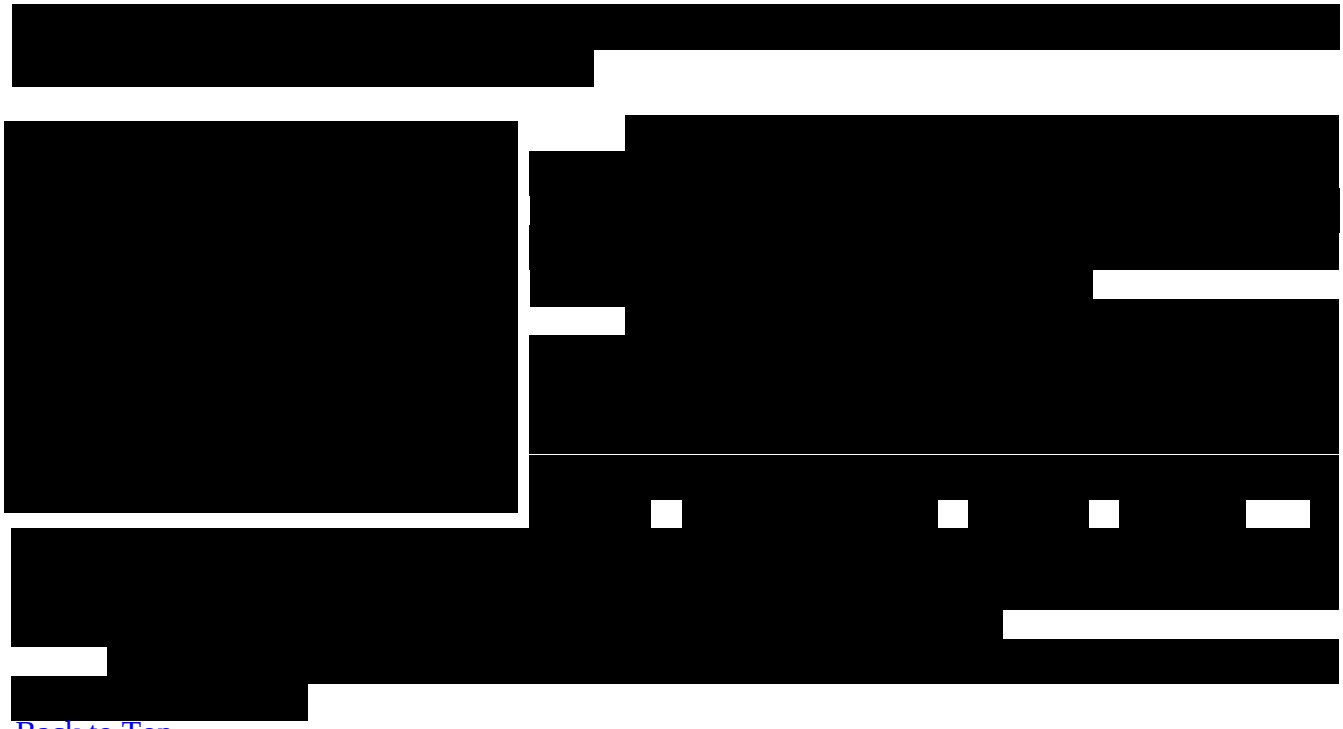
On July 17, 2012, Allan Wright was sentenced to complete a five-year term of probation with the first three months to be spent in home confinement. Wright also was sentenced to pay a $1,000 fine, and is barred from any hunting or fishing during the probationary term.

Wright previously pleaded guilty to four Lacey Act violations (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(2)) for trafficking in illegally harvested white-tailed deer and for making false records while employed as a wildlife officer for the Ohio Department of Natural Resources Division of Wildlife.

The defendant knowingly sold an Ohio resident hunting license to a South Carolina resident who then illegally shot three deer during the 2006 white-tailed deer season. Using his authority as a wildlife officer, Wright seized white-tailed deer antlers from a hunter who had killed a deer illegally during the 2009 season. Rather than dispose of the antlers through court proceedings, Wright arranged for their transport to another individual in Michigan.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top



Back to Top

United States v. Steven E. Avery et al., No. 2:11-CR-00190 (E.D. Va.), AUSAs Joseph Kosky and Melissa O'Boyle.

On July 12, 2012, Steven E. Avery was sentenced to serve 12 months' incarceration, followed by one year of supervised release. Billy J. Avery was sentenced to serve nine months' home confinement as a condition of a five-year term of probation. Both will pay $25,000 fines and are held jointly and severally liable (along with Sea Solutions, Inc.) for paying $66,402 in restitution to the Coast Guard. The company also will complete a one-year term of probation.

In February 2010, Sea Solutions, a Chesapeake-based ship-scrapping company, purchased the *M/V Snow Bird* for the purpose of scrapping the vessel knowing that it contained petroleum products and other pollutants. Despite this knowledge, the defendants began scrapping operations with the pollutants onboard. In October 2010, they caused a major spill of oil, oily water, and other pollutants into the Elizabeth River. During the ensuing cleanup, several thousand gallons of oily waste was removed from the river and the shoreline by the Coast Guard.

The company pleaded guilty to a felony Clean Water Act violation (33 U.S.C. §§ 1311(a), 1319(c)(2)(A)) and the individuals pleaded guilty to a Refuse Act violation (33 U.S.C. § 407).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard Investigative Service, the Virginia Department of Environmental Quality, and the Chesapeake Fire Marshal's Office.

Back to Top

United States v. Tom David White et al., No. 2:11-CR-00094 (E.D. Wash.), AUSA Timothy Ohms.

On July 11, 2012, Tom David White and his wife, Erin Jill White, were sentenced after previously pleading guilty to Endangered Species Act and conspiracy violations (16 U.S.C. § 1538(a)(1)(B), 18 U.S.C. §371) stemming from their attempt to ship a gray wolf pelt via FedEx in December 2008. Tom White will pay a $10,000 fine and was held jointly and severally responsible for $20,000 in restitution. He also will complete a three-year term of probation to include three months' home confinement. Erin White will pay a $5,000 fine and complete a three-year term of probation. They also will forfeit a variety of weapons and animal parts.

Defendant with deceased wolf

Authorities were contacted after a woman dropped off a package for shipment that was leaking blood and found to contain a fresh hide from a gray wolf. Investigation confirmed that Erin White had dropped off the package, and her husband subsequently admitted to agents that he had killed a gray wolf approximately one week prior to their attempting to ship the skin to Canada.

William White, Tom White's father, previously pleaded guilty to conspiracy to take an endangered species, conspiracy to export an endangered species, and to illegally importing wildlife that had been unlawfully taken in Canada (18 U.S.C. § 371; 16 U.S.C §§ 1538(a)(1)(B), 1538 (a)(1)(A), 3372(a)(2)(A)). He was sentenced to pay a $15,000 fine and is held jointly and severally

liable for the $20,000 in restitution. William White will complete a five-year term of probation to include six months' home confinement, and is subject to the same forfeiture provisions.

This case was investigated by the United States Fish and Wildlife Service, the Washington Department of Fish and Wildlife, the Washington Department of Agriculture, Immigrations and Customs Enforcement, and the United States Forest Service.

Back to Top

United States v. Harris David Spicer, No. 8:11-CR-00527 (M.D. Fla.), AUSA Cherie Krigsman.

On June 28, 2012, Harris David Spicer was sentenced to pay a $7,500 fine and will complete a two-year term of probation. Spicer was found guilty after a bench trial of a Migratory Bird Treaty Act (16 U.S.C. § 704) violation for unlawfully placing bait for the purpose of shooting migratory birds.

According to evidence presented at trial, sometime in September or early October 2009, Spicer placed sorghum (otherwise known as milo) seeds in the vicinity of a horse track located on his property. This type of seed is traditionally used as a lure for certain species of birds. In October 2009, Spicer hosted several hunters for a dove shoot around the horse track.

The defendant engaged in similar activity in October 2003 and had been advised at that time of the prohibitions against hunting doves over a baited field.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. CTCO Shipyard of Louisiana, LLC, No. 2:12-CR-00139 (E.D. La.), AUSA Dorothy Taylor.

On June 28, 2012, CTCO Shipyard of Louisiana, LLC, (CTCO Shipyard) was sentenced to pay a $375,000 fine, and will make a $150,000 community service payment to the Louisiana Department of Environmental Quality (LDEQ). The company also will complete a three-year term of probation.

CTCO Shipyard previously pleaded guilty to violating the Clean Water Act (33 U.S.C. § 1319(c)(2)(A)) for failing to properly sample discharges, as well as for failing to submit monthly reports to the LDEQ.

The defendant owned and operated a marine towing and barge repair facility. Under its permit, it was required to monitor its effluent discharges, take samples, and provide discharge monitoring reports to local regulators. Investigation confirmed that between June 2008 and January 2010, the company failed to do any of this and was responsible for the discharge of raw sewage into the facility's storm water system, which ultimately discharged into the Intracoastal Waterway Canal, a water of the United States.

This case was investigated by the Louisiana Department of Environmental Quality and the United States Environmental Protection Agency Criminal Investigation Division.

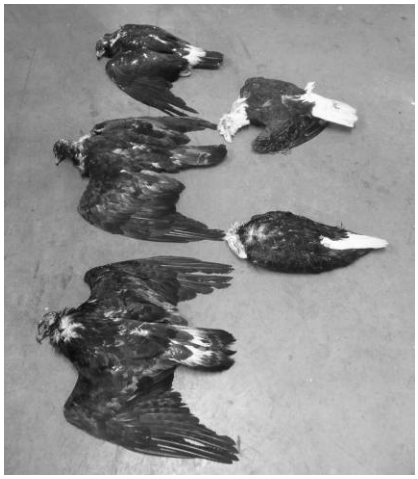
Back to Top

[redacted]

[redacted]

Back to Top

United States v. William E. Hugs, Sr., et al., Nos. 1:11-CR-00054 - 00055, 00065; 3:11-CR-30016, 5:11-CR-50024-50026 (D. Mont., D.S.D.), AUSAs Mark Steger Smith, Kris McLean, Eric Kelderman, and Tim Maher.



Deceased eagles

On June 14, 2012, William Esley Hugs, Sr., was sentenced as one of the remaining defendants from Operation Rolling Thunder, a two year-plus United States Fish and Wildlife investigation that was focused on the illegal trafficking of protected migratory birds, primarily bald and golden eagles, in Montana and South Dakota. A total of 12 people have been charged and sentenced.

The investigation involved the development of an undercover business and multiple transactions with the defendants. In total, the covert business spent $26,376 to purchase feathers, other bird parts (wings, claws), and whole birds, including approximately 80 eagles and 30 hawks.

Hugs, Sr., was sentenced to 18 months' incarceration, followed by three years' supervised release, after pleading guilty to a violation of the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. § 668).

His son, William Esley Hugs, Jr., was previously sentenced to time served (four months), followed by three years' supervised release after pleading guilty to conspiracy, two violations of the Migratory Bird Treaty Act (MBTA) (18 U.S.C. §371; 16 U.S.C. §§ 703, 707), and two BGEPA violations. Harvey Hugs was sentenced to serve six months' incarceration, followed by one year of supervised release, after pleading guilty to one violation of the BGEPA. Marc Little Light was sentenced to pay a $2,000 fine and will complete a one-year term of probation after pleading guilty to one MBTA violation. Gilbert G. Walks, Jr., was sentenced to serve a two-year term of incarceration, followed by one year of supervised release, and will perform 100 hours of community service after pleading guilty to two MBTA violations and two BGEPA counts.

Ernie Stewart was charged and pleaded guilty in both South Dakota and Montana. He pleaded guilty to a single BGEPA charge in South Dakota and two BGEPA charges in Montana. He was sentenced to serve a year and a day of incarceration followed by one year of supervised release.

From the District of South Dakota, Tilden Reddest was sentenced to serve 52 consecutive weekends in jail as a condition of a five-year term of probation and will perform 400 hours of community service, after pleading guilty to two BGEPA violations. Stanley Littleboy was previously sentenced to serve five months' incarceration and five months' community confinement, followed by one year of supervised release, after pleading guilty to two violations of the BGEPA. Shane Red Hawk was sentenced to serve one month incarceration followed by five months' home confinement and one year of supervised release. He also was ordered to perform 100 hours of community service after

pleading guilty to two violations of the BGEPA. Noella Red Hawk was sentenced to serve six months' home confinement as a condition of a one-year term of probation and will perform 50 hours of community service after pleading guilty to one BGEPA violation.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

September 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted]. If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Mounts covered after illegal treatment with pesticide that is prohibited for indoor use. See U.S. v. Smither, below, for details.

AT A GLANCE:

- **Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011).**
- **United States v. Agosto-Vega, 617 F.3d 541 (1st Cir. 2010).**
- **United States v. Chemical & Metal Industries, Inc., 677 F.3d 750 (5th Cir. 2012).**
- **United States v. Pineda-Moreno, ___ F.3d ___, 2012 WL 3156217 (9th Cir. Aug. 6, 2012).**
- **Northwest Environmental Defense Center v. Brown, 640 F.3d 1063 (9th Cir. 2011).**
- **United States v. Freedman Farms, Inc., 786 F. Supp. 2d 1016 (E.D.N.C. 2011).**

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al. United States v. Prastana Taohim et al.	*Vessel/* APPS *Vessel/* Obstruction
D. Alaska	United States v. William Duran Vizzerra, Jr.	*Painting Business/* RCRA
[redacted]	[redacted]	[redacted]
D.D.C.	United States v. Sanford Ltd., et al.	*Vessel/* APPS, Conspiracy, Obstruction
S.D. Fla.	United States v. Culinary Specialties, Inc., et al. United States v. Manuel Ravelo, Jr., et al. United States v. Alejandro Gonzalez United States v. Michael W. Kimbler et al. United States v. Dale Leblang et al.	*Shrimp Mislabeling/* Lacey Act; Food, Drug, and Cosmetics Act; Conspiracy *Spiny Lobster Harvest/* Conspiracy *Vessel/* False Statement, Obstruction *Spiny Lobster Harvest/* Conspiracy *Quarantined Plant Shipments/*Plant Protection Act, Conspiracy

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Ind.	United States v. Euranus Johnson	*Chrome Plating Waste/* RCRA, Social Security Fraud
E.D. La.	United States v. Cedyco Corporation United States v. Donald Hudson United States v. Odysea Carriers, S.A. et al.	*Barge Repair Facility/* CWA *Drilling Rig Tests/* False Statement *Vessel/* APPS, Obstruction, PWSA
W.D. La.	United States v. Jason Prejean et al.	*Dry Cleaner/* CWA
D. Mass.	United States v. John Tetreault	*Municipal Employee/* False Statement
D. Minn.	United States v. Vernon L. Hoff et al.	*Wolf Killings/* ESA, False Statement
N.D. Miss.	United States v. Mari Leigh Childs d/b/a S&L Aqua Operations	*Drinking Water Operator/* CWA, False Statement
[redacted]	[redacted]	[redacted]
D. Mont.	United States v. Matthew Black Eagle et al. United States v. Matthew Whitegrass et al.	*Electroplating Waste/* RCRA *Elk Hunting/* Lacey Act
E.D.N.C.	United States v. Timothy T. Smither et al.	*Pesticide Mislabeling/* FIFRA, Conspiracy
M.D.N.C.	United States v. House of Raeford Farms, Inc., et al.	*CAFO/*CWA
N.D.N.Y.	[redacted]	[redacted]

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D.N.Y.	United States v. David Hausman United States v. Jai Ping Cheng et al.	*Rhino Horn Trafficking/* Lacey Act, Obstruction *Misleadingly Packaged Pesticides/* FIFRA, Conspiracy
W.D.N.Y.	United States v. Michael V. Johnson	*Turtle Meat Processor/* Lacey Act
N.D. Ohio	United States v. William Zirkle	*Tool Manufacturer/* CWA
S.D. Ohio	United States v. Ohio Valley Coal Company	*Slurry Spills/* CWA misdemeanor *Deer Hunt/* Lacey Act
[redacted]	[redacted]	[redacted]
D. Ore.	United States v. Tammy Young	*Municipal Employee/* False Statement
E.D. Penn.	United States v. Peter Shtompil et al.	*Oil and Ester Manufacturer/* CWA
D. S. D.	United States v. Jeremy Hoefs, et al. United States v. Ronald M. Mittleider	*Geese and Duck Hunts/* Lacey Act *Bird Hunts/* MBTA, Lacey Act
M.D. Tenn.	United States v. Gibson Guitar Corporation	*Musical Instrument Manufacturer/* Lacey Act
N.D. Tex.	United States v. Jeffrey D. Gunselman et al. United States v. Team Industrial Inc.	*Bio-Diesel Fuel Fraud/* Wire Fraud, Money Laundering, False Statement *Refinery Leak Detection/* CAA Negligent Endangerment
D. Utah	United States v. Slade E. Barnett, Jr.	*Bio-Diesel Fuel Manufacturer/* CWA

DISTRICT	CASES	*CASE TYPE/* STATUTES
W.D. Va.	United States v. David T. Davis	*Bear Gall Bladder and Migratory Bird Part Sales/* Lacey Act, MBTA, Alcohol and Drug Laws, Animal Fighting and Sale
E.D. Wis.	United States v. Daniel Evanoff United States v. Corrie Korn et al.	*Aluminum Products/* CAA *Duck Hunting/* Lacey Act

Additional Quick Links:

Significant Environmental Decisions

First Circuit

United States v. Agosto-Vega, 617 F.3d 541 (1st Cir. 2010).

The defendant was the owner and principal officer of an automobile dealership, as well as a real estate development company located in Puerto Rico. Soon after purchasers began moving into residences in a housing project developed by the real estate company, several homes began to experience frequent overflows of raw sewage from their septic tanks, which would drain into storm sewers. The defendant directed employees of the real estate company to use a hose to suction raw sewage from the septic tanks. That wastewater was either discharged directly into storm drains that

emptied into a creek via an underground pipe, or into a large tank truck that would be emptied into the storm drains or directly into the creek. The creek was a tributary of a major river that emptied into the Atlantic Ocean.

The defendant (and the automobile dealership) were indicted by a federal grand jury on one count of conspiracy to violate the Clean Water Act and on three counts of aiding and abetting in the unlawful discharge of raw sewage from a point source into waters of the United States. Both defendants were convicted by a jury on all counts. On appeal, the defendant contended *inter alia* that the government had failed to prove that he had knowledge of the illegal discharges, or that the creek constituted "navigable waters of the United States."

Held: The First Circuit, on other grounds, vacated the convictions of both defendants and remanded for a new trial. However, the court found that the jury reasonably could have found that the defendant had been fully aware of the raw sewage problem at the project, had regularly visited the project during periods when overflows were occurring, and knew that he was ultimately responsible for solving the pollution problems. Eyewitnesses testified as to the dumping of raw sewage into the storm drains and directly into the creek, and the jury reasonably could have concluded that such activities could not have occurred without the direction, knowledge, and approval of defendant, who had the most to gain or lose economically by the activities at the site.

The court further found that the government had established regulatory jurisdiction over the creek under either Justice Kennedy's "significant nexus" standard or the plurality's test in Rapanos, but the government was not required to prove that defendant was aware of the facts connecting the creek to the regulatory definition of "waters of the United States." Finally, the evidence established that the defendant, as one who created the conditions for, and had ultimate responsibility for, the discharges, could be held liable as an aider and abettor of those unlawful discharges.

Back to Top

Fifth Circuit

United States v. Chemical & Metal Industries, Inc., 677 F.3d 750 (5th Cir. 2012).

Defendant company recycled hazardous compounds for manufacturers, including Honeywell. An employee of Honeywell died from exposure to toxic industrial waste from a container that defendant had mislabeled.

Defendant was indicted on one count of knowingly storing hazardous waste without a permit in violation of RCRA, and one count of negligent endangerment by negligently releasing a hazardous air pollutant into the ambient air in violation of the Clean Air Act. Defendant pleaded guilty to Count Two in exchange for dismissal of Count One. Defendant was sentenced to serve two years' probation, fined $1 million, and ordered to pay $2 million in restitution. Defendant appealed the size of the fine and award of restitution as exceeding the amount authorized under relevant statutes.

Held: The Fifth Circuit, finding no evidence to support the fine imposed and the restitution awarded by the district court, modified the fine and vacated the restitution order, and, as modified, affirmed the judgment of that court. An order of restitution that exceeds the victim's actual losses or damages is an illegal sentence. As the district court did not make a finding of any pecuniary gain or loss, the imposition of the $1 million fine was in error. Correspondingly, the court's imposition of $2 million in restitution was impermissible as there was no finding of loss.

The court declined to remand the matter to provide the government an opportunity to submit evidence on the gain or loss issue. Instead, it modified the fine to $500,000 (the maximum under the Alternative Fines Act), and vacated the restitution award.
Back to Top

Ninth Circuit

Northwest Environmental Defense Center v. Brown, 640 F.3d 1063 (9th Cir. 2011).

An environmental organization filed a citizen suit against the Oregon State Forester and members of the Oregon Board of Forestry, as well as several lumber companies, contending that they violated the Clean Water Act by failing to obtain NPDES permits for point source discharges from systems of ditches, culverts and channels that received stormwater runoff from two logging roads in a state forest. The district court held that the discharges were exempt from the NPDES program under the Silvicultural Rule.

Held: The Ninth Circuit reversed, holding that the channels funneling runoff were "discernible, confined and discrete conveyances" of pollutants from point sources subject to the NPDES program. The court went on to reject the defendant's argument that the Silvicultural Rule, which exempts *natural* runoff from silvicultural activities, applied to industrial logging.
Back to Top

District Courts

United States v. Freedman Farms, Inc., 786 F. Supp. 2d 1016 (E.D.N.C. 2011).

In a prosecution for discharging pollutants into wetlands in violation of the Clean Water Act, the trial court gave notice of its preliminary jury instruction regarding what constitutes a "water of the United States," indicating that it would instruct the jury using only the "significant nexus" standard from Justice Kennedy's concurring opinion in Rapanos. The government moved for reconsideration of that determination, arguing that the instruction should incorporate both the "significant nexus" standard and the "relatively permanent, standing, or continuously flowing bodies of water standard" from the plurality opinion in that case.

Held: The court denied the government's motion for reconsideration. The court parsed the principles for determining the holding of a fractured decision such as in Rapanos, and noted the great difficulty in applying such principles to the specifics of the Rapanos decision. It then analyzed the Rapanos decision in detail, as well as decisions of the Fourth Circuit and other courts following Rapanos, and decided to follow its original determination to instruct solely upon the "significant nexus" standard.
Back to Top

Significant Non-Environmental Decisions

Supreme Court

Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011).

The defendant was convicted by a jury of driving while intoxicated, based principally upon a forensic report stating that his blood-alcohol concentration (measured by a gas chromatograph) was above the threshold level punishable as aggravated DWI. (The trial occurred after Crawford but before Melendez-Diaz.) The forensic analyst who completed and certified the report was not called to testify at trial; another analyst (who was familiar with the testing device but had not directly observed the testing of the defendant's blood) was called instead. The trial court admitted the report as a business record and the defendant was convicted. While acknowledging that the report was testimonial, the New Mexico Supreme Court affirmed, finding that the certifying analyst had been a "mere scrivener" who simply transcribed machine-generated test results and the testifying analyst qualified as an expert with respect to the testing machine and the state laboratory's procedures. It held that the defendant's Sixth Amendment right of confrontation of witnesses had not been violated by the first analyst's failure to testify.

Held: The U.S. Supreme Court ultimately granted certiorari and (in a 5-4 decision) reversed the judgment of the state supreme court and remanded the case for further proceedings. The Court found that the certificates of analysis in this case, as in Melendez-Diaz, had been made specifically for the purpose of establishing some fact in a criminal trial. Thus, the forensic report was testimonial under Crawford, since the first analyst had not been simply recording a machine output, but rather had also been certifying that the sample had not been contaminated and that no human error had been made in the testing process. The testifying analyst could not adequately convey to a jury the certifying analyst's level of proficiency, or what he had known or observed, nor expose any lapses or lies on his part. Thus, defendant had a Sixth Amendment right to confront the particular analyst who had certified the report, unless that analyst was unavailable at trial and defendant had had a prior opportunity to cross-examine him.

Back to Top

Ninth Circuit

United States v. Pineda-Moreno, ___ F.3d ___, 2012 WL 3156217 (9th Cir. Aug. 6, 2012).

The defendant was suspected of growing marijuana in the back country of Oregon. DEA agents subsequently observed the defendant and other men pay cash for large amounts of fertilizer that he loaded into a vehicle that he owned. The agents monitored travels by the men in the vehicle, observing evasive driving behavior and the purchase of items consistent with possible remote growing operations. The agents (either on a public street or in a public parking lot) attached mobile tracking devices to the underside of the vehicle, and began monitoring its location on public streets, a public

parking garage, and in an accessible driveway next to the defendant's home. By monitoring the vehicle's movement, the agents learned that it had traveled to two suspected marijuana grow sites.

Based upon the information from the tracking devices and from their earlier surveillance, agents from DEA and other law enforcement agencies stopped the defendant's vehicle and took the men into custody for immigration violations. They then performed a consensual search of the defendant's home and uncovered two large bags containing marijuana.

The defendant was indicted for conspiring to manufacture marijuana and for manufacturing marijuana. He moved to suppress evidence derived from use of the mobile tracking devices, arguing that the attachment of the devices to his vehicle, as well as trespassing on his driveway, all without a warrant, violated the Fourth Amendment. The district court denied the motion. The defendant then pleaded guilty to the conspiracy charge, reserving the right to appeal the denial of his suppression motion. The Ninth Circuit affirmed the denial of the motion to suppress on the ground that the installation and use of the tracking device had not constituted a search under the Fourth Amendment. The defendant filed a petition for certiorari in the U.S. Supreme Court.

Subsequent to the Ninth Circuit's decision, the U.S. Supreme Court decided Jones, holding that installation of a GPS tracking device on a vehicle and its use to monitor the vehicle's movements constituted a "search" under the Fourth Amendment. Thereupon, that Court granted the defendant's petition for certiorari, vacated the judgment of the Ninth Circuit, and remanded the matter so that the Ninth Circuit could consider it further in light of Jones.

Held: The Ninth Circuit affirmed denial of the defendant's suppression motion and his resulting conviction, holding that the use of electronic tracking devices to monitor movements of a vehicle along public roads did not constitute a "search" under the Fourth Amendment. The agents' conduct, prior to Jones, in attaching the tracking devices in public areas and monitoring them had been done in objectively reasonable reliance upon, and thus was authorized by, then-binding circuit precedent. Thus, the critical evidence in the case was not subject to the exclusionary rule.

Back to Top

Trials

United States v. House of Raeford Farms, Inc., et al., No. 1:12-CR-00248 (M.D.N.C.), ECS Trial Attorney Mary Dee Carraway, ECS Senior Trial Attorney Daniel Dooher, and ECS Paralegal Lisa Brooks.

Turkey waste and parts

On August 20, 2012, a jury convicted House of Raeford Farms (Raeford Farms) on ten of the 14 felony Clean Water Act counts charged (33 U.S.C. § 1319(c)(2)(A)). Plant manager Gregory Steenblock was acquitted.

Raeford Farms is a turkey slaughtering and processing facility located in Raeford, North Carolina. In 2005 and 2006, plant employees were directed to bypass the facility's pretreatment system and to send untreated wastewater directly to the local POTW. In addition, employees discharged thousands of gallons of wastewater into a pretreatment system that did not have the capacity to adequately treat the wastewater before it

was discharged to the POTW. This wastewater was contaminated with blood, grease, and body parts from slaughtered turkeys. A former employee testified that the facility continued to "kill turkeys" despite being warned that the unauthorized bypasses had an adverse impact on the city's wastewater treatment plant.

Many of these bypasses took place while Raeford Farms was subject to a local consent order requiring that it construct a new pretreatment system and that it comply with all its permit requirements. Sentencing is scheduled for November 28, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Sanford Ltd., et al., No. 1:11-CR-00352 (D.D.C.), ECS Trial Attorney Ken Nelson, AUSA Frederick Yette, ECS Trial Attorney Steve DaPonte, SAUSA Jim McLeod, and ECS Paralegals Jessica Egler and Ben Laste.

On August 15, 2012, after a 13-day trial, a jury convicted Sanford Ltd., a New Zealand fishing company, of conspiracy, two APPS violations, and two obstruction violations, but acquitted the company of one obstruction count. Chief Engineer Ronald Pogue was found guilty of an APPS charge and obstruction for falsifying the oil record book, but was acquitted on the conspiracy charge (18 U.S.C. §§ 371, 1505, 1519; 33 U.S.C. §§ 1907(a), 1908(a)).

Inspecting holes in vessel

This case involved the *F/V San Nikunau*, a fishing vessel that docked at the port of Pago Pago, American Samoa, in July 2011. The Coast Guard discovered that the vessel was engaged in the routine practice of dumping bilge wastes over the side of the ship without first processing them through a properly functioning oil water separator and oil content monitor. These discharges were not recorded in the ORB. Coast Guard personnel also witnessed two illegal discharges of bilge waste directly into Pago Pago Harbor. In addition to a fine, the government is seeking criminal forfeiture of over $24,000,000. Engineer Rolando Ong Vano previously pleaded guilty to an APPS violation for his role in the overboard discharges.

Sentencing is scheduled for November 16, 2012. This case was investigated by the United States Coast Guard.

Back to Top

Informations/Indictments

[redacted]

Back to Top

[redacted]

Back to Top

United States v. Jeffrey D. Gunselman et al., No. 5:12-CR-00078 (N.D. Tex.), AUSA Paulina Jacobo.

On August 9, 2012, Jeffrey D. Gunselman and several corporations were charged in a 79-count indictment with wire fraud, money laundering, and making false statements under the Clean Air Act (18 U.S.C. §§ 1343, 1957, 42 U.S.C. § 7413(c)(2)(A)) related to the operation of his now defunct company, Absolute Fuels, LLC, and other related corporate entities.

The indictment charges the defendants with 51 counts of wire fraud, 24 counts of money laundering and four false statement violations. The indictment also includes a forfeiture allegation which would require the defendant to forfeit approximately $42 million, real estate, automobiles, jewelry, an airplane and other miscellaneous property traceable to his convicted offenses.

From September 2010 to October 2011, Gunselman, d/b/a/ Absolute Fuels, LLC, and the other related corporate defendants, devised a scheme to defraud money from the U.S. Environmental

Protection Agency (EPA), various brokers, energy companies and others. Gunselman falsely represented that he and each corporate defendant were in the business of producing bio-diesel fuel; however, Gunselman did not have a bio-diesel fuel-producing facility. His business operation consisted of falsely generating renewable fuel credits and selling them to oil companies and brokers. Gunselman and his companies also made verbal and written statements to the EPA that proved to be false and misleading.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the United States Secret Service.

Back to Top

United States v. Slade E. Barnett, Jr., No. 2:12-CR-00378 (D. Utah), AUSA Jared Bennett.

On August 9, 2012, a two-count indictment was unsealed charging Slade E. Barnett, Jr., with a false statement violation and a violation of the Clean Water Act (18 U.S.C. § 1001(a)(3); 33 U.S.C. § 1319(c)(2)(B)).

Barnett was the principal agent for Denali Industries, LLC, which was in the business of manufacturing bio-diesel fuel from grease, vegetable oil, and other substances. From December 2007 through June 2008, Barnett allegedly directed employees to dump grease and other waste oils into the sewer system. On two occasions, the discharges caused sewer system pumps to fail, and a third discharge clogged 300 feet of sewer pipe with grease, requiring it to be replaced. When asked to provide information on the facility's wastewater processing, Barnett allegedly provided false and misleading information to local regulators. Barnett is specifically charged with knowingly introducing a pollutant into a sewer system that the person knew or should have known could cause property damage.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Vernon L. Hoff et al., No. 12-CR-00184 (D. Minn.), AUSA Laura M. Provinzino.

On July 18, 2012, Vernon L. Hoff and Kyler J. Jensen were charged with conspiracy, Endangered Species Act and false statement violations (16 U.S.C. §1538(a)(1)(G); 18 U.S.C. §§ 371, 1001(a)(1), (a)(2)) for allegedly killing two gray wolves, burying them in the Superior National Forest (Forest), and then lying to federal investigators about the incident.

The indictment alleges that on February 17, 2010, after Jensen intentionally killed the wolves with his vehicle, he and Hoff agreed that the wolves should be taken to the Forest and buried. Jensen then allegedly loaded the two gray wolves into his vehicle, took them to the Forest, and buried them with a bulldozer. At the time, the gray wolf was listed as a threatened species under the ESA. It was removed from the list in Minnesota in January of 2012.

Hoff is alleged to have lied to federal agents when questioned about the incident, and Jensen has denied burying the carcasses. Trial is scheduled for October 9, 2012.

This case was investigated by the United States Fish and Wildlife Service and the Minnesota Department of Natural Resources.

Back to Top

Plea Agreements

United States v. Culinary Specialties, Inc., et al., No. 1:12-CR-20117 (S.D. Fla.), AUSA Norman O. Hemming, III.

On August 22, 2012, Culinary Specialties, Inc., and company owners Walter Schoepf and Karl Degiacomi, pleaded guilty to violations stemming from the false labeling and misbranding of shrimp. The company pleaded guilty to conspiracy to violate the Lacey Act and the Food, Drug, and Cosmetics Act. Schoepf and Degiacomi pleaded guilty to a Lacey Act false labeling violation (18 U.S.C. § 371; 16 U.S.C. §§ 3372(d)(1), (d)(2), 3373(d)(3)(A); 21 U.S.C. §§ 331(a), 333(a)(2), 343(a)(1), 343(b)).

From June 2008 through July 2009, the defendants conspired with Richard Stowell, United Seafood, Inc., Adrian Vela, and the Sea Food Center, to violate the Lacey Act by mislabeling and selling approximately 500,000 pounds of shrimp. The shrimp, valued at more than $400,000, was ultimately sold to supermarkets in the northeastern United States.

This case was investigated by the National Oceanic and Atmospheric Association Office of Law Enforcement.

Back to Top

United States v. Manuel Ravelo, Jr., et al., No. 4:12-CR-10006 (S.D. Fla.), AUSAs Tom Watts-FitzGerald and Antonia Barnes.

On August 22, 2012, Manuel Ravelo pleaded guilty to a Lacey Act conspiracy violation (18 U.S.C. § 371). From August 2007 through approximately September 2008, Ravelo sold and transported spiny lobster in violation of harvest requirements, licensing provisions, and bag and trip limits.

The defendant was required to immediately surrender his navigation equipment and location data for all of his artificial habitat sites, along with his Crawfish and Dive Endorsements. He also will be required at sentencing to forfeit a 29' Sea Vee vessel and all the associated equipment used for the illegal harvesting.

Casitas removed from Sanctuary

As part of the resolution of this case, Ravelo has already removed more than 300 artificial lobster habitats known as "casitas" from approximately 200 different sites in the Florida Keys National Marine Sanctuary. Ravelo's involvement in the scheme was valued at more than $375,000 in retail value. Co-defendants Scott Greager, Rush C. Maltz and Titus A. Werner previously pleaded guilty to and were sentenced for their roles in the conspiracy. [*See Also U.S. v. Kimbler et al., which arose from this same investigation.]*

Ravelo is scheduled to be sentenced on November 19, 2012. This case was investigated by the National Oceanic and Atmospheric Association Office of the Law Enforcement and the United States Fish Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Jeremy Hoefs, et al., No. 1:12-CR-10027 (D.S.D.), AUSA Mikal Hanson.

On August 21, 2012, Jeremy Hoefs pleaded guilty to a misdemeanor Lacey Act violation (16 U.S.C. §§ 3372(a)(1), 3372(a)(2)(A), 3372(c)(1) and 3373(d)(2)) stemming from his involvement in the unlawful hunting of geese and ducks in 2008 and 2009. Co-defendants Vernon Renville and Mark Belote entered similar pleas on August 3rd and July 25th, respectively. Mike Evangelista, Damien Rexrode, and Mike Bishop remain variously charged in a ten-count indictment with conspiracy, Migratory Bird Treaty Act, and Lacey Act violations with trial scheduled to begin on October 23, 2012.

The defendants are charged with taking ducks and geese that were not lawfully tagged, shooting ducks over the possession limit, guiding hunters who did not have valid hunting licenses, and altering dates on tags to falsely indicate that the birds were taken on a series of days, instead of on a single day.

This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. William Duran Vizzerra, Jr., No. 3:12-CR-00069 (D. Alaska), ECS Trial Attorney Todd Mikolop, RCEC Karla Perrin, and AUSA Aunnie Steward.

Abandoned hazardous waste

On August 17, 2012, William Duran Vizzerra Jr. pleaded guilty to a RCRA disposal violation (42 U.S.C. § 6928(d)(2)(A)), for the abandonment of paint waste.

Vizzerra was the president and part-owner of Precision Pavement Markings Inc., a road and parking lot painting and striping business that operated from a storage lot in Anchorage between approximately 2006 and 2009. Vizzerra used the lot to store hazardous waste, including methyl methacrylate paint and toluene that was used to clean and flush the paint lines, nozzles, and sprayers used in his business. In approximately November 2009, Vizzerra abandoned approximately 320 55-gallon drums, 179 five-gallon pails, and two 200-gallon totes of paint waste that was found to be hazardous due to its extreme flammability.

A year later, a citizen reported the abandoned drums to the U.S. Environmental Protection Agency. Investigators observed that many of the drums were marked as "waste" or displayed hazardous markings, such as "flammable" or "flammable liquid." Other containers were found to be rusted and in very poor condition.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Daniel Evanoff, No. 2:12-CR-00150 (E.D. Wis.), ECS Trial Attorney Mary Dee Carraway, AUSA Tracy Johnson, and RCEC Dave Taliaferro.

On August 7, 2012, Daniel Evanoff pleaded guilty to a Clean Air Act tampering violation (42 U.S.C. § 7413 (c)(2)).

Evanoff was a vice president of Allotech International, a subsidiary of J.L. French, a company that makes die-cast aluminum products for the automobile industry. This aluminum processing is a source of air emissions that are limited under CAA Title V permit requirements.

As a company vice president, the defendant's duties included overseeing environmental compliance and the supervision of engineers who were responsible for daily monitoring reports and other pollution control records. From 2007 through 2009, Evanoff admitted to directing employees to alter the baghouse leak detection and temperature readings and creating charts with falsified readings, so that the plant appeared to be operating within permitted emissions levels.

Evanoff was recently convicted in the Western District of Kentucky for a similar offense. He is scheduled to be sentenced on November 5, 2012, in that case.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jason Prejean et al., Nos. 6:10-CR-00244, 6:12-CR-00162 (W.D. La.), AUSA Myers P. Namie.

On July 31, 2012, Jason Prejean and his company Prejean Web Enterprises, d/b/a One Low Price Cleaners, pleaded guilty to misdemeanor Clean Water Act violations (33 U.S.C. § 1319 (c)(1)(B)) stemming from a discharge of tetrachloroethylene (also known as PERC) into the local POTW. Company manager Jason Bruno previously pleaded guilty to a similar violation.

In May 2009, the local fire department responded to an emergency call regarding noxious fumes emanating from a local shopping center. Several individuals were transported to a local emergency room after being overcome. Investigators subsequently determined that PERC had been dumped into the drains from Bruno's cleaners business from December 2007 through May 2009.

At one point in time, the cleaners had been using a hazardous waste disposal company to properly dispose of the wastewater; however, it stopped using the service to avoid paying the pickup and disposal fees.

This case was investigated by the Louisiana Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police.

Back to Top

United States v. Matthew Black Eagle et al., Nos. 4:11-CR-00033, 4:12-CR-00032 (D. Mont.), AUSA Kris McLean.

On July 31, 2012, Matthew Black Eagle pleaded guilty to a RCRA storage violation (42 U.S.C. § 6928(d)(1)) stemming from the discovery in June 2010 of 44 drums containing hazardous waste that were located on property he owned. Co-defendant Robert Darin Fromdahl was previously sentenced after pleading guilty to a similar violation.

Photo 9
Northwest view of drum cache.

In June 2010, a rancher discovered the drums on property he was leasing from the Ft. Peck tribe. Black Eagle, the owner of the property, stated that Fromdahl (the owner of an electroplating business) paid him $500 in 2009 to store the drums. Black Eagle initially denied knowing what the drums contained, but later admitted to being told that they mostly contained toxic acid copper.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. David Hausman, No. 1:12-CR-00576 (S.D.N.Y.), ECS Senior Trial Attorney Richard Udell and AUSA Janis Echenberg.

On July 31, 2012, antiques expert David Hausman pleaded guilty to a two-count information charging him with obstruction and Lacey Act violations (16 U.S.C. §§ 3372 (d)(2), 3373 (d)(2)(A); 18 U.S.C. § 1519) for his involvement in the trafficking of Rhinoceros horns. At the time of the offenses, Hausman was a confidential informant for investigators during Operation Crash, a nationwide, proactive law enforcement effort to stem the black market trade in endangered Rhinoceros horns. As such, he was prohibited from engaging in any illegal activity involving the Rhino trade during the time that he was providing this assistance.

In September 2011, however, Hausman arranged via the Internet to purchase a taxidermied head of an endangered Black Rhinoceros with two horns attached. Hausman did not know that the seller was an undercover U.S. Fish and Wildlife Service (FWS) officer. Before purchasing the horns Hausman took several steps to conceal his involvement from law enforcement and insisted that there be no email communications to avoid creating a paper trail. After purchasing the Rhino mount at a truck stop, he was later observed sawing off the horns in a motel parking lot.

The investigation also determined that prior to this incident Hausman had paid a straw buyer to purchase a Black Rhinoceros mount from a Pennsylvania auction house because the law forbids interstate trafficking. Hausman had told the FWS that this was an illegal sale, but not that he was the ultimate purchaser. Again the defendant directed that the buyer not send any email to avoid creating a paper trail. After telling the buyer to remove the horns and mail them to him, Hausman made a set of fake horns and directed the straw buyer to attach them to the Rhino head in the event that law enforcement conducted an investigation.

Sentencing is scheduled for December 5, 2012. Operation Crash is a continuing investigation being conducted by the United States Fish and Wildlife Service in coordination with other federal and local law enforcement agencies including U.S. Immigration and Customs Enforcement Homeland Security Investigations. "Crash" is the term used to describe a herd of Rhinoceros.

Back to Top

United States v. Euranus Johnson, No. 1:12-CR-00115 (S.D. Ind.), AUSA Zachary Myers.

Chrome plating waste

On July 23, 2012, Euranus Johnson pleaded guilty to a RCRA storage violation (42 U.S.C. §§ 408 (a)(4); 6928(d)(2)(A)) and to one count of Social Security fraud.

In August 2004, Johnson was the owner of the Antique Chrome Shop, a chrome plating business. He did not have a permit to store the hazardous waste that was generated during the plating process. An inspector found 40 containers of hazardous waste on the property in January 2011and advised Johnson that it must be properly disposed. Johnson illegally stored the waste in the basement of the building until June 2011. Due to water coming into contact with the waste, a green liquid was seen flowing from the building into a nearby alley.

The Social Security fraud violation was the result of the defendant collecting his full disability payment when he should received a lesser amount, when factoring in income earned from the chrome plating business.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Social Security Administration Office of Inspector General.

Back to Top

United States v. Team Industrial Inc., No. 2:12-CR-00030 (N.D. Tex.), AUSA Christy L. Drake.

Borger-area refinery

On July 18, 2012, Team Industrial Services, Inc., (Team) pleaded guilty to a Clean Air Act negligent endangerment violation (42 U.S.C. § 7413(c)(4)). The company, which provided leak detection and repair services, failed to follow required procedures when conducting emissions monitoring of refinery components.

Between 2007 and 2009 Team employees working at the Borger-area refinery knowingly failed to properly conduct emissions monitoring. They also manipulated testing data to falsely represent emissions monitoring events that were not performed. As a result, potentially harmful emissions were released into the ambient air, and falsified reports were provided to state and federal regulators.

As part of the plea agreement, Team agreed to implement an environmental compliance plan that specifically addresses its leak detection and reporting activities. This facility will be placed on the EPA's List of Violating Facilities and will, therefore be ineligible for any federally funded contracts, grants, or loans, until the EPA removes it from the list.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and The Texas Commission on Environmental Quality's Environmental Crimes Unit.

Back to Top

United States v. John Tetreault, No. 1:12-CR-10146 (D. Mass.), AUSA Anton Giedt.

On July 10, 2012, John Tetreault pleaded guilty to two false statement violations (18 U.S.C. § 1001 (a)(2)) for submitting falsified drinking water reports to the Massachusetts Department of Environmental Protection.

Tetreault was employed as superintendent of the City of Avon Water Department. In June and November 2010, he submitted monthly reports with falsified data concerning chlorine level readings. Sentencing is scheduled for October 2, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. David T. Davis, No. 3:12-CR-00002 (W.D. Va.), AUSA Ramin Fatehi and SAUSA K. Michelle Welch.

On June 18, 2012, David T. Davis pleaded guilty to multiple federal offenses involving the illegal sale of bear gall bladders, the sale of fighting gamecocks, the possession of protected migratory birds, and the distribution of marijuana (7 U.S.C. § 2156; 16 U.S.C. § 703; 18 U.S.C. § 3372; 21 U.S.C. § 841; 26 U.S.C. § 5601). Davis is currently serving a 90-day sentence after pleading guilty in county court to animal cruelty charges as well as multiple counts of possessing a firearm while manufacturing, transporting, or selling illegal alcohol.

Between 2010 and 2011, through a series of undercover transactions, Davis sold agents black bear gall bladders, gamecocks, and marijuana seeds. Davis also admitted to possessing the talons of a Red Tailed Hawk, a migratory bird. Sentencing is scheduled for October 17, 2012.

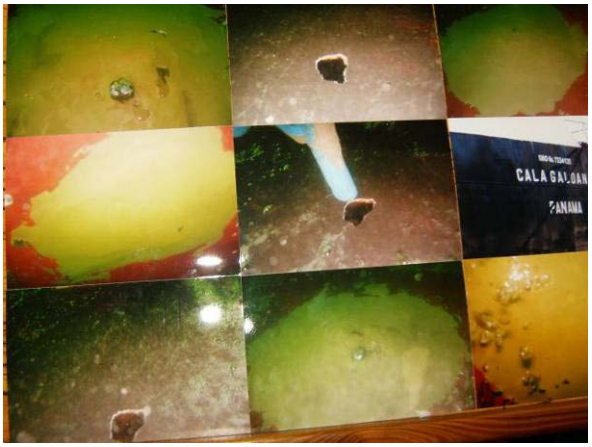
This case was investigated by the United States Department of Agriculture, Office of the Inspector General; the Virginia Department of Alcoholic Beverage Control; the Virginia Animal Fighting Task Force; the United States Forest Service; the National Park Service, Law Enforcement Division; the United States Fish and Wildlife Service; the Virginia Department of Agriculture; the Virginia Department of Game and Inland Fisheries; and the Virginia Attorney General's Office. The Humane Society of the United States assisted in recovering and caring for the animals involved in this case.

Back to Top

Sentencings

United States v. Alejandro Gonzalez, No. 1:11-CR-20868 (S.D. Fla.), ECS Trial Attorney Ken Nelson and AUSA Jaime Raich.

On August 29, 2012, Alejandro Gonzalez was sentenced to serve 21 months' incarceration followed by one year of supervised release. Gonzalez was previously convicted by a jury of three false statement violations and one obstruction charge (18 U.S.C. §§ 371, 1001(a)(2), 1505) in connection with the issuance of false safety documents in April and December of 2009 for two cargo vessels, the *M/V Cala Galdana* and the *M/V Cosette*.



Holes in *M/V Cala Galdana*

As a naval engineer and a vessel classification surveyor, Gonzalez was responsible for surveying the safety and seaworthiness of merchant vessels on behalf of foreign countries. In 2008, inspectors found that the *Cala Galdana* was taking on water and advised that it needed to be drydocked. On several occasions, the defendant told Coast Guard officials that the vessel had undergone maintenance work at a drydock when in fact this had never happened. Gonzalez further obstructed the Coast Guard's port state control examination of the *Cosette* by issuing a fraudulent safety certificate without conducting a proper survey. Inspectors subsequently discovered exhaust fumes and fuel pouring into the engine room, endangering the crew and the ship.

This case was investigated by the United States Coast Guard and the Coast Guard Investigative Service.

Back to Top

United States v. Michael W. Kimbler et al., No. 4:12-CR-10002 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On August 20, 2012, Michael W. Kimbler and Michael Bland were sentenced after previously pleading guilty to conspiring to illegally harvest spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary (Sanctuary) (18 U.S.C. § 371). Kimbler will serve nine months' incarceration, followed by a one-year term of supervised release. Bland, who provided investigative assistance, was sentenced to serve a one-year term of probation, with a special condition of six months' home confinement.

The defendants were involved in the illegal harvest of spiny lobster from April 2007 through approximately September 2011. Placing any artificial structure on the seabed within the Sanctuary is prohibited. Under NOAA supervision, they have begun removing these artificial structures using their own vessels and at their own expense.

Kimbler and Bland, along with other unnamed individuals, made multiple landings of lobster that exceeded the daily harvest and possession limit of 250 lobsters, and concealed the excess harvest

by failing to report their catch as well as fraudulently using another person's documentation. Kimbler's involvement in the scheme was valued at more than $200,000 in retail value, while Bland's exceeded $70,000. The two will forfeit two vessels and equipment used to commit this crime. They also will surrender dive endorsements, navigation equipment, and location data for all their artificial habitat sites. [*See Also U.S. v. Ravelo, et al., which arose from this same investigation.]*

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

Back to Top

United States v. Corrie Korn et al., Nos. 3:12-mj-00019 and 00020 (W.D. Wis.), AUSA Paul W. Connell.

On August 17, 2012, Corrie Korn was sentenced to pay a $5,000 fine and will be barred from hunting and guiding for a two-year period. Probation was not ordered. Co-defendant Faling Yang was already sentenced to the same terms. Korn and Yang previously pleaded guilty to Lacey Act violations (16 U.S.C. § 3372) stemming from their operation of a commercial guiding company located on a national wildlife refuge near the Mississippi River.

Undercover investigation confirmed that the defendants, both local police officers, illegally killed and transported ducks in October 2009, by exceeding the permissible bag limits. The officers were placed on administrative leave pending resolution of the case.

This case was investigated by the United States Fish and Wildlife Service and the Wisconsin Department of Natural Resources.

Back to Top

United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala.), ECS Trial Attorneys Todd Mikolop and Gary Donner, and ECS Paralegal Jessica Egler.

On August 15, 2012, Giuseppe Bottiglieri Shipping Company S.P.A and Chief Engineer Vito La Forgia were sentenced, after previously pleading guilty to an APPS violation (33 § U.S.C. 1908(a)). The company will pay a $1 million fine plus make a $300,000 community service payment. It also will complete a four-year term of probation and implement an environmental compliance plan. La Forgia will serve one month of incarceration followed by one year of supervised release. A fine was not assessed.

During an inspection of the *M/V Bottiglieri Challenger* at the port of Mobile in January 2012, Coast Guard inspectors found evidence of false entries made in the oil record book, along with evidence that overboard discharges of oily waste had been made via a bypass pipe that had been removed prior to the ship's arrival at port.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Prastana Taohim et al., No. 1:11-CR-00368 (S.D. Ala.), former ECS Trial Counsel David O'Connell, AUSA Mike Anderson, and ECS Paralegal Jessica Egler.

On August 15, 2012, Captain Prastana Taohim was sentenced to serve a year and a day of incarceration followed by three years' supervised release. A fine was not assessed. Taohim was previously convicted by a jury of two counts of obstruction for dumping plastic at sea and then

ordering that the ship's garbage record book be falsified to conceal the dumping (18 U.S.C. §§1505, 1519). Specifically, the defendant's convictions stem from his ordering the dumping of hundreds of plastic pipes at sea (that had previously contained insecticide and were used to fumigate a grain shipment). He then ordered that the ship's garbage record book be falsified to conceal the disposal.

Co-defendants Target Ship Management, chief engineer Payongyut Vongvichiankul, and second engineer Pakpoom Hanprap have already been sentenced. They were involved in the overboard discharge of oily bilge waste from the *M/V Gaurav Prem* on multiple occasions as the vessel sailed from South Korea to Mobile. These discharges were not recorded in the oil record book. The illegal overboard discharges were made through a bypass pipe connecting the ship's bilge system to its ballast system.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division. Additional assistance was provided by the Coast Guard Sector Mobile, and the Coast Guard Eighth District Legal Office.

Back to Top

United States v. Cedyco Corporation, No. 12-CR-00167 (E.D. La.), ECS Trial Attorney Christopher Hale, AUSA Dorothy Taylor, and ECS Paralegal Ben Laste.

On August 15, 2012, Cedyco Corporation was sentenced to pay a $557,000 fine, after previously pleading guilty to misdemeanor Clean Water Act violations for negligent discharges of oil (33 U.S.C. §§ 1319(c)(1)(A), 1321 (b)(3)).

Cedyco owned and operated several hydrocarbon facilities, including fixed barges, platforms, and wells, in the brackish bayous of South Louisiana. The company's negligent operation and poor maintenance of three of its facilities in Jefferson Parish led to harmful discharges of oil in 2008 into the navigable waters of the United States.

The fine will be paid directly into the Oil Spill Liability Trust Fund to aid the Coast Guard in responding to future oil spills. Additionally, Cedyco has agreed to cease operations and divest itself of all hydrocarbon business interests in the state of Louisiana.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Coast Guard Investigative Service, and the Louisiana Department of Environmental Quality.

Back to Top

United States v. Peter Shtompil et al., No. 2:12-CR-00011 (E.D. Penn.), AUSA Sarah L. Grieb.

On August 10, 2012, Peter Shtompil was sentenced to pay a $7,000 fine and will complete a three-year term of probation after previously pleading guilty to tampering with a monitoring method in violation of the Clean Water Act (33 U.S.C. § 1391(c)(4)).

Shtompil was the operations director for Nupro Industries Corporation (Nupro) d/b/a Neatsfoot Oil Refineries Corporation, and Advance Technologies. The company manufactures oils (at its Neatsfoot plant) and esters (at the Advance Technologies facility). Both processes generated wastewater that was classified as a hazardous waste and was required to be sampled and treated before being discharged to the Philadelphia POTW. From November 2006 to June 2007, Nupro and Shtompil watered down samples of wastewater that were taken prior to its discharge into the city's sewer system.

The company was recently sentenced to pay a $200,000 fine, complete a three-year term of probation, and fund a $25,000 community service project to benefit the Philadelphia Water

Department. In addition, Nupro will publish an advertisement regarding its conviction and will implement an environmental compliance plan.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Donald Hudson, No. 2:12-CR-00115 (E.D. La.), AUSAs Dorothy Taylor and Emily K. Greenfield.

On August 8, 2012, Donald Hudson was sentenced to complete a two-year term of probation and will perform 120 hours of community service. Hudson previously pleaded guilty to a false statement violation (18 U.S.C. §1001) for lying to agents about blowout preventer system testing on a drilling rig located in the Gulf of Mexico.

In May 2010, the Bureau of Safety and Environmental Enforcement (BSEE) was notified that a crew on a rig operated by Helmerich & Payne, Inc., had falsified the rig's blowout preventer system tests by falsely reporting that every valve on the choke manifold was successfully pressure tested. From January through May 2010, the crew supervised by Hudson deliberately did not test a number of valves on the choke manifold because they knew that the valves would leak. During this period, the defendant was aware, on a few occasions, of what his crew was doing and personally authorized those few falsified test results.

The BSEE is one of three agencies created after the Minerals Management Service was reorganized in April 2010. The MMS is now known as the Bureau of Ocean Energy Management, Regulation, and Enforcement, with the BSEE acting as its environmental enforcement arm.

This case was investigated by the Department of Interior Office of Inspector General, in cooperation with the BSEE.

Back to Top

United States v. Timothy T. Smither et al., No. 5:11-CR-00371 (E.D.N.C.) AUSA Banu Rangarajan.

Original and illegally labeled pesticide

On August 8, 2012, Timothy T. Smither and his wife Denise were sentenced for their involvement in the mislabeling of a pesticide. Timothy Smither, a former manager of a pesticide company, will serve a year and a day of incarceration, followed by three years' supervised release. Denise Smither, a former office assistant, was sentenced to serve a two-year term of probation with a special condition of five months' home confinement. A restitution hearing has been scheduled for November 7, 2012.

In 2000, Miller Trophy Room decided to use a pesticide known as Termidor SC to treat animal trophy mounts, which is not authorized for indoor use. Smither and others also illegally relabeled the pesticide and created false Material Safety Data Sheets to conceal the actual ingredients of the re-labeled product that was subsequently shipped to and used by customers nationwide to treat trophy mounts. During the application process, some customers' hands and arms were directly exposed to Termidor. One customer reported that his wife operated a day care center out of their home and that

the children played on or near the mounts after the treatments. Customers were told that the chemical being applied was completely safe and that it was a Miller Trophy Room "secret" chemical.

Timothy Smither previously pleaded guilty to conspiring to commit mail fraud, wire fraud, and to violating FIFRA (18 U.S.C. § 371) and Denise Smither pleaded guilty to a FIFRA violation (7 U.S.C. § 136j (a)(2)).

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina Department of Agriculture Structural Pest Control and Pesticides Division, and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Jai Ping Cheng et al., Nos. 1:12-CR-00032 and 1:11-CR-01100 (S.D.N.Y.), AUSA Janis Echenberg.

On August 8, 2012, Jai Ping Cheng was sentenced to time served followed by two years' supervised release. Cheng was ordered to pay a $3,000 fine and $1,200 in restitution to the New York State Department of Environmental Conservation, plus perform 200 hours of community service.

Chen and co-defendant Cheng Yan Huang previously pleaded guilty to two FIFRA violations (7 U.S.C. § 136) for their roles in the illegal distribution and sale of unregistered and misbranded pesticides that were found in dozens of locations throughout Manhattan. The packages were particularly dangerous because they could lead people to mistake them to contain cookies or cough medicine. A woman was hospitalized after accidentally ingesting one of the pesticides, believing it to be medicine. Huang is scheduled for sentencing on September 12, 2012.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, United States Immigration and Customs Enforcement's Homeland Security Investigations, and the United States Postal Inspection Service.

Back to Top

United States v. William Zirkle, No. 3:12-mj-08005 (N.D. Ohio) AUSA Thomas Karol.

On August 3, 2012, William Zirkle was sentenced to serve a six-month term of probation and will perform 200 hours of community service. A fine was not assessed. Zirkle previously pleaded guilty to a Clean Water Act pretreatment violation (33 U.S.C. § 1319(c)(1)(A)) for negligently failing to ensure that wastewater was properly treated prior to being discharged to the local POTW.

Zirkle worked at the former SK Hand Tool Corporation manufacturing facility in Defiance, Ohio. As the result of an accident, approximately 200 gallons of chrome plating solution spilled into a cement pit near the pretreatment system in April 2008. The defendant attempted to treat the spill by adding chemicals into the pit, instead of having it pumped back through the system. As a result, improperly treated wastewater with a high concentration of chrome was discharged into the sewer system, causing subsequent damage.

This case was investigated by the Northwest Ohio Environmental Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency, and the Ohio Attorney General's Office Bureau of Criminal Identification and Investigation.

Back to Top

United States v. Ohio Valley Coal Company, No. 2:12-CR-00137 (S.D. Ohio), AUSA Mike Marous and RCEC Dave Mucha.

On August 1, 2012, Ohio Valley Coal Company (OVCC) was sentenced to pay a $500,000 fine and $87,000 in restitution to the Ohio EPA Division of Surface Water. The company also will complete a one-year term of probation and will implement an environmental compliance plan. OVCC previously pleaded guilty to two negligent Clean Water Act violations (33 U.S.C. §§ 1311(a), 1319(c)(1)(A)) stemming from two coal slurry spills that blackened a local stream in 2008 and again in 2010. The company admitted to violating its NPDES permit and to bypassing its surface impoundment treatment works.

Slurry discharge

In 2008, slurry pumped from a settling pond polluted the Captina Creek for 22 miles to the Ohio River. The 2010 spill was caused by a ruptured slurry pipeline. There have been at least nine OVCC coal slurry spills in Captina Creek dating back to 1999. Officials consider the Captina a high-quality stream, in part because it is the last known breeding ground in Ohio for the Eastern hellbender salamander, a state endangered species. The company has already spent $6 million on the construction of a new pipeline, which is double-walled to help prevent future spills. Employees Donald Meadows and David Bartsch were previously prosecuted for their roles in the 2008 incident.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency, and the Ohio Bureau of Criminal Identification and Investigation.

Back to Top

[redacted]

Back to Top

United States v. Mari Leigh Childs d/b/a S&L Aqua Operations, No. 3:11-CR-00135 (N.D. Miss.), AUSA Robert Mims.

Chapman Subdivision wastewater lagoon

On August 1, 2012, Mari Leigh Childs was sentenced to serve a five-year term of probation with a special condition of six months' home confinement. Childs was further ordered to pay $ 34,900 in restitution to a number of local water and sewer authorities.

The defendant previously pleaded guilty to making false statements in discharge monitoring reports (DMRs), operator logs, and lab reports that are required under the Clean Water Act from February 2006 through February 2009. She further admitted to making false statements in water sample logs sheets and drinking water reports that were required under the Safe Drinking Water Act from January 2007 through January 2009.

Childs and her husband were private wastewater and drinking water operators doing business as S&L Aqua Operations. Childs admitted to falsifying information and reports collected on behalf of the Rising Sun Subdivision Waste Water Treatment Plant and the Chapman Subdivision WWTP. The falsified data included test results for BOD, TSS, ammonia, chlorine, and pH levels. These data were used to prepare DMRs that were submitted to Mississippi Department of Environmental Quality. The company oversees operations at ten local wastewater treatment facilities and 12 public water systems.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Mississippi Department of Health, and the Mississippi Department of Environmental Quality.

Back to Top

United States v. Dale Leblang et al., No. 12-CR-60015 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On July 27, 2012, four defendants were sentenced after previously pleading guilty to conspiracy violations (18 U.S.C. § 371) for the illegal transportation and sale in interstate commerce of a species of citrus plant that has been under quarantine in Florida for many years.

In March 2011, USDA inspectors discovered that *Calomondin*, a known carrier of both Citrus Canker Disease and the Citrus Greening Disease, was being sold from nurseries in Ohio and Illinois. Those plants were traced back to Allied Growers (Allied) in Ft. Lauderdale, which was owned and operated by Dale Leblang and David Peskind. Valico Nurseries (owned and operated by Randall Linkous and his daughter Andrea Moreira) provided the plants to Allied. All four defendants were aware of the quarantine and took various steps to conceal the true identity of the plants, including falsely labeling the plants when they were shipped out of Florida.

Linkous was sentenced to serve a one-year term of probation, to include six months of home confinement. Linkous also will perform 100 hours of community service and is prohibited from being involved with the sale of plants without permission from the court. Moreira will complete a one-year term of probation, perform 50 hours of community service, and is subject to a similar employment restriction. Defendants Leblang and Peskind were each ordered to serve one-year terms of probation, but were not placed under employment restrictions or ordered to perform community service, in light of their cooperation in the investigation and resolution of the case.

This case was investigated by the United States Food and Drug Administration.
Back to Top

United States v. Michael V. Johnson, No. 1:12-mj-01034 (W.D.N.Y.), AUSA Aaron Mango.

On July 26, 2012, Michael V. Johnson was sentenced to pay a $40,000 fine after pleading guilty to a misdemeanor Lacey Act trafficking violation (16 U.S.C. § 3372) for the purchase of Common Snapping Turtles, a protected species.

In 2007 and 2008, Johnson operated a business known as Turtle Deluxe, Inc., a turtle meat processing facility located in Millington, Maryland. As part of the operation, he purchased live turtles from people located in various states. On two occasions in 2007 and 2008, the defendant bought turtles from undercover law enforcement officers and resold the meat, with a market value of approximately $8,400.

As part of the plea, the defendant already has made donations to the following organizations to support their turtle research and education efforts: $7,500 to the Buffalo Zoo, $7,500 to Teatown Lake Reservation, and $5,000 to the Tifft Nature Preserve Buffalo Museum of Science.

This case was investigated by the United States Fish and Wildlife Service and the New York State Department of Environmental Conservation.
Back to Top

United States v. Odysea Carriers, S.A. et al., Nos. 2:12-CR-00056, 00105 (E.D. La.), AUSAs Emily Greenfield and Dorothy Taylor.

On July 25, 2012, operator Odysea Carriers, S.A. was sentenced to pay a $1 million fine and will make a $100,000 community service payment to the National Fish and Wildlife Foundation. The company also will complete a three-year term of probation and will implement an environmental compliance plan.

Odysea previously pleaded guilty to an APPS violation, obstruction, and a PWSA violation (18 U.S.C. §1519; 33 U.S.C. §§ 1908(a), 1232(b)(1)) stemming from the illegal overboard discharges of sludge and oily water from the *M/V Polyneos* in 2011, and for failing to notify authorities of cracks found in the ballast tanks. Chief Engineer Pedro Guerero previously pleaded guilty to a false statement violation (18 U.S.C. § 1001(a)(3)). He was sentenced to pay a $2,000 fine and will complete a three-year term of probation.

From June 2011 through October 2011, crew members used a bypass hose to pump the contents of the bilge tank, bilge oil tank, and sludge tank directly overboard into the ocean. Guerrero falsified the oil record book by omitting these discharges, and by stating that the incinerator had been used to dispose of the wastes, which was untrue.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Tammy Young, No. 6:12-CR-00157, (D. Ore.), AUSA Amy Potter.

On July 24, 2012, Tammy Young was sentenced after pleading guilty to an information charging her with a false statement violation (18 U.S.C. § 1001). She will complete a three-year term of unsupervised probation and will perform 100 hours of community service.

Young was the Water Treatment Plant Supervisor and Water Quality Technician for the Coos Bay North Bend Public Water Board (Water Board). The Water Board is a "community water system" that provides water to approximately 38,000 people.

As part of her duties, the defendant was responsible for sampling and testing drinking water, and submitting monitoring reports to health authorities. In May 2010, Young submitted a report containing falsified data for coliform bacteria levels.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. Matthew Whitegrass et al., No. 4:12-CR-00029 (D. Mont.), AUSA Jessica Betley.

On July 10, 2012, Matthew Whitegrass and Benjamin Yellow Owl were sentenced after pleading guilty to Lacey Act violations (16 U.S.C. §§ 3372(a)(4), 3373(d)(2)) stemming from the illegal killing of four elk in December 2011. The two were each sentenced to pay $2,500 in restitution, a $1,000 fine, complete a 28-month term of probation, and will forfeit their firearms.

In December 2011, a Glacier National Park ranger heard gunshots within the park boundaries. A total of four elk were found shot, and the defendants were apprehended with firearms in their truck, along with spent rifle casings, near the park. They were not authorized to hunt within the boundaries of the park.

This case was investigated by the Glacier National Park Law Enforcement Service and the United States Fish and Wildlife Service.

Back to Top

[redacted]

[redacted]

Back to Top

United States v. Ronald M. Mittleider, No. 1:12-CR-10027 (D.S.D.), AUSA Meghan N. Dilges.

On July 5, 2012, Ronald M. Mittleider was sentenced to pay a $3,000 fine, complete a one-year term of unsupervised probation, and pay $6,825 in restitution to the State of South Dakota Department of Game, Fish, and Parks, and an additional $3,500 to the National Fish and Wildlife Fund.

Mittleider previously pleaded guilty to violations of the Migratory Bird Treaty Act and the Lacey Act (16 U.S.C. §§ 3372, 3373; 707, 707) for illegally shooting and killing one hawk, and one owl. He further assisted in the illegal taking of pheasants over the daily limit on numerous occasions during paid commercial hunts at his lodge, known as Ron's Ringneck Ranch, in 2008 and 2009.

This case was investigated by the United States Fish and Wildlife Service, and the South Dakota Department of Game, Fish, and Parks.

Back to Top

Other Litigation Events

United States v. Gibson Guitar Corp., (M.D. Tenn.), ECS Trial Attorney Lana Pettus and AUSA John Webb, with assistance from AUSA Carrie Daughtrey.

On August 6, 2012, Gibson Guitar Corp. (Gibson) entered into a deferred prosecution agreement to resolve criminal violations of the Lacey Act (16 U.S.C. §§ 3372, 3373) for illegally purchasing and importing ebony wood from Madagascar and rosewood and ebony from India.

Gibson will be required to pay a penalty of $300,000 into the Lacey Act Reward Fund. The agreement further provides for a community service payment of $50,000 to the National Fish and Wildlife Foundation to be used to promote the conservation, identification, and propagation of protected tree species used in the musical instrument industry and the forests where those species are found. The company also is required to implement an environmental compliance program.

Since May 2008, it has been illegal to import into the United States plants and plant products (including wood) that have been harvested and exported in violation of the laws of another country. The harvest of Madagascar Ebony, a slow-growing tree species, was banned in 2006.

Despite being informed of the ban, in October 2008 and September 2009, the company purchased four shipments of "fingerboard blanks," consisting of sawn boards of Madagascar Ebony, for use in the manufacture of guitars.

This case was investigated by the United Stated Fish and Wildlife Service with assistance from United States Immigration and Customs Enforcement.

Back to Top

ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

October 2012

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, please email them to Elizabeth Janes: [redacted] If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Approximately 5,000 gallons of toxic wastewaters stored beneath green floor grating (bottom left) were illegally discharged on a daily basis. See U.S. v. Salazar et al., inside, for more details.

AT A GLANCE:

- United States v. Atlantic States Cast Iron Pipe Company et al., ___ F.3d ___, 2012 WL 4074565 (3rd Cir. Sept. 17, 2012.)
- United States v. Butler et al., ___ F.3d ___, 2012 WL 4017378 (10th Cir. Sept. 13, 2012).
- United States v. Jones, 132 S. Ct. 945 (2012).
- Rehberg v. Paulk, 132 S. Ct.1497 (2012).
- In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011, 670 F.3d 1335 (11th Cir. 2012).

DISTRICT	CASES	*CASE TYPE/* STATUTES
[redacted]	[redacted]	[redacted]
C.D. Calif.	United States v. Win Lee Corporation et al. [redacted]	*Rhino Horn Smuggling/* Lacey Act, Money Laundering, Smuggling, Conspiracy, Tax Fraud [redacted]
D. Colo.	United States v. Dennis E. Rodebaugh et al.	*Big Game Outfitter/* Lacey Act
D. Conn.	United States v. John C. Scheerer	*Lead Abatement Inspector/* False Statement
D.D.C.	United States v. Rolando Ong Vano et al.	*Vessel/* APPS

DISTRICT	CASES	*CASE TYPE/* STATUTES
S.D. Fla.	United States v. David Feltenberger et al.	*Turtle Farms/* Lacey Act, Conspiracy
C.D. Ill.	United States v. James Mikrut et al.	*Asbestos Removal/* CAA
D. Kan.	United States v. A-1 Barrel Company, LLC United States v. Chad Irvin	*Drum Refurbisher/* CWA *Eagle Killing/* BGEPA
E.D. La.	United States v. Connie M. Knight	*Impersonating Federal Official/* Fraud
M.D. La.	United States v. Cleopatra Shipping Agency, Ltd.	*Vessel/* APPS
[redacted]	[redacted]	[redacted]
D.N.J.	United States v. Vele Bozinoski	*Asbestos Removal/* CAA, Conspiracy
S.D.N.Y.	United States v. Jai Ping Cheng et al.	*Pesticide Mislabeling/* FIFRA
[redacted]	[redacted]	[redacted]
W.D.N.C.	United States v. Jose Cabrera United States v. Brian K. Smith et al.	*Vehicle Emissions Testing/* CAA, Conspiracy *Hazardous Waste Transporter/* RCRA
S.D. Ohio	United States v. Cardington Yutaka Technologies, Inc., et al. United States v. Scotts Miracle-Gro et al.	*Auto Parts Manufacturer/* CWA, False Statement *Distributing Pesticides/* FIFRA
E.D. Penn.	United States v. Blue Marsh Labs et al.	*Lab Fraud/* CWA, False Statement, Conspiracy

DISTRICT	CASES	*CASE TYPE/* STATUTES
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Additional Quick Links:

Significant Environmental Decisions

Third Circuit

United States v. Atlantic States Cast Iron Pipe Company et al., ___ F.3d___, 2012 WL 4074565 (3rd Cir. Sept. 17, 2012.)

On September 17, 2012, the Third Circuit Court of Appeals affirmed all convictions and sentences in the case.

In April 2009, Atlantic States Cast Iron Pipe Company ("Atlantic States") was sentenced to pay an $8 million fine, and to complete a four-year term of probation, during which it was subject to oversight by a court-appointed monitor. The four former Atlantic States managers were sentenced to serve terms of incarceration ranging from 70 months for Plant Manager John Prisque to 30 months for Finishing Department manager Craig Davidson. Also sentenced were Atlantic States Maintenance

Superintendent Jeffrey Maury to 46 months, and Human Resources manager Scott Faubert to 41 months.

The defendants were all found guilty by a jury of conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. The defendants also were variously found guilty of substantive CWA, CAA, CERCLA, false statement, and obstruction violations charged in a 34-count superseding indictment.

Atlantic States, a division of McWane, Inc., manufactures iron pipes, which involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit. Evidence at trial proved a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice.

Evidence further showed that the defendants routinely violated the facility's CWA permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River; repeatedly violated the facility's CAA permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola; systematically altered accident scenes; and routinely lied to federal, state, and local officials who were investigating environmental and worker safety violations.

Back to Top

Tenth Circuit

United States v. Butler et al., ___ F.3d ___, 2012 WL 4017378 (10th Cir. Sept. 13, 2012).

On September 13, 2012, the Tenth Circuit issued an opinion and judgment in this matter affirming in part, vacating in part, and remanding to the district court for further proceedings. The Appellate Court upheld two significant aspects of James Butler's sentence, concluding that the district court properly ordered $25,000 in restitution under the Mandatory Victims' Restitution Act and that the district court had properly applied a sentencing enhancement based on his role as a leader or organizer of criminal activity involving five or more participants. However, the Court vacated the sentences imposed by the district court on two other grounds, the first applicable to both James and Marlin Butler, the second only to James Butler.

First, the Tenth Circuit concluded that the district court erred in using the price of guided deer hunts to estimate the fair market retail value of the deer killed illegally on the hunts. The court held that the price of the hunts did not constitute a direct measure of "fair market retail value" because it included the value of other incidentals such as accommodations, where [redacted] should have reflected only "the price of the animal itself." The Court next found that the district court could not rely on the price of the hunts as a "reasonable estimate" of market value, because the record revealed no evidence to support the district court's determination that fair market retail value was "difficult to ascertain" within the meaning of the commentary to Guidelines 2Q2.1.

Second, the Appellate Court vacated a condition of probation prohibiting James Butler from hunting, fishing, or trapping, or accompanying others engaged in such activity, because the condition would prevent him from continuing his employment as business manager of a commercial deer operation, and the district court did not sufficiently find that the restriction was "the minimum restriction necessary" to protect the public.

Back to Top

Significant Non-Environmental Decisions

Supreme Court

United States v. Jones, 132 S. Ct. 945 (2012).

The defendant came under suspicion of trafficking in narcotics in the District of Columbia and was made the target of an investigation by a joint FBI and local police task force. The government applied to the U.S. District Court for a warrant to use an electronic tracking device on a vehicle registered to the defendant's wife. A warrant was issued authorizing installation of the device within the District within ten days. On the 11th day, in Maryland, agents installed a GPS tracking device on the vehicle while it was parked in a public parking lot. Over the next four weeks, the government used the device to track the vehicle's movements. The government ultimately obtained a multi-count indictment charging defendant and several co-conspirators with conspiracy to distribute and possess with intent to distribute cocaine.

The defendant moved to suppress evidence obtained through the GPS device. (The government conceded noncompliance with the warrant and argued only that a warrant had not been required.) The district court granted the motion in part, suppressing the data obtained while the vehicle was parked in a garage adjoining the defendant's residence. However, it held the remaining data admissible, since "a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy on his movements from one place to another." On appeal, the U.S. Court of Appeals for the District of Columbia reversed the conviction, finding that admission of the evidence obtained by warrantless use of the GPS device violated the Fourth Amendment. The U.S. Supreme Court granted certiorari.

Held: Distinguishing Knotts, the Supreme Court affirmed the judgment of the District of Columbia Circuit. A vehicle is an "effect" entitled under the Fourth Amendment to protection against unreasonable searches and seizures, and the use of a GPS device to monitor a vehicle's movements constitutes a "search." Since the government here obtained information by physically intruding upon a constitutionally protected area, a search clearly occurred, which would have been constitutionally permissible only in compliance with a valid warrant.

Back to Top

Rehberg v. Paulk, 132 S. Ct.1497 (2012).

The chief investigator for a district attorney's office testified before a grand jury that resulted in the defendant's indictment. After the indictment was dismissed, the defendant brought an action in federal court under 42 U.S.C. § 1983 alleging that the district attorney, prosecutor, and chief investigator had conspired to fabricate evidence against him.

The district court denied a motion filed by the respondent investigator to dismiss on immunity grounds. However, the Eleventh Circuit reversed, holding that the respondent had absolute immunity from a claim under Section 1983 based upon his grand jury testimony. The U.S. Supreme Court granted certiorari.

Held: The Supreme Court affirmed the judgment of the Eleventh Circuit. Certain governmental activities, such as the prosecutorial function, are viewed as so important that some form of absolute immunity from civil liability is needed to ensure that they are performed with independence and without fear of consequences. A trial witness sued under Section 1983 enjoys absolute immunity from any claim based upon his testimony.

These factors apply with equal force to grand jury witnesses. In both contexts, the fear by a witness of retaliatory litigation may deprive the tribunal of critical evidence. Therefore, a grand jury witness is entitled to the same immunity as a trial witness. Also, there is no reason to distinguish law enforcement witnesses from lay witnesses.

Back to Top

Eleventh Circuit

In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011, 670 F.3d 1335 (11th Cir. 2012).

During a child pornography investigation, officers obtained several IP addresses that led them to hotels where a John Doe was a registrant. The officers obtained a warrant to search Doe's room and seized several pieces of digital media, including laptops and hard drives. When FBI forensic examiners were unable to access portions of the hard drives, Doe was served with a subpoena requiring him to appear before a grand jury in the Northern District of Florida and produce the unencrypted contents located on the hard drives of his laptop computers plus five external hard drives. He informed the United States Attorney that, when he appeared before the grand jury, he would invoke his Fifth Amendment privilege against self-incrimination and refuse to comply with the subpoena. Because Doe's compliance with the subpoena was considered necessary to the public interest, the Attorney General authorized the U.S. Attorney to apply to the district court for an order that would grant Doe immunity and require him to respond to the subpoena.

The U.S. Attorney and Doe thereafter appeared before the district court, where the U.S. Attorney requested that the court grant Doe immunity limited to the use of Doe's act of production of his unencrypted contents of the hard drives. The immunity would not extend to the government's derivative use of the contents of the drives as evidence in a criminal prosecution. Thus, Doe contended that, if decrypted contents of the hard drives contained child pornography, those contents would be Doe's because hard drives belonged to him. By decrypting the contents of the hard drives, Doe would be testifying that he had placed the contents on those drives, encrypted those contents, and could retrieve and examine them whenever he wished. The court granted the requested order.

Doe later appeared before the grand jury, but refused to decrypt the hard drives. The U.S. Attorney moved for an order requiring Doe to show cause why he should not be held in civil contempt. The court issued the order and Doe explained that the government's use of the decrypted contents of the hard drives would constitute derivative use of his immunized testimony. Doe was adjudged in contempt of court and incarcerated.

Held: On appeal, the Eleventh Circuit reversed the judgment of the district court. It held that Doe had properly invoked the Fifth Amendment privilege. When the government then chose not to give him immunity, the district court acquiesced. Under those circumstances, Doe's refusal to produce the unencrypted contents of the hard drives was justified. The district court therefore erred in

adjudging Doe in civil contempt. The court found that Doe's decryption and production of the contents of the hard drives would trigger Fifth Amendment protection because it would be testimonial. The district court had erred in finding that those acts were not testimonial, and also in allowing the government derivative use of the evidence those acts disclosed.

Back to Top

Trials

United States v. Dennis E. Rodebaugh et al., No. 1:10-CR-00444 (D. Colo.), ECS Senior Trial Attorney Ronald Sutcliffe and Trial Attorney Mark Romley.

Elk feeding on illegally placed salt

On September 20, 2012, big game outfitter Dennis E. Rodebaugh was found guilty by a jury of six Lacey Act violations (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B)). He was acquitted on two Lacey Act and one conspiracy charge.

Rodebaugh has operated a Colorado big game outfitting business called AD&S Guide and Outfitters since 1988, offering multi-day elk and deer hunts to scores of non-resident clients in the White River National Forest for between $1,200 and $1,600 per hunt. Co-defendant Brian D. Kunz worked as a seasonal guide for Rodebaugh since 1997, and admitted to assisting in the illegal taking of two bull elk.

Each summer between 2002 and 2007, Rodebaugh guided and outfitted numerous clients on hunts in which deer and elk were shot from tree stands near which Rodebaugh had placed hundreds of pounds of salt each summer as bait. The use of bait to hunt big game is unlawful in Colorado and a violation of the Lacey Act.

This case was investigated by the United States Fish and Wildlife Service and the Colorado Division of Wildlife.

Back to Top

Informations/Indictments

United States v. Connie M. Knight, No. 12-CR-00261 (E.D. La.), ECS Trial Attorney Patrick Duggan and AUSA Emily Greenfield.

On September 26, 2012, Connie M. Knight was arrested after the unsealing of a 22-count indictment charging her with violations stemming from her impersonating a federal training official affiliated with the Occupational Health and Safety Administration (OSHA), in the wake of the BP Deepwater Horizon disaster and cleanup effort (18 U.S.C. §§ 912, 1028) .

After the spill, BP was required to implement and fund a variety of hazardous materials safety and awareness training for all individuals involved in the cleanup. During this time, Knight allegedly began holding fraudulent hazardous waste training classes. She purportedly focused on the Southeast Asian fishing communities (where little English was spoken), and which were economically dependent on the then-closed gulf shrimping industry.

The indictment states that Knight enticed individuals to attend her class by claiming she was the highest ranking OSHA trainer in the U.S., displaying fraudulent OSHA credentials, and claiming that her training was the fast-track to lucrative BP cleanup employment. She also created false OSHA credentials for her staff. After a short class in English, Knight would allegedly provide trainees with fraudulent certification, as well as duplicated training identification cards used to enter BP cleanup worksites. Because the cards were duplicated, it is unknown whether any of Knight's victims were exposed to hazardous waste. It is estimated that over a four-month period, Knight trained thousands of individuals and made well over $250,000.

This case is being investigated by the United States Department of Labor Office of Inspector General and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from OSHA, the Federal Bureau of Investigation, the Florida Fish and Wildlife Conservation Commission, and the Plaquemines Parish Sheriff's office.

Back to Top

[redacted]

Back to Top

Plea Agreements

United States v. Win Lee Corporation et al., No. 12-CR-00202 (C.D. Calif.), ECS Trial Attorney Shennie Patel, and AUSAs Joseph Johns and Dennis Mitchell.

On September 13, 2012, Vinh Chuing "Jimmy" Kha and Felix Kha pleaded guilty to five counts charging conspiracy, smuggling, Lacey Act trafficking, money laundering, and tax fraud violations (16 U.S.C. §§ 3372(a)(1), 3373 (d)(1)(b); 18 U.S.C. §§ 371, 554, and 1956(a)(1)(A)(i))). Win Lee Corporation pleaded guilty to two felony counts charging smuggling and Lacey Act trafficking.

The Khas were involved in a U.S. - based trafficking ring that operated in the black market trade of endangered rhinoceros horn. They admitted to

Confiscated contraband

purchasing White and Black rhinoceros horns, knowing that the animals were protected by federal law as endangered and threatened species. Both defendants admitted that they purchased the horns in order to export them overseas so they could be sold and made into libation cups or traditional medicine. The Khas each acknowledged making payments to Vietnamese customs officials to ensure clearance of horns sent to that country. In addition, Jimmy and Felix Kha each admitted that they failed to pay income taxes owed for 2009 and 2010. Two other defendants, Jin Zhao Feng and Jarrod Wade Steffen, previously pleaded guilty for their involvement in rhino horn trafficking. Feng admitted he attempted to smuggle a horn from an endangered Black rhinoceros from the United States to China. Steffen, who used money provided by the Khas to buy horns for them, pleaded guilty to conspiracy, smuggling, wildlife trafficking, and money laundering.

This case was investigated by the United States Fish and Wildlife Service, with assistance from other federal and local law enforcement agencies including Immigration and Customs Enforcement Homeland Security Investigations, and the Internal Revenue Service.

Back to Top

United States v. Cardington Yutaka Technologies, Inc., et al., No. 2:11-CR-00140 (S.D. Ohio), ECS Trial Attorney Richard Powers, AUSA Mike Marous, and ECS Paralegal Lisa Brooks.

On September 12, 2012, Cardington Yutaka Technologies, Inc. (CYT) agreed to plead guilty to four false statement violations (18 U.S.C. § 1001). Muhammed Razavi agreed to plead guilty to two misdemeanor Clean Water Act violations, and James P. Carroll and Carl R. Wolf each agreed to plead guilty to a single misdemeanor CWA count (33 U.S.C. § 1319(c)(1)(A)). The court has deferred acceptance of the plea agreements until presentence investigation reports are prepared.

This auto parts manufacturer, located in Cardington, Ohio, is a wholly-owned subsidiary of Yutaka Giken Company, Ltd., based in Japan. Razavi was CYT's executive vice president. Carroll was the Facility Manager and Wolf was a Human Resources Manager.

Over an eight-year period, Razavi, Wolf, Carroll and the company made false statements and false records to conceal the existence, nature, and volume of the company's discharge of industrial wastewater to the local POTW. These falsified records were submitted to the Ohio EPA and to the Village of Cardington.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency Office of Special Investigations, and the Ohio Bureau of Criminal Identification and Investigation.

Back to Top

[redacted]

Back to Top

United States v. Vele Bozinoski, No. 1:12-CR-00141 (D.N.J.), AUSA Kathleen P. O'Leary.

On September 5, 2012, Vele Bozinoski pleaded guilty to conspiracy to violate the Clean Air Act (18 U.S.C. § 371) stemming from the improper removal of insulation from piping at the former Garden State Paper Mill in Garfield, New Jersey, in February 2007.

Sentencing is scheduled for January 11, 2013.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

Back to Top

[redacted]

Back to Top

United States v. Jose Cabrera, No. 3:12-CR-00240 (W.D.N.C.), AUSA Steven Kaufman.

On August 29, 2012, Jose Cabrera pleaded guilty to conspiracy to violate the Clean Air Act (18 U.S.C. § 371) stemming from his involvement in illegal vehicle emissions testing. While employed by Carolina Tire and Service, Cabrera conducted numerous illegal emission inspections in May 2012.

As of early 2011, law enforcement officials have been participating in a task force investigating North Carolina companies and individuals for fraud associated with North Carolina's vehicle emission's program.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the North Carolina State Bureau of Investigations; and the North Carolina Division of Motor Vehicles, License, and Theft Bureau.

Back to Top

[redacted]

Back to Top

Sentencings

[redacted]

Back to Top

United States v. Brian K. Smith et al., Nos. 3:11-CR-00146, 00280 (W.D.N.C.), AUSA Steven Kaufman.

On September 27, 2012, Brian K. Smith was sentenced to serve a two-year term of probation to include six months of home detention. He also will perform 50 hours of community service, pay a $2,000 fine, and will be held jointly and severally liable for $32,150 in restitution. Kaara Doolin-Smith, his ex-wife, was previously sentenced to the same terms.

The defendants, owners of Dove Environmental Management (Dove), a licensed hazardous waste transporter, pleaded guilty to a RCRA storage violation (42 U.S.C. § 6928(d)(2)(A)) for abandoning hazardous waste in public storage units that were discovered in 2010. From July to November 2010, the defendants illegally stored more than 90 containers of regulated hazardous waste materials in public rental storage units. The containers were discovered in October 2010 during an inspection by the rental facility after the company failed to make numerous monthly payments. The ensuing investigation prompted an emergency EPA Superfund response. Several generators listed on the containers advised that they had contracted with Dove to remove and dispose of the wastes as far back as 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation Diversion and Environmental Crimes Unit, and the Department of Environment and Natural Resources Hazardous Waste Section.

Back to Top

United States v. David Feltenberger et al., Nos. 2:12-CR-14036 and 20362 (S.D. Fla.), AUSA Jaime Raiche.

On September 25 and 26, 2012, two men were sentenced for their involvement in the illegal sale of freshwater turtles in interstate and foreign commerce. David Feltenberger was sentenced to serve 90 days' incarceration and 90 days of home confinement, followed by three years of supervised released and 250 hours of community service. He also will pay a $20,000 fine. Codefendant Chris Craig will complete a two-year term of probation and perform 50 hours of community service. The two previously pleaded guilty to conspiracy and Lacey Act violations (18 U.S.C. § 371; 16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(2)).

The Florida Fish and Wildlife Conservation Commission has instituted an aquaculture permitting system (or "turtle farms") in response to the decline of the wild freshwater turtle population in Florida, due to overharvesting. Farm owners are permitted to have a certain number of wild-caught turtles strictly for breeding purposes.

Feltenberger's permit allowed him to collect more than 15,000 turtles of various species from the wild for use as brood stock from May 2011 through April 2012. In the fall of 2011, Feltenberger, along with employee Craig, purchased wild-caught turtles that were then illegally shipped to China. In a related case, James Cheung was permitted to collect more than 500 wild-caught turtles for use as brood stock from March 2011 through April 2012. Cheung allegedly sold those turtles to buyers in California. Cheung remains scheduled for trial to begin on November 5, 2012.

These cases were investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

Back to Top

United States v. James Mikrut et al., No. 2:10-CR-20042 (C.D. Ill.), AUSA Eugene Miller and RCEC James Cha.

Pipes with insulation removed

On September 20, 2012, James Mikrut was sentenced to serve one year and a day of incarceration followed by a one-year term of supervised release. During the supervised release, the defendant will be under home detention. He was further jointly and severally liable for $47,085 in restitution to the EPA for cleanup costs.

In August 2009, Michael Pinski hired Duane O'Malley, owner and operator of Origin Fire Protection, to remove asbestos-containing insulation from pipes in a five-story building. Neither O'Malley nor his company was trained to perform asbestos removal work. O'Malley agreed to remove the asbestos insulation for a substantially reduced cost. O'Malley arranged for Mikrut to recruit five people to do this work inside the building during a five-day period in August 2009. The asbestos insulation was placed in approximately 100 unlabeled plastic garbage bags that later were emptied onto an open field in a residential area resulting in asbestos contamination of the soil.

O'Malley was convicted by a jury on all five Clean Air Act counts (42 U.S.C. § 7413(c)(1)), with Mikrut pleading guilty to five CAA violations and Pinski pleading guilty to one CAA violation. O'Malley was recently sentenced to serve 120 months' incarceration, followed by a three-year term of supervised release. O'Malley also was ordered to pay a $15,000 fine and was held jointly and severally liable for the restitution. Due to his prior conviction for a "Solicitation of Murder for Hire" charge in the State of Illinois, O'Malley was sentenced using Criminal History Category II. Pinski remains scheduled for sentencing on November 20, 2012.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Jai Ping Cheng et al., Nos. 1:12-CR-00032 and 1:11-CR-01100 (S.D.N.Y.), AUSA Janis Echenberg.

On September 13, 2012, Cheng Yan Huang was sentenced to time served followed by a one-year term of supervised release. Huang also was ordered to pay $1,200 in restitution to the New York State Department of Environmental Conservation (NYDEC). Jai Ping Cheng was previously sentenced to time served followed by two years' supervised release. Cheng was ordered to pay a $3,000 fine and $1,200 in restitution to the NYDEC, plus perform 200 hours of community service.

The defendants pleaded guilty to two FIFRA violations (7 U.S.C. § 136) for their roles in the illegal distribution and sale of unregistered and misbranded pesticides that were found in dozens of locations throughout Manhattan. The packages were particularly dangerous because they could lead people to mistake them to contain cookies or cough medicine. A woman was hospitalized after accidentally ingesting one of the pesticides, believing it to be medicine.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division, the New York State Department of Environmental Conservation, United States Immigration and Customs Enforcement's Homeland Security Investigations, and the United States Postal Inspection Service.

Back to Top

United States v. A-1 Barrel Company, LLC, No. 2:12-CR-20067 (D. Kan.), AUSA Scott Rask.

On September 11, 2012, A-1 Barrel Company, LLC, (A-1 Barrel) was sentenced to pay a $15,000 fine and will complete a one-year term of probation.

The company previously pleaded guilty to a misdemeanor violation of the Clean Water Act (33 U.S.C. §§ 1317, 1319 (c)(1)(A)) for discharging effluent to the local POTW that exceeded permitted levels for pH.

A-1 Barrel was in the business of refurbishing used industrial barrels and drums, some of which contained residual liquid that had to be rinsed out. Over the course of several days in May and June of 2007, officials sampled wastewater that had been discharged from the facility into the sewer and found that pH levels were outside the permitted limits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Cleopatra Shipping Agency, Ltd., No. 3:12-CR-00102 (M.D. La.), AUSA Mary Patricia Jones.

On September 11, 2012, Cleopatra Shipping Agency (Cleopatra), a Greek vessel management company, was sentenced to pay a $300,000 fine and will complete a three-year term of probation plus implement an environmental compliance plan. The company pleaded guilty to an APPS violation (33 U.S.C. § 1908(a)), and a crew member whistle blower will be paid $150,000 of the fine.

Cleopatra managed and operated the *M/V Stellar Wind*, an ocean-going bulk carrier. In August 2011, during the ship's voyage from Spain to the United States, the chief engineer discharged oily bilge waste directly overboard, and did not record those discharges in the oil record book. There also were entries made in the ORB stating that the oily water separator had been used, when in fact it was not. The ORB was presented to Coast Guard officials once the vessel was docked in Louisiana, at which time they were alerted to the discharges and record falsifications.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

[redacted]

Back to Top

United States v. John C. Scheerer, No. 3:12-CR-00086 (D. Conn.), SAUSA Neeraj Patel and RCEC Peter Kenyon.

On September 10, 2012, John C. Scheerer was sentenced after previously pleading guilty to making a false statement (18 U.S.C. § 1001) in connection with home improvement projects funded by the United States Department of Housing and Urban Development (HUD). Scheerer will pay a $1,000 fine and will complete a two-year term of probation to include a special condition of six months' home confinement. He was further ordered to pay a total of $11,160 in restitution to be divided among five townships and a project manager.

Scheerer was hired to perform home improvement and lead abatement work on several residential properties throughout Connecticut. His work was partially funded by HUD in connection

with a residential revitalization. Upon completion of each job, the defendant was required to hire an independent lead inspector to test for lead hazards and to submit a final lead clearance report.

From March 2006 to March 2010, the defendant falsified and fraudulently submitted approximately 30 lead abatement clearance reports for properties where he performed work funded by HUD. Instead of hiring a lead inspector, he prepared falsified reports using the letterhead of a third-party lead inspection company, creating the erroneous impression that the inspections had been conducted. Subsequent testing confirmed that no significant lead hazards remained.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

Back to Top

United States v. Blue Marsh Labs et al., Nos. 5:11-CR-00259, 00364 (E.D. Pa.), AUSAs Thomas Moshang and Elizabeth Abrahams.

On September 10, 2012, Blue Marsh Labs and owner Michael McKenna were sentenced after previously pleading guilty to conspiracy, a false statement, and a Clean Water Act false statement violation (18 U.S.C. §§ 371, 1001; 33 U.S.C. § 1391(c)(4)) that resulted in the false reporting of pollution test results. False results also were reported for imported fruit that had been tested for potential contamination.

McKenna will serve nine months' incarceration followed by three years' supervised release. The company will serve a five-year term of probation and both were held jointly and severally liable for $14,114 in restitution.

The defendants were previously charged in an 84-count indictment with charges stemming from the falsification of environmental laboratory testing from 2005 through 2007. Among the tests falsified were results from Hurricane Katrina flood water samples that were to be tested for a variety of contaminants, including cyanide. Other tests falsified included those required by the United States Food and Drug Administration for fruit imported from South America that was suspected of being contaminated with pesticides. Former lab manager Debbie Wanner previously pleaded guilty to three counts of making false statements under the Clean Water Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Food and Drug Administration Office of Criminal Investigations, and the Department of Defense Criminal Investigative Service.

Back to Top

Back to Top

United States v. Rolando Ong Vano et al., No. 1:11-CR-00352 (D.D.C.), ECS Trial Attorney Ken Nelson, AUSA Fred Yette, ECS Paralegals Jessica Egler and Ben Laste.

Bypass hose

On September 7, 2012, former Chief Engineer Rolando Ong Vano was sentenced to pay a $2,000 fine and will complete a one-year term of unsupervised probation. Vano previously pleaded guilty to an APPS violation (33 U.S.C. §1908 (a)) for concealing intentional overboard discharges of oily bilge waste from the fishing vessel *F/V San Nikunau*. Sanford Ltd., the owner and operator of the vessel, and chief engineer Ronald Pogue, were recently convicted by a jury on conspiracy, APPS, and obstruction violations.

Vano admitted to falsifying the oil record book and to lying to Coast Guard inspectors that the oil water separator was used on the vessel when in fact it was not. Officials discovered the violations during an inspection of the vessel in American Samoa in July 2011. Sanford and Pogue are scheduled for sentencing on January 13, 2013.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Scotts Miracle-Gro, No. 2:12-CR-00024 (S.D. Ohio), ECS Senior Trial Attorney Jeremy Korzenik and AUSA Mike Marous.

On September 7, 2012, Scotts Miracle-Gro (Scotts) was sentenced to pay a $4 million fine and will pay an additional $500,000 in community service projects, after previously pleading guilty to 11 criminal violations of FIFRA (7 U.S.C. § 136). In a separate civil agreement with the U.S. Environmental Protection Agency, the company will pay more than $6 million in penalties and spend $2 million more on environmental projects under a settlement that resolves additional civil pesticide violations. The violations include distributing or selling unregistered, canceled or misbranded pesticides, including products with inadequate warnings or cautions. These are the largest criminal penalties and civil settlements under FIFRA to date.

Scotts, the world's largest marketer of branded consumer lawn and garden products, admitted to illegally applying pesticides toxic to birds to wild bird food products, falsifying pesticide registration documents, distributing pesticides with misleading and unapproved labels, and distributing unregistered pesticides in 2008.

Sheila Kendrick, the company's manager of federal registration for the regulatory affairs department previously pleaded guilty to a FIFRA violation and a false statement violation (7 U.S.C. § 136j (a)(2); 18 U.S.C. § 1001), for her role in falsifying pesticide registration documents.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; and the Environmental Enforcement Unit of the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation.

Back to Top

United States v. Chad Irvin, No. 6:12-CR-10129 (D. Kan.), AUSA Matthew Treaster.

On August 22, 2012, Chad Irvin was sentenced after pleading guilty to a violation of the Bald and Golden Eagle Protection Act (16 U.S.C. § 668(a)). Irvin will pay a $5,000 fine and will complete a three-year term of probation. He also will pay $2,500 in restitution to the Kansas Department of Wildlife and Parks and $500 to veterinary doctor Michael Malone.

While hunting coyote in January 2012, the defendant shot a golden eagle with a 12-guage shotgun and left it for dead. A day later, authorities were alerted to the shooting and found that the eagle was still alive. They transported it to a veterinary hospital where it was determined the bird was paralyzed in both legs, and had to be euthanized.

The defendant is prohibited from hunting, fishing or trapping during the period of probation and must forfeit the shotgun. He also will perform 50 hours of community service working with hunter education classes.

This case was investigated by the United States Fish and Wildlife Service and the Kansas Department of Wildlife, Parks and Tourism.

Back to Top

Bench and plaque dedicated to Ray Mushal at the National Advocacy Center, with close-up photo of plaque, below.