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U.S. Department of Justice

Environment and Natural Resources Division

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SEP 2 8 2012

FOIA Nos.: 2011-03035, 2011-03069
OIP Appeal No.: AP-2011-03178, AP-2011-03177

This letter is a supplemental response to your Freedom of Information Act (FOIA) requests for (1) electric copies of the five most recent issues of Environmental Crimes Bulletin and (2) electronic copies of each issue of the Environmental Crimes Bulletin produced during the calendar year 2007. The Environment and Natural Resources Division (ENRD) received your requests on April 11, 2011 and June 8, 2011, respectively.

ENRD responded to these requests on September 14, 2011, and you appealed these responses. On May 2, 2012, the Office of Information Policy remanded your request to ENRD for further processing and direct response to you.

We have now completed processing of these requests. Please find enclosed 17 issues of the Environmental Crimes Bulletin (November 2010 to March 2011, and January 2007 to December 2007), 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." We have also removed the direct contact information of government prosecutors under Exemptions 6 and 7(C).

The cost of processing your request did not exceed our minimum billing threshold, so you will not be charged for 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 Sarah Lu at (202) 514-0424 if you have any questions.

Sincerely,

Karen M. Wardzinski
Chief, Law & Policy Section

Enclosure

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

January 2007

EDITORS' NOTE:

Our colleagues with Environment Canada publish a monthly online environmental magazine called *EnviroZine*. In the November issue you may read about how Canadian wildlife inspectors discovered a rare poisonous snake that had been mailed from Israel in a package marked as containing "watermelon seeds." http://www.ec.gc.ca/EnviroZine/english/issues/70/home_e.cfm

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 (202) 305-0396. 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

U.S. v. Grace, 439 F.Supp.2d 1125 (D. Mont. 2006).
U.S. v. Grace, 455 F. Supp.2d 1172 (D. Mont. 2006) (EPA indoor air sampling results).
U.S. v. Grace, 455 F. Supp.2d 1177 (D. Mont. 2006) (W.R. Grace historical product testing).
U.S. v. Grace, 455 F. Supp.2d 1181 (D. Mont. 2006) (ATSDR medical study).
U.S. v. Grace, 455 F. Supp.2d 1196 (D. Mont. 2006) (EPA soil sampling results).
U.S. v. Grace, 455 F. Supp.2d 1203 (D. Mont. 2006) (EPA risk assessments).
U.S. v. San Diego Gas and Electric, No. 06-CR-00065 (S.D. Cal.) (Regulated Asbestos-containing material test methods).

Districts	Active Cases	*Case Type* / Statutes
[redacted]	[redacted]	[redacted]
C.D. Calif.	United States v. Danaos Shipping Company, Ltd. [redacted]	*Vessel/* Negligent Discharge of Oil [redacted]
N.D. Calif.	United States v. Artemios Maniatis	*Vessel/* APPS
S.D. Calif.	United States v. Amar Alghazouli	*CFC Smuggling/* Conspiracy, CAA, Money Laundering, Smuggling
D.D.C.	United States v. District Yacht Club	*Cement Debris* / Rivers and Harbors Act
N.D. Fla.	United States v. Panhandle Trading, Inc.	*Seafood Importers Mislabeled Catfish/* Lacey Act
D. Mass.	United States v. Overseas Shipholding Group	*Multi-District Vessel/* Conspiracy, APPS, Obstruction, False Statement, CWA
D. Minn.	United States v. Troy Gentry	*Bear Hunt/* Lacey Act
D.N.J.	United States v. Sun Ace Shipping Company	*Vessel/* APPS
N.D.N.Y.	United States v. John Chick United States v. John Wood United States v. Everett Blatche [redacted] United States v. AAR Contractor	*Asbestos Removal/* Conspiracy, CAA *Asbestos Removal/* Conspiracy, CAA, Mail Fraud *Asbestos Removal/* Conspiracy, CWA, CAA, CERCLA [redacted] *Asbestos Removal/* Conspiracy, RICO, CAA, TSCA, Tax Fraud
S.D.N.Y.	United States v. Daniel Storms	*DEP Employee/* CWA False Statement
[redacted]	[redacted]	[redacted]
N.D. Okla.	United States v. Sinclair Tulsa Refining Company	*Oil Refinery/* CWA
D. Utah	United States v. Johnson Matthey	*Gold and Silver Refinery/* Conspiracy, CWA Pretreatment
E.D. Va.	United States v. William Garrison	*Elk Hunting/* Lacey Act

Quick Links

Significant Opinions

District Courts

U.S. v. Grace, 439 F.Supp.2d 1125 (D. Mont. 2006)

Defendant corporation and seven 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, and obstruction of justice. Seven individual defendants filed motions to sever their trials from the corporate defendant and, in some cases, from other individual defendants. The defendants based their motions on varying grounds, including the "spillover" prejudicial effect of being tried together, the length of trial, their intent to present, as part of their defense, and documents over which co-defendant W.R. Grace had asserted attorney-client privilege.

Held: The trial court granted two individual defendants' motions to sever and set their joint trial for a later date. The defendant corporation and the remaining five individual defendants remained joined for trial. The court examined *in camera* attorney-client privilege documents and determined that the two individual defendants' Fifth Amendment right to due process and Sixth Amendment right to present evidence in their defense outweighed the presumption in favor of joint trials. Because one defendant had the right to present exculpatory evidence that was incompatible with W.R. Grace's right to a fair trial and the other defendant was W.R. Grace's in-house counsel, which raised the near certainty of antagonistic defenses and irreconcilable conflicts with co-defendants, the court ordered their trial severed.

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U.S. v. Grace, 455 F. Supp.2d 1172 (D. Mont. 2006) (EPA indoor air sampling results)
U.S. v. Grace, 455 F. Supp.2d 1177 (D. Mont. 2006) (W.R. Grace historical product testing)
U.S. v. Grace, 455 F. Supp.2d 1181 (D. Mont. 2006) (ATSDR medical study)
U.S. v. Grace, 455 F. Supp.2d 1196 (D. Mont. 2006) (EPA soil sampling results)
U.S. v. Grace, 455 F. Supp.2d 1203 (D. Mont. 2006) (EPA risk assessments)

Defendant corporation and seven 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, and obstruction of justice. Defendants filed multiple motions *in limine* to exclude government evidence and related expert testimony relating to government sampling and medical evidence, as well as W.R. Grace's own historical product testing relating to its asbestos-contaminated vermiculite. The defendants based their motions primarily on the grounds that the evidence at issue did not meet the "fit" test for expert testimony under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702, and it was unfairly prejudicial under Federal Rule of Evidence 403.

Held: The trial court, in large part, granted the defendants' motions. The court excluded EPA's risk assessments and sampling results and W.R. Grace's historical testing and related expert testimony for the purpose of proving a risk of harm as required by the Clean Air Act knowing endangerment crime. The court did not exclude the evidence entirely, however, and stated that some of the evidence would be permitted to show the defendants' knowledge or as proof of the obstruction counts or the defraud prong of the conspiracy. With regard to the ATSDR medical study, the court excluded it entirely, finding that it failed *Daubert's* "fit" requirement because the study was not designed to establish a causal link between exposure to asbestos and the incidence of asbestos-related disease in Libby, Montana, and additionally the probative value of the study's findings was outweighed by the risk of jury confusion.

Note: The government filed notice of interlocutory appeal of all five orders. The government's opening brief is due to the Ninth Circuit in early January of 2007.

United States v. San Diego Gas and Electric et al., No. 06-CR-0065 (S. D. Cal.), ECS Trial Attorney Mark Kotila [redacted] and AUSA Melanie Pierson [redacted]

On November 21, 2006, the court issued an order dismissing four of the five counts charged in the indictment for "failure to state an offense." The court found that the government relied on an improper test method used by EPA to determine if coal tar insulation used to wrap an underground pipeline contained more than 1% asbestos and therefore was to be treated as regulated asbestos-containing material ("RACM"). Specifically, the court held that the EPA should have used the required multi-layer test rather than the recommended single layer test. Defense counsel in this case had limited their argument to the issue of the test, claiming the government could not prove the jurisdictional amount of 1% since they used the wrong test. The court, however, went a step further by ruling that the indictment was defective on its face in that it failed to unambiguously set forth all elements of the charged offense, i.e., that the material was specifically defined as regulated asbestos-containing material as determined by the specified test method and,there fore, should be dismissed. As to the false statement count charged, the court opined that there was no direct link between the false statement to a member of the regulating agency and the authorized function of the EPA.

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 and to make false statements. The charges relate to the alleged illegal removal of asbestos at SDG&E's gas holding facility. According to the indictment, a sample of suspected asbestos was taken from the facility prior to commencing work. Analysis of the sample, which came from the coating of the facility's underground piping, indicated that the coating was 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 to the residents in the surrounding area. Specifically, the defendants are alleged to have 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.

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Indictments

United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420- 23; (C.D. Cal., N.D. Cal, D. Mass., D. Me., E.D.N.C., E.D.Tex.), ECS Special Litigation Counsel Gregory Linsin [redacted] ECS Senior Trial Attorney Richard Udell [redacted] and ECS Trial Attorneys Malinda Lawrence [redacted] Lana Pettus [redacted] and Joe Poux [redacted] AUSAS: Dorothy Kim [redacted] Stacey Geis [redacted] Jon Mitchell [redacted] Rick Murphy [redacted] Banu Rangaragan [redacted] Joe Batte [redacted] and Malcolm Bales [redacted]

On December 19, 2006, informations were filed in six districts charging Overseas Shipholding Group ("OSG") with conspiracy, CWA, obstruction, false statement, and APPS violations that occurred on a total of 12 ships. Plea agreements also were filed in Boston and Beaumont, Texas. Under the terms of the plea agreements, OSG has agreed to pay a total of $37 million, $27.8 million of which will be paid as a criminal fine. The Districts of Massachusetts and Maine and the Eastern District of Texas each will receive $10 million; $3 million each will be paid to the Central District of California and the Eastern District of North Carolina; and $1 million will be paid to the Northern District of California. Payments of $9.2 million will be made toward organizational community service projects.

The company also will complete a three-year term of probation and be subject to the terms of an environmental compliance plan (to include a court-appointed monitor and an outside independent auditor). [redacted]

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *M/T Uranus*. The *Uranus* made discharges on voyages within U.S. waters in New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *M/T Overseas Shirley* and *M/T Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

The government's investigation thereby expanded to encompass 12 vessels in six ports. [redacted] Starting in August 2005, OSG made six self-disclosures involving six ships that committed violations during the pendency of the criminal investigation. All of the cases involve the falsification and failure to maintain oil record books.

This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the Environmental Protection Agency Criminal Investigations Division.

United States v. John Chick, No. 06-CR-514 (N.D.N.Y.), AUSA Craig Benedict [redacted].

On December 20, 2006, John Chick was charged in a 10-count indictment with violations stemming from the illegal removal of asbestos from the Cayuga County Board of Elections Building in Auburn, New York. Chick 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.

Trial is scheduled to begin on February 20, 2007. 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.

United States v. Artemios Maniatis et al., No. 06-CR-0796 (N.D. Calif.), AUSA Stacey Geis [redacted]

On December 13, 2006, Greek nationals Artemios Maniatis and Dimitrios Georgakoudis were charged with an APPS violation stemming from their roles in ordering the routine illegal discharge of sludge and waste oil from the oil tanker *M/T Captain X Kyriakou.*

Investigation began when a crew member informed the Coast Guard National Response Center that he was routinely ordered to discharge oil overboard. Coast Guard inspectors subsequently discovered a bypass pipe and evidence that these illegal discharges had not been recorded in the vessel's oil record book as required.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Coast Guard Pacific JAG Office.

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United States v. William Garrison, No. 3:06-CR-00046 (E.D. Va.), ECS Trial Attorney David Joyce [redacted]

On December 13, 2006,William Garrison was charged with a conspiracy to violate the Lacey Act and with making a false statement stemming from Garrison's participation in illegal elk hunting on the Valles Caldera National Preserve in New Mexico during 2003.

The Preserve is an 8,900-acre property situated inside of a collapsed crater northwest of Santa Fe, New Mexico. It is home to large populations of big game animals including elk, antelope and oryx. The indictment alleges that Garrison and members of his hunting party shot and killed bull elk, without permits, in violation of state law. At least one of these elk was then transported through interstate commerce in violation of the Lacey Act.

Six other hunters previously have been convicted in Virginia for this activity, as well as two hunters and guides in New Mexico. This case was investigated by the United States Fish and Wildlife Service.

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

On December 13, 2006, a superseding indictment was returned, adding Johnson Matthey, PLC, the UK-based parent company, as a defendant.

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 in 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 superseding indictment now alleges that the parent company, a multi-national specialty chemicals producer, played a role in conspiring to conceal the release of the contaminated wastewater into the sewers.

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

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United States v. John Wood, No. 5:06-CR-00494 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On December 7, 2006, John Wood was charged with conspiracy to violate the CAA and to commit mail fraud related to illegal asbestos removal activities at numerous locations in New York State. Wood also was charged with three substantive CAA counts.

The defendant is the owner of J&W Construction, an asbestos removal company. According to the indictment, 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.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Clinton County Sheriff's Department, and the New York State Department of Labor, Asbestos Control Bureau.

United States v. Everett Blatche, No. 5:06-CR-00474 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On December 7, 2006, Everett Blatche was scheduled for trial to begin on February 5, 2007. He was charged in November 2006 with conspiracy to violate the CAA, CWA, and CERCLA related to an illegal asbestos removal. Blatche also was charged with one CERCLA, one CWA, and three substantive CAA counts.

Blatche was a supervisor for AAPEX Environmental Services, Inc., an asbestos removal company. From June through November, 2006, the defendant supervised numerous individuals who removed approximately 220,000 square feet of spray-on fire proofing asbestos material from a large building. Blatche supervised the illegal removal activities at numerous locations throughout the building, discharged asbestos that ran down the outside of the structure and onto surrounding grounds, disposed of asbestos as if it were simply construction debris, and released asbestos into storm drains that led to the Erie Canal system.

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.

Pleas / Sentencings

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 December 15, 2006, Danny Nguyen, Panhandle Seafood, Inc. ("PSI"), and Panhandle Trading, Inc. ("PTI"), were sentenced after pleading guilty in August 2006 to conspiracy to violate the Lacey Act and conspiracy to commit money laundering for their role in an illegal catfish importation scheme. Nguyen was ordered to serve 51 months' incarceration followed by three years' supervised release. Both companies will complete five-year terms of probation and all three defendants will be held jointly and severally liable for $1,139,275 in restitution to be paid to United States Department of Homeland Security, Immigration, Customs and Border Protection.

Eight defendants were charged in a 42-count superseding indictment returned in May 2006. 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 states 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.

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.

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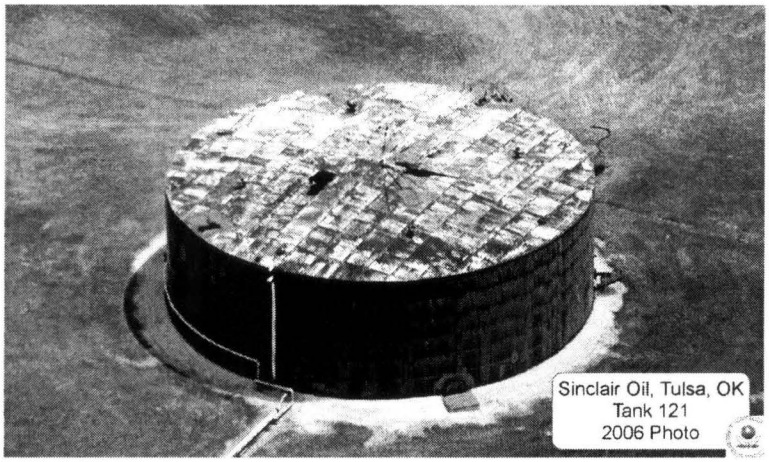
United States v. Sinclair Tulsa Refining Company et al., No. 4:06-CR-00214 (N.D. Okla.), ECS Trial Attorney Mark Kotila [redacted] and AUSA Susan Morgan [redacted]



Corroded tank

On December 13, 2006, Sinclair Tulsa Refining Company ("Sinclair"), a subsidiary of oil and gasoline producer Sinclair Oil, pleaded guilty to two felony CWA violations for deliberately manipulating wastewater discharges at its Tulsa Refinery. Company managers Harmon Connell and John Kapura each also pleaded guilty to one felony CWA count.

Sinclair, Kapura and Connell admitted to manipulating the sampling and discharges of wastewater in violation of their NPDES permit over an extended period of time. According to court documents, between January 2000 and March 2004, the Sinclair refinery discharged an average of 1.1 million gallons of treated wastewater per day into the Arkansas River. On numerous occasions in 2002 and 2003, Sinclair directed employees to limit wastewater discharges with high concentrations of oil and grease to manipulate the result of required bio-testing. During monitoring periods, Sinclair, through its employees, reduced flow rates of wastewater discharges to the river and diverted more heavily contaminated wastewater to holding impoundments, as one way of ensuring that they had passed the tests.

Under the agreement, Sinclair has agreed to pay a criminal fine of $5 million and to make a community service payment of $500,000 which will be paid into an environmental fund, to be identified at a later date. Connell and Kapura each face a maximum penalty of three years in prison and a fine to be determined by the court. Sentencing is scheduled for April 2, 2007.

This case was jointly investigated by the Oklahoma Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

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United States v. Sun Ace Shipping Company et al., No. 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted]

Sun Ace Shipping Company ("Sun Ace") was sentenced in November 2006 to pay a $400,000 fine plus an additional $100,000 community service payment. On December 12, 2006, an APPS award of $200,000 (half of the fine), was ordered to be divided among three crew member whistle blowers.

The company must complete a three-year term of probation during which time its vessels will be banned from U.S. ports and waters. The community service payment will be made 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.

Bypass pipe

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.

On December 5, 2006, chief engineer Chang-Sig O pleaded guilty to obstruction of justice for maintaining a false oil record book ("ORB") and for lying to the Coast Guard about his knowledge of the bypass hoses used to circumvent pollution control equipment. Second engineer, Mun Sig Wang, pleaded guilty to an APPS violation for presenting a false ORB to inspectors during the January port inspection. The company pleaded guilty in September of last year to a one-count information charging an APPS violation for failing to maintain an accurate ORB. The engineers are scheduled to be sentenced on January 27, 2007.

This case was investigated by the United States Coast Guard.

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United States v. Daniel Storms, No. 7:06-CR-00770 (S.D.N.Y.), AUSA Ann Ryan [redacted]

On December 11, 2006, Daniel Storms, a former employee of the New York City Department of Environmental Protection ("DEP"), was sentenced to serve two years' probation and to pay a $250 fine.

Storms pleaded guilty in September of this year 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.

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.

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

On December 8, 2006, Ahed Alghazouli was sentenced to serve 30 months' incarceration followed by three years' supervised release. He also must pay a $6,000 fine.

Ahed Alghazouli pleaded guilty in August 2006 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 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 previously was sentenced after being convicted at trial in March 2006 on five of the six counts charged. He was sentenced to pay a $7,500 fine and to 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 were required to forfeit $135,000 in currency and a home in Chandler, Arizona, to the government. 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.

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United States v. District Yacht Club, No. 1:06-MJ-00405 (D.D.C.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Bruce Hegyi [redacted]

On December 5, 2006, the District Yacht Club ("DYC") pleaded guilty to an information charging a Rivers and Harbors Act violation. On approximately May 8, 2003, one or more officers of the DYC knowingly directed the discharge and deposit of approximately 240 square feet of cement debris into the Anacostia River without a permit. On this occasion, the debris was discharged and deposited into the river from the shore using a piece of motorized equipment, known as a "Pettibone," and was dumped approximately two feet in front of a sewer outfall, which caused the flow from the outfall to be partially obstructed and re-directed.

Dock near outfall

The company was sentenced to pay a $10,000 fine and an additional $10,000 in restitution to be paid to the National Park Foundation to restore and preserve the area where this material was discharged. The company also will complete a three-year term of probation and is required to develop an environmental compliance plan.

This case was investigated by the United States Park Service, the Federal Bureau of Investigation, the United States Environmental Criminal Investigation Division, The United States Army Corps of Engineers, the National Park Service and the Charles County Volunteer Fire Diving Unit.

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United States v. Danaos Shipping Co., Ltd., No. 2:06-CR-00502 (C.D. Calif.), AUSA Dorothy Kim [redacted].

On December 4, 2006, Danaos Shipping Co., Ltd., ("Danaos") a company based in Greece, was sentenced to pay a $500,000 fine and complete a three-year term of probation. The company previously 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 into the oil spill. Half of the fine will be devoted to the following community service projects: $50,000 will go to the Santa Monica Mountains National Recreational Area and $200,000 will be divided between the National Marine Fisheries Service and the Channel Islands National Marine Sanctuary. Danaos also will implement an environmental compliance plan.

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 that 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 Danaos official on board the ship that he had observed the oil flowing from the vent holes in the ship's sea chest. Company 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.

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

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[redacted]

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United States v. AAR Contractor, Inc., et al., Nos. 5:00-CR-00099, 101, 450; 5:02-CR-00051 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On December 4, 2006, the five remaining defendants who cooperated extensively in the prosecution of Alex and Raul Salvagno were sentenced along with AAR Contractor, Inc. ("AAR").

The Salvagnos and AAR were convicted in March 2004 of 14 felony counts following a five-month jury trial. 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 that 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.

1) Timothy Carroll, the public owner of Analytical Laboratories of Albany, was sentenced to serve 26 months in prison, followed by two years' supervised release and 200 hours of community service. He will be held jointly and severally liable for the $22,875,575 in restitution to be paid to victims. Carroll pleaded guilty to a conspiracy to violate the CAA and to commit mail fraud.

2) Gary Alvord, the director of operations for AAR Contractor, was sentenced to serve 15 months in prison, followed by two years' supervised release and 200 hours of community service. Alvord pleaded guilty to a conspiracy to violate the CAA and TSCA and to substantive CAA violations.

3) Robert Obrey, an AAR field supervisor, was sentenced to serve 15 months in prison, followed by two years of supervised release and 200 hours of community service. Obrey pleaded guilty to a conspiracy to violate the CAA and TSCA and to substantive CAA violations.

4) Philippe Goyeau, the ALA executive director, was sentenced to serve eight months in prison, followed by two years of supervised release and 200 hours of community service. Goyeau pleaded guilty to a conspiracy to violate the CAA.

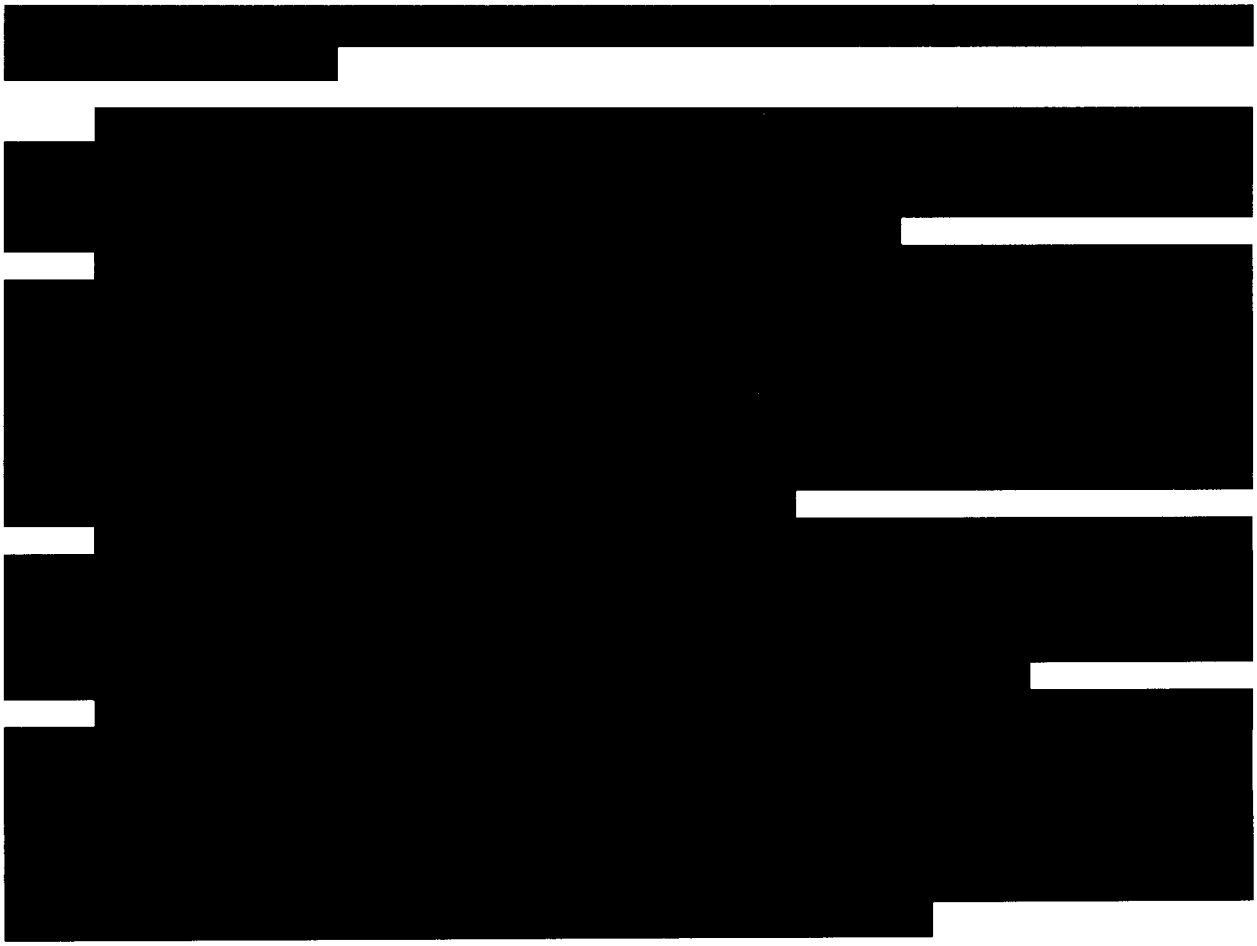
5) Alison Gardner, the ALA laboratory director, was sentenced to serve three years of probation and must complete 300 hours of community service. Gardner pleaded guilty to a conspiracy to violate the CAA and to commit mail fraud.

Because of their significant cooperation, the sentence for each of the individuals above was substantially lower than what would have been generated by the sentencing guidelines.

AAR Contractor was sentenced to pay approximately $22,875,575 in restitution to victims of the asbestos scheme. The company also must forfeit $2,033,457 to the United States.

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 19½ years' incarceration, which is the second longest environmental criminal sentence. The Salvagnos 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. 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.



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United States v. Troy Gentry et al., No. 06-CR-00235 (D. Minn.), AUSA Michael Dees [redacted] and D. Gerald Wilhelm [redacted]

On November 27, 2006, country singer Troy Lee Gentry pleaded guilty to a misdemeanor conspiracy violation of the Lacey Act for submitting a false hunting registration form after killing a domesticated, trophy-caliber black bear. Specifically, Gentry bought the bear from co-defendant Lee Marvin Greenly, a Minnesota hunting guide and owner of a wildlife photography business. Following the sale, Gentry killed the captive-reared bear with a bow and arrow while the bear was enclosed in a pen on Greenly's Minnesota property. Gentry and Greenly then tagged the bear with a Minnesota hunting license and registered the animal with the Minnesota Department of Natural Resources as if it had been killed in the wild. The animal was then shipped to a taxidermist in Kentucky for mounting.

Greenly pleaded guilty to two felony violations of the Lacey Act in connection with his work as a licensed commercial hunting guide, and admitted he and his employees had guided some clients into the Sandstone Unit of the Rice Lake National Wildlife Refuge. Even though it is illegal to enter parts of the refuge, Greenly conceded he had established and maintained multiple bear-baiting stations and hunting stands in those areas. He also admitted he or his employees had directed two clients to those prohibited areas, where one of them had shot and killed two black bears.

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

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ENVIRONMENTAL CRIMES MONTHLY BULLETIN

February 2007

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 (202) 305-0396. 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 *Active Cases* and *Quick Links*.

AT A GLANCE

Significant Opinions

- **National Ass'n of Home Builders v. U.S. Army Corps of Engineers, F. Supp. 2d 2007 WL 259944 (D.D.C. Jan. 30, 2007)**

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	United States v. Hisayoshi Kajima	*Butterfly Smuggling*/ Endangered Species Act
D. Idaho	[redacted] United States v. Gary Lehnherr	[redacted] *Mule Deer Hunting*/ Lacey Act
S.D. Fla.	United States v. William Wessinger, Jr.	*White-Tail Deer Poaching*/ Lacey Act
[redacted]	[redacted]	[redacted]
D. Md.	United States v. Pacific-Gulf Marine	*Vessel*/ APPS
[redacted]	[redacted]	[redacted]
E.D. Pa.	United States v. Kim Johnson	*Smuggling African Artifacts*/ Endangered Species Act
E.D. Tex.	United States v. Overseas Shipholding Group	*Multi-District Vessel*/ Conspiracy, APPS, Obstruction, False Statement, CWA
W.D. Va.	United States v. Brett Boyce	*Elk Hunting*/ Lacey Act
W. D. Wash.	United States v. Irika Maritime SA	*Vessel*/ APPS
[redacted]	[redacted]	[redacted]

Quick Links

Significant Opinions

District Court

National Ass'n of Home Builders v. U.S. Army Corps of Engineers, __ F. Supp. 2d __ 2007 WL 259944 (D.D.C. Jan. 30, 2007)

This decision invalidated the so-called "Tulloch II" rule, jointly issued by the Army Corps of Engineers and the EPA in 2001, governing when the use of "mechanized earth-moving equipment" results in the discharge of "dredged or fill material" and is thus subject to the permit regime administered by the Corps.

The District Court's decision is the latest setback for the Corps and EPA in a longstanding legal dispute about what constitutes the discharge of dredged material. When the Corps expanded the definition of discharge of dredged material (with the "Tulloch I" rule) in 1993, industry trade associations successfully challenged the expanded definition. *See American Mining Cong. V. U.S. Army Corps of Engineers*, 951 F. Supp. 267 (D.D.C. 1997), *aff'd by National Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998). The Corps and EPA responded with the Tulloch II rule in January 2001, stating that earth-moving activity in the waters of the United States would be regarded as resulting in a discharge of dredged material unless project-specific evidence showed that the activity resulted only in "incidental fallback." Incidental fallback was defined as "the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal." In the latest ruling the District Court concluded that the Tulloch II rule was inconsistent with the earlier decisions invalidating Tulloch I, because Tulloch II improperly required that the volume of incidental fallback be small and failed to address the amount of time that dredged material is held before it is dropped back into the water. The District Court thus held that the Tulloch II violated the Clean Water Act, granted the plaintiffs' motion for summary judgment, and ordered that the rule be rewritten (again).

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Indictments

[redacted]

United States v. Gary Lehnherr et al., No. 1:07-CR-00008 (D. Idaho), ECS Trial Attorney Ron Sutcliffe and AUSA George Breitsameter .

On January 9, 2007, Gary Lehnherr was charged with a Lacey Act violation and three false statement violations. Ronnie Gardner was charged with two Lacey Act violations related to illegal mule deer hunting.

The indictment states that in October and November 2004 both hunters illegally killed mule deer and then made false statements to investigators concerning where and how the deer were killed. Specifically, they used a center fire rifle in a traditional muzzle-loading-only game management unit, and then falsely told investigators they had killed the deer in a different hunt area.

This case was investigated by the United States Fish and Wildlife Service in cooperation with the Idaho Department of Fish and Game.

Pleas / Sentencings

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] ECS Senior Counsel Rocky Piaggione [redacted], and AUSA Tanya Kowitz [redacted]

On January 24, 2007, Pacific-Gulf Marine, Inc. ("PGM"), an American-based ship operator, was sentenced to pay a $1 million fine with an additional $500,000 to 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.

M/V Tanabata

PGM also must complete a three-year term of probation and institute a comprehensive environmental compliance plan.

The company pleaded guilty in August 2006 to a four-count information charging it with 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.

The criminal investigation began in September 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 *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.

Stephen Karas and Mark Humphries, former chief engineers of the *Tanabata*, were charged in June 2006 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. The engineers' trial which was scheduled to begin on March 5, 2007 recently was adjourned.

This case was investigated by the Chesapeake Regional Office of 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 Baltimore, Coast Guard Activities Europe, Coast Guard Fifth District Legal Office, Coast Guard Office of International and Maritime Law, and Coast Guard Headquarters Office of Investigations and Analysis.

United States v. Irika Maritime SA, et al.,No. 3:06-CR-05661(W.D. Wash.), AUSAs Jim Oesterle and Carl Blackstone and SAUSA Cmdr. Benes Aldana

On January 23, 2007, Irika Maritime SA was sentenced to pay a $500,000 fine, plus an additional $250,000 in community service payments, for failing to maintain an accurate oil record book in an attempt to conceal illegal discharges of oily sludge directly into the ocean. The company will complete a four-year term of probation, implement an environmental compliance plan, and the community service payments will be equally divided between the Columbia River Estuarine Coastal Fund and the Puget Sound Marine Conservation Fund. Both funds are administered by the National Fish and Wildlife Foundation for projects to restore and protect fragile marine habitats.

The *M/V Irika* is a 623-foot long Panamanian-flagged ocean-going bulk carrier. On October 5, 2006, U.S. Coast Guard inspectors boarded the ship at Vancouver, Washington, to conduct a routine inspection. Inspectors reviewed the ORB but were unable to identify any discrepancies. They were subsequently contacted by the ship's second engineer who discretely gave inspectors numerous digital photos of a flexible hose being used to bypass pollution prevention equipment. The photos prompted inspectors to conduct a second inspection on October 6, 2006, during which time they located the hose and found additional evidence of its use.

The court further approved the government's motion requesting that one half of the $500,000 fine be awarded to the whistle blower. The second engineer told authorities he had objected to the waste dumping, but his protests were ignored by the chief engineer Ilias Dimitriou Ntais. Ntais pleaded guilty in November 2006 to an APPS violation for failing to maintain the ORB and was sentenced in December to pay a $2,500 fine.

This case was investigated by the United States Coast Guard.

United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420-423, (C.D. Cal., N.D. Cal, D. Mass., D. Me., E.D.N.C., E.D.Tex.), ECS Special Litigation Counsel Gregory Linsin , ECS Senior Trial Attorney Richard Udell and ECS Trial Attorneys Malinda Lawrence Lana Pettus and Joe Poux AUSAS: Dorothy Kim Stacey Geis Jon Mitchell Rick Murphy Banu Rangaragan , Joe Batte and Malcolm Bales

On January 23, 2007, Overseas Shipholding Group ("OSG") officially entered into the plea agreement in Beaumont, Texas. Informations were filed in December 2006 in six districts charging the company with conspiracy, CWA, obstruction, false statement, and APPS violations which occurred on a total of 12 ships. Plea agreements were also filed at that time in Boston and Texas. Under the terms of the plea agreements, OSG will pay a total of $10 million in Beaumont ($7.4 criminal fine; $2.6 community service), as part of a $37 criminal penalty. Guilty pleas will be entered to Counts One (conspiracy) and Two (false statements) of the pending second superseding indictment in *United States v. Jho et al.* relating to the *M/T Pacific Ruby*, as well as to Counts One through Four (false statements) of the new information relating to the *M/T Uranus, M/T Overseas Shirley,* and the *M/T Pacific Sapphire*. Payments of $9.2 million will be applied to organizational community service projects.

OSG will complete a three-year term of probation and be subject to the terms of an environmental compliance plan (to include a court appointed monitor and an outside independent auditor).

On December 4, 2006, an adverse opinion was issued in the *Jho* prosecution dismissing the APPS violations holding that the United States did not have jurisdiction to enforce the criminal provision of APPS for failing to maintain an Oil Record Book based upon the United Nation's Convention on the Law of the Sea and customary international law. A protective notice of appeal was filed on December 5, 2006. OSG has agreed to plead guilty to three of the APPS counts, if the government prevails on appeal, or will substitute false statement counts in the alternative. The outcome of the appeal will not impact the overall settlement or number of counts.

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *Uranus*. The *Uranus* made discharges on voyages within U.S. waters in New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *Overseas Shirley* and *Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

Sentencing is scheduled in Texas on March 26, 2007. This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the United States Environmental Protection Agency Criminal Investigation Division.

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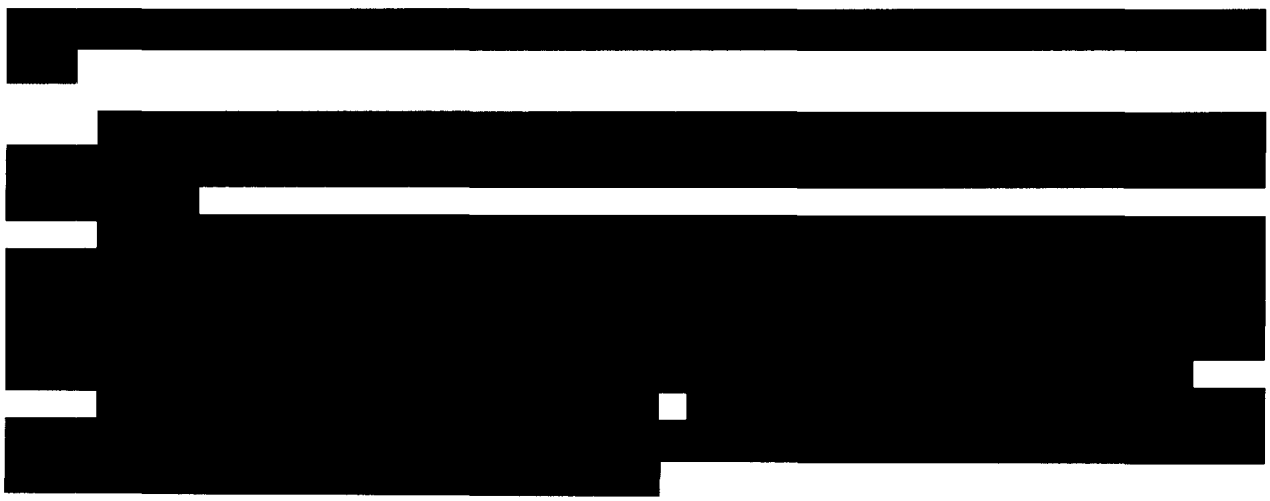

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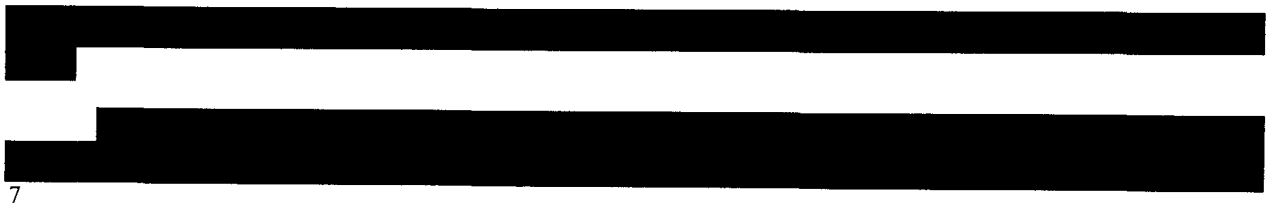

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United States v. Kim Johnson et al., No. 2:06-CR-00501(E.D. Pa.), AUSA Paul Gray [redacted]-

On January 18 and 12, 2007, Virginia Smith and Kim Johnson pleaded guilty to a ten-count indictment charging them 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. The defendants sold animal parts in 2002 and 2003 to an undercover United States Fish and Wildlife Service agent. The items included ivory tusks sold for $2,500, a gorilla skull for $1,500, three helmet masks containing colobus monkey fur for $1,225, a python skin for $450, a tiger skin for $5,500, and a jaguar skin for $8,000.

Smith and Johnson are scheduled to be sentenced on April 26, 2007. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [redacted]

On January 16, 2007, Hisayoshi Kajima pleaded guilty to a 17-count indictment charging him with Endangered Species Act and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation revealed that Kojima 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. 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.

On two other occasions Kojima 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.

Kajima is scheduled to be sentenced on April 16, 2007. This case was investigated by the United States Fish and Wildlife Service.

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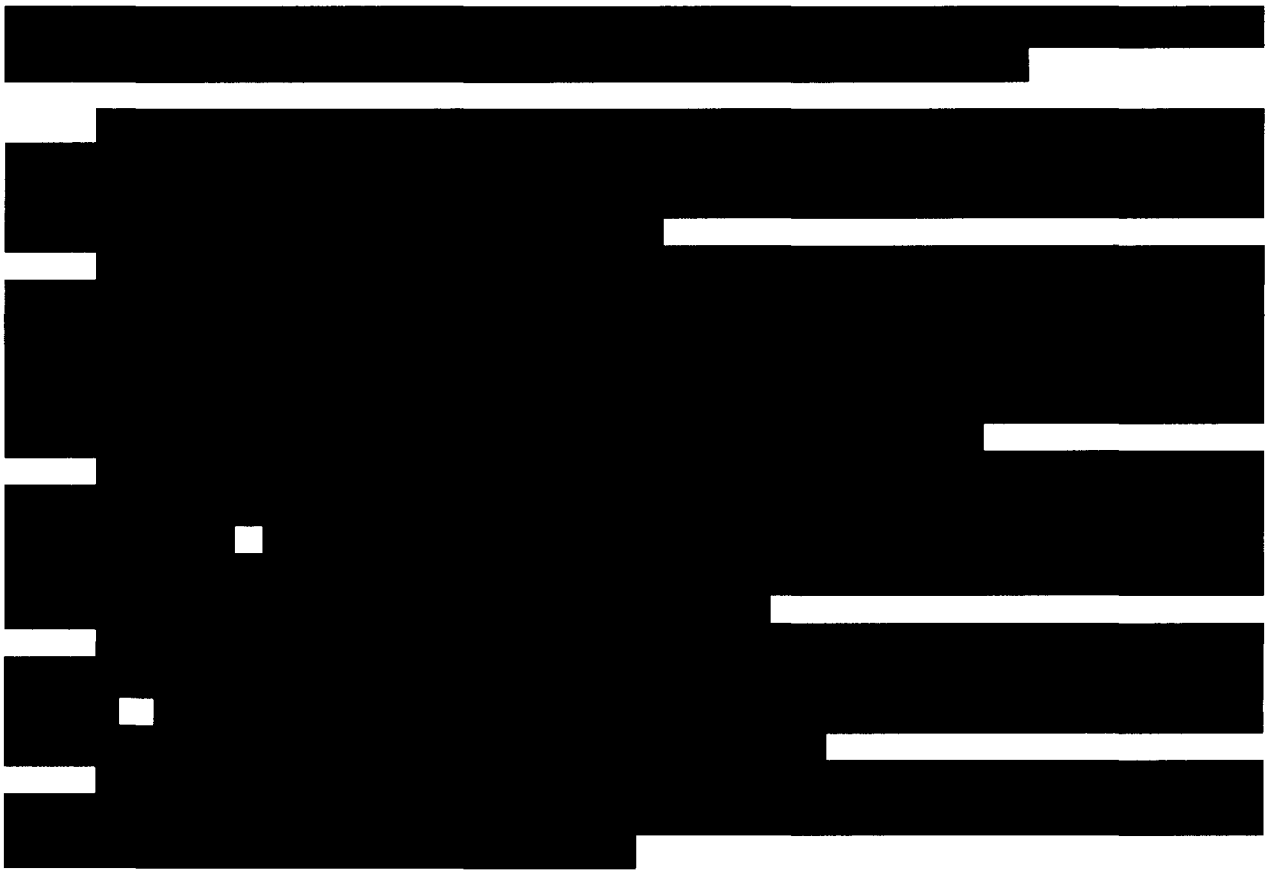

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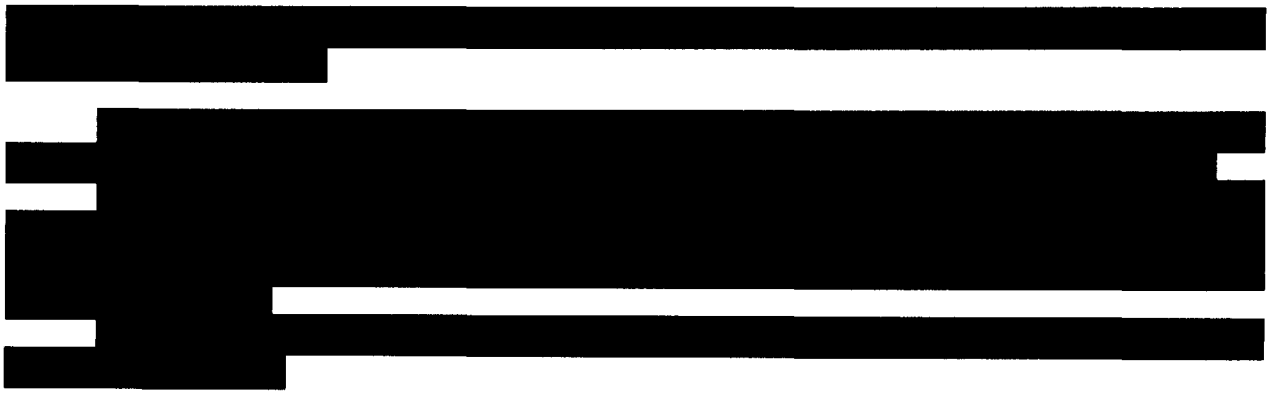

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United States v. William D. Wessinger, Jr. Nos. 3:06-CR-30068 and 3:06-CR-60321 (C.D. Ill., S.D. Fla.), AUSAs Gregory Gilmore [redacted] and Tom Watts-Fitzgerald [redacted]

On January 9, 2007, William D. Wessinger, Jr., pleaded guilty to, and was sentenced for, two misdemeanor Lacey Act violations for illegally poaching white-tail deer in Illinois during 2001 and 2003. Wessinger was sentenced to pay a $12,000 fine which will be equally divided between the federal Lacey Act Reward Fund and a fund administered by the Illinois Department of Natural Resources. Wessinger was further ordered to forfeit all his right, title, and interest in the deer mounts, capes, molds, and replicas resulting from his illegal hunting activity and to forfeit a compound bow used in the illegal poaching of a trophy mount in 2003.

Defendant on left/Photo courtesy of Pike Press, Pittsfield, Illinois

In 2001 and 2003, Wessinger traveled to Illinois to hunt white tailed deer indigenous to the state. Illinois deer are highly prized because they are often bigger and have larger antlers than deer in many other parts of the United States. A trophy-sized animal can generate significant income to a hunter through equipment company endorsement deals, advertising fees, and sale of replica deer antlers produced from molds of the original rack.

Wessinger admitted that, in November 2001, he killed an eight-point buck, knowing he would not be allowed under Illinois law to harvest another antlered deer that season and thus would forgo the opportunity to collect a larger trophy. The following day, however, he encountered and killed a second eight-point buck and then sought to conceal it by having a second hunter tag and claim the animal as his own kill to the IDNR. Wessinger later transported both sets of heads and antlers to Florida.

In 2003, Wessinger returned to Illinois and assisted another hunter in locating a deer which had been wounded by an arrow two days earlier. After finding and fatally shooting the deer, Wessinger took it to a lodge where measurement of the antlers and consideration of the 32-point rack clearly identified it as an All-Time awards list trophy animal. No deer harvest tag was placed on the animal at the time it was killed and none of the active hunters were in possession of hunting permits. The defendant subsequently transported the antlers and cape to Florida and had replicas of the rack produced from a mold and exhibited in his home. The original rack was placed in a safe in his residence, where it was seized pursuant to a search warrant.

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

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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 January 9, 2007, Brett Boyce was sentenced to pay a $500 fine and $7,000 in restitution payable to the National Fish and Wildlife Foundation. Boyce is one of several hunters from Virginia who have been prosecuted for elk hunting in New Mexico in 2003 without any permits and then shipping their trophies back to Virginia. Boyce pleaded guilty in August 2006 to a misdemeanor Lacey Act violation for receiving wildlife in interstate commerce.

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

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ENVIRONMENTAL CRIMES MONTHLY BULLETIN

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

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
D. Ak.	United States v. Princess Cruise Lines, Inc.	*Humpback Whale Harmed/* Failure to Operate at Slow Safe Speed
C.D. Calif.	United States v. Chris Mulloy United States v. Bruce Penny	*Animal Smuggling/* Lacey Act, False Statement *Fish Smuggling/* Conspiracy, Lacey Act
N.D. Calif.	United States v. Kevin Thompson	*Undersized Shark Sales/* Conspiracy, Lacey Act
D. Colo.	United States v. Jan Swart	*Leopard Hunts/* Lacey Act
D. Del.	United States v. Chian Spirit Maritime Enterprises, Inc.	*Vessel/* APPS
M.D. Fla.	United States v. Ronald Evans, Sr.	*Labor Camp Operation/* Migrant and Seasonal Farm Worker Protection Act, Conspiracy, Trafficking, Narcotics, CWA
N.D. Fla.	United States v. Michael Bonner	*Charter Vessel Permits/* Magnuson-Stevens Act
[redacted]	[redacted]	[redacted]
M.D. La.	United States v. Honeywell International, Inc.	*Mislabeled Cylinder/* CAA Negligent Release
E.D. Mich.	United States v. CESI	*Wastewater Treatment* / Conspiracy, CWA, False Statement
D.N.J.	United States v. Fernando Magnaye United States v. Chang Sig O	*Vessel/* APPS, Obstruction *Vessel/* APPS, Obstruction
N.D.N.Y.	United States v. John Chick	*Asbestos Abatement/* Conspiracy, CAA
W.D. Tex.	United States v. Dennis Rodriguez	*Drum Storage* / RCRA
[redacted]	[redacted]	[redacted]

Additional Quick Links

Indictments

United States v. Jan Swart et al., No. 07-CR-00021 and 22 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted], ECS Trial Attorney Jim Nelson [redacted] and AUSA Greg Holloway [redacted].

On February 5, 2007, U.S. Fish and Wildlife Service ("USFWS") agents arrested Jan Swart and Willem Basson, South African residents and citizens, in Harrisburg, Pennsylvania. The defendants were charged in the District of Colorado with Lacey Act smuggling and false labeling violations, respectively, of leopard parts from animals killed by American sport hunters in South Africa in 2002.

Swart and Basson are South African big game outfitters who entered the country recently to advertise their services at an outdoors show in Harrisburg. Basson guided a Florida trophy hunter on an illegal leopard hunt in South Africa in 2002, gave the hide and skull to Swart for smuggling to Zimbabwe, and then smuggled them into the United States. Basson instructed his American client to apply for a USFWS import permit using false information. Swart took the hide provided by Basson and four others from leopards killed in South Africa and smuggled them by road to Zimbabwe. From there he bribed an official to provide Zimbabwe export permits for the parts, which then were imported in 2004 to Denver, Colorado. Swart was accompanied during his smuggling trip to Zimbabwe by a Denver taxidermist who ultimately received the parts and by another American hunter.

Trial is scheduled to begin on April 23, 2007. This case was investigated by the United States Fish and Wildlife Service.

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United States v. CESI et al., Nos. 07-CR-20030 and 20037 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted] and AUSA Mark Chutkow [redacted]

On January 24, 2007, a 12-count indictment was returned charging Comprehensive Environmental Solutions, Inc. ("CESI"), a business that operates a wastewater treatment and disposal facility, and three former employees, with Clean Water Act violations, conspiracy, making false statements and obstruction of justice, in connection with illegal discharges of untreated liquid wastes from the facility. An information and plea agreement for a fourth former employee also were filed.

The employees named in the indictment are Bryan Mallindine, the former president and CEO of CESI who is charged with conspiracy, a CWA violation, and obstruction of justice; Michael Panyard, a former president, general manager, and sales manager for the company is charged with conspiracy, three CWA violations, and seven false statement charges; and Charles Long, a former plant and operations manager is charged with conspiracy and a CWA violation. Former plant manager, Donald Kaniowski, has agreed to plead guilty to a CWA violation for unlawfully bypassing treatment equipment and discharging untreated liquid wastes into the Detroit sanitary sewer system. He is scheduled to be sentenced on May 23, 2007.

The indictment alleges that in 2002 CESI took over ownership and operations at a plant that had a permit to treat liquid wastes 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.

According to court records, although the facility's storage tanks were at or near capacity, the company continued to accept millions of gallons of liquid wastes which it 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. Trial is scheduled to begin on April 17, 2007.

The 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.

Pleas / Sentencings

United States v. Dennis Rodriguez, No. 3:05-02498 (W.D. Tex.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] AUSA Donna Miller [redacted] and AUSA Laura Franco Gregory [redacted]

Hazardous waste stored in blue drums

On February 16, 2007, Dennis Rodriguez, president and chief operator of North American Waste Assistance ("NAWA"), pleaded guilty to three RCRA violations. Specifically, he pleaded guilty to one count of making a false statement in a manifest, one count of transporting hazardous waste to an unpermitted facility in Texas, and one count of transporting hazardous waste to an unpermitted facility in South Carolina.

NAWA is a waste disposal company located in El Paso, Texas, that disposed of hazardous and non-hazardous waste. In March 2003, NAWA was hired by a local construction company to dispose of approximately 180 55-gallon drums of construction-related waste. About 84 of the drums contained an expired petroleum-based concrete curing compound, which is an ignitable hazardous waste. Rodriguez generated a manifest that stated that the drums contained "Non-RCRA, Non-Regulated" waste and made arrangements to transport the drums to disposal sites in Texas and South Carolina, which were not permitted to accept or dispose of hazardous waste. Rodriguez is scheduled to be sentenced for May 11, 2007.

This case was prosecuted by the United States Environmental Protection Agency Criminal Investigation Division and the Texas Commission on Environmental Quality.

United States v. Honeywell International, Inc., No. 3:07-CR-00031 (M.D. La.), AUSA Corey Amundson [redacted] with assistance from ECS Senior Trial Attorney Jennifer Whitfield

On February 13, 2007, Honeywell International Inc., pleaded guilty to a CAA violation for the negligent release of hazardous air pollutants, negligently placing another person in imminent danger of serious bodily injury or death. The company has agreed to pay a total of $12 million in fines and restitution.

Mislabeled cylinder

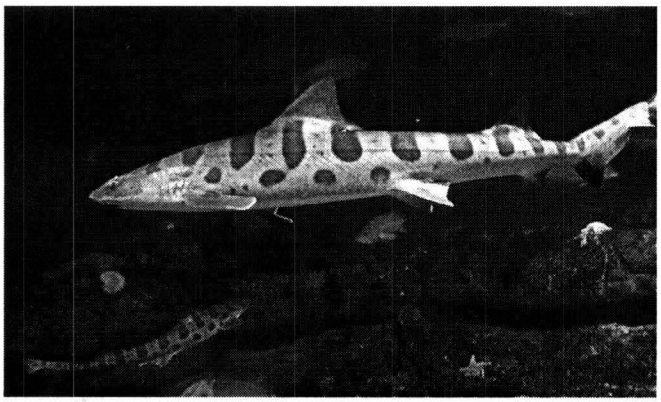
On July 23, 2003, Delvin Henry, an employee at Honeywell's Baton Rouge plant, opened a one-ton cylinder that had been stored for five years and erroneously labeled as containing a relatively benign refrigerant. Once opened, approximately 1,800 pounds of spent antimony pentachloride, a highly toxic and corrosive hazardous material, were released from the cylinder. Henry was struck by the material and died the following day from his injuries.

The company has agreed to pay an $8 million fine, and the following in restitution: $2 million will be paid to Henry's three children; $1.5 million will be divided between the Louisiana Department of Environmental Quality and the Louisiana State Police Hazardous Materials Unit; and $500,000 will be paid to the Louisiana State Police Emergency Operations Center. This constitutes the largest criminal fine and restitution ordered in the Middle District of Louisiana.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Louisiana State Police, and the Louisiana Department of Environmental Quality.

United States v. Kevin Thompson et al., 4:06-CR-00051 (N.D. Calif.), AUSAs Maureen Bessette [redacted] and Stacey Geis [redacted]

On February 12, 2007, $410,000 previously in restitution previously ordered from six individual defendants in a prosecution for poaching juvenile leopard sharks, along with $500,000 from an organization under a non-prosecution agreement, were combined with $600,000 in private donations to fund a program for rehabilitating and restoring marine wildlife habitat in the San Francisco Bay to further protect the California leopard shark.



California leopard shark

The investigation began in Miami, Florida, when a pet trade distributor, Ricky Hindra, was apprehended with 18 undersized leopard sharks from California. California state law 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 that does not reach sexual maturity until it is between seven and 13 years of age. The species may live as long as 30 years. Hindra subsequently was convicted in 2003 of violating the Lacey Act and sentenced to serve 18 months' incarceration. Two other defendants entered into pretrial diversion agreements in Chicago, each agreeing to pay a $5,000 fine plus perform community service. The investigation led back to the San Francisco Bay Area where the principal suppliers were located.

In February 2006, the following six defendants were variously charged with, and pleaded guilty to, Lacey Act conspiracy and substantive Lacey Act violations:

Kevin Thompson is the pastor of the Bay Area Family Church, HSA-UWC in San Leandro, California. From 1992 through 2003, Thompson instigated a scheme in which members of his church illegally harvested undersized California leopard sharks from the San Francisco Bay and sold them throughout the United States and abroad. Thompson pleaded guilty to conspiracy to violate the Lacey Act and was sentenced on January 22, 2007, to serve one year and one day of incarceration followed by three years' supervised release. He was further ordered to pay $100,000 in restitution.

John Newberry admitted that, from 1992 through 2004, he and other church members, using church vessels, fished for undersized leopard sharks and stored the sharks at a facility located in San Leandro, California, owned by a business associated with the church. They subsequently shipped the sharks out of Oakland and San Francisco Airports for sale to dealers throughout the country and abroad. Newberry pleaded guilty to conspiracy to violate the Lacey Act and three substantive Lacey Act violations. He was sentenced on February 2, 2007, to serve six months in prison, and six months' of community confinement followed by three years' supervised release. Newberry was further ordered to pay $50,000 in restitution.

Hiroshi Ishikawa admitted that, from 1996 through 2003, he caught and sold undersized leopard sharks taken from the San Francisco Bay with other church members, under the direction of Newberry and Thompson. Ishikawa pleaded guilty to a Lacey Act conspiracy and substantive Lacey Act violation. He was sentenced on October 11, 2006, to serve three years' probation and pay $40,000 in restitution.

Vincent Ng admitted that, from 2001 through 2004, he bought and sold undersized sharks through his business, Amazon Aquarium, Inc. The sharks were subsequently sold throughout the

United States. Ng pleaded guilty to a Lacey Act conspiracy and two substantive Lacey Act violations and was sentenced on February 8, 2007, to serve a two-year term of probation with eight months' home confinement and pay $100,000 in restitution.

Ira Gass admitted that, from 1996 through 2003, he purchased undersized leopard sharks taken from the San Francisco Bay and sold them to other marine aquaria dealers throughout the United States and abroad. When shipping the sharks, Gass intentionally mislabeled them as "common sharks" in order to avoid detection by wildlife inspectors. The sharks were sold throughout the United States and abroad. Gass pleaded guilty to a Lacey Act conspiracy and substantive Lacey Act violation. He was sentenced on February 5, 2007, to serve eight months in prison, followed by three years' supervised release, and must pay $100,000 in restitution.

Sion Lim, a citizen of Singapore, regularly purchased and sold undersized California leopard sharks through his fish and corals wholesale distribution business, Bayside Marine Aquatics, located in Oakland, California. The sharks were sold throughout the United States. Lim pleaded guilty to two Lacey Act violations and was sentenced on June 6, 2006, to serve a one-year term of probation, pay a $5,000 fine and $20,000 in restitution.

As part of a non-prosecution agreement, $500,000 will be paid by The Holy Spirit Association for the Unification of World Christianity ("HSA-UWC"), founded by the Reverend Sun Myung Moon.

The Monterey Bay Aquarium in Monterey, California, the John G. Shedd Aquarium in Chicago, Illinois, and the Cabrillo Aquarium in San Pedro, California, collaborated with and assisted federal wildlife agents and Illinois Conservation officers in the transport and care of 19 baby leopard sharks confiscated during the course of the two-year investigation. The baby sharks, which ranged in size from eight-and-a-half 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 ultimately were returned to the wild in Monterey Bay in the summer of 2004. Three remain on exhibit at Monterey Bay Aquarium; seven died either at the Shedd Aquarium or Monterey Bay Aquarium because of their poor condition at the time they were confiscated.

This case was investigated by the 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.

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United States v. Chris Mulloy et al., No. 2:06-CR-00692 (C.D. Calif.), AUSA Joe Johns [redacted]

On February 9, 2007, both Chris Mulloy and his sister, Darlah Mulloy, were each sentenced to serve two-year terms of probation. Chris Mulloy was further ordered to pay a $5,000 fine. The Mulloys each pleaded guilty in November 2006 to a smuggling violation for their attempting to smuggle monkeys and birds into the United States from Thailand.

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.

Cusack previously was sentenced to serve more than five months' incarceration for attempting to smuggle four birds of paradise, two lorises, and 50 rare orchids into this country.

Mulloy also attempted to sneak two newborn Asian leopard cats past the customs agents in carry-on luggage and later contacted his sister Darlah 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 with 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 was left with 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.

Slow Loris Pygmy Monkeys

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

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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

On February 7, 2007, Jequita Evans was sentenced to serve 15 years' incarceration followed by five years' supervised release. Evans was convicted by a jury last summer of conspiracy to distribute crack cocaine and 48 counts of structuring cash transactions to avoid financial reporting requirements. Her husband, Ronald Evans, Sr., was found guilty 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. He was sentenced on January 26, 2007, to serve 30 years' incarceration followed by three years' supervised release. Ronald Evans, Jr., was sentenced on February 13, 2007, to serve 78 months' incarceration, followed by three years' supervised release after pleading guilty to conspiracy to possess narcotics.

Evans, Sr., owned 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, and Winston-Salem.

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 avoid 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 originally were charged in this case. [redacted] 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. Johnson was sentenced to serve a one-year term of incarceration followed by three years' supervised release. Davenport was ordered to serve 63 months in prison followed by five years' supervised release, and Labeaud was sentenced to serve two years probation. Williams has not yet been sentenced.

As part of their sentencings, the Evans have forfeited the two labor camps, vehicles and other personal property.

This case was investigated by the United States Department of Labor Inspector General's Office, the United State Environmental Protection Agency Criminal Investigation Division, the Drug Enforcement Administration, and the Putnam County Sheriff's Office.

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United States v. Michael Bonner et al., Nos. 3:07-CR-13 and 14, LAC (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On February 6, 2007, Michael Bonner and Gerald Andrews Jr., pleaded guilty to a one-count misdemeanor information charging them with knowingly and willfully submitting false information to the Secretary of Commerce in violation of the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act")

In November 2003, the Magnuson-Stevens Act placed a moratorium on charter vessel/head boat permits for Gulf coastal migratory pelagic 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. The moratorium created a limited-entry fishery in that the permits were not available to all charter boat owners.

Bonner was an Alabama boat builder and Andrews was a charter-boat fisherman in Florida. Defendants were charged with knowingly and willfully submitting false information (back-dated checks and sales agreements) to the NMFS regarding a matter that the Secretary of Commerce was considering in carrying out the Magnuson-Stevens Act. The defendants back-dated two sales

agreements and checks to a date prior to the March 29, 2001 moratorium qualifying date and submitted them to the NMFS in an attempt to secure letters of eligibility for permits for two commercial fishing vessels.

Sentencing is scheduled for April 24, 2007. The case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement.

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United States v. Fernando Magnaye, No. 3:07-CR-00077 (D.N.J.), ECS Senior Counsel Claire Whitney [redacted] and AUSA Brad Harsch [redacted]

On February 2, 2007, Fernando Magnaye, the chief engineer of the *M/T Clipper Trojan,* pleaded guilty to charges of presenting a false document to Coast Guard inspectors and to attempting to obstruct a Coast Guard inspection in an effort to conceal the ship's illegal discharges of oil sludge and oil-contaminated bilge waste overboard into the ocean.

Magnaye presented the ship's oil record book ("ORB") to inspectors on June 15, 2006, in Port Newark, New Jersey, falsely stating that the book was accurate. Magnaye knew that, from January through June 2006, there were illegal discharges of oil sludge and contaminated bilge waste that were not recorded in the ORB. Additionally, Magnaye asked the ship's fourth engineer to ensure that the Coast Guard would take a false reading of the contents of the ship's bilge sludge oil tank. Magnaye did so because an accurate reading of the tank's contents might have exposed the false entries in the ORB.

Sentencing is scheduled for May 31, 2007. This case was investigated by the United States Coast Guard Investigative Service.

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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 February 2, 2007, Bruce Penny pleaded guilty 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." On January 29, 2007, co-defendant Anthony Robles also pleaded guilty to conspiracy to violate the Lacey Act and Peter Wu pleaded guilty to a Lacey Act smuggling violation for his involvement in the scheme.

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. In the United States, Asian Arowanas can sell on the black market for as much as $10,000.

Penny sold several lucky fish to a purchaser in New York; Robles purchased dragon fish, sold some to Penny and helped Penny ship some of the fish to the New York buyer. Wu transported and sold an Asian Arowana to an undercover agent with the U.S. Fish and Wildlife Service.

Robles is scheduled to be sentenced on April 16, 2007, Penny is scheduled to be sentenced on April 30, 2007, and Wu is scheduled to be sentenced on May 21, 2007.

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

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United States v. Chian Spirit Maritime Enterprises, Inc., et al., Nos. 1:06-CR-00075, 76 (D. Del.), Special Litigation Counsel Greg Linsin [redacted] and ECS Trial Attorney Jeff Phillips [redacted]

On January 29, 2007, Chian Spirit Maritime Enterprises, Inc. ("Chian Spirit"), and Venetico Marine ("Venetico"), the Greek-based operator and owner, respectively, of the *M/V Irene E.M.*, a large bulk carrier, each pleaded guilty to one APPS violation for misleading United States Coast Guard investigators during an inspection of the vessel in Delaware Bay in December 2005. They each were sentenced to pay an aggregate of $1.25 million, $250,000 of which will be dedicated to a marine-based environmental enhancement community service project on the Delaware Bay.

During a routine Coast Guard inspection, inspectors uncovered evidence that the oil record book ("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 occurred 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.

Chief engineer Adrien Dragomir pleaded guilty in August 2006 to one APPS violation for falsifying the ORB. He was sentenced to serve a one-year term of unsupervised probation. Grigore Manolache, the ship's master, pleaded guilty in July 2006 to an information charging him with presenting false information to the Coast Guard and was also sentenced to serve a one-year term of unsupervised probation.

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

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United States v. Princess Cruise Lines, Inc., No. 3:07-CR-00005-JDR (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] and AUSA Steve Skrocki [redacted]

On January 29, 2007, Princes Cruise Lines, Inc., ("Princess") pleaded guilty to a one-count information charging the company with failing to operate its vessel, the *Dawn Princess,* in a slow, safe speed near humpback whales in waters near Glacier Bay National Park and Preserve, Alaska.

Humpback whale in front of ship

On July 12, 2001, the vessel was accelerating through 14 knots as it left Park waters and failed to slow or alter course after two humpback whales were observed on a closing course about half a mile away, eventually crossing in front of the vessel. Some passengers and crew believe the vessel struck one of the whales, and a pregnant dead humpback surfaced in the area a few days later with injuries consistent with a vessel strike. Failure to slow the vessel in this situation violated a regulation enacted earlier in 2001 to protect humpback whales near Glacier Bay, supporting the anti–take provisions of the Endangered Species Act ("ESA") and Marine Mammal Protection Act. Shortly after the event, Princess issued a press release acknowledging the incident and admitting the possibility that it struck the whale. Princess subsequently imposed a permanent 10-knot speed restriction on all its vessels in nearby waters.

Violation of the "speeding" regulation was charged as a class-A misdemeanor under the ESA, carrying a maximum corporate penalty of a $200,000 fine and a five-year term of probation. Pursuant to the plea agreement, the company was sentenced to pay the maximum fine with an additional $550,000 community-service payment to be made to the National Park Foundation and earmarked for Glacier Bay research.

This case is believed to represent the first criminal charge and conviction for a whale-strike by a vessel.

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United States v. Chang-Sig O et al., No. 2:06-CR-00599 (D.N.J.), ECS Trial Attorney David Kehoe [redacted].

On January 26, 2007, chief engineer Chang-Sig O was sentenced to serve five months in prison followed by two months' supervised release during which time he may not return to U.S. navigable waters serving as a ship's engineer. Second Engineer Mun Sig Wang was sentenced to serve three years' probation during which time he is prohibited from serving as an engineer on board any vessel that enters into U.S. navigable waters.

Wang pleaded guilty in December 2006 to an APPS violation for presenting a false oil record book to inspectors during a port inspection of the bulk carrier *M/V Sun New* in Camden, New Jersey earlier in 2006. The false record book concealed the dumping of oily wastes overboard using a pipe built to bypass the vessel's oil-water separator. O pleaded guilty to obstruction of justice for maintaining a false ORB and for lying to the Coast Guard about his knowledge of the bypass hoses used to circumvent pollution control equipment.

On January 3, 2006, Coast Guard inspectors boarded the ship and discovered 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. Upon further investigation, inspectors discovered that the ship's crew had disposed of significant amounts of oily waste into the ocean at least twice during the voyage from South Korea to New Jersey. The Sun Ace Shipping Company, the ship's operator, previously pleaded guilty to an APPS violation and was sentenced in November 2006 to pay a $400,000 fine plus an additional $100,000 community service payment. On December 12, 2006, an APPS award of $200,000 (half of the fine), was ordered to be divided among three crew member whistle blowers.

This case was investigated by the United States Coast Guard.

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United States v. John Chick, No. 06-CR-514 (N.D.N.Y.), AUSA Craig Benedict [redacted].

On January 24, 2007, John Chick pleaded guilty 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. The defendant was originally 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.

Chick is scheduled to be sentenced on June 5, 2007. 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.

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ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

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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 (202) 305-0396. 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 *Active Cases* and *Additional Quick Links*.

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
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N.D. Calif.	United States v. Twilight Marine Ltd.	*Vessel/* Operating Vessel in Grossly Negligent Manner
S.D. Calif.	United States v. San Diego Gas and Electric Company	*Asbestos Abatement/* CAA, Conspiracy, False Statement
S.D. Fla.	[redacted] United States v. Fermin Fortun [redacted]	[redacted] *Wildlife Refuge Damage/* Destruction of Federal Property [redacted]
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D. Minn.	United States v. Troy Gentry [redacted] United States v. Eco Finishing Company	*Illegal Bear Hunt/* Lacey Act [redacted] *Electroplating Waste/* CWA Pretreatment
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W.D. Wash.	United States v. Daniel Storm	*Lab Chemical Disposal/* RCRA

Additional Quick Links

Significant Opinions

Third Circuit

United States v. Thomas Michael Hayes, Jr., No. 04-1430 (3rd Circuit Mar. 8, 2007)

On March 8, 2007, the Third Circuit reversed and remanded the case for a new trial in a non-precedential opinion. The Court found that the district court should have allowed the admission of defendant's reverse 404(b) evidence (evidence of prior good acts). During the course of the trial, the defendant attempted to offer evidence that he issued directives or made statements to employees that were contrary to the objectives of the conspiracy and contrary to the direction allegedly given to the government's witnesses. The Third Circuit found that the trial court erroneously excluded this evidence by concluding it was character evidence, and held that the evidence was relevant to show the defendant's intent. The Court went on to hold that the error was not harmless. The Court also addressed a jury note sent to the judge shortly after deliberations. The jury inquired whether "the co-conspirators' (who had already pled guilty) sentences depend on the verdict(s) we come up with." The court answered "no." The Third circuit found the answer "not technically incorrect," but misleading. The Court reasoned that the answer "allowed the jurors to conclude that the witnesses had nothing to gain by [the defendant's] conviction."

Thomas Michael Hayes, Jr., was convicted in April 2003 of conspiracy to violate the CAA, to make false statements to the U.S. EPA, to commit mail fraud, and to obstruct justice. He was sentenced in February 2004 to serve 57 months' incarceration followed by three years' supervised release. He also was ordered to pay a $1,000 fine.

Hayes was the vice president of Western Hemisphere Operations for Saybolt, Inc., whose primary business is the sampling and analysis of petroleum products. Saybolt and several of its senior executives, operating on behalf of, and in conjunction with, a number of its clients, falsified data on petroleum products, including reformulated gasoline. While the company had testing laboratories throughout the United States, this case involves conduct undertaken at its headquarters in Parsipanny, New Jersey, and at the facilities located in Kenilworth, New Jersey, and Woburn, Massachusetts. After he became aware of the EPA's investigation, Hayes ordered specific laboratory data to be destroyed.

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Fourth Circuit

United States v. D.J. Cooper, ___F.3d ___, 2007 WL 914314 (4th Cir. March 28, 2007), held that the government is not required to prove that a criminal defendant in a Clean Water Act ("CWA") case knew the facts that made the water into which he was discharging pollutants a water of the United States. The decision brings some clarity to the issue of how the knowing mental state standard of a CWA criminal violation relates to the "water of the United States" element. As a purely "jurisdictional" element, it does not require proof of factual knowledge, and it is subject to neither a mistake of fact nor a mistake of law defense.

Cooper was convicted of knowingly discharging pollutants without a permit from a point source to navigable waters, defined as "waters of the United States." The Fourth Circuit held that the "waters of the United States" element constituted a "classic jurisdictional element," intended merely to situate the CWA within Congress's authority. The court then noted the well-settled principle that *mens rea* requirements typically do not extend to jurisdictional elements of a crime. The Fourth Circuit recognized that Congress might, in exceptional circumstances, intend for a jurisdictional element to *also* constitute a substantive component of the crime, but after an analysis of the language, purposes, and affect of the CWA the court concluded that such was not the case with regard to "waters of the United States." The court noted that three other Courts of Appeals (the Second, Eighth, and Ninth Circuits) had similarly declined to extend the "knowingly" requirement of the CWA to "waters of the United States," and that the Fifth Circuit has held that "knowingly" does not apply to "purely jurisdictional elements" without specifically identifying those elements.

Notably, the Fourth Circuit distinguished its prior decision in *United States v. Wilson*, 133 F.3d 251 (4th Cir. 1997), which had required evidence that the defendant was aware of facts establishing a link between waters of the United States and the wetland into which he had discharged fill material. The *Cooper* panel suggested that *Wilson* should apply only in the "limited context" in which a defendant's conduct is not clearly prohibited by federal or state law and there is confusion among federal agencies as to whether federal law applies to the facts of the alleged violation.

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Indictments

United States v. San Diego Gas and Electric et al., No. 3:07-CR-00484 (S. D. Cal.), ECS Trial Attorney Mark Kotila ([redacted]) and AUSA Melanie Pierson [redacted]

On February 27, 2007, a superseding indictment was returned by the grand jury. The original indictment, including a false statement count and several Clean Air Act counts, was previously dismissed by the court. On February 12, 2007, following a motion to reconsider filed and argued by the government, the court reinstated the false statement count, finding that the court does have jurisdiction over a false statement made to state regulators due to U.S. EPA delegating authority to the San Diego Air Pollution Control District.

San Diego Gas and Electric ("SDG&E"), two of its employees, and a contractor were charged with conspiracy to unlawfully remove asbestos and to make false statements. The charges relate to the alleged illegal removal of asbestos at SDG&E's gas holding facility. According to the indictment, a sample of suspected asbestos was taken from the facility prior to commencing work. 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 indictment alleges that the two employees and the contractor agreed that they would lie to government inspectors and the residents in the surrounding area. Specifically, the defendants are alleged to have 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 the asbestos.

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

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Pleas / Sentencings

United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420-423, (C.D. Calif., N.D. Calif., D. Mass., D. Me., E.D.N.C., E. D. Tex.), ECS Special Litigation Counsel Gregory Linsin [redacted] ECS Senior Trial Attorney Richard Udell [redacted] and ECS Trial Attorneys Malinda Lawrence([redacted] Lana Pettus [redacted] and Joe Poux ([redacted] AUSAS: Malcolm Bales [redacted] Joe Batte ([redacted] Stacey Geis [redacted] Dorothy Kim [redacted] Jon Mitchell [redacted] Rick Murphy [redacted] and Banu Rangaragan [redacted]

M/T Pacific Sapphire

On March 21, 2007, Overseas Shipholding Group Inc. ("OSG") pleaded guilty and was sentenced to pay $27 million for violations in Boston, Portland, Maine, Los Angeles, San Francisco, and Wilmington, N.C. In addition to the fine, OSG was sentenced to serve a three-year term of probation during which it must implement and follow a stringent environmental compliance program that includes a court-appointed monitor and outside independent auditing of OSG ships trading worldwide. OSG pleaded guilty in January to additional charges in Beaumont, Texas, and has agreed to pay another $10 million at a later date.

The total $37 million plea agreement is the largest-ever involving deliberate vessel pollution. The violations involving 12 OSG oil tankers occurred between June 2001 to March 2006, and they include APPS violations, conspiracy, false statements, and obstruction of justice. The $37 million penalty includes a $27.8 million criminal fine which will be divided among the districts and a $9.2 million organizational community service payment that will fund various marine environmental projects from coast to coast. In imposing the sentence, the court granted a motion to award 12 current and former whistleblower crew members with $437,500 each for their role in disclosing the illegal conduct.

Informations were filed in December 2006 in six districts charging the company with conspiracy, CWA, obstruction, false statement, and APPS violations which occurred on a total of 12 ships. Guilty pleas were entered to Counts One (conspiracy) and Two (false statements) of the second superseding indictment in *United States v. Jho et al.* relating to the *M/T Pacific Ruby*, as well as to Counts One through Four (false statements) of the new information relating to the *M/T Uranus*, *M/T Overseas Shirley*, and the *M/T Pacific Sapphire*.

On December 4, 2006, an adverse opinion was issued in the *Jho* prosecution dismissing the eight APPS violations, holding that the United States did not have jurisdiction to enforce the criminal provision of APPS for failing to maintain an oil record book based upon the United Nation's Convention on the Law of the Sea and customary international law. A notice of appeal was filed on December 5, 2006. OSG has agreed to plead guilty to three of the APPS violations, if the government prevails on appeal, or will substitute false statement counts, if the government's appeal fails. The outcome of the appeal will not impact the overall settlement or number of counts.

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *Uranus*. The *Uranus* made discharges on voyages within U.S. waters in New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *Overseas Shirley* and *Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. William "Jamie" Garrison, No. 3:06-CR-00046 (W.D. Va.), ECS Trial Attorney David Joyce [redacted]

On March 23, 2007, William "Jamie" Garrison entered his guilty plea to a misdemeanor Lacey Act violation stemming from his participation in illegal elk hunting on the Valles Caldera National Preserve in New Mexico during 2003.

The Preserve is an 8,900 acre property situated inside of a collapsed crater northwest of Santa Fe, New Mexico. It is home to large populations of big game animals including elk, antelope and oryx. Garrison and members of his hunting party shot and killed bull elk, without permits, in violation

of state law. At least one of these elk was then transported through interstate commerce in violation of the Lacey Act.

Garrison was sentenced to serve a two-year term of probation to include three months' home confinement. He also will pay a $1,500 fine and $5,000 in restitution to the National Fish and Wildlife Fund.

Six other hunters previously have been convicted in Virginia for this activity as well as two hunters and guides in New Mexico. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Troy Gentry et al., No. 0:06-CR-00235 (D. Minn.), AUSA Michael Dees ([redacted]) and D. Gerald Wilhelm ([redacted])

On March 14, 2007, Marvin Greenly, a Minnesota hunting guide and wildlife photography business owner, was sentenced to pay a $1,000 fine, complete a three-year term of probation and pay $2,100 in restitution to the Minnesota Department of Natural Resources and $968 to the United States Fish and Wildlife Service Rice Lake National Wildlife Refuge. Co-defendant and country singer Troy Lee Gentry was sentenced on February 26, 2007, to pay a $15,000 fine and serve a three-year term of probation.

Gentry purchased a captive-reared bear from Greenly that he killed with a bow and arrow while the bear was enclosed in a pen on Greenly's Minnesota property. Gentry and Greenly then tagged the bear with a Minnesota hunting license and registered the animal with the Minnesota Department of Natural Resources as if it had been killed in the wild. The animal was then shipped to a taxidermist in Kentucky for mounting.

Greenly pleaded guilty to two felony violations of the Lacey Act in connection with his work as a licensed commercial hunting guide and admitted that he and his employees had guided some clients into the Sandstone Unit of the Rice Lake National Wildlife Refuge. Even though it is illegal to enter parts of the refuge, Greenly established and maintained multiple bear-baiting stations and hunting stands in those areas. He also admitted he or his employees had directed two clients to those prohibited areas, where one of them had shot and killed two black bears. Gentry pleaded guilty to a misdemeanor conspiracy violation of the Lacey Act for submitting a false hunting registration form after killing a domesticated, trophy-caliber black bear.

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

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United States v. Cognis Corporation, No. 1:06-CR-00109 (S.D. Ohio), AUSA Laura Clemmens ([redacted])

On March 14, 2007, the Cognis Corporation was sentenced as a result of a series of chemical spills in 2005 that killed numerous fish and birds. The company will pay a $215,000 fine with additional payments of $100,000 to The Mill Creek Watershed Council of Communities, $100,000 to the Mill Creek Restoration

Chemical spill

Project, and $10,000 to Raptor, Inc. The company also will reimburse the Ohio Department of Natural Resources Division of Wildlife $9,994.67 as restitution for the fish kill.

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 containing isodecyl alcohol, adipic acid and other pollutants from the plant into storm drains. The drains empty into Mill Creek, which is a tributary of the Ohio River. On December 14th, 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. The company pleaded guilty in September 2006 to an information charging four negligent violations of the CWA and one violation of the MBTA.

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.

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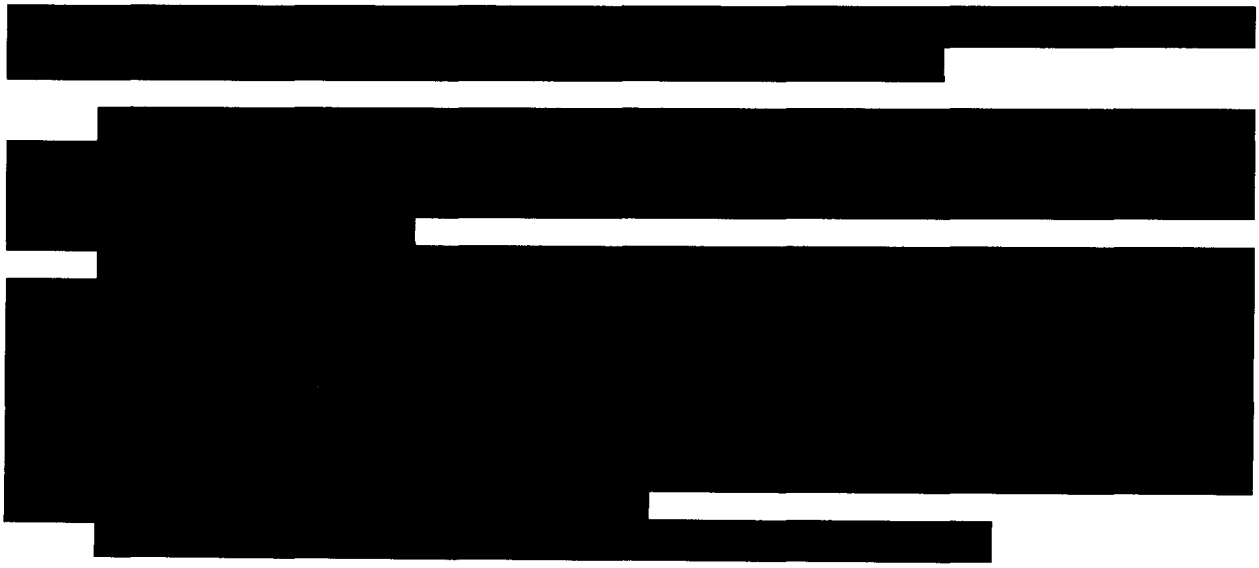

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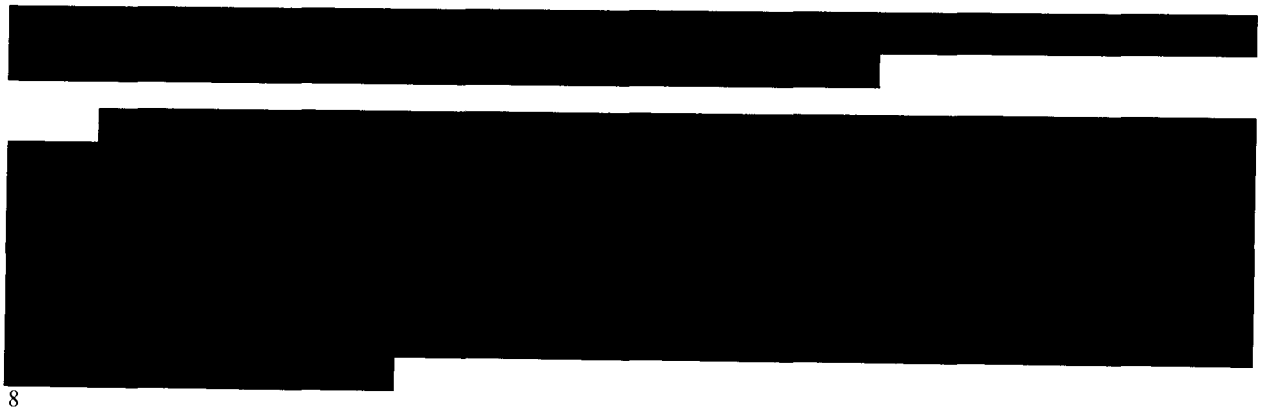

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United States v. Deniz Sharpe, 1:07-CR-00098 (D. Md.), ECS Senior Trial Attorney Richard Udell [redacted] ECS Trial Attorney David Joyce [redacted] and AUSA Tonya Kowitz [redacted]

On March 7, 2007, Deniz Sharpe, a chief engineer for the *M/V Fidelio,* pleaded guilty to a one-count information charging him with an APPS violation for falsifying the oil record book ("ORB"). The *Fidelio* was one of four car carrier vessels managed by American-based operator Pacific-Gulf Marine, Inc. ("PGM"). 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. During his tenure both as chief engineer and as first engineer, Sharpe was involved in the deliberate discharge of oil-contaminated wastewater which had not been processed through the oil water separator and for which entries were either falsely made or omitted from the ORB.

M/V Fidelio

PGM pleaded guilty last summer to four 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. The company was sentenced in January 2001 to pay a $1 million fine and an additional $500,000 in community service. PGM also will complete a three-year term of probation and enact an environmental compliance plan. Sharpe is scheduled to be sentenced on August 28, 2007.

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United States v. Daniel Storm, No. 2:07-CR-00060 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On March 7, 2007, Daniel Storm pleaded guilty to knowingly disposing of hazardous waste without a permit. Storm, a professor of pharmacology, admitted that in June 2006 he dumped

containers of highly flammable ethyl ether down a sink in his lab. The illegal disposal of ethyl ether created a significant risk of explosion or fire.

In 2006, the University of Washington Environmental Health and Safety Department conducted a survey of Storm's lab and determined that three metal containers of ethyl ether and two glass bottles containing a mixture of ethyl ether and water needed to be disposed of. The cost for disposal was $15,000 which Storm was unwilling to pay from his laboratory operations account, because it was too costly. Storm then used an axe to break open the metal containers and dumped the ethyl ether down a sink in his laboratory, pouring an ethanol solution down the drain to flush out any remaining explosive material.

Storm subsequently devised an elaborate cover-up scheme, including creating a false invoice using a fictitious hazardous waste company. He then placed calls to other professors purporting to represent the waste company and offering to pick up their lab waste in an effort to legitimize the company. Finally, he gave investigators two written memos detailing his alleged disposal arrangement with the fictitious waste company. When the agents were unable to locate this company, they subsequently discovered the illegal disposal.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the University of Washington Police Department.

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United States v. Twilight Marine Ltd., No. 4:07-CR-00114 (N.D. Calif.), AUSA Maureen Bessette

Crack covered with paint

On March 6, 2007, Twilight Marine Ltd., ("TML") pleaded guilty to, and was sentenced for, operating a vessel in a grossly negligent manner, in violation of 46 U.S.C. § 2302(b), a Class A misdemeanor.

TML was the owner of the Maltese-registered vessel, the *M/V Warrior*. In or about September 2006, the ship made an Atlantic Ocean crossing, traveling toward North America. During this crossing, several sailors onboard identified several small cracks and rust holes in the vessel's starboard side deck which were repaired. Shortly thereafter, however, two three-foot long cracks were discovered on the port side deck which the master ordered the crew to cover with tape and paint to conceal the cracks, creating a hazardous condition.

When the ship arrived in San Francisco in November 2006, the Coast Guard discovered the cracks during an inspection, but had not been told of them by company officials. TML was sentenced to pay a $50,000 fine with an additional $100,000 to be paid in restitution to the National Fish and Wildlife Foundation. The company also will implement an environmental compliance program.

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

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United States v. Timothy Boisture, No. EV05-CR-0043 (S.D. Ind.), AUSA Steve Debrota [redacted] and SAUSA Dave Taliaferro [redacted]

On March 6, 2007, Timothy Boisture, a partner with Environmental Consulting and Engineering Co., Inc., was sentenced after being convicted of violations stemming from his fraudulent actions during a well-closure project. Boisture must serve a five-year prison term, followed by three years' supervised release, and he must pay $492,571 in restitution.

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 that threatened to flow into a local pond and the Ohio River. Boisture was convicted in October 2006 of defrauding the state by submitting false invoices, charging more than $44,000 for equipment that was never installed and services that were not billed by his subcontractor. He further was 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.

The $492,571 in restitution is to be paid as follows: $158,247 will go to the Environmental Consulting and Engineering Company, Inc., ("ECECI") for fraudulent overpayments; $60,000 is to be paid to the Indiana Department of Natural Resources ("IDNR") for re-drilling and re-plugging six wells; $44,824 is to be paid to the Indiana Department of Environmental Management ("IDEM") for fraudulent costs paid for non-existent equipment and services; and $229,500 is to be paid to IDEM for the future cost of re-drilling and re-plugging 17 additional wells.

In a case related to the same well-closure project, Bi-State Pipe Company, Inc. ("Bi-State"), co-owner Carl Hanisch, and IDNR inspector Donald Veatch, also were sentenced on March 6, 2007. Veatch was ordered to complete 12 months' home detention followed by three years' supervised release and must pay approximately $385,000 in restitution as follows: $215,100 to IDEM for their bridge plug fraud scheme and for re-drilling future wells, $60,000 to IDNR for re-drilling earlier wells, and $109,934 to ECECI. Hanisch and Bi-State were each sentenced to serve a one-year term of probation and will be held jointly and severally liable for the $275,100 in restitution to be paid to IDEM and IDNR.

Veatch was an inspector with the IDNR Division of Oil and Gas. In 1999, Bi-State was sub-contracted to plug the inactive and leaking injection wells. The defendants pleaded guilty to falsely stating on several forms that Bi-State had installed cast iron bridge plugs in the wells to prevent petroleum-based hydrocarbons from contaminating freshwater zones higher up in the wells. These forms were submitted to IDNR and used to generate certifications that were utilized by the State of Indiana to receive $269,949 in reimbursement from the Federal Oil Spill Liability Trust Fund for the costs to plug the wells.

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 Criminal Investigation Division, and the Federal Bureau of Investigation.

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United States v. Fermin Fortun et al., No. 4:06-CR-10020 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On March 2, 2007, Fermin Fortun and his son, Fermin Fortun, Jr., pleaded guilty to destruction of federal property valued in excess of $1,000. The two had originally been charged with the additional violations of trespassing, illegally searching for objects of antiquity, and the lighting of fires, all within the Key West National Wildlife Refuge. The Fortuns, who have been incarcerated since their arrest six months ago, were sentenced to time served and each ordered to complete three-year terms of supervised release.

The investigation began in June 2006, as officials 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 area of the Key, set fires at their campsite, and were searching for objects of antiquity without the required authorization or permit for such activities. 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.

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United States v. Randall Cone, No. 2:07-CR-00074 (E.D. Pa.), SAUSA Martin Harrell [redacted]

On February 28, 2007, former asbestos contractor Randall Cone pleaded guilty to a one-count information charging him with a CAA violation in connection with the transportation of asbestos waste in 2000, following the discovery of the waste in an abandoned trailer in 2005 in Camden, New Jersey.

In 2000, Cone was the owner and operator of R. Cone Environmental Services, Inc., an asbestos abatement firm. He was hired in the spring of 2000 to remove and dispose of asbestos-containing material from a building in Philadelphia that was being converted to a charter school. Cone then hired an individual to transport this material for disposal, but it eventually was abandoned in a semi-trailer at a parking lot in New Jersey. The material was discovered by a company that was redeveloping the property in New Jersey, which subsequently paid approximately $18,000 to dispose of the asbestos waste and trailer. Cone is scheduled to be sentenced on May 31, 2007.

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

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

On February 16, 2007, Eco Finishing Company ("ECF"), an electroplating company, was sentenced to complete a three-year term of probation, pay a $225,000 fine and an additional $25,000 in restitution to the Federal Transport Program.

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 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 only during MCES inspections. The company pleaded guilty to an information charging it with one Clean Water Act charge for the knowing violation of a pretreatment program.

Co-defendant Ted Gibbons, a former chemist for ECF, previously was 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 those 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 Federal Bureau of Investigation, the Minnesota Pollution Control Agency, and the MCES.

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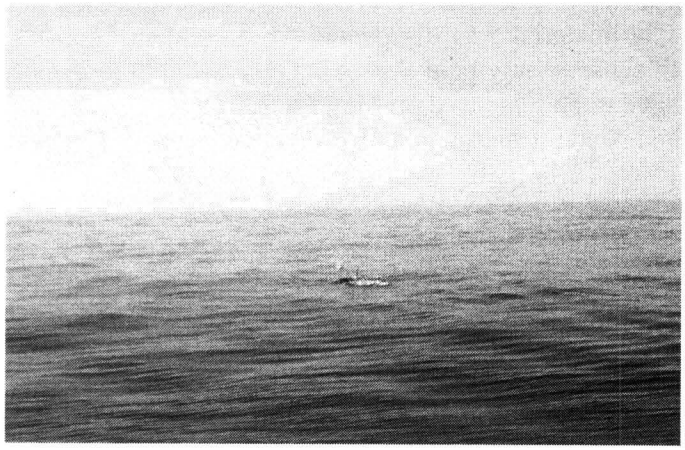
United States v. Don Walker, No. 1:06-CR-00290 (S.D. Ala.), AUSA Maria Murphy [redacted]



Shot fired into water above dolphin

On February 14, 2007, Don Walker, the captain of the *FV Lady D*, a fishing boat chartered out of Orange Beach, Alabama, pleaded guilty to, and was sentenced for, violating the Marine Mammal Protection Act in regard to shooting at a dolphin last year in the Gulf of Mexico.

On June 10, 2006, members of a fishing party which had chartered the *F/V Lady D,* complained to officials that Walker had shot at a dolphin that was attempting to eat a fish off a fishing line. A member of the party took a picture of a bullet spraying the water near the dolphin.

The defendant was sentenced to serve a one-year term of probation and was ordered to pay a $1,000 fine. He is further required to make a $1,000 contribution to the Mote Marine Laboratory in Sarasota, Florida, for the development of a public service announcement reminding others of the consequences of harassing bottlenose dolphins.

This case was investigated by the National Marine Fisheries Service.

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United States v. Loch Louman et al., No. 3:06-CR-00248 (E. D. Va.), AUSAs Olivia Hawkins and Michael Dry [redacted] and SAUSA David Lastra [redacted]

On February 6, 2007, Loch Louman pleaded guilty to a Rivers and Harbors Act ("RHA") violation stemming from illegal dumping during a bridge construction project. Co-defendant Rick Callahan pleaded guilty in January 2007 to an RHA violation and both are scheduled to be sentenced on April 30, 2007.

In the spring of 2000, the Virginia Department of Transportation ("VDOT") awarded a contract to AMEC Civil, L.L.C., previously doing business as Morse Diesel Civil, L.L.C., to complete the Clarksville Bypass Project in Mecklenburg, Virginia. This project involved the expansion of Route 58

south of the existing bridge, as well as the construction of a new bridge across the J.H. Kerr Reservoir, a state water and a navigable water of the United States. VDOT obtained a Virginia Water Protection Permit, pursuant to the Virginia Water Protection Permit Regulations and section 401 of the Clean Water Act. This permit governed the expansion project and included provisions prohibiting the pouring of wet or uncured concrete into state waters as well as the dumping of construction material or waste material into the reservoir.

During construction of the Bypass Project, Louman, the construction project manager, and Callahan, the project manager, used a hose to pump slurry, a mixture containing water, concrete, and plasticizer, into the Reservoir in violation of the RHA.

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

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

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

May 2007

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 also 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 at http://www.regionalassociations.org.
You may quickly navigate through this document using electronic links for the *Active Cases* and *Additional Quick Links*.

AT A GLANCE

- **Environmental Defense v. Duke Energy Corp., 127 S. Ct. 1423 (2007)**

Districts	Active Cases	*Case Type* / Statutes
S.D. Alaska	United States v. Robert Becker	*Illegal Rockfish Catch/* Lacey Act
C.D. Calif.	United States v. Hisayoshi Kajima	*Butterfly Trafficking/* Endangered Species Act, Smuggling
D. Colo.	United States v. Edward Borner United States v. Willem Basson [redacted]	[redacted]
M.D. Fla.	United States v. Kassian Maritime Navigation Agency Ltd.	*Vessel/* APPS, False Statement, Obstruction
N.D. Fla.	United States Michael Bonner	*Charter Vessel Permits/* Conspiracy, Magnuson Stevens Act, False Statement
S.D. Fla.	United States v. David Sparandara United States v. Alexandre Alvarenga-Freire	*Bengal Cats/* Endangered Species Act *Coral Harvesting/* Lacey Act
D. Idaho	United States v. Tim Sundles	*Wolf Poisoning/* Endangered Species Act
D. Mass.	United States v. Michael Zak	*Bird Killings/* Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act
D. Md.	United States v. Stephen Karas	*Vessel/* Conspiracy, False Statement
D. Nev.	United States v. Greg Street Plating	*Electroplater/* CWA
D. N. J.	United States v. Clipper Wonsild Tankers Holding A/S	*Vessel/* Conspiracy, APPS, False Statement, Obstruction
N.D. N. Y.	United States v. Everett Blatche	*Asbestos Abatement/* Conspiracy
E.D. N. C.	United States v. Jerry Gaskill	*Dredge and Fill/* CWA, Rivers and Harbors Act
D. Okla.	United States v. Sinclair Tulsa Refining Company	*Oil Refinery/* CWA NPDES
D. P. R.	United States v. Puerto Rico Aqueduct and Sewer Authority	*Water Authority/* CWA NPDES
M.D. Tenn.	United States v. James Holden	*Sewage Treatment Plant/* False Statement, Obstruction
[redacted]	[redacted]	[redacted]

Additional Quick Links

Significant Opinions

Supreme Court

The United State Environmental Protection Agency's regulations promulgated under two air pollution control schemes within the Clean Air Act – New Source Performance Standards ("NSPS") and Prevention of Significant Deterioration ("PSD") – define the term "modification" differently. Under the NSPS, regulations require a source to use the best available pollution-limiting technology when modifications would increase the pollutants released as measured in kilograms per hour. Conversely, the PSD regulations require a permit for a modification when the modification would increase annual emissions above the actual average for the two prior years.

At issue in **Environmental Defense v. Duke Energy Corp., 127 S. Ct. 1423 (2007)**, was whether Duke Energy was required to obtain permits when it replaced and redesigned its coal-fired electric generating units. In the District Court and the Court of Appeals for the Fourth Circuit, Duke Energy successfully argued that a PSD permit was not required because none of its projects increased the hourly emissions rate. The two lower courts each held that the term "modification" as defined in the NSPS provisions mandated that the term receive the same definition in the PSD regulations. Consequently, the lower courts held that PSD regulations must measure an increase in the amount of an emitted air pollutant in terms of an hourly rate and because Duke's hourly emissions did not increase – though total emissions increased – no permit was necessary. Intervening environmental groups subsequently petitioned the Supreme Court for certiorari.

The Supreme Court, in a 9-0 decision, vacated the judgment below. Justice Souter, writing for the Court, stated that the "principles of statutory construction are not so rigid" as the lower courts held. Specifically, "a given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies." The Court made clear that in interpreting a definition in a statute, "there is ... no effectively irrebutable presumption that the same defined term in different provisions of the same statute must be interpreted identically. Context counts." The PSD regulations are designed to measure actual operations and emissions over time, and the regulatory purpose was invalidated by lower courts' elimination of the requirement that net emissions over time not increase and replacing it with a test based only on hourly emissions. Because the Court of Appeals erroneously applied the PSD definition of modification to the NSPS regulations, the Supreme Court vacated the judgment below and remanded the case for further proceedings.

This issue of how a definition in one part of a statute may affect regulation under other provisions may arise in the context of criminal enforcement actions.

Trials

United States v. Michael Zak et al., No. 3:06-CR-30011 (D. Mass.), AUSAs Kimberly West [redacted] and Kevin O'Regan [redacted]

On April 10, 2007, Michael Zak was convicted during a bench trial of shooting and killing a bald eagle, in violation of the Bald and Golden Eagle Protection Act, and of violating the Migratory Bird Treaty Act. Zak's employee and co-defendant, Timothy Lloyd, pleaded guilty in March of this year to conspiring to violate the Migratory Bird Treaty Act and to two counts of violating the Migratory Bird Treaty Act.

In 2005, investigators received information that Zak was suspected of unlawfully killing protected migratory birds that are natural predators of trout. An investigation documented the remains of approximately 279 great blue herons, six ospreys, one bald eagle, one red tailed hawk, and three unidentified raptors, all in various states of decay. Forensic examinations conducted on ten of the great blue heron carcasses and on the bald eagle revealed that all had been killed by rifle shot. While conducting surveillance agents observed Zak fire a rifle in attempts to kill great blue herons and ospreys.

Zak and Lloyd are scheduled to be sentenced on June 27, 2007. This case was investigated by the United States Fish and Wildlife Service.

Indictments

[redacted]

United States v. Clipper Wonsild Tankers Holding A/S et al., No. 2:07-CR-00264 (D.N.J.), AUSA Brad Harsch [redacted] with assistance from ECS Senior Counsel Claire Whitney [redacted]

On March 27, 2007, Clipper Wonsild Tankers Holding A/S, Clipper Marine Services A/S, and Trojan Shipping Co. Ltd., were charged in an 11-count indictment with violations stemming from the dumping of oily waste in international waters from the *M/T Clipper Trojan.*

The indictment states that vessel crew members dumped oil sludge directly overboard in May and June of 2006, and they regularly dumped oil-contaminated bilge water overboard between March and June of 2006. Clipper Wonsild Tankers Holding A/S and Clipper Marine Services A/S are Danish companies that commercially operated and managed the vessel. The Trojan Shipping Co., Ltd., a Bahamian company, is the ship's registered owner. All three companies are part of The Clipper Group A/S, a global shipping consortium based in Denmark.

On February 2, 2007, Fernando Magnaye, the ship's chief engineer, pleaded guilty to charges of presenting a false document to Coast Guard inspectors and to attempting to obstruct a Coast Guard inspection in an effort to conceal the ship's illegal overboard discharges of oil sludge and oil-contaminated bilge waste.

This case was investigated by the United States Coast Guard.

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United States v. Robert Becker, No. 1:07-CR-0002 (D. Alaska), SAUSA Todd Mikolop [redacted]

On March 21, 2007, Robert Becker was charged in a three-count indictment with violating the Lacey Act. According to the indictment, between November 2004 and January 2005, Becker made three unlawful fishing trips to the Fairweather Grounds in the Gulf of Alaska and caught approximately 17,000 pounds of Demersal Shelf Rockfish. During these three fishing trips, the Fairweather Grounds and all of the East Yakutat Section were closed to directed fishing.

Becker allegedly 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 NOAA Office for Law Enforcement.

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United States v. Edward Borner, No. 07-CR-01053 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted], ECS Trial Attorney Jim Nelson [redacted], and AUSA Greg Holloway [redacted].

On March 6, 2007, taxidermist Edward Borner pleaded guilty to a one-count information charging him with a misdemeanor Lacey Act violation in connection with his receiving leopard skins and skulls.

In November 2004, Borner took possession of five leopard hides and three leopard skulls which he should have known were illegally imported into the United States from Zimbabwe as they were not accompanied by valid CITES permits.

This is the first plea entered in a related case in which two South African outfitters, Jan Swart and Willem Basson, were charged with smuggling and Lacey Act false labeling charges after

engineering the smuggling of the trophy parts of leopards illegally killed in South Africa by U.S. hunters. Several other hunters are expected to plead guilty. Borner is scheduled to be sentenced on July 24, 2007.

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

United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR00048 (M.D. Fla.), SAUSA John Irving [redacted] ECS Trial Attorney Jeff Phillips [redacted] and AUSA John Sciortino [redacted]

On March 8, 2007, Greek-based shipping company Kassian Maritime Navigation Agency Ltd., ("Kassian Maritime") and Spyridon Markou, the second engineer for the *M/V North Princess*, were charged in a three-count indictment with APPS, false statement and obstruction violations. Kassian Maritime is charged with the illegal dumping of bilge and oily wastewater, making false statements to U.S. Coast Guard inspectors, and obstruction of justice in relation to the Coast Guard's inspection of the *North Princess*. Markou is charged with obstructing the ship's inspection.

The indictment states that, on or about November 20, 2006, after the ship was inspected by Coast Guard inspectors in Jacksonville, evidence was found that the company, through its employees, made false statements and used false documents during the course of the inspection. The indictment further alleges that the shipping company failed to maintain an accurate oil record book.

The obstruction charge against Markou stems from his providing false information to inspectors regarding the ship's use of an illegal bypass pipe.

The case remains scheduled for the June 4, 2007, trial calendar and was investigated by the United States Coast Guard.

Pleas / Sentencings

United States v. Michael Bonner et al., No. 3:06-CR-00450 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [redacted]

On April 24, 2007, Michael Bonner and Gerald Andrews were each sentenced to complete three-year terms of probation and pay $25,000 and $40,000 fines, respectively. The two pleaded guilty in February of this year to a one-count misdemeanor information charging them with knowingly and willfully submitting false information to the Secretary of Commerce in violation of the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act").

In November 2003, the Magnuson-Stevens Act placed a moratorium on charter vessel/head boat permits for Gulf coastal migratory pelagic 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. The moratorium created a limited-entry fishery in that the permits were not available to all charter boat owners.

Bonner was an Alabama boat builder and Andrews was a charter-boat fisherman in Florida. The defendants submitted false information (back-dated checks and sales agreements) to the NMFS in an attempt to secure letters of eligibility for permits for two commercial fishing vessels.

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

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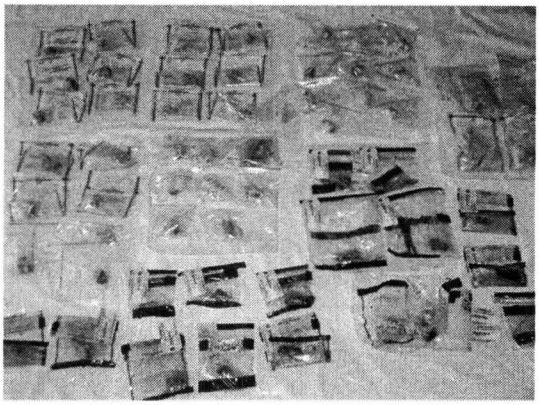
United States v. Tim Sundles, No. 4:05-po-00223 (D. Idaho), AUSAs George Breitsameter [redacted] and Michael Fica [redacted].



Poisoned meatballs

On April 20, 2007, Tim Sundles was sentenced to serve six days' incarceration and was banned from public lands for two years for attempting to kill federally protected wolves, in violation of the Endangered Species Act, with poisoned meatballs in 2004. He will also complete a two-year term of probation and pay a $1,500 fine.

The sentencing ends a three-year investigation involving state and federal wildlife investigators that began with the poisoning of pet dogs and other animals at a popular recreation area in the Salmon-Challis National Forest. Agents obtained DNA evidence to link the pesticide-tainted meatballs to Sundles. They had further evidence that a person claiming to be Tim Sundles spelled out on the Internet how to poison wolves using a common pesticide.

Sundles, a specialty ammunition maker, was a vocal critic of the federal government's push to restore wolves to the Northern Rockies beginning in 1995, making known his opinion that the wolves would destroy livestock and game populations.

At sentencing the court further ordered the defendant to pay $128 in veterinarian bills for treatment of the dogs he poisoned. A total of 73 tainted meatballs were recovered.

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

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United States v. James Larry Holden et al., No. 1:05-CR-00011 (M.D. Tenn.), AUSA Samuel Williamson [redacted].

On April 20, 2007, James Larry Holden was sentenced to serve 24 months' incarceration, followed by two year's supervised release with 90 days to be served in a community correctional facility. James Michael Holden will serve 32 months' incarceration followed by two years' supervised release and 90 days in a community correctional facility.

The father and son defendants were found guilty by a jury in September of last year of making a material false statement to the Tennessee Department of Environment and Conservation and the U.S. Environmental Protection Agency. James MichaelHolden, the son, also was found guilty of obstruction of justice,but his fath er was acquitted on this charge.

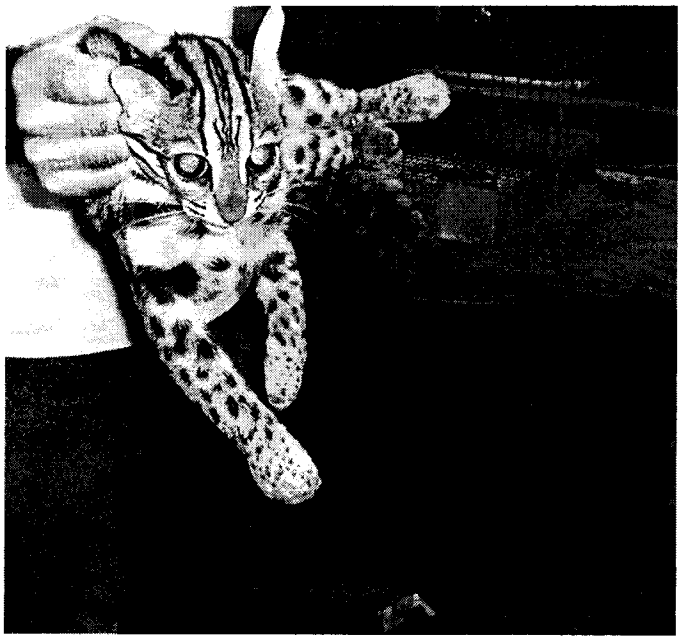
James Larry Holden is the former Director of the Mt. Pleasant, Tennessee, Department of Public Works. James Michael Holden is the former licensed operator of the Mt. Pleasant Sewage

Treatment Plant. James Michael Holden's obstruction conviction stemmed from his instructing employee Marty Roddy to alter documents to make it appear that required water-quality testing had been performed.

Investigation revealed that on 21 dates from January 2002 to October 2003, Roddy's initials appeared on test reports despite the fact that he was absent from work on those days. Spot testing by officials revealed that fecal coliform bacteria levels were as much as 20,000 times greater than stated in the reports. Roddy pleaded guilty in September 2005 to a false statement violation.

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

United States v. David Sparandara, No. 1:06-CR-20627 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]



Asian Leopard Cat

On April 20, 2007, David Sparandara pleaded guilty to a Lacey Act violation for the illegal sale and transportation from the Czech Republic to Miami of a live Asian Leopard Cat, an endangered species.

In January 2005, a Fish and Wildlife inspector in Texas was informed that the defendant and a Prague-based entity known as the European-American Consortium for Small Felines, for which the defendant is the director, were preparing to ship two Asian Leopard Cats to the United States. Investigation revealed that none of the parties involved possessed the required paperwork to legally import the cats. Even when advised by law enforcement of the necessity to obtain these permits, Sparandara failed to do so and in fact re-routed one of the cats through the Miami International Airport in February 2005. Paperwork accompanying the animal indicated that it was being sold to the importer for in excess of $4,000. A subsequent effort by Sparandara in December 2005 to ship another cat into Miami led to the interception and seizure of the animal.

The Asian Leopard Cats are prized for their rarity and color pattern. They also have substantial commercial value in the pet trade due to their susceptibility to hybridization with domestic cats, which produces the "Bengal cat" pet species.

Sentencing is scheduled for July 20, 2007. This case was investigated by the United States Fish and Wildlife Service.

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 April 19, 2007, Puerto Rico Aqueduct and Sewer Authority ("PRASA") was sentenced in accordance with the plea agreement reached in July of last year. 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.

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.

Final Clarifier

The Authority was sentenced to serve a five-year term of probation, pay a $9 million fine, pay an additional $109 million to make repairs and upgrades at the nine POTWs named in the indictment, pay $10 million for 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, which must commence within six months, 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.

The court entered an additional order that required PRASA to post a notice in every plant in Spanish and in English, which informs employees that they are encouraged to report any illegal activity that they are aware of to EPA, DOJ, or directly to the court. If the court learns that any employee was prevented from coming forward, that person or entity that prevented the person from reporting will be held in contempt of this order. The court further stated that, given the 25 year history of violations, he would have sentenced the Authority to pay a $50 million fine. He also stated that EPA was somewhat to blame for not being more aggressive in its enforcement efforts.

An additional comprehensive civil settlement was previously 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.

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United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [redacted]

On April 16, 2007, Hisayoshi Kajima was sentenced to serve 21 months' incarceration followed by two years' supervised release. He also must pay a $30,000 fine and $7,656 in restitution to the United States Fish and Wildlife Foundation.

Kajima pleaded guilty in January of this year to a 17-count indictment charging him with Endangered Species Act and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation revealed that Kojima 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. 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.

On two other occasions Kojima 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.

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

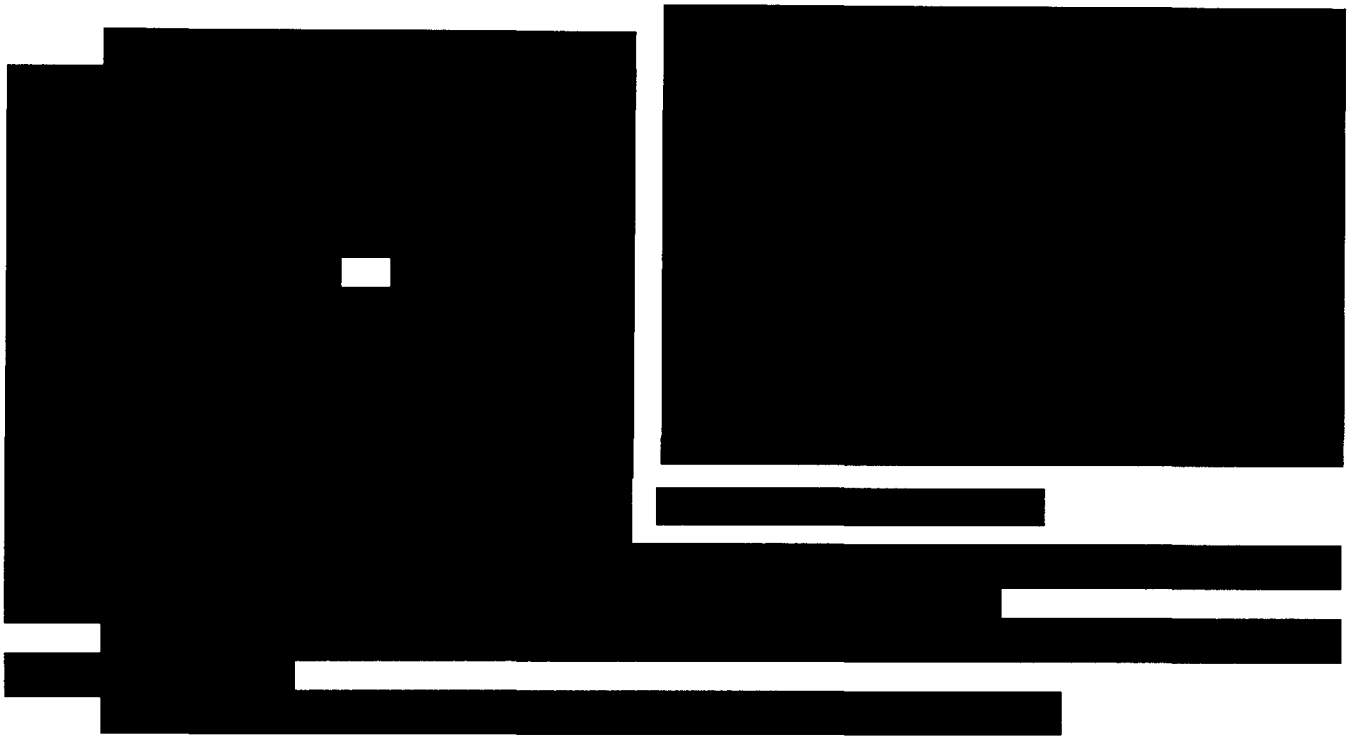
United States v. Willemm Basson, No. 07-CR-00021 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted]**, ECS Trial Attorney Jim Nelson** [redacted] **and AUSA Greg Holloway** [redacted]

On April 13, 2007, Willem Basson, a South African big-game outfitter, pleaded guilty to a one-count indictment charging a felony Lacey Act false labeling violation. The charge stems from his involvement in a scheme to import, through Denver in 2004, the hide and skull of a leopard one of his clients had illegally killed in South Africa in 2002.

Basson was arrested in Pennsylvania in February of this year, along with Jan Swart, another South African outfitter, at a sports show where both were advertising their businesses. Basson was sentenced to pay a $5,000 fine, serve 19 days' imprisonment (with credit for 19 days already served) followed by three years' unsupervised probation in South Africa. The probation term requires Basson to return to the United States, at his own expense, to cooperate in the government's prosecution, if summoned. The government recommended that he pay a $10,000 fine and $5,000 community service payment, but the court reduced the fine upon a finding that Basson was likely to lose his firearm rights and livelihood in South Africa due to the conviction in this case, and declined to impose the community service payment on philosophical grounds.

Swart remains scheduled for trial to begin on June 4, 2007. This case was investigated by the United States Fish and Wildlife Service.

[redacted]



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United States v. Greg Street Plating, Inc., No. 3:06-CR-00081 (D. Nev.), ECS Trial Attorney Lary Larson and AUSA Ronald Rachow

On April 6, 2007, Greg Street Plating, Inc. ("Greg Street"), an electroplating, metal plating and finishing company, pleaded guilty to a Clean Water Act violation for discharging highly acidic waste into the sewer system that leads to the Truckee Meadows Sewage treatment facility. The company, which is out of business, was sentenced to pay a $30,000 fine.

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 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 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.

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United States v. Sinclair Tulsa Refining Company et al., No. 4:06- CR- 00214 (N.D. Okla.), ECS Senior Trial Attorney Mark Kotila and AUSA Susan Morgan .

On April 4, 2007, Sinclair Tulsa Refining Company ("Sinclair"), a subsidiary of oil and gasoline producer Sinclair Oil, and company managers Harmon Connell and John Kapura all were sentenced for their manipulating the sampling and discharges of wastewater in violation of their NPDES permit over an extended period of time.

Sinclair will serve a two-year term of probation, pay a $5 million fine, and make an additional $500,000 community service payment to the River Park's Authority, which works to preserve the Arkansas River and adjacent lands. Connell and Kapura will both complete three-year terms of probation to include six months' home confinement. Connell will pay a $160,000 fine and serve 100 hours' community service. Kapura must pay a $80,000 fine and serve 50 hours' community service.

Between January 2000 and March 2004, the Sinclair refinery discharged an average of 1.1 million gallons of treated wastewater per day into the Arkansas River. On numerous occasions in 2002 and 2003, Sinclair directed employees to limit wastewater discharges with high concentrations of oil and grease to manipulate the result of required bio-testing. During monitoring periods, Sinclair, through its employees, reduced flow rates of wastewater discharges to the river and diverted more heavily contaminated wastewater to holding impoundments as one way of ensuring that they had passed the tests.

The company pleaded guilty in December 2006 to two felony CWA violations for deliberately manipulating wastewater discharges at its Tulsa Refinery. Connell and Kapura each pleaded guilty to one felony CWA count.

This case was jointly investigated by the Oklahoma Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

United States v. Stephen Karas et al., 1:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence [redacted] ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Tonya Kowitz [redacted]

On March 29, 2007, Stephen Karas pleaded guilty to a conspiracy to violate APPS, to make false statements, and to obstruct a Coast Guard proceeding, as well as a substantive false statement violation.

Karas and Mark Humphries, former chief engineers of the *M/V Tanabata*, a vessel managed by PGM, 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 *M/V Tellus* and the *M/V Tanabata* in Baltimore. During the September inspection both engineers denied involvement in any illegal conduct. On the *Tanabata*, the pipe used to bypass the oily water separator ("OWS") allegedly was thrown overboard by the Humphries after the Coast Guard had inspected the vessel in Baltimore.

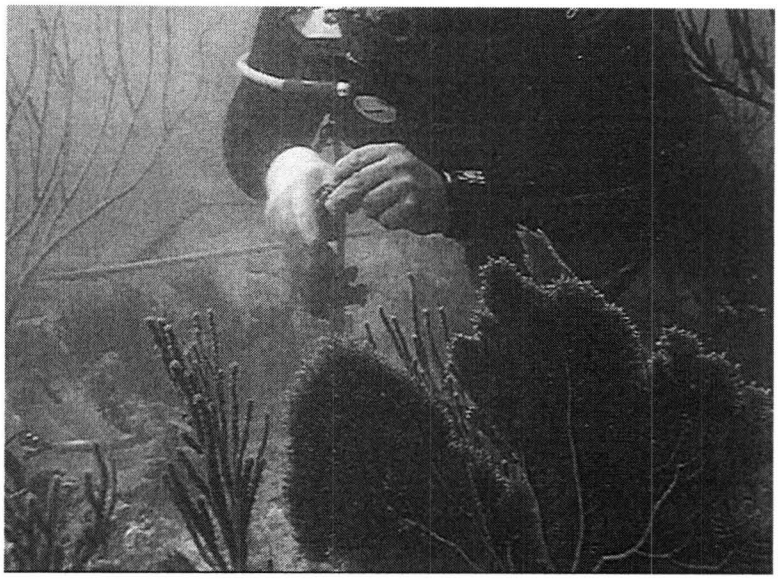
Karas admitted to using the bypass pipe and to concealing it during U.S. port calls. He also admitted to making false entries in the oil record book which stated that discharges were being made through the oily water separator, when it was bypassed entirely.

Humphries remains scheduled for trial to begin on October 1, 2007. This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

United States v. Alexandre Alvarenga-Freire, No. 1:07-CR-20078 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted].

On March 22, 2007, Alexandre Alvarenga-Freire pleaded guilty to an information charging him with a Lacey Act violation in connection with the illegal harvesting and sale in interstate and foreign commerce of *Ricordia florida*, an invertebrate corallimorph (coral).

Ricordia florida, are prized by aquarists for their varied coloration and the "natural" look they give to tank displays. Both federal and Florida law closely regulate the harvesting and sale of such marine life, requiring that a person who sells salt water marine-related wildlife such as this hold a state wholesale and retail license. Freire had none of the required permits or licenses.



Freire harvesting coral

In November 2006, two German nationals were intercepted at Miami International Airport attempting to export 500 specimens of *Ricordia florida* for sale through their business in Dusseldorf, Germany. They admitted to investigators that they had been involved with Freire in harvesting the marine life while aboard his vessel, the "PIPPIN", east of Cudjoe Key in Monroe County. Their description made clear the activity had occurred in the Florida Keys National Marine Sanctuary.

Investigators placed a Global Positioning System tracking device on the boat and monitored its location through January 25, 2007, at which point Freire was arrested at Cudjoe Key Marina returning from the Sanctuary with a load of 400 specimens of *Ricordia florida*. The tracking device placed the harvesting location within the Sanctuary, confirming the information from the German nationals. Further confirmation was acquired by having an Immigration and Customs Enforcement aircraft conduct an overflight of the vessel during the three-day harvesting trip prior to Freire's arrest.

The Sanctuary is a highly-valued 2,800 square nautical mile area that surrounds the entire archipelago of the Florida Keys and includes the productive waters of Florida Bay, the Gulf of Mexico, and the Atlantic Ocean. It is home to unique and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive coral reefs. The cost to remediate the damage caused by the defendant's removal of the coral from the seabed is estimated to exceed $78,000.

At the sentencing, which is scheduled for June 1, 2007, Freire will forfeit his 1969, 34-foot fiberglass hulled Morgan sailing vessel.

This case was investigated by the United State Fish and Wildlife Service, the NOAA Office for Law Enforcement, the Florida Fish and Wildlife Conservation Commission, Immigration and Customs Enforcement, and NOAA's National Marine Sanctuary Program.

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United States v. Everett Blatche, No. 5:06-CR-00474 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On March 21, 2007, Everett Blatche pleaded guilty to one felony count of conspiracy to violate the Clean Water Act, Clean Air Act, and CERCLA. He is scheduled to be sentenced on August 21, 2007.

Blatche was a supervisor for AAPEX Environmental Services, Inc., an asbestos removal company. From June through November, 2006, the defendant supervised numerous individuals who removed approximately 220,000 square feet of spray-on fire proofing asbestos material from a large building. Blatche supervised the illegal removal activities at numerous locations throughout the building, discharged asbestos that ran down the outside of the structure and onto surrounding grounds, disposed of asbestos as if it were simply construction debris, and released asbestos into storm drains leading to the Erie Canal system.

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.

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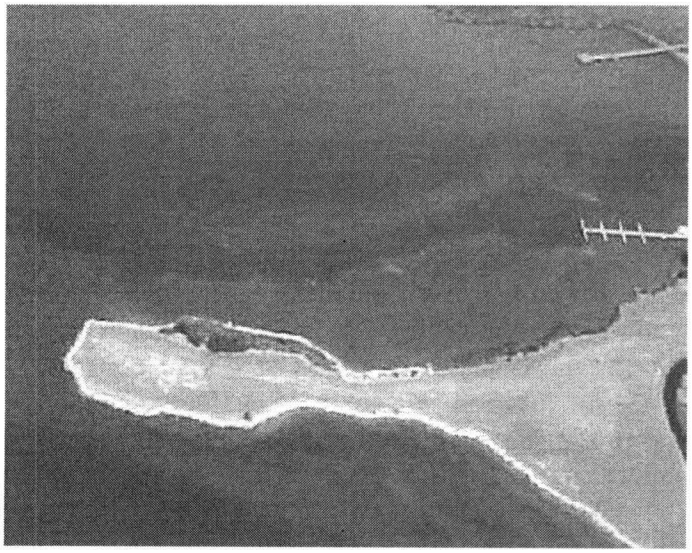
United States v. Jerry Gaskill, No. 2:05-mj-00094, 2:05-CR-00035, and 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan [redacted].

On March 20, 2007 Jerry Gaskill was sentenced to serve a three-year term of probation and was ordered to pay a $5,000 fine. Gaskill, the Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, was convicted by a jury in June of last year of a false statement violation and acquitted 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.



Prop washed channel

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," that is the unauthorized dredging of a channel by using the propellers of NCDOT 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. Moore also was sentenced March 20th to serve a three-year term of probation and pay a $5,000 fine. O'Neal, Bateman and Smith have not yet been sentenced.

The unauthorized dredging created a 730-foot long by 30-foot wide by five-foot deep channel that 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.

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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

June 2007

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 also 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 at http://www.regionalassociations.org.
You may quickly navigate through this document using electronic links for the *Active Cases* and *Additional Quick Links*.

AT A GLANCE

- **United States v. Johnson, 437 F.3d 157 (1st Cir.), vacated and remanded, 467 F.3d 56 (1st Cir. 2006).**
- **United States v. Johnson, 2007 WL 137310 (11th Cir. May 11, 2007).**
- **United States v. Cundiff, __ F. Supp. 2d __, 2007 WL 957346 (W.D. Ky. Mar. 29, 2007).**
- **United States v. San Diego Gas & Electric Co., ___ F. Supp. 2d ___, 2006 WL 3913458 (S.D. Cal. Nov. 21, 2006).**
- **State v. Harenda Enterprises, Inc., 724 N.W.2d 434, 2006 WI App. 230 (Ct. App. 2006).**

Districts	Active Cases	*Case Type* / Statutes
S.D. Alaska	United States v. Frederick Reynolds	*Walrus Ivory Sales*/Conspiracy, Marine Mammal Protection Act, Lacey Act, False Statement
C.D. Calif.	United States v. Virginia Star Seafood Corp.	*Illegal Catfish Imports*/Conspiracy, Lacey Act, Food and Drug Act, Trafficking
D. Colo.	United States v. Jan Swart	*Leopard Smuggling*/ Lacey Act
[redacted]	[redacted]	[redacted]
D. Md.	United States v. Frank Coe	*Vessel*/ Conspiracy, APPS
D. Maine	United States v. Petraia Maritime Ltd.	*Vessel*/ APPS
[redacted]	[redacted]	[redacted]
E.D. Pa.	United States v. Fleet Management Ltd. United States v. Kim Johnson United States v. Martin Schneider	*Vessel*/ Conspiracy, APPS, Obstruction *African Artifact Sales*/Endangered Species Act, Lacey Act *Whale Teeth Imports*/Lacey Act, Marine Mammal Protection Act, Endangered Species Act, Smuggling
E.D. Va.	United States v. Loch Louman	*Bridge Construction Project*/Rivers and Harbors Act

Additional Quick Links

Significant Opinions

1st Circuit

United States v. Johnson, 437 F.3d 157 (1st Cir.), vacated and remanded, 467 F.3d 56 (1st Cir. 2006).

The government filed a civil action charging that defendant growers discharged dredged and fill material without permits in violation of Section 404 of the Clean Water Act, 33 USC § 1344, at three sites that they owned in order to construct, expand and maintain cranberry farms. The sites were not "adjacent to" navigable-in-fact waters of the United States, but were hydrologically connected through a series of immediately adjacent connections to a navigable-in-fact river leading to the Atlantic Ocean. The district court granted summary judgment to plaintiff, holding that there was sufficient basis for the government to exercise jurisdiction over the sites because of evidence that wetlands on the sites were hydrologically connected to navigable waters by nonnavigable tributaries. On appeal, defendants claimed that (1) their property was not covered by the relevant regulation or (2) in the alternative, either the regulation exceeded the authority granted by the Act or the Act exceeded Congress' power under the Commerce Clause.

Held: The First Circuit, in a 2-1 decision, affirmed the judgment of the district court. The court first analyzed in detail the statutory and regulatory framework of the Act and the decisions in Riverside Bayview Homes and SWANCC (rejecting In re Needham and Harken Exploration) in concluding that jurisdiction over wetlands requires a "significant nexus" between the site in question and a navigable-in-fact-water, but that it does not require adjacency. Applying the methodology of Deaton, the court next addressed the constitutional challenge, finding that under Riverside Bayview Homes and SWANCC, Congress in fact did possess a valid constitutional rationale and authority under the Commerce Clause for assertion of jurisdiction and of Congress' purpose in creating the Act for "restoring and maintaining" the nations' waters. The court then found that the statutory phrase "waters of the United States" was sufficiently ambiguous to constitute an implied delegation of authority to the Corps of Engineers and to USEPA to promulgate "gap-filling" rules. It went on to interpret the relevant regulations as encompassing "tributaries" consisting of any open water hydrologically connected to a navigable-water-in-fact, even if interrupted by wetlands en route. The court then found that, under Chevron and in light of Riverside Bayview Homes and SWANCC, those regulations were based upon a permissible construction of the Act and afforded a reasonable basis for determining whether a significant nexus existed between navigable waters and their tributary systems. It found that

the hydrological connection, through the tributary system and its adjacent wetlands, from the sites to a navigable-in-fact river was sufficient here to establish jurisdiction under the Act.

In denying a subsequent petition for rehearing en banc, the First Circuit, after a detailed analysis of the fragmented opinions of the U.S. Supreme Court in Rapanos, vacated its prior decision and remanded to the district court for reconsideration whether the government had jurisdiction over the wetlands in question. Significantly, the court concluded that federal jurisdiction could be established under either the plurality or the concurring (Kennedy) opinion in that case.

11th Circuit

United States v. Johnson, 2007 WL 137310 (11th Cir. May 11, 2007)

After his Clean Water Act conviction for illegally filling two acres of Florida Bay "bay bottom," Balch cooperated with the government against his consultant, Johnson, providing details that revealed how Johnson had lied to the Army Corps of Engineers, EPA criminal investigators, and a grand jury. Johnson was convicted of obstruction of justice (18 U.S.C. § 1503), making false statements to a grand jury (18 U.S.C. § 1623), and making false statements to an executive branch agency (18 U.S.C. § 1001). Johnson appealed his conviction and sentence.

Regarding his conviction, Johnson claimed that there was insufficient evidence to show the materiality of statements he had made during the investigation of his client, Balch. Johnson claimed that when he knew that Balch had begun to fill bay bottom was immaterial. Specifically, he claimed that, because Balch, without reliance upon statements from Johnson, was convicted of knowingly causing an unpermitted fill, the idea that Johnson's lies were material was effectively gutted. The 11th Circuit disagreed, holding that Johnson's lies "disrupted and interfered with the investigation into Balch's violations of the Clean Water Act" and were "capable of interfering with the administration of justice and had a natural tendency to influence the government in its decisionmaking process." Thus, the Court held that there was sufficient evidence for the jury to find that Johnson's lies were material. The other elements of his crimes were not seriously disputed

The Court also affirmed a sentencing enhancement for substantial interference with the administration of justice under USSG § 2J1.3(b)(2). The Court observed that the government had correctly conceded that it could not rely on investigative costs incurred prior to the false testimony or the expenses associated with prosecuting the defendant's underlying perjury offense to support the enhancement. It also agreed with Fifth Circuit case law holding it unnecessary to particularize a specific number of hours spent by government employees to sustain application of the enhancement. The Court upheld the enhancement because the record showed that the government was required to expend additional resources in order to conduct further investigation into the target's conduct due to the defendant's false testimony. The Court also found that the sentence imposed, which was at the low end of the advisory guideline range, was not unreasonable.

District Court

United States v. Cundiff, ___ F. Supp. 2d ___, 2007 WL 957346 (W.D. Ky. Mar. 29, 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. In a civil enforcement action, the court granted summary judgment to the government, holding that defendants had violated the Clean Water Act. Defendants appealed, but while that appeal was pending, the Supreme Court's decision in Rapanos was issued. The Sixth Circuit then remanded for consideration of whether the wetlands at issue were waters of the United States under that decision.

Held: After detailed analysis of the opinions in Rapanos, the court noted a difference among the circuits as to whether the Corps of Engineers may continue to exercise regulatory jurisdiction (1) over wetlands that satisfy the standard either of the plurality opinion *or* of Justice Kennedy's concurring opinion or (2) over only those that satisfy the standard of the plurality opinion. The court elected to adopt the first of these approaches, following the lead of the First Circuit in Johnson. It went on to hold (upon the testimony of a professional wetland scientist and of a supervisor with the Kentucky Division of Water) that there was a significant nexus between the wetlands in question and the Green River (a traditional navigable-in-fact water). The court found that the wetlands performed significant functions affecting the ecological integrity of the tributaries (including water storage, filtering of pollutants and habitat support) that had been adversely impacted by defendants' unauthorized ditch construction, land clearing and filling activities. Alternatively, it found (also from the expert testimony, along with aerial photographs) that the creeks were relatively permanent, continuously flowing bodies of water connected to a traditional interstate navigable water, and that the wetlands in question were adjacent to, and had a continuous surface connection with, the tributaries. Thus, the wetlands met the tests as jurisdictional waters of the United States under either Supreme Court standard in Rapanos.

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United States v. San Diego Gas & Electric Co., ___ F. Supp. 2d ___, 2006 WL 3913458 (S.D. Calif. Nov. 21, 2006).

Defendant utility company assigned its defendant employee to oversee a demolition project. In connection with that project, the employee falsely stated to the county Air Pollution Control District (APCD) that he was a certified asbestos consultant, in an effort to persuade the county agency that asbestos-containing pipe wrap at the site did not constitute regulated asbestos. The company and the employee subsequently were indicted *inter alia* for making a materially false statement in violation of 18 U.S.C. §1001. They moved for dismissal of the false statement count, arguing *inter alia* that the alleged statement was not directly related to an authorized function of USEPA.

Held: The court dismissed the false statement count with prejudice. It noted that the statement at issue was made to an APCD inspector rather than directly to EPA, and that EPA does not require that a "certified asbestos consultant" supervise or be hired regarding asbestos removal or demolition projects. Furthermore, EPA was not affected financially by the false statement. The court found that

there was no direct connection between the alleged false statement and EPA's concurrent enforcement authority pursuant to the asbestos NESHAP regulation under the Clean Air Act, and thus that statement concerned matters merely peripheral to the business of EPA. The court rejected the government's argument that, in delegating its authority to enforce the NESHAP regulations to the APCD, EPA's retention of current enforcement authority provided a direct relationship of the statement in question to an authorized function of EPA.

State Court

State v. Harenda Enterprises, Inc., 724 N.W.2d 434, 2006 WI App. 230 (Ct. App. 2006).

Defendant under contract inspected material containing asbestos in relation to a renovation of the Milwaukee Auditorium. Rules adopted by the Wisconsin Department of Natural Resources pursuant to authority under state statutes incorporated federal regulations by reference in defining "asbestos-containing material" and prescribed test procedures for determining the asbestos content of materials. In particular, those rules provided that, when discrete strata of material were present, the results for each layer were to be combined to yield an estimate of asbestos content for the sample as a whole. Subsequent to the adoption by the state of the asbestos rules in question, USEPA published in the Federal Register a "clarification" of those rules that it stated were "intended solely as guidance". That clarification was not adopted under established rule-making procedures and (according to EPA) "did not represent an action subject to judicial review". It provided in part that "[i]n general, when a sample consists of two or more distinct layers or materials, each layer should be treated separately and the results reported by layer (discrete stratum)". Some time later, EPA issued another "clarification" reiterating that multi-layered systems must be analyzed as separate materials and that results were not to be combined to determine average asbestos content.

Subsequently, the state, alleging that defendant had relied upon the wrong method for assessing asbestos content (the "averaging" method for combining samples of layered materials set forth in the adopted rules) such that necessary precautions were not taken during the renovation, imposed environmental penalties and ancillary surcharges upon him. At trial, the court granted summary judgment to the state.

Held: On appeal, the intermediate state Court of Appeals reversed, finding that defendant's testing had complied with the law. After stating that "an agency interpretation may not trump a statute's clear language", the court found that the state's application of EPA's clarifications (bolstered by a case decision by EPA's Environmental Appeals Board) was at clear odds with the plain language of the adopted rule.

Trials

United States v. Petraia Maritime Ltd., No. 2:06-CR-00091 (D. Maine), ECS Trial Attorneys Wayne Hettenbach [redacted] and Kevin Cassidy [redacted] and AUSA Rick Murphy [redacted]

On May 17, 2007, after three days of trial, a jury returned guilty verdicts on all three APPS violations charged, but acquitted Petraia Maritime Ltd ("PML") of obstruction.

Petraia Maritime Ltd. ("PML"), for the actions of its employees, was charged in November 2006 in a four-count indictment 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 since they were not recorded in the ORB. The obstruction charge stems from the company's allegedly concealing and destroying the equipment used to carry out the discharges.

Two chief engineers, Felipe Arcolas and Alfredo Lozada, previously pleaded guilty to making false entries in the ORB. They each were sentenced to serve one month's home confinement as part of a two-year term of probation and were further ordered to pay a $3,000 fine.

This case was investigated by the United States Coast Guard.

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Indictments

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 May 24, 2007, an indictment was returned charging Virginia Star Seafood Corporation, International Sea Products Corporation, Silver Seas Company, Blue Ocean Seafood Corporation, Henry Nguyen, Peter X. Lam, Arthur Yavelberg, Cafatex, Anhaco, Antesco, Binh Dinh Import Export Company, David S. Wong, True World Foods, David Chu, Dakon International, Henry Yip, 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, the submission of false statements to Customs and

Border Patrol to effect the entry, the illegal entry of the fish, and the subsequent sale of falsely labeled fish to seafood buyers. In addition, one charge stems from the alleged efforts of defendant Nguyen to re-export such illegally imported product following the execution of a search warrant.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Enforcement, the Food and Drug Agency, and Immigration Customs and Enforcement.

United States v. Fleet Management Ltd., et al., No. 2:07-CR-00279 (E. D. Pa.), ECS Trial Attorney Jeff Phillips [redacted] and AUSA Joan Burnes [redacted]

On May 17, 2007, an indictment was returned variously charging two corporations and two crew members with violations stemming from the illegal overboard discharge of bilge waste over a six-month period through the use of the ballast/emergency dewatering system, as well as the use of a flexible "bypass" hose.

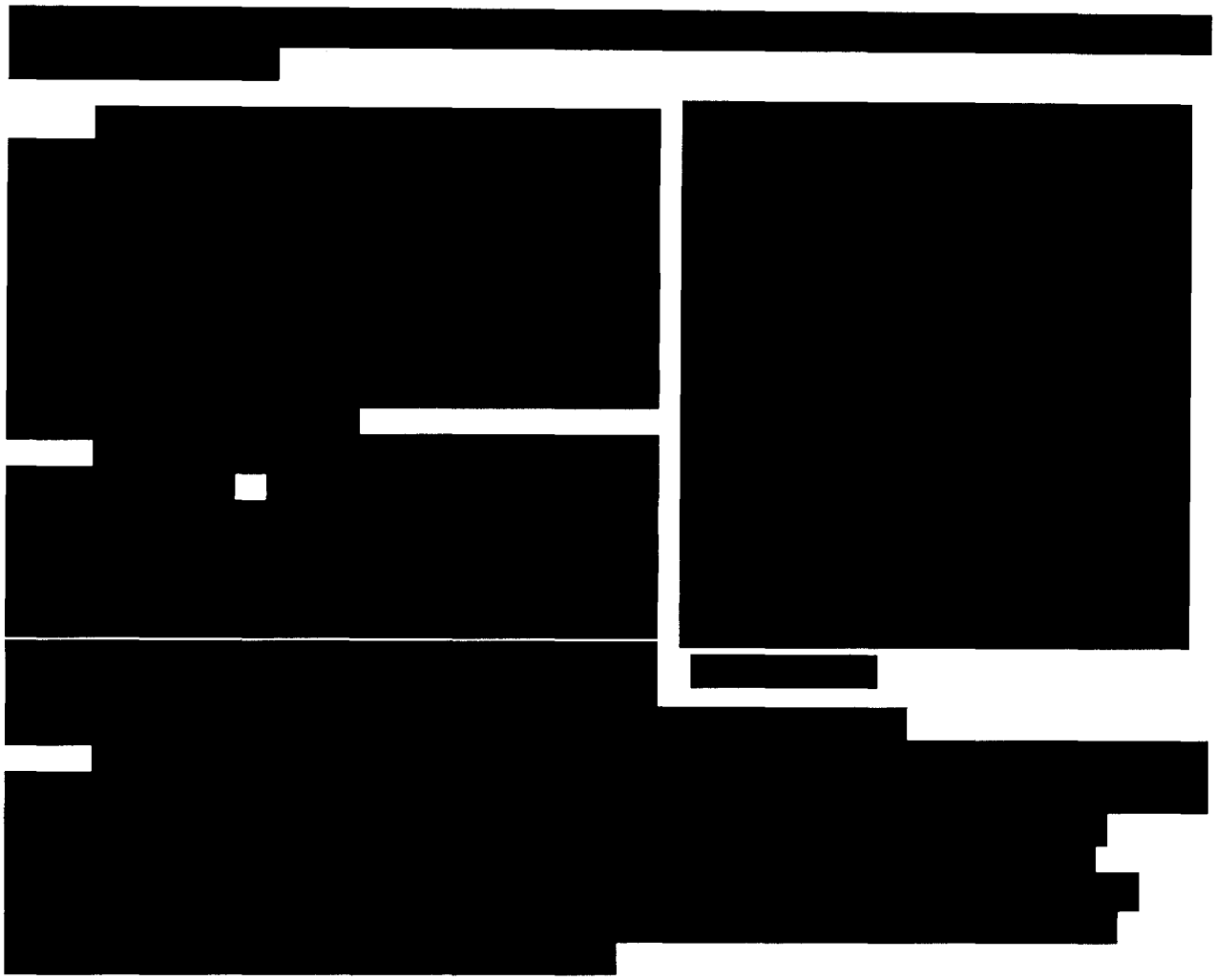
Defendant Fleet Management, Ltd., headquartered in Hong Kong, operated and managed a large and growing fleet of vessels, including the Liberian-flagged *M/V Valparaiso Star*. The *Valparaiso Star* was a 9,867 ton refrigerated cargo ship that carried products such as fruit and vegetables from the west coast of South America to the United States and Europe. Defendant Star Reefers Shipowning, Inc., operated the ship and was headquartered in the Cayman Islands. Ship's master Parag Raj Grewal and chief engineer Yevgen Dyachenko also are named in the indictment.

In January 2007, a motorman from the ship contacted authorities while in port in Philadelphia, stating that he had been ordered by his chief engineer to illegally discharge sludge from oil, bilge, and holding tanks. He further stated that his refusal to do so had resulted in the loss of his job. A subsequent inspection of the ship by Coast Guard inspectors uncovered the bypass hose as well as evidence that oil record book entries had been falsified to conceal these discharges.

The defendants are charged with conspiracy to violate APPS and to obstruct a Coast Guard proceeding along with three substantive APPS violations and an obstruction violation. The obstruction stems from allegations that the defendants placed considerable pressure on the whistleblower to change his story.

This case was investigated by the United States Coast Guard.

Pleas / Sentencings



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United States v. Jan Swart, d/b/a Trophy Hunting Safaris, No. 07-CR-00022 (D. Colo.), ECS Senior Trial Attorney Bob Anderson ECS Trial Attorney Jim Nelson and AUSA Greg Holloway .

On May 21, 2007, Jan Swart, a South African big-game outfitter, pleaded guilty to a one-count indictment charging a felony smuggling violation. The charge stems from his involvement in a scheme to import, through Denver in 2004, five hides and three skulls of leopards illegally killed in South Africa and smuggled to Zimbabwe. False CITES permits were subsequently obtained for the parts prior to their shipment to the United States.

Swart and co-defendant Basson, another South African outfitter, were arrested in Pennsylvania in February of this year at a sports show where both were advertising their businesses. Swart has agreed to serve 18 months' incarceration followed by three years' supervised release, pay a $20,000

fine and a $10,000 community service payment. Swart also will be banned from advertising in this country and may have his sentenced reduced if he cooperates against three remaining U.S. hunters under investigation. A number of hunters have already been prosecuted in connection with this case.

Sentencing is scheduled for August 6, 2007. This case was investigated by the United States Fish and Wildlife Service.

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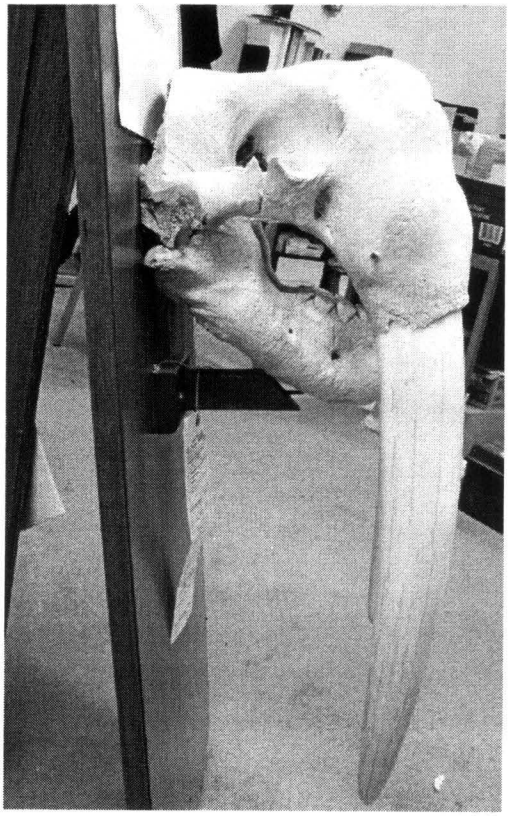
United States v. Frederick Reynolds et al., No. 1:06-CR-00004 (D. Ak.), ECS Senior Trial Attorney Bob Anderson [redacted] and SAUSA Todd Mikolop [redacted]

On May 17, 2007, Frederick Reynolds pleaded guilty to conspiracy to violate the Lacey Act, Marine Mammal Protection Act, and to make false statements. The plea agreement calls for stipulated sentencing factors (most notably a wildlife market value between $10,000 and $30,000) and a joint recommendation of six months' incarceration. Co-defendant Michael Sofoulis pleaded guilty earlier this year to a similar conspiracy violation and was sentenced June 4th to serve six months' incarceration, followed by one year of supervised release. Sofoulis will pay a $15,000 fine and a $5,000 community service payment.



Walrus headmount

The defendants were charged in September 2006 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 beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration or tagging. The ivory also subsequently may be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

The indictment states 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 more 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.

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United States v. Loch Louman et al., No. 3:06-CR-00248 (E. D. Va.), AUSAs Olivia Hawkins and Michael Dry [redacted] and SAUSA David Lastra [redacted].

On May 14, 2007, Rick Callahan was sentenced to serve a one-year term of probation after previously pleading guilty to a Rivers and Harbors Act ("RHA") violation. Co-defendant Loch Louman was sentenced on April 30, 2007, to serve 30 days' incarceration and was ordered to pay a $1,500 fine. Louman pleaded guilty to an RHA violation stemming from illegal dumping during a bridge construction project.

In the spring of 2000, the Virginia Department of Transportation ("VDOT") awarded a contract to AMEC Civil, L.L.C., previously doing business as Morse Diesel Civil, L.L.C., to complete the Clarksville Bypass Project in Mecklenburg, Virginia. This project involved the expansion of Route 58 south of the existing bridge, as well as the construction of a new bridge across the J.H. Kerr Reservoir, a state water and a navigable water of the United States. VDOT obtained a Virginia Water Protection Permit, pursuant to the Virginia Water Protection Permit Regulations and section 401 of the Clean Water Act. This permit governed the expansion project and included provisions prohibiting the pouring of wet or uncured concrete into state waters as well as the dumping of construction material or waste material into the reservoir.

During construction of the Bypass Project, Louman, the construction project manager, and Callahan, the project manager, used a hose to pump slurry, a mixture containing water, concrete, and plasticizer, into the Reservoir in violation of the RHA.

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

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United States v. Kim Johnson et al., No. 2:06-CR-00501(E.D. Pa.), AUSA Paul Gray [redacted]

On May 10, 2007, Virginia Smith was sentenced to serve a three-year term of probation and ordered to pay a $500 fine. Co-defendant Kim Johnson was sentenced on April 30, 2007, to pay a $1,000 fine, and serve five months' incarceration followed by three years' supervised release. Smith and Johnson pleaded guilty in January of this year to 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. The defendants sold animal parts in 2002 and 2003 to an undercover United States Fish and Wildlife Service agent. The items included ivory tusks sold for $2,500, a gorilla skull for $1,500, three helmet masks containing Colobus monkey fur for $1,225, a python skin for $450, a tiger skin for $5,500, and a jaguar skin for $8,000.

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

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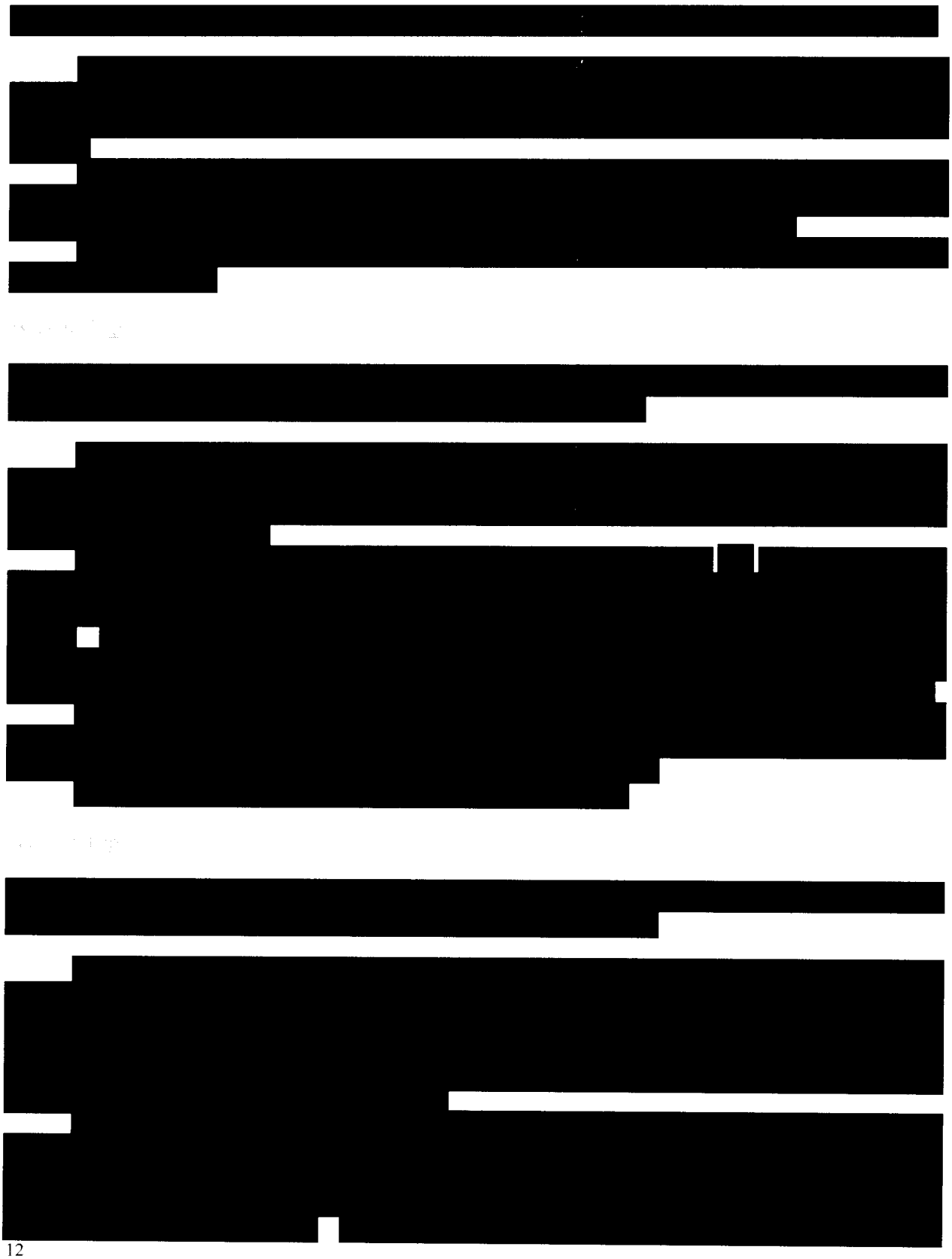

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United States v. Frank Coe, No. 1:07-CR-00177 (D. Md.), ECS Trial Attorney David Joyce [redacted] ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Tonya Kowatz [redacted]

On May 1, 2007, chief engineer Frank Coe pleaded guilty to an information charging him with conspiracy and an APPS violation for falsifying the oil record book ("ORB"). Coe was employed on the *M/V Fidelio*, one of four car carrier vessels managed by Pacific-Gulf Marine "PGM." PGM was sentenced earlier this year to pay a $1 million fine, $500,000 in community service, and will serve three years of probation.

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 in fact was 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.

Coe is the third chief engineer to plead guilty in this investigation. Deniz Sharpe, who served as chief engineer of the *M/V Fidelio* after Coe, pleaded guilty on March 7, 2007, to violating APPS involving continuing illegal conduct after the Coast Guard had removed the bypass pipe from the ship. Stephen Karas, the former chief engineer of the *M/V Tanabata* pleaded guilty on March 29, 2007, to conspiracy and to making false statements. An additional chief engineer remains scheduled for trial to begin in October 2007.

This case was investigated by the United States Coast Guard.

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United States v. Martin Schneider et al., No. 2:06-CR-00456-457 (E.D.Pa.), AUSA Manisha Sheth [redacted]

On April 26, 2007, Martin Schneider pleaded guilty to charges stemming from his importing hundreds of Sperm whale teeth from England into the U.S. The teeth had been extracted from Sperm whales illegally hunted and killed by fishing fleets. Schneider pleaded guilty to Lacey Act, Endangered Species Act, and Marine Mammal Protection Act violations, as well as to two smuggling charges.

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. Lewis Eisenberg, Schneider's customer, also pleaded guilty to Lacey Act, Endangered Species Act, and Marine Mammal Protection Act violations for the purchase of the whale teeth.

Both defendants are scheduled to be sentenced on July 25, 2007. 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.

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

July 2007

EDITORS' NOTE:

DAVID UHLMANN, THE CHIEF OF THE ENVIRONMENTAL CRIMES SECTION FOR THE LAST SEVEN YEARS, HAS LEFT THE DEPARTMENT TO ESTABLISH AN ENVIRONMENTAL LAW PROGRAM AT THE UNIVERSITY OF MICHIGAN LAW SCHOOL. AS A MEMBER OF THE SECTION FOR THE PAST 17 YEARS, DAVID WILL BE GREATLY MISSED.

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 also 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 at http://www.regionalassociations.org.

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

AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
S.D. Alaska	United States v. Michael Sofoulis United States v. Michael Zacharof [redacted]	*Walrus Ivory Sales*/Conspiracy, Marine Mammal Protection Act, Lacey Act, False Statement *Seal Parts*/ Marine Mammal Protection Act [redacted]
C.D. Calif.	United States v. Santa Maria Refining Company	*Oil Refinery Waste*/ Safe Drinking Water Act, False Statement
E.D. Calif.	United States v. Artemios Maniatis	*Vessel*/ Conspiracy, APPS, False Statement, Obstruction
N.D. Calif.	[redacted] United States v. Jeffery Diaz	[redacted] *Predatory Bird Egg Sale*/ Smuggling, False Statement
D. Conn. (multi-district)	United States v. Ionia Management S.A.	*Vessel*/ APPS, False Statement, Obstruction
[redacted]	[redacted]	[redacted]
D. Idaho	United States v. Krister Evertson	*Sodium Borohydride Manufacture*/ HMTSA, RCRA
W.D. Ky.	United States v Canal Barge Company, Inc.	*Vessel*/ Conspiracy, Ports and Waterways Safety Act, Clean Water Act
D. Md.	United States v. Terrance Yates	*Abandoned Asbestos Waste*/ False Statements
[redacted]	[redacted]	[redacted]
D.N.J.	United States v. Fernando Magnaye	*Vessel*/ False Statement, Obstruction
S.D. N.Y.	United States v. Nicholas Miritello	*DEP Employee*/ False Statement

Districts	Active Cases	*Case Type* / Statutes
E.D. Pa.	United States v. Branko Lazic United States v. Randall Cone	*Asbestos Abatement Elementary School*/ Clean Air Act *Abandoned Asbestos*/ Clean Air Act
W.D. Pa.	United States v. Barry McMaster	*Tiger Skin Sale*/ Endangered Species Act
E.D. Tex.	United States v. Spindletop Drilling Company	*Oil Drilling Company*/ MBTA
S.D. Tex.	United States v. Citgo Petroleum Corporation	*Oil Refinery*/ Clean Air Act, MBTA
[redacted]	[redacted]	[redacted]

Additional Quick Links

Significant Opinions

8th Circuit

United States v. Spare-Addo, 486 F.3d 414 (8th Cir. 2007)

Defendant Spare-Addo was employed at Prime Plating, a small metal plating business in Minnesota. An investigation revealed that Prime Plating was bypassing its pretreatment system and discharging untreated liquid industrial waste directly into the public sewer system. Spare-Addo was convicted of eight counts of violating, or aiding and abetting the violation of, the Clean Water Act (Counts 2-9). He was acquitted of several additional counts, including one count of knowingly introducing or aiding and abetting the introduction of a pollutant into the sewers that he knew or reasonably should have known could cause personal injury and property damage, in violation of 33 U.S.C. § 1319(c)(2)(B) (Count 10).

On appeal, Spare-Addo asserted that his convictions on Counts 2-9 could not stand in light of the acquittal on Count 10. Specifically, he claimed that because he was acquitted on Count 10 -- a

charge that included an aiding and abetting option -- the jury must have found that he personally discharged the pollutants in Counts 2-9, as opposed to aided and abetted the discharge. Because the government did not present evidence that Spare-Addo personally discharged the pollutants, he argued that his convictions should be reversed due to insufficient evidence.

The Eighth Circuit affirmed Spare-Addo's convictions, holding that the verdicts were not inconsistent as Count 10 contained an additional element of knowledge that the pollutant could cause personal injury or property damage. Consequently, the fact that he was acquitted of another charge involving aiding and abetting was immaterial to his convictions on Counts 2-9.

District Court

United States v. Miller, 484 F. Supp. 2d 154 (D. Me. 2007)

Defendant Miller was charged in a one count indictment with unlawful transportation of hazardous waste without a manifest, in violation of 42 U.S.C. § 6928(d)(5). The conduct giving rise to the charge occurred in 2002 and the defendant was not indicted until 2006. A potential defense witness – the individual in charge of the clean-up at issue – died in 2003 without having been interviewed by law enforcement. The defendant brought a motion to dismiss, alleging prejudicial pre-indictment delay in violation of her Fifth Amendment due process rights. The district court denied the motion on the grounds that the defendant failed to establish that the government engaged in intentional delay for tactical reasons.

Trials

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 June 27, 2007, a jury convicted the defendants on two Clean Air Act violations and acquitted on two other CAA violations. The remaining five Migratory Bird Treaty Act violations will be tried separately.

Citgo Petroleum Corporation, its subsidiary, Citgo Refining and Chemicals Co., and Philip Vrazel, the environmental manager at its Corpus Christi, Texas, East Plant Refinery, were charged in a ten-count indictment in August 2006 with Clean Air Act and the Migratory Bird Treaty Act violations. 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 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 also is charged with operating with more than seven megagrams of benzene in its exposed waste streams in 2001.

The indictment further 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 Texas Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, the Federal Bureau of Investigation, the Texas Parks and Wildlife Division, and the Texas Commission on Environmental Quality.

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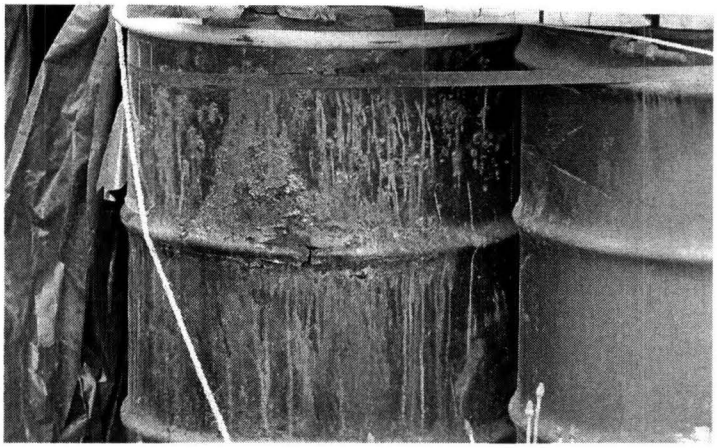
United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted], AUSA Michelle Mallard [redacted] and ECS Paralegal Claire Martirosian [redacted]

On June 19, 2007, Krister Evertson, a.k.a. "Krister Ericksson", was convicted by a jury on all counts.

Evertson, the owner and president of SBH Corporation, was charged in September 2006 with violating the Hazardous Materials Transportation Safety Act and with two RCRA storage and disposal violations.



Corroded drum

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.

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 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. The EPA ultimately spent over $500,000 on the cleanup of, and response to, Evertson's abandonment of the hazardous waste.

Sentencing is scheduled for August 28, 2007. 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.

[redacted]

United States v. Artemios Maniatis et al., No. 2:07-CR-00024 (E.D. Calif.), ECS Assistant Chief Kris Dighe [redacted] ENRD Attorney John Irving [redacted] and AUSA Robert Tice-Raskin [redacted]

On June 5, 2007, defendants Athenian Sea Carriers, Ltd. ("ASC"), and chief engineer Artemios Maniatis were acquitted of all charges. Defendant Dimitrios Georgakoudis' trial, which previously was severed, will begin on September 24, 2007.

ASC, the operator of the *M/T Captain X Kyriakou*, Maniatis, and first engineer Georgakoudis were variously charged in a seven-count indictment with conspiracy to violate APPS, false statements, obstruction and destruction of evidence, and substantive violations of the same statutes stemming from the routine illegal discharge of sludge and waste oil from the vessel.

Investigation began during the fall of 2006 when a crew member informed the Coast Guard National Response Center that he was routinely ordered to discharge oil overboard. Coast Guard inspectors subsequently discovered a bypass pipe and evidence that these illegal discharges had not been recorded in the vessel's oil record book. The crew member also alleged that the oil content meter had been "tricked" to allow oily bilge waste to be discharged directly overboard. Further evidence indicated that portions of the bypass pipe had been incinerated or thrown overboard with some crew members falsely stating that they were unaware of the illegal discharges. The defendants also were alleged to tried to coerce a subordinate crew member to not reveal the violations to inspectors.

This case was investigated by the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Coast Guard Pacific JAG Office.

Indictments

United States v. Barry McMaster, No. 07-CR-00247 (W.D. Pa.), AUSA Luke Dembosky [redacted]

On June 27, 2007, Barry McMaster, was charged with two misdemeanor Endangered Species Act violations for offering for sale, and causing the shipment of, an endangered species in interstate commerce.

On or about November 12, 2004, McMaster is alleged to have offered a tiger skin for sale in interstate commerce and then caused the skin to be shipped in interstate commerce on or about December 14, 2004.

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

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United States v. Ionia Management S.A. et al., Nos. 3:07-CR-00134, 07-CR-60147, 07-CR-0043, 1:07-CR-00496 (D. Conn., S.D. Fla., E.D.N.Y., D.V.I.), ECS Trial Attorneys Malinda Lawrence [redacted] and Jim Nelson [redacted] ECS Senior Counsel Rocky Piaggione [redacted] Supervisory AUSA Anthony Kaplan [redacted] and AUSAs William Brown [redacted] Taryn Merkl [redacted] and Tom Watts FitzGerald [redacted]

On June 20, June 14, and June 7, 2007, Ionia Management S.A. ("Ionia"), a Greek company that manages a fleet of tanker vessels, was charged in four districts for its role in the overboard dumping of waste oil from the *M/T Kriton* into international waters and falsification of records to impede the United States Coast Guard and other authorities from learning of the illegal conduct. The ship's second engineer, Edgardo Mercurio, also is charged.

The indictments, returned in Connecticut, Florida, New York, and the Virgin Islands, charge Ionia Management and Mercurio with falsifying records to conceal the illegal discharge of waste oil, and using and presenting false oil record books to the Coast Guard during port inspections. Mercurio is additionally alleged to have encouraged other crew-members to lie to the Coast Guard about the violations. Ionia was on probation in the Eastern District of New York for a similar case in 2004 at the time of these new charges.

These cases were investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Nicholas Miritello, No. 7:07-mj-00894 (S.D.N.Y.), AUSA Anne Ryan [redacted]

On June 6, 2007, Nicholas Miritello, an employee of the New York City Department of Environmental Protection ("NYDEP"), was arrested on a complaint charging 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.

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.

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 June 6, 2007, an indictment was returned charging Canal Barge Company, Inc. ("CBC"), port captain Paul Barnes, captain Jeffrey Scarborough, and pilot Randolph Martin with conspiracy and violations of the Ports and Waterway Safety Act and the Clean Water Act.

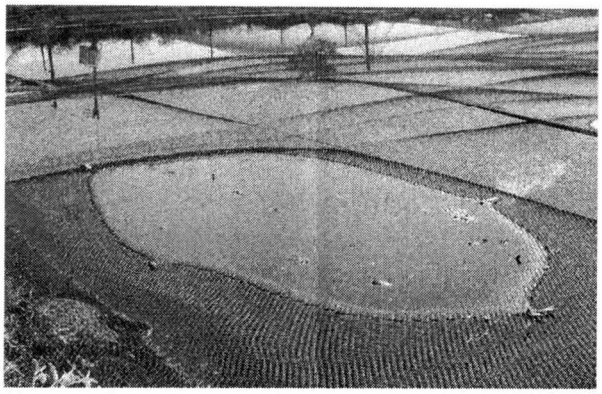
The indictment states that on or about June 16, 2005, CBC Barge 222 had a benzene leak while on the Ohio River and did not report the leak (or hazardous condition) to the United States Coast Guard. The defendants are further alleged to have concealed the leak by patching it up and then transferred the 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.

Trial is scheduled to begin on August 27, 2007.

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

Pleas / Sentencings

United States v. Spindletop Drilling Company, No. 5:07-CR-00016 (E.D. Tex.), AUSA Jim Noble [redacted]



Damaged net

On June 26, 2007, Spindletop Drilling Company pleaded guilty to a misdemeanor violation of the Migratory Bird Treaty Act.

On September 6, 2006, U.S. Fish and Wildlife agents inspected the company's "Pewitt D" lease in rural Titus County. The inspection led to the discovery of approximately twelve dead Northern Mockingbirds and one dead Mourning Dove in an oil sludge pit on the property. While Spindletop had originally covered the pit with a net to prevent such an occurrence, over time portions of the net had sunk below the surface.

At the time of the plea, the company offered photographs and testimony demonstrating that it already had made the necessary repairs to the netting over the oil sludge pit and was implementing additional compliance mechanisms to avoid any future incidents.

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

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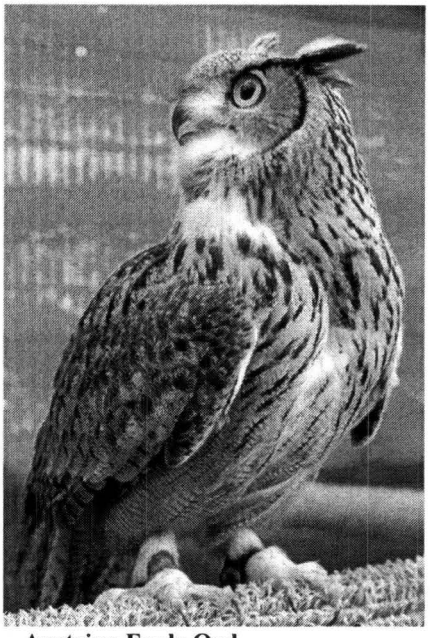
United States v. Jeffery Diaz, No. 06-CR-0050 (N.D. Calif.), ECS Senior Trial Attorney Bob Anderson [redacted] **and AUSA Michael Nerney** [redacted].



Austrian Eagle Owl

On June 25, 2007, Jeffrey Diaz was sentenced to pay a $5,000 fine and serve 21 months' imprisonment, followed by three years of supervised release. The court agreed with the government that the value of the 12 Austrian Eagle Owls eggs smuggled by the defendant was most likely the value of the live birds that a competent breeder could have hatched from the eggs, figuring a 70% hatch rate. This owl is listed as endangered, with a retail value of several thousand dollars per bird.

Diaz pleaded guilty in November of last year, on the eve of trial, to two felony smuggling counts and two felony false statement counts for smuggling the eggs in 2005 and then lying about it on customs forms and elsewhere.

At the sentencing hearing the government also presented undisputed testimony that the smuggling of fertile eggs into the U.S. from Austria without the required quarantine period posed a tangible threat of disease transmission to humans, including the bird flu. Substantial economic harm in the form of Exotic Newcastles Disease also could be caused, destroying commercial

poultry flocks and causing a ban on poultry exports, as has happened in the past.

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

United States v. Michael "Richard" Zacharof, No. 3:07-CR-00026 (D. Alaska), AUSA Aunnie Steward [redacted].

On June 19, 2007, Michael Zacharof pleaded guilty to a violation of the Marine Mammal Protection Act for illegally selling genitalia from northern fur seal, a depleted species, to be re-sold in a Korean gift shop.

Zacharof is an Alaska native who illegally sold marine mammal parts in June 2005. Specifically, he sold more than 100 raw seal genitalia also known as "oosiks" to be re-sold at a Korean gift shop in Anchorage, Alaska, for approximately $100 a piece. The defendant was the president of the Aleut Community of St. Paul Island Tribal Government. He also was the co-signatory with the National Marine Fishery Service on the agreement for cooperation in the conservation of the northern fur seals in 2000. Marine mammal parts are illegal to sell unless they have been converted into an authentic native handicraft by a Native Alaskan.

Sentencing is scheduled for October 7, 2007. This case was investigated by the National Marine Fisheries Service.

United States v. Fernando Magnaye, No. 3:07-CR-00077 (D.N.J.), ECS Senior Counsel Claire Whitney [redacted] and AUSA Brad Harsch [redacted]

On June 12, 2007, chief engineer Fernando Magnaye was sentenced to serve five months in prison and was ordered to pay a $3,000 fine for his role in attempting to cover up illegal discharges of oil sludge and oil-contaminated bilge waste on board the *M/T Clipper Trojan.* At sentencing, the court made a point of stating that the violation in this case was "serious."

The defendant pleaded guilty in February 2007 to charges of presenting a false document to Coast Guard inspectors and to attempting to obstruct a Coast Guard inspection in an effort to conceal the ship's illegal discharges of oil sludge and oil-contaminated bilge waste overboard into the ocean.

Magnaye presented the ship's oil record book ("ORB") to inspectors on June 15, 2006, in Port Newark, New Jersey, falsely stating that the book was accurate. Magnaye knew that, from January through June 2006, there were illegal discharges of oil sludge and contaminated bilge waste that were not recorded in the ORB. Additionally, Magnaye asked the ship's fourth engineer to ensure that the Coast Guard would take a false reading of the contents of the ship's bilge sludge oil tank. Magnaye did so because an accurate reading of the tank's contents might have exposed the false entries in the ORB.

This case was investigated by the United States Coast Guard.

United States v. Terrance Yates, No. 8:07-CR-00202 (D. Md.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Gina Sims [redacted]

On June 11, 2007, Terrance Yates pleaded guilty to an information charging him with making false statements on a report submitted to the U.S. EPA in connection with the improper disposal of asbestos-containing waste materials.

Trailer with abandoned RACM

Yates owned and operated Hazport Solutions, Inc., which contracted with asbestos abatement companies to transport regulated asbestos-containing material ("RACM") from asbestos abatement sites to authorized landfills. Between August 2004 and July 2006, Yates contracted with at least five hazardous waste removal companies to transport between 12 and 17 trailers full of RACM from locations in Maryland, Virginia, and the District of Columbia to an EPA-approved landfill in Pennsylvania. Instead of transporting the waste to the approved landfill, however, the defendant took the trailers to a lot in Severn, Maryland, where he left them for more than a year until they were discovered by law enforcement. Some of the bags containing asbestos had been damaged, and loose asbestos-containing debris was found in the trailers.

Yates subsequently returned waste shipment records to the companies that had paid for the proper disposal, falsely certifying that the waste had been disposed of at the Pennsylvania landfill.

The clean-up of the abandoned trailers cost approximately $57,000. Sentencing is scheduled for September 17, 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Maryland Department of the Environment.

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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 June 11, 2007, Branko Lazic, owner of Bilaz, Inc., pleaded guilty 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.

Sentencing is scheduled for October 1, 2007. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Pennsylvania Attorney General's Office.

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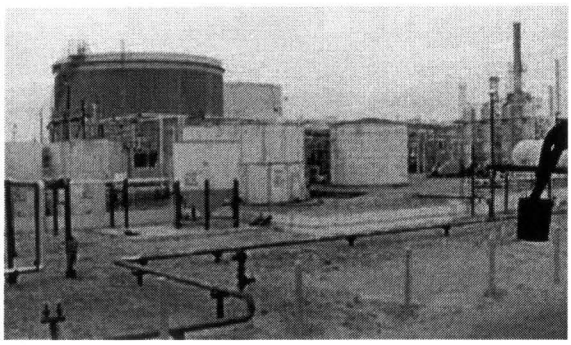
United States v. Santa Maria Refining Company, No. 2:07-CR-00277-279, 281 (C.D. Calif.), AUSAs David Willingham [redacted] and Dorothy Kim [redacted]



Santa Maria Refinery

On June 11, 2007, the Santa Maria Refining Company ("SMRC"), a subsidiary of Greka Energy Corporation, was sentenced as a result of violating the Safe Drinking Water Act and for making false statements. SMRC was sentenced to pay a $1 million fine, with $500,000 of the fine to be paid toward the Los Padres National Forest Restoration Project. The company also will complete a three-year term of probation, pay $15,500 in restitution to EPA, and must implement an environmental compliance program.

In April 2004, EPA began investigating allegations that officials at the Greka Energy ("Greka") facility in Santa Maria, California, were knowingly and routinely discharging oil refinery waste into Class II underground injection wells that are only to be used for brine separated from crude oil during the refining process. These officials were also believed to have lied to the EPA and to the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources, about this practice. The company pleaded guilty in April of this year to intentionally pumping contaminated wastewater generated during the refining process into wells that were not permitted for that use. SMRC also pleaded guilty to a false statement violation after admitting that one of its managers had lied to EPA in an effort to convince the agency that it was not injecting the wastewater into the ground for disposal purposes.

Three employees, Robert Thompson, Edward Stotler and Brent Stromberg, also pleaded guilty in April to making false statements to the EPA, denying that they had knowledge of the illegal wastewater discharges into the injection wells. They are scheduled to be sentenced on October 4, 2007.

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

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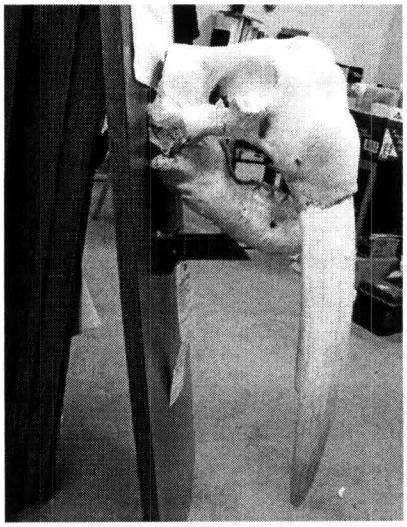
United States v. Michael Sofoulis et al., No. 1:06-CR-00004 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] and SAUSA Todd Mikolop [redacted]

On June 4, 2007, Michael Sofoulis was sentenced to serve six months' incarceration, followed by one year of supervised release. He also must pay a $15,000 fine plus $5,000 in restitution to the state of Alaska. Sofoulis pleaded guilty to a misdemeanor violation of the Marine Mammal Protection Act for his involvement in a scheme to sell walrus headmounts made from tusks and skulls beach-collected by co-defendant Frederick Reynolds, who falsified the registration documents. Reynolds pleaded guilty in May of this year to conspiracy to violate the Lacey Act, Marine Mammal Protection Act, and to make false statements.



Walrus headmount

The defendants were charged in September 2006 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 beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration or tagging. The ivory also subsequently may be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

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. He further

used tagging gear owned by his mother-in-law to sell the ivory (configured as "headmounts") for $1,000 or more 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.

Reynolds is scheduled to be sentenced on September 17, 2007. This case was investigated by the United States Fish and Wildlife Service.

[redacted]

United States v. Randall Cone, No. 2:07-CR-00074 (E.D. Pa.), SAUSA Martin Harrell [redacted]

On May 31, 2007, former asbestos contractor Randall Cone was sentenced to complete a five-year term of probation, four months of which will be served as home confinement. He was further ordered to pay a $500 fine and $18,000 in restitution.

Cone pleaded guilty in February 2007, to a one-count information charging him with a Clean Air Act violation in connection with the transportation of asbestos waste in 2000.

In 2000 Cone was the owner and operator of R. Cone Environmental Services, Inc. He was hired in the spring of 2000 to remove and dispose of asbestos-containing material from a building in Philadelphia that was being converted into a charter school. Cone then hired an individual to transport this material for disposal, but it eventually was abandoned in a semi-trailer at a parking lot in New Jersey. The material was discovered in 2005 by a company that was redeveloping the property in Camden, New Jersey, which subsequently paid approximately $18,000 to dispose of the asbestos waste and trailer.

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

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CORRECTION: Regarding the summaries of the *Fleet Management* and *Frank Coe* vessel prosecutions noted in the June edition, we neglected to credit the United States Environmental Protection Agency Criminal Investigation Division for its contribution to those investigations.

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 2007

ANNOUNCEMENT:

Stacey Mitchell Appointed Chief of the Environmental Crimes Section

Acting Assistant Attorney General of the Environment and Natural Resources Division Ronald Tenpas has named Stacey Mitchell to head up the Environmental Crimes Section. Stacey joined ECS as a Trial Attorney in 1998, and most recently served as an Assistant Chief. Prior to joining ECS, Ms. Mitchell, after receiving an environmental law certificate from the Tulane University School of Law, Stacey worked as an Assistant District Attorney in the New York County District Attorney's Office.

During her tenure at ECS, Ms. Mitchell has successfully prosecuted a wide variety of environmental crimes cases throughout the nation. She also has chaired and sat on a number of Department of Justice committees, worked

AT A GLANCE

SIGNIFICANT OPINIONS

- **United States v. W.R. Grace, 2007 WL 2003307 (9th Cir. July 12, 2007).**
- **United States v. Kassian Maritime Navigation Agency, Ltd., et al. No. 3:07-CR-48-J-25 (M.D. Fla., July 19, 2007).**
- **United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.).**
- **United States v. Ionia Management S.A. et al., ___ F.Supp. 2d ___, 2007 WL 2181898 (D. Conn. July 30, 2007).**

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. Alan Veys	*Bear Hunting*/ Lacey Act, Conspiracy
S.D. Calif.	United States v. San Diego Gas and Electric	*Asbestos Abatement*/ Clean Air Act, False Statement
S.D. Fla.	United States v. Stanley Saffan United States v. David Sparandara United States v. Alexander Alvarenga-Freire United States v. Genesis Petroleum, Inc.	*Illegal Billfish Harvest*/ Lacey Act, Wire Fraud, Obstruction, Conspiracy *Bengal Cats*/ Endangered Species Act *Illegal Coral Harvesting*/ Lacey Act *Fuel Theft*/ Hazmat, Stolen Property, Conspiracy
N.D. Ga.	United States v. Acuity Specialty Products	*Chemical Plant Discharges*/ Clean Water Act
D. Idaho	United States v. Gary Lehnherr	*Illegal Mule Deer Hunt*/ Lacey Act
D. Mass.	United States v. Michael Zak	*Bald Eagle Shooting*/ Bald and Golden Eagle Protection Act, Migratory Bird Act
D. Md.	United States v. Patrick Brown	*Vessel*/ False Statement, Conspiracy
E.D. Mich.	United States v. Comprehensive Environmental Solutions Inc.	*Wastewater Treatment Facility*/ Clean Water Act, Obstruction, False Statement, Conspiracy
W.D. Mo.	United States v. Hulsing Hotels Missouri, Inc.	*Asbestos Abatement*/ Clean Air Act
S.D. Tex.	United States v. CITGO Petroleum, Inc. United States v. Overseas Shipholding Group	*Oil Refinery*/ Clean Air Act, Migratory Bird Treaty Act *Multi-District Vessel*/ APPS, Obstruction, False Statement, Clean Water Act, Conspiracy
D.V.I.	United States v. Dylan Starnes	*Asbestos Abatement*/ Clean Air Act, False Statement
W.D. Wash.	United States v. Calypso Maritime Corporation	*Vessel*/ APPS, False Statement

Additional Quick Links

Significant Opinions

9th Circuit

United States v. W.R. Grace, 2007 WL 2003307 (9th Cir. July 12, 2007).

On July 12, 2007, the Ninth Circuit reversed the district court's orders that prevented the government from calling witnesses not appearing on a witness list submitted over one year before trial and that also prevented the government's expert witnesses at trial from relying on newly discovered or developed studies. The Court first held that,de spite the government's "belated and reluctant" showing of the materiality of the excluded witnesses and studies, it would exercise jurisdiction over the interlocutory appeal under 18 U.S.C. § 3731. The Court then stated that the district court had no authority under Rule 16 to order the government to provide a witness list in advance of trial and, therefore, held that the district court erred by precluding the government from calling witnesses not appearing on the witness list. The Court also held, with respect that to the excluded studies, that the district court failed to articulate a legitimate basis for their exclusion, and it remanded for further proceedings. Judge Wallace wrote a separate concurrence, calling for the *en banc* court to revisit the Ninth Circuit's additional showing of materiality requirement under 18 U.S.C. § 3731.

Districts

United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.)

In a powerfully written, 268-page memorandum opinion, Judge Cooper denied a wide-ranging series of defense motions, including allegations of prosecutorial misconduct and numerous challenges

to the verdict. The opinion, filed on August 2, 2007, was noteworthy not only for its length, but also for the way the court meticulously described the evidence (and the inferences drawn from that evidence) supporting the verdicts. With respect to the defendants' motions for acquittal under Rule 29 and motions for a new trial under Rule 33, the court granted judgments of acquittal on Count 2 (on which the jury did not reach a verdict) and Counts 21 and 33 (Clean Water Act counts), but otherwise upheld the jury's verdict on the 30 other counts of conviction against the company and numerous other counts against the four convicted managers. Specifically, the court found sufficient evidence for the five-object conspiracy count, four false statement counts, four obstruction of justice counts, 20 Clean Water Act counts, and one Clean Air Act count. Judge Cooper also devoted 85 pages of her opinion to rejecting the defendants' *mens rea* arguments, which included a thorough analysis of the mental state requirements of the Clean Water Act and Clean Air Act in support of her refusal to grant the defendants' proposed instruction on recklessness.

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United States v. Ionia Management S.A. et al., ___ F.Supp. 2d ___,2007 WL 2181898 (D. Conn. July 30, 2007).

On July 30, 2007, in a vessel pollution case the government prevailed on a "*Jho*" motion to dismiss for lack of jurisdiction over criminal offenses relating to a falsified oil record book. Relying upon *United States v. Petraia Maritime, Inc.*, 483 F. Supp. 2d 34 (D. Me. 2007), and *United States v. Royal Caribbean Cruises, Ltd.*, 11 F. Supp. 2d 1358 (S.D. Fla. 1998), the court held that international law did not apply because the maintenance and presentation of a falsified oil record book in a U.S. port was essentially a domestic law violation over which the United States has criminal jurisdiction. The court went on to say that, even if international law applied, the concurrent jurisdiction provision of MARPOL allowed the United States to prosecute the defendants.

The court also denied the defendant's motion to dismiss charges related to the oil record book under the Paperwork Reduction Act, which bars penalties for failure to comply with regulatory information collection requests that have not been properly approved by the Office of Management and Budget. Relying upon *United States v. Jho*, 465 F. Supp. 2d 618 (E.D. Tex. 2006), and *United States v. Kassian Maritime*, No. 07-CR-00048-J-25 (M.D. Fla. July 19, 2007), the Court held that the maintenance of a valid oil record book was not a mere regulatory requirement because Congress had incorporated MARPOL into United States law. The Paperwork Reduction Act, therefore, does not bar prosecution in this case.

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United States v. Kassian Maritime Navigation Agency, Ltd., et al. No. 3:07-CR-48-J-25 (M.D. Fla., July 19, 2007)

On July 19, 2007, in a vessel pollution case the government prevailed on defendant's motion to dismiss based upon, *inter alia*, the Paperwork Reduction Act and lack of jurisdiction where discharges and false entries are made in international waters. A similar argument was made in *United States v. Jho*, 465 F. Supp. 2d 618 (E.D. Tex. 2006), *appeal docketed*, No. 06-41749 (5th Cir. Dec. 21, 2006), wherein the court dismissed charges under international law. The government is appealing the *Jho* decision to the Fifth Circuit and has successfully defended against similar arguments in several recent cases. See *United States v. Petraia Maritime, Inc.*, 483 F. Supp. 2d 34 (D. Me. 2007); *United States v. Oleg Kiselyov*, No. 2:07-CR-9-F3 (E.D. N.C. July 19, 2007); and *United States v. Ionia Management S.A. et al.*, ___ F. Supp. 2d ___, 2007 WL 2181898 (D. Conn. July 30, 2007).

Regarding jurisdiction, the court relied upon *Petraia* and *United States v. Royal Caribbean Cruises, Ltd.*, 11 F. Supp. 2d 1358 (S.D. Fla. 1998), and reasoned that international law did not apply because the defendants were charged with unlawful maintenance and presentation of a falsified oil record book in a port of the United States. Since this conduct occurred within the territory of the United States, the court held that the government had criminal jurisdiction to prosecute the offenses. In response to the defendant's argument that the indictment failed to charge a crime, the court also held that 33 C.F.R. § 151.25, which requires ships to "maintain" an oil record book within U.S. territory, requires the oil record book to be valid and complete. Thus, "a Defendant violates the law if while in a U.S. port, the book fails to disclose any relevant discharges, where ever they may have occurred." *Kassian Maritime Navigation, slip op.* at 12.

The court also denied the defendant's motion to dismiss charges related to the oil record book under the Paperwork Reduction Act ("PRA"), which bars penalties for failure to comply with regulatory information collection requests that have not been properly approved by the Office of Management and Budget. Finding no support for the defendant's assertion that a statute that expressly incorporates an international protocol into United States law is equivalent to a mere regulation for PRA purposes, the court found that the PRA did not bar prosecution in this case. In a similar case, another court subsequently relied in part upon this reasoning to hold that the maintenance of a valid oil record book was not a mere regulatory requirement because Congress had incorporated MARPOL into United States law; therefore, the Paperwork Reduction Act did not bar prosecution. *Ionia* at 22, (D. Conn. July 30, 2007).

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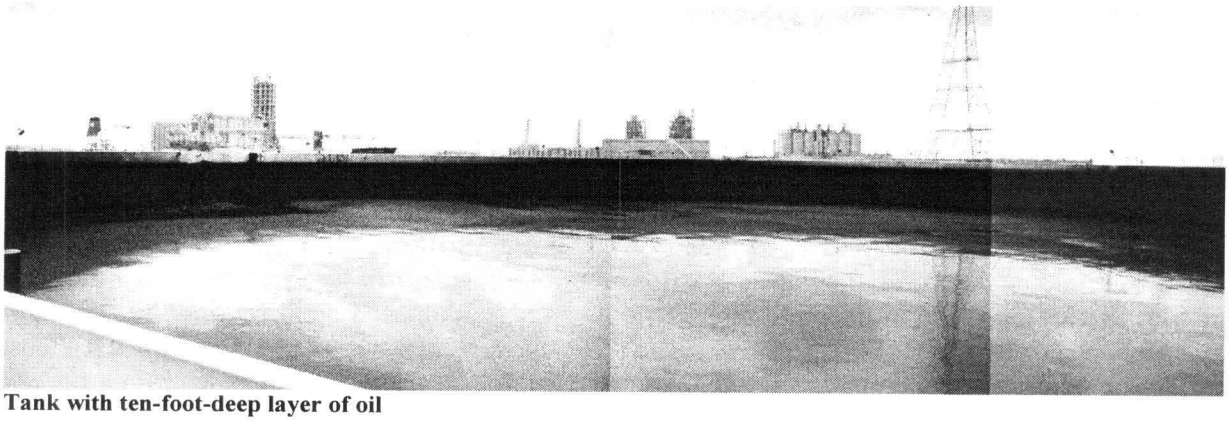
Trials

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] SAUSA William Miller [redacted] and contract paralegal Peggy Ament [redacted]



Tank with ten-foot-deep layer of oil

On June 27, 2007, a jury convicted CITGO Petroleum Corporation ("CITGO Petroleum") and CITGO Refining and Chemicals Company ("CITGO Refining") of two Clean Air Act violations for operating two very large open top tanks that contained oil without installing the proper emission

controls. The tanks were used as oil-water separators,but were not equipped with either a fixed-roof or a floating-roof or were not vented to a control device. The oil-water separators upstream of the tanks never worked to remove the oil from the wastewater before the oil entered the tanks. The defendants knew years before the two tanks went into operation that the upstream oil-water separators did not work. Internal CITGO documents established that the refinery engineer and members of the refinery and corporate environmental offices recommended placing emission controls on the tanks during the construction phase. The engineer noted that the upstream oil-water separators were inadequate and that the tanks would have oil "feet deep" on the surface. CITGO operated the two tanks, which were approximately the size of foot ball fields, 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 exposed to the atmosphere. On July 17, 2007, CITGO Refining was further found guilty of three misdemeanor criminal violations of the Migratory Bird Treaty Act ("MBTA") stemming from the fact that these tanks attracted migratory birds that became trapped in the oil. Phillip Vrazel was acquitted of all five MBTA counts.

CITGO Petroleum, its subsidiary, CITGO Refining, and Vrazel, the environmental manager at its Corpus Christi, Texas, East Plant Refinery, were variously charged in a ten-count indictment with CAA and MBTA violations. 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 companies were acquitted on the counts charging benzene emissions violations.

The tanks attracted migratory birds, many of which were killed (including four cormorants, five pelicans, and 20 ducks) after they landed in the tanks. As a result, CITGO Refining and Vrazel were charged with an additional five counts of violating the MBTA. A false statement count, which the court severed from the other violations, remains to be tried. Counsel is awaiting a ruling by the court on the defendants' motion to dismiss this count. If it is not dismissed, the trial will go forward against CITGO Petroleum, CITGO Refining, and Vrazel on the false statement count.

Sentencing has been scheduled for October 18, 2007, for the CAA and MBTA convictions. This case was investigated by the Texas Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division, the United States Fish and Wildlife Service, the Federal Bureau of Investigation, Texas Commission on Environmental Quality and the Texas Parks and Wildlife Division.

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United States v. San Diego Gas and Electric et al., No. 3:06-CR-00065 (S. D. Calif.), ECS Senior Trial Attorney Mark Kotila [redacted] and AUSA Melanie Pierson [redacted]

On July 13, 2007, a jury convicted San Diego Gas and Electric Company ("SDG&E") on three Clean Air Act ("CAA") NESHAP counts and one false statement count. The violations stem from the illegal removal of regulated asbestos-containing materials at SDG&E's gas holding facility. The court dismissed the conspiracy charge pursuant to a Rule 29 motion.

Environmental specialist David Williamson and contractor Kyle Rhuebottom were each 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 the asbestos.

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

Indictments

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]

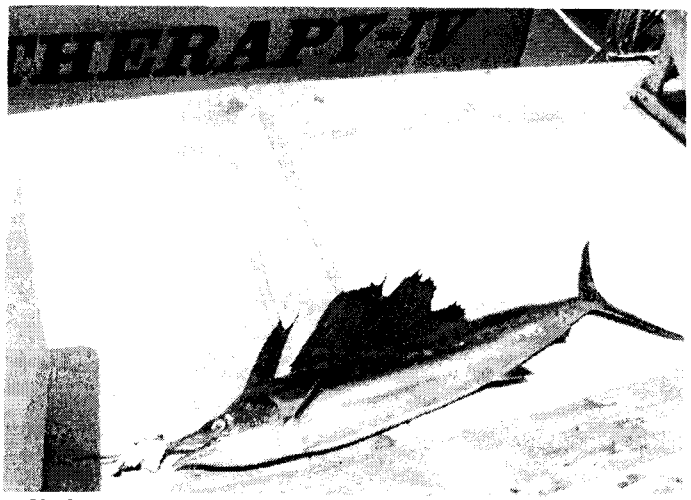
On July 26, 2007, Patrick Brown was charged with conspiracy and five counts of making and using false writings and documents. Brown was the chief engineer of the *M/V Fidelio* from 1994 to 2004. The *Fidelio* was operated by Pacific Gulf Marine ("PGM") from 2001 to 2004. On March 29, 2003, while the relief chief engineer Frank Coe was aboard, the Coast Guard discovered a bypass pipe filled with oil under the deck plates on the ship. Coe and another chief engineer, Deniz Sharpe, previously pleaded guilty to similar charges. PGM was sentenced last August 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.

United States v. Stanley Saffan et al., No. 1:07-CR-20553 (S.D. Fla.), AUSA Tom Watts FitzGerald [redacted]

On July 20, 2007, Stanley Saffan, Sean Lang, Brian Schick, and Adam Augusto were arrested on an indictment variously charging them with conspiracy, wire fraud, obstruction of justice, and fisheries offenses for their illegal harvesting and landing of billfish. Ralph Pegram, Therapy Charter Fishing Yacht, Inc., and Duchess Charter Fishing Yacht, Inc., also are named in the indictment.

According to the indictment, 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, the owner of both the corporations, were each



Undersized swordfish

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. Evidence further indicates 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.

When the contracts were undertaken, the anglers were given false information and were not told, among other things, that permits were required by the defendants to harvest billfish and that illegally undersized billfish would be harvested and landed. The defendants further concealed from their customers that the sailfish need not be killed and landed to secure what amounted to a mere replica mount constructed from artificial materials. The co-conspirators falsely claimed that the taxidermy company needed and would use parts of landed billfish in preparing the mounts for the anglers who paid for the fishing charters.

The wire fraud charges resulted from the defendants' practice of requiring credit card deposits of between $214 and $1,860 from the anglers while they were still aboard the charter boat. The processing of the credit card deposits involved interstate transmissions to secure authorization from the issuing institutions.

Saffan, Lang, and Schick are charged with an additional obstruction violation for concealing the illegal take of undersized sailfish. As part of an effort to mislead the investigators, Saffan also is alleged to have acquired, via the Internet, permits from National Oceanic and Atmospheric Administration ("NOAA") after the fish already had been taken and landed.

The government is pursuing the criminal forfeiture of both charter fishing vessels.

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.

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United States v. CESI et al., Nos. 07-CR-20030 and 20037 (E.D. Mich.), ECS Senior Counsel James Morgulec [redacted] and AUSA Mark Chutkow [redacted]

On July 12, 2007, a superseding indictment was returned against Comprehensive Environmental Solutions, Inc., ("CESI"). The indictment was superseded to change the statutory basis of three of the counts. The elements of the offenses charged in those counts and the underlying facts required to prove them remain substantially the same.

CESI, a business that operates a wastewater treatment and disposal facility, and three former employees are charged with Clean Water Act ("CWA") violations, conspiracy, making false statements and obstruction of justice in connection with illegal discharges of untreated liquid wastes from the facility.

The employees named in the indictment are Bryan Mallindine, the former president and CEO of CESI, who is charged with conspiracy, a CWA violation, and obstruction of justice; Michael Panyard, a former president, general manager, and sales manager for the company, who is charged with conspiracy, three CWA violations, and seven false statement charges; and Charles Long, a former plant and operations manager, is charged with conspiracy and a CWA violation. Former plant manager Donald Kaniowski, who pleaded guilty to a CWA violation for unlawfully bypassing treatment equipment and discharging untreated liquid wastes into the Detroit sanitary sewer system. He is scheduled to be sentenced on November 28, 2007.

According to the indictment, 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.

According to court records, although the facility's storage tanks were at or near capacity, the company continued to accept millions of gallons of liquid wastes which it 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. Trial is scheduled to begin on October 16, 2007.

The 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.

Pleas / Sentencings

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

On August 2, 2007, after an all-day sentencing hearing, Alan Veys was sentenced to serve one month of incarceration and five months' home detention followed by one year of supervised release. He was further ordered to pay $20,000 in fines and restitution stemming from his involvement in illegal black bear hunts. Veys pleaded guilty in March of this year to one misdemeanor count of negligently conspiring to violate the Lacey Act for conspiring with co-defendant James Jairell to transport in interstate commerce the trophy parts of black bears.

Veys, the operator of the Pybus Point Lodge on Admiralty Island, acting alone or with Jairell, recruited clients at sports shows to hunt bears at the Lodge in the spring and fall for approximately $4,000 per trip. The clients paid 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. The defendants falsified "sealing certificates" submitted to the state, which claimed the bears were killed on non-guided hunts, and then shipped the bear skins and skulls to the clients from Alaska.

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

United States v. David Sparandara, No. 1:06-CR-20627 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On July 27, 2007, David Sparandara was sentenced to pay a $1,500 fine and complete a five-year term of probation. He pleaded guilty in April of this year to a Lacey Act violation for the illegal sale and transportation from the Czech Republic to Miami of a live Asian Leopard Cat, an endangered species.

In January 2005, a Fish and Wildlife inspector in Texas was informed that the defendant and a Prague-based entity known as the European-American Consortium for Small Felines, for which the defendant is the director, were preparing to ship two Asian Leopard Cats to the United States. Investigation revealed that none of the parties possessed the required paperwork to legally import the

cats. Even when advised by law enforcement of the necessity to obtain these permits, Sparandara failed to do so and in fact re-routed one of the cats through the Miami International Airport in February 2005. Paperwork accompanying the animal indicated that it was being sold to the importer for in excess of $4,000. A subsequent effort by Sparandara in December 2005 to ship another cat into Miami led to the interception and seizure of the animal.

The Asian Leopard Cats are prized for their rarity and color pattern. They also have substantial commercial value in the pet trade due to their susceptibility to hybridization with domestic cats, which produces the "Bengal cat" pet species.

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

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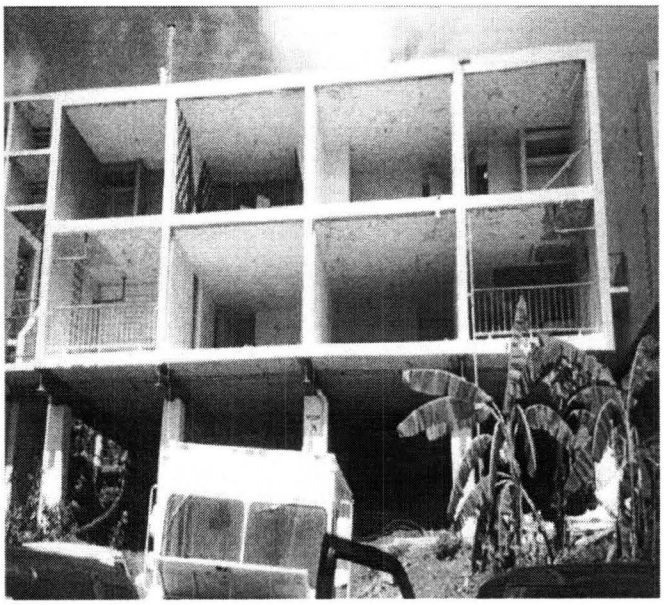
United States v. Dylan Starnes et al., No. 2003-20 (D. V. I.), ECS Chief Stacey Mitchell [redacted] ECS Trial Attorney Joseph Poux [redacted], and AUSA Major Coleman [redacted]

On July 27, 2007, Dylan Starnes was sentenced to serve 33 months' incarceration followed by three years' supervised release. A fine was not imposed.

Starnes and co-defendant Cleve-Allan George 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.



Apartment building

George and Starnes were hired by the Virgin Island 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 has been delayed due to George's filing for bankruptcy and because of his conflicts with a number of attorneys appointed to represent him. A sentencing date has not yet been scheduled for George.

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.

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United States v. Michael Zak et al., No. 3:06-CR-30011 (D. Mass.), AUSAs Kimberly West [redacted] and Kevin O'Regan [redacted]

On July 25, 2007, Michael Zak was sentenced to serve six months in a community corrections center as part of a five-year term of probation. He also must pay a $65,000 fine. Timothy Lloyd was sentenced to pay a $1,500 fine, complete a two-year term of probation and perform 200 hours of community service.

Zak was convicted during a bench trial in April 2007 of shooting and killing a bald eagle, in violation of the Bald and Golden Eagle Protection Act, and of violating the Migratory Bird Treaty Act ("MBTA"). Lloyd, Zak's employee and co-defendant, pleaded guilty in March 2007 to conspiring to violate the MBTA and to two substantive counts of violating the MBTA.

In 2005 investigators received information that Zak was suspected of unlawfully killing protected migratory birds that are natural predators of trout. An investigation documented the remains of approximately 279 great blue herons, six ospreys, one bald eagle, one red tailed hawk, and three unidentified raptors, all in various states of decay. Forensic examinations conducted on 10 of the great blue heron carcasses and on the bald eagle revealed that all had been killed by rifle shot. While conducting surveillance agents observed Zak fire a rifle in attempts to kill great blue herons and ospreys.

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

United States v. Gary Lehnherr et al., No. 1:07-CR-00008 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA George Breitsameter [redacted]

On July 23, 2007, Gary Lehnherr and Ronnie Gardner pleaded guilty to misdemeanor Lacey Act violations stemming from illegal mule deer hunting.

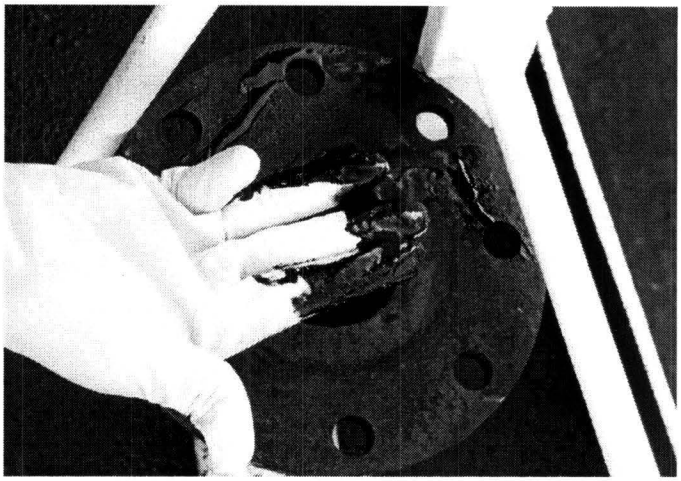
In October and November 2004 both hunters illegally killed mule deer and then made false statements to investigators concerning where and how the deer were killed. Specifically, they used a center fire rifle in a traditional muzzle-loading-only game management unit and then falsely told investigators they had killed the deer in a different hunt area. DNA from blood and hair found at the actual site was matched to DNA from the deer's antlers, proving the deer was shot there.

Investigators said the deer was so big it would have gone into the record books had it been taken with a traditional muzzleloader. The deer also had an extremely rare antler configuration.

Sentencing is scheduled for October 15, 2007. This case was investigated by the Idaho Department of Fish and Game and the United States Fish and Wildlife Service.

United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla.), ENRD John Irving [redacted] AUSA John Sciortino [redacted] and Senior Trial Attorney Richard Poole [redacted]

On July 23, 2007, the eve of trial, Greek-based shipping company Kassian Maritime Navigation Agency Ltd. ("Kassian") pleaded guilty to an APPS violation for maintaining a false oil record book. Kassian has agreed to pay a $1 million criminal fine, serve a 30-month term of probation, and pay $300,000 to fund community service projects through the United States Fish and Wildlife Foundation. In addition, the company will implement an environmental compliance program. Second engineer for the *M/V North Princess*, Spyridon Markou, pleaded guilty to making a false statement to the United States Coast Guard.



Oily bypass pipe

In March 2007 the defendants were charged in a three-count indictment with APPS, false statement, and obstruction violations. On or about November 20, 2006, after the ship was inspected by Coast Guard inspectors in Jacksonville, Florida, they found evidence that the company, through its employees, made false statements and used false documents during the course of the inspection by failing to maintain an accurate oil record book.

This case was investigated by the United States Coast Guard.

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United States v. Alexandre Alvarenga-Freire, No. 1:07-CR-20078 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On July 18, 2007, Alexandre Alvarenga-Freire was sentenced to serve ten months' incarceration followed by one year of supervised release. The defendant also forfeited his 1969 34-foot fiberglass-hulled Morgan sailing vessel as a result of the violations.

Alvarenga-Freire pleaded guilty in March of this year to a Lacey Act violation for the illegal harvesting and sale in interstate and foreign commerce of *Ricordia florida*, an invertebrate corallimorph (coral).

Ricordia florida are prized by aquarists for their varied coloration and the "natural" look they give to tank displays. Both federal and Florida law closely regulate the harvesting and sale of such marine life, requiring that a person who sells salt water marine-related wildlife such as this hold a state wholesale and retail license. Freire had none of the required permits or licenses.

In November 2006 two German nationals were intercepted at Miami International Airport attempting to export 500 specimens of *Ricordia florida* for sale through their business in Dusseldorf, Germany. They admitted to investigators that they had been involved with Freire in harvesting the marine life while aboard his vessel, east of Cudjoe Key in Monroe County. Their description made clear the activity had occurred in the Florida Keys National Marine Sanctuary.

Investigators placed a Global Positioning System tracking device on the boat and monitored its location through January 25, 2007, at which point Freire was arrested at Cudjoe Key Marina returning from the Sanctuary with a load of 400 specimens of *Ricordia florida*. The tracking device placed the harvesting location within the Sanctuary, confirming the information from the German nationals. Further confirmation was acquired by having an Immigration and Customs Enforcement aircraft conduct an overflight of the vessel during the three-day harvesting trip prior to Freire's arrest.

The Sanctuary is a highly-valued 2,800 square nautical mile area that surrounds the entire archipelago of the Florida Keys and includes the productive waters of Florida Bay, the Gulf of Mexico, and the Atlantic Ocean. It is home to unique and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive coral reefs. The cost to remediate the damage caused by the defendant's removal of the coral from the seabed is estimated to exceed $78,000.

This case was investigated by the United State Fish and Wildlife Service, the National Oceanic and Atmospheric Administration Office for Law Enforcement, the Florida Fish and Wildlife Conservation Commission, Immigration and Customs Enforcement, and NOAA's National Marine Sanctuary Program.

United States v. Calypso Maritime Corporation et al., No's 3:07-05367 and 05412 (W.D. Wash.), AUSA Jim Oesterle [redacted] and SAUSA Benes Aldana.

On July 6, 2007, Jesus Reyes, chief engineer for the *M/V Tina*, was sentenced to serve a one-year term of probation. A fine was not imposed. Reyes pleaded guilty to a false statement violation for presenting a false oil record book ("ORB") to investigators.

Greek shipping company Calypso Marine Maritime Corp. ("Calypso"), pleaded guilty in June to an information charging one APPS and one false statement violation for Reyes' failure to maintain the ORB and for his presenting it with the false entries.

After the Coast Guard inspected the ship on May 21, 2007, while anchored in Kalama, Washington, crew members were ordered to use two sections of pipe, at night, to bypass the oil water separator. According to the plea agreement, Reyes was acting under the direction of an engineering superintendent who had boarded the ship in Astoria, Oregon, and then ordered crew members to paint over and conceal the flanges where the bypass pipe had been.

The company is scheduled to be sentenced on September 21, 2007. This case was investigated by the United States Coast Guard.

United States v. Acuity Specialty Products et al., No's 1:06-CR-00085 and 1:07-CR-00233 (N. D. Ga.), ECS Senior Trial Attorney Dan Dooher [redacted] and AUSA Paul Jones [redacted]

On June 29, 2007, Acuity Specialty Products ("Acuity") pleaded guilty to one Clean Water Act violation. The company also was sentenced to complete a three-year term of probation and pay a $3.8 million fine.

Acuity operates a chemical blending facility and makes a variety of domestic and industrial chemicals and cleaning products. Wastewater from the company'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 effectively hid from officials the actual concentration of phosphorus that was being discharged to the POTW.

Acuity admitted that from at least September 1998 until November 2002, while inspectors conducted sampling, employees altered the wastewater flow in order to distort sampling results, with the intention of misleading the City of Atlanta. Daniel Schaffer, the company's former director of environmental compliance, pleaded guilty to conspiracy to violate the CWA in February 2006. Schaffer is scheduled to be sentenced on October 2, 2007.

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

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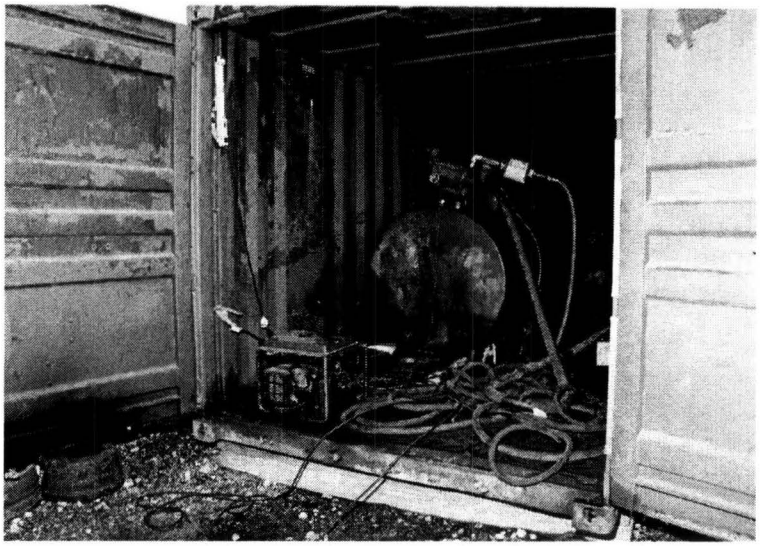
United States v. Genesis Petroleum, Inc., et al., No. 0:06-CR-60361 (S.D. Fla.), AUSAs Tom Watts-FitzGerald [redacted] and Lynn Rosenthal [redacted]

On June 28, 2007, Genesis Petroleum, Inc. ("Genesis"), pleaded guilty to a conspiracy to violate the hazmat transportation regulations and to interstate transportation of stolen property. The scheme involved the diversion of thousands of gallons of fuel that was paid for by a variety of retail customers. Genesis was the operator of a series of commercial tanker trucks that hauled gasoline and diesel fuel to customers in the south Florida area. The trips were scheduled by a Gainesville, Georgia-based company, which paid Genesis for its cartage services. Investigation revealed that, between January 2006 and November 2006, more than 8,000 gallons of fuel were taken for the personal use of Genesis employees.



Container with concealed storage tanks

Genesis drivers made fuel deliveries into a modified 40-foot shipping container which had been leased by the company director. This container was not equipped with safety placards, and met none of the safety requirements imposed on commercial fuel dispensers. Surveillance of the container disclosed that deliveries were being made by the drivers into two concealed storage tanks inside the container. Employees then withdrew fuel from the tanks and used it for Genesis tanker truck fuel tanks, their personal vehicles, commercial vehicles, other private vehicles, and gas containers.

Ricardo Aristides Mejia, the company director, and the following eight employees have pleaded guilty over the course of the past two months: Roberto Muniz, Yoel Betancourt, Alberto Alvarez, Leonel SanMartin, Noel Delgado-Hernandez, Dalayn Gonzalez-Linares, and Tomas V. Valdivia.

This case was investigated by United States Immigration and Customs Enforcement, the United States Department of Transportation-Office of Inspector General, the General Services Administration-Office of Inspector General, the Broward County Sheriff's Office, the Florida Department of Law Enforcement, the Florida Department of Environmental Protection, the Internal Revenue Service, the Broward County Department of Planning and Environmental Protection, the Broward County Department of Fire Rescue and Emergency Services, and the Broward County Fire Marshall.

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United States v. Hulsing Hotels Missouri, Inc., No. 4:07-CR-00226 (W.D. Mo.), SAUSA Anne Rauch

On June 25, 2007, Hulsing Hotels Missouri, Inc. ("Hulsing Hotels"), was sentenced to pay a $200,000 fine for violating the Clean Air Act NESHAP for illegally removing asbestos-containing materials during renovations at the Clarion Hotel in Kansas City, Mo. Dan Hulsing, appearing on behalf of Hulsing Hotels which managed the Clarion, pleaded guilty to the information charging one CAA violation.

In March 2006, acting on a complaint, Kansas City Health Department inspectors collected samples of asbestos material at the site. The Department had not been previously notified of the project as required. Investigation revealed that none of the workers on the project had worn protective clothing during the removal and no containment procedures were used to control the spread of the asbestos-containing material. As a result, many hotel employees and guests came into direct contact with this material.

The hotel was closed by the EPA and the Kansas City Health Department while it was decontaminated and a licensed asbestos abetment contractor was brought in to properly finish the job.

This case was investigated by the Kansas City Health Department and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420-423, (C.D. Calif., N.D. Calif., D. Mass., D. Me., E.D.N.C., E. D. Tex.), ECS Special Litigation Counsel Gregory Linsin , ECS Senior Trial Attorney Richard Udell and ECS Trial Attorneys Malinda Lawrence Lana Pettus and Joe Poux AUSAS: Malcolm Bales Joe Batte , Stacey Geis Dorothy Kim Jon Mitchell Rick Murphy and Banu Rangaragan

On June 20, 2007, Overseas Shipholding Group Inc., ("OSG ") was ordered to pay a $10 million fine in Beaumont, Texas, which is in addition to the $27 million it was sentenced to pay in March 2007 for violations in Boston, Portland, Maine, Los Angeles, San Francisco, and Wilmington, North Carolina. In addition to that earlier fine, OSG was sentenced to serve a three-year term of probation during which it must implement and follow a stringent environmental compliance program that includes a court-appointed monitor and outside independent auditing of OSG ships trading worldwide.

M/T Overseas Shirley

The total $37 million plea package is the largest-ever involving deliberate vessel pollution. The violations involving 12 OSG oil tankers occurred between June 2001 to March 2006, and they include APPS violations, conspiracy, false statements, and obstruction of justice. The $37 million penalty includes a $27.8 million criminal fine, which will be divided among the districts, and a $9.2 million community service payment that will fund various marine environmental projects from coast to coast. In imposing the sentence, the court granted a motion to award 12 current and former whistleblower crew members with $437,500 each for their roles in disclosing the illegal conduct.

Informations were filed in December 2006 in six districts charging the company with conspiracy, CWA, obstruction, false statement, and APPS violations that occurred on a total of 12 ships. Guilty pleas were entered to Counts One (conspiracy) and Two (false statements) of the second superseding indictment in relation to the *M/T Pacific Ruby*, as well as to Counts One through Four (false statements) of the new information relating to the *M/T Uranus, M/T Overseas Shirley,* and the *M/T Pacific Sapphire*.

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *Uranus*. The *Uranus* made discharges on voyages off the coast of New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *Overseas Shirley* and *Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the United States Environmental Protection Agency Criminal Investigation Division

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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

EDITOR'S 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: [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*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- Northern California River Watch v. City of Healdsburg, F.3d , 2007 WL 2230186 (9th Cir. Aug. 6, 2007).
- United States v. Moses, F.3d , 2007 WL 2215954 (9th Cir. Aug. 3, 2007).
- United States v. Citgo Petroleum Corp., F. Supp. 2d , 2007 WL 1125792 (S.D. Tex. Apr. 16, 2007).
- United States v. Hylton, F. Supp. 2d , 2007 WL 1674183 (W.D. Okla. June 7, 2007).

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. James Jairell United States v. IMC Shipping Co. Pte. Ltd.	*Bear Hunting/* Lacey Act, Conspiracy *Vessel/* Refuse Act, Migratory Bird Treaty Act
C.D. Calif.	United States v. David Bachtel United States v. Robert Robertson	*Vessel Scuttled/* Clean Water Act, Obstruction, False Statement, Sinking Boat in Navigation Channel *Waste Recycler/* False Statement
C. Colo.	United States v. Jan Swart	*Leopard Hunting/* Smuggling
M.D. Fla.	United States v. Zane Fennelly United States v. Kassian Maritime Navigation Agency Ltd.	*Spiny Lobster Fishing/*Magnuson Stevens-Fisheries Conservation Act *Vessel/* APPS, False Statement
D. Hawaii	United States v. David Williams	*Vessel/* Obstruction, False Statement
N.D. Ill.	United States v. David Jacobs	*Electroplator /* RCRA, ERISA
S.D. Ill.	United States v. Charles Powell, Jr.	*Asbestos Abatement/* Clean Air Act, Conspiracy
D. Maine	United States v. Jo Miller	*Textile Mill/* RCRA, Accessory After-the-Fact
[redacted]	[redacted]	[redacted]
N.D. N.Y.	United States v. Laidlaw Environmental Services	*Mislabeled Waste/* RCRA
W.D. N.Y.	United States v. Ron Jagielo	*Electorplator/* RCRA, Repeat Offender
[redacted]	[redacted]	[redacted]
W.D. Okla.	United States v. Guy Hylton, Jr.	*Asbestos Abatement/* Clean Air Act Negligent Endangerment, False Statement
E.D. Tex. (E.D. La.)	United States v. Rowan Companies, Inc.	*Sandblasting/* Clean Water Act, MARPOL
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W.D. Va.	United States v. John Callahan	*Asbestos Abatement/* Clean Air Act
W.D. Wash.	United States v. Daniel Storm	*Hazardous Waste /* RCRA

Additional Quick Links

Significant Opinions

9th Circuit

Northern California River Watch v. City of Healdsburg, ___ F.3d___, 2007 WL 2230186 (9th Cir. Aug. 6, 2007).

[The 9th Circuit withdrew its previous opinion (Northern California River Watch v. City of Healdsburg, 457 F.3d 1023 (9th Cir. 2006)) and replaced it with this one. The opinion is modified somewhat in light of the post-Rapanos caselaw. The 2006 opinion was summarized in the September 2006 edition of this Bulletin.]

Plaintiff environmental organization brought a citizen suit against defendant municipality under the Clean Water Act alleging that the City, without an NPDES permit, had discharged wastewater from its waste treatment facility into a pond (a rock quarry pit that had been formed from a prior gravel excavation operation). The pond was filled with water up to the line of the water table of the surrounding aquifer, and it drained into that aquifer. The pond lay along the Russian River, a navigable water that was separated from the pond by wetlands and a levee. Usually there was no surface connection between the river and the pond due to the levee. However, pond water eventually (and continuously) seeped from the aquifer into the river. In the process, the wastewater was partially cleansed as it passed through the bottom and sides of the pond and also through wetlands surrounding the pond. Pollutants remained in the water, however, including a substantially elevated concentration of chlorides. After trial, the district court found under Riverside Bayview Homes that the defendant had discharged sewage into protected waters of the United States (the pond) in violation of the CWA.

Held: On appeal, the Ninth Circuit affirmed the decision of the district court. The court found that the pond and its surrounding areas that were "inundated or saturated by surface or groundwater" constituted wetlands and that the pond was not "isolated." Under Justice Kennedy's controlling opinion in Rapanos, in order to qualify as a navigable water under the CWA, a body of water need not be continuously flowing, but must bear a "significant nexus" to a waterway that is in fact navigable,

and a mere hydrological connection due to adjacency of wetlands to navigable waters is not alone sufficient. Applying that test, the Ninth Circuit found that pond waters seeped through both surface wetlands and the underground aquifer directly into the Russian River and that these hydraulic connections significantly affected the physical, biological, and chemical integrity of the river. Thus, the pond and its wetlands not only were "adjacent" to the river within the meaning of Riverside Bayview Homes, but they also possessed a significant nexus to the river (which contained waters that were navigable in fact). Furthermore, an actual surface connection occurred whenever the river overflowed the levee. Finally, the wetlands in question supported substantial bird, mammal, and fish populations as an integral and indistinguishable part of the river's ecosystem.

The court rejected defendant's claim that the pond was excluded from protection under the "waste treatment system" exemption contained in the CWA and regulations. That exemption applies only to discharges made into a self-contained body of water that has no connection to waters of the United States or into waters that are part of an approved treatment system, neither of which situations existed here. It also rejected defendant's claim that the pond was excluded from protection under the regulatory exemption for ongoing excavation operations. In fact, rock and sand no longer were being excavated from the pond, which now was being used only for the pumping of sand and sediment *into* the pond.

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United States v. Moses, ___ F.3d ___, 2007 WL 2215954 (9th Cir. Aug. 3, 2007).

Defendant real estate broker and developer worked on a subdivision development located in a flood plain next to a creek that flowed into a tributary of waters of the United States (the Snake River). 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 and 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.

The Army Corps of Engineers warned the defendant on several occasions that his stream alteration work required a permit under the Clean Water Act and ordered him to cease and desist the work, subsequently issuing him a NOV. The defendant continued his actions and the USEPA issued an administrative compliance order directing him to cease discharges and to submit a work plan for restoring the stream. Nevertheless, the work continued, severely impacting the stream.

The defendant was indicted on 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, he 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 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 waters of the United States 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 water of the United States. 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 waters of the United States. 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 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, in any event, the exception did not apply because the work here "further impair[ed]" a water of the United States. Finally, the court held that Nationwide Permit No. 3 was inapplicable because it was issued under the Rivers and Harbors Act, not the CWA.

Districts

United States v. Citgo Petroleum Corp., ___ F. Supp. 2d ___, 2007 WL 1125792 (S.D. Tex. Apr. 16, 2007).

The defendant became the subject of an environmental criminal investigation regarding alleged mismanagement of benzene waste operations at its Corpus Christi refinery in violation of the Clean Air Act. In response to grand jury subpoenas, the company produced thousands of documents, including privileged documents, including documents that had been marked as "attorney client privileged" and "attorney work product". The government claimed that by producing the documents the defendant waived the privileges. The defendant subsequently stated to the government in writing that most of the documents marked as privileged were not in fact privileged and therefore there had been no waiver and that a few documents that were in fact privileged had been inadvertently disclosed. Defendant requested the return of those that were indeed privileged. When the government refused, the defendant filed a motion to compel return. The government filed a motion *in limine* to use as evidence attorney-client information and documents disclosed by the company during the grand jury investigation. It supported its motion with a series of documents from the defendant's files (all marked privileged) that it contended contained advice of corporate counsel regarding compliance with federal benzene regulations, arguing that the defendant had waived its attorney-client and work product privileges by disclosing them. The defendant responded by claiming that only four of the inadvertently disclosed documents in fact had been privileged, that the government had waited almost two years after disclosure before asserting the waiver, and that the government had violated ethical obligations by failing to notify the defendant promptly of the disclosure .

Held: The court granted in part the government's motion *in limine* and denied the defendant's motion to compel. Considering only the four documents that were acknowledged as privileged, it found that the defendant had not taken reasonable precautions to properly label documents and to prevent disclosures on multiple occasions. The defendant's delay in bringing a legal action and its lax attention to protecting confidentiality obviated the government's lack of timeliness and candor in the matter. Since the disclosure was inadvertent, however, and not for tactical advantage, the court limited the waiver to the specific documents disclosed, rather than generally to the entire subject matter of the representation, namely to all issues related to benzene waste management.

United States v. Hylton, ___ F. Supp. 2d ___, 2007 WL 1674183 (W.D. Okla. June 7, 2007).

Defendant Guy Hylton, Jr., was the city manager for Elk City, Oklahoma, and Chick Little was a city employee. In May 2002, Hylton bought a former railroad depot built in the 1900s that was to be renovated and used by the City. During a five-month period in 2003, inmates from a local work program were used to remove asbestos from the property without proper equipment.

The Oklahoma Department of Central Services ("DCS") performed asbestos removal at governmental units within the state, including local units. An inspector for the State Department of Labor took samples at this former train depot in Elk City at the behest of federal OSHA because of the possible presence of asbestos. A representative of DCS who later was estimating the costs of removal took a second set of samples. Quantem Laboratories, which analyzed both sets of samples, concluded that they contained significant amounts of asbestos. A third sample later was taken at a dump site by a representative of the State Department of Environmental Quality in the company of two criminal investigators for that agency who were investigating a complaint of illegal asbestos disposal. In that instance, Quantem Laboratories concluded that the object tested was a white powder that did not contain asbestos.

All three sets of samples were destroyed or lost prior to the return of an indictment in the case. The defendants moved to dismiss the indictment, arguing that their inability to inspect the samples or to do further testing upon them denied them a fair trial by preventing them from having or developing important exculpatory evidence.

Held: After a hearing, the court denied the motion to dismiss the indictment. It held under Youngblood that there had been nothing to suggest that the government knew or should have known that the samples that had tested positive for asbestos had potential exculpatory value in a criminal proceeding at the time of their destruction. The failure to preserve the samples was not otherwise done in bad faith, since the laboratory acted in accordance with an established (and documented) procedure and no request had been made for their retention beyond the usual date in connection with a legal case or otherwise. With respect to the later samples that tested negative for asbestos, the laboratory report to that effect was itself exculpatory even in the absence of those samples.

The defendants were charged with a Clean Air Act knowing endangerment violation and with a CAA violation for causing the waste to be taken to a dump that was not licensed to handle it. They were further charged with an 18 U.S.C. §1001 false statement for informing investigators that the waste had been properly disposed of. A jury found both defendants guilty of a lesser CAA negligent endangerment charge and Little also was convicted of a false statement.

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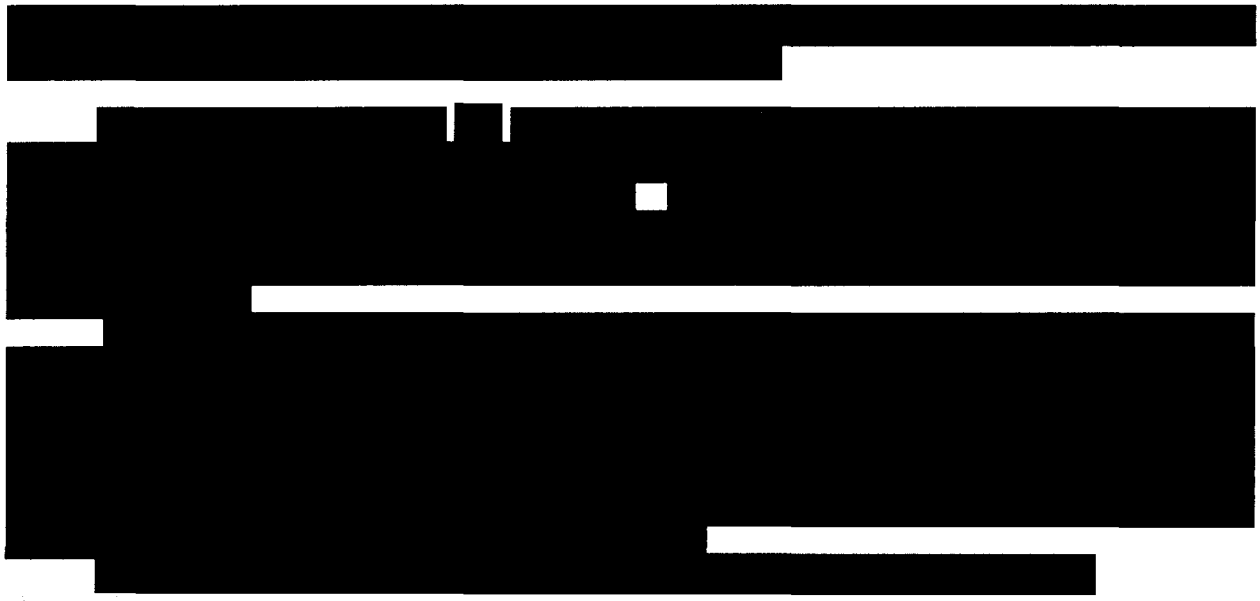
Trials



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 August 20, 2007, Guy Hylton, Jr., the city manager for Elk City, Oklahoma, and Chick Little, a building superintendent for the city, were found guilty by a jury of a Clean Air Act 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 the 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.

Indictments

United States v. Rowan Companies, Inc., No. 2:07-CR-00298 (E.D. La., E.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted], AUSAs Joe Batte [redacted] and Dee Taylor [redacted]

On August 16, 2007, informations were filed in two districts charging Rowan Companies, Inc., ("Rowan") with violations related to discharges from an oil rig. Specifically, the defendant is charged in the Eastern District of Louisiana with a Clean Water Act violation for discharging sandblasting waste into waters off an oil rig. The company also is charged in the Eastern District of Texas with MARPOL and CWA violations for discharging oil and garbage from an oil rig.

This was a mobile oil rig rented out to various companies that had drilling rights in the Gulf of Mexico, and it was pulled by a tug to and from those locations. The initial port was in Beaumont, Texas, and then it was moved to Louisiana for sandblasting.

The government's investigation revealed that between January and May 2004, company employees participated in sandblasting on one of the offshore drilling rigs in Port Fourchon, Louisiana, without properly containing the discharge of blasting waste. Investigation further revealed that employees on multiple occasions discharged a waste hydraulic oil and water mix from the rig into the navigable waters of the United States in the Eastern District of Texas between 2002 and 2004. Finally, defendants are charged with dumping garbage from the rig during this same time frame, which included used paint and paint cans, paint rollers and brushes, and food wastes.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the United States Coast Guard and the United States Department of Interior.

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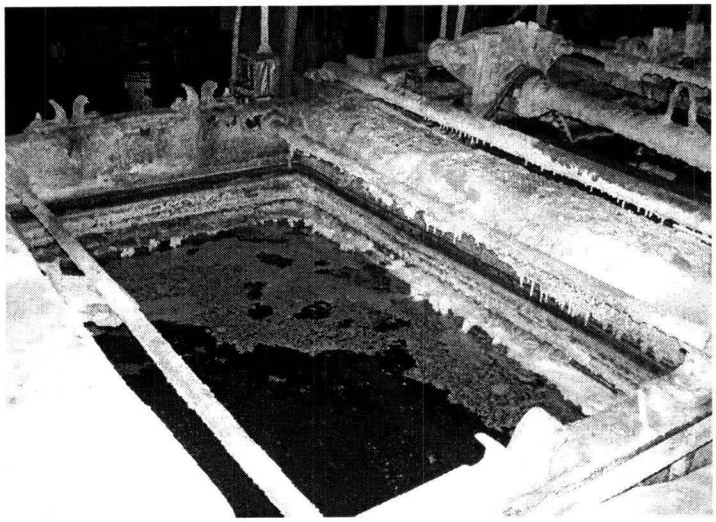
United States v. David Jacobs, No. 1:07- CR-00527 (N.D. Ill.), AUSA April Perry [redacted].

On August 15, 2007, David Jacobs, the president and owner of Northwestern Plating Works Inc., was charged in a two-count indictment 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.

The indictment states that 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



Crystalized Plating wastes

plating chemicals and wastes. Between July 2005 and April 2006, Jacobs is alleged to have 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, which 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 is charged with having converted for his own use $830,000 in plan funds 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.

United States v. David Williams, No. 1:07-CR-00376 (D. Hawaii), ECS Trial Attorney Joe Poux [redacted] Major Crimes Section Chief Ronald Johnson [redacted] and AUSA William Shipley [redacted]

On August 8, 2007, David Williams, a Chief Warrant Officer in the U.S. Coast Guard and the Main Propulsion Assistant for the Coast Guard Cutter *RUSH*, was charged with obstructing the investigation into his authorization of the overboard discharge of bilge wastes through a deep sink which then drained directly into the Honolulu Harbor. He further is 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 *RUSH* personnel who had personally been involved that bilge wastes had indeed been discharged into the Harbor.

According to the indictment, when questioned by investigators, Williams denied authorizing personnel to discharge bilge waste and also is alleged to have denied knowledge of any bypasses.

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

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 August 6, 2007, Zane Fennelly, former captain of a Jacksonville, Florida-based commercial fishing vessel, was arrested on an indictment returned on August 2, 2007. The indictment alleges a violation of the Magnuson Stevens-Fisheries Conservation Act for knowingly disposing of and attempting to destroy, three bags containing spiny lobster tails that were caught within the exclusive economic zone ("EEZ") of the United States.

On July 21, 2007, upon the approach of U.S. Coast Guard and Florida Fish and Wildlife Conservation Commission officers, Fennelly attempted to get rid of his catch. The bags did not sink, however, and were easily spotted and retrieved by law enforcement. The spiny lobster fishery in the

EEZ off the coast of Florida is only open between August 6th and March 31st and was closed at the time Fennelly jettisoned the lobster tails overboard.

This case was investigated by the United States Coast Guard and the Florida Fish and Wildlife Conservation Commission.

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Pleas / Sentencings

United States v. James Jairell et al., No. 1:06-CR-0003 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] ECS Trial Attorney Wayne Hettenbach [redacted], with assistance from AUSA Steven Skrocki [redacted].

On August 29, 2007, James Jairell was sentenced to serve one month of incarceration despite a stipulation in the plea agreement to a seven-month sentence. The judge apparently changed his mind based on sentencing co-defendant Alan Veys earlier in the month to serve one month of incarceration. Jairell previously pleaded guilty to a felony conspiracy to violate the Lacey Act and to a Lacey Act felony false labeling violation for his involvement in illegal black bear hunts.

Veys, the operator of the Pybus Point Lodge on Admiralty Island, acting alone or with Jairell, recruited clients at sports shows to hunt bears at the Lodge in the spring and fall for approximately $4,000 per trip. The clients paid 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. The defendants falsified "sealing certificates" submitted to the state, which claimed the bears were killed on non-guided hunts, and then shipped the bear skins and skulls to the clients from Alaska.

Veys earlier pleaded guilty to one misdemeanor count of negligently conspiring to violate the Lacey Act. As part of his sentence, Veys also will complete five months' home detention followed by one year of supervised release. He was further ordered to pay $20,000 in fines and restitution.

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

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United States v. Daniel Storm, No. 2:07-CR-00060 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On August 28, 2007, Daniel Storm was sentenced to serve three years' probation, complete 80 hours of community service, and pay a $5,000 fine. Storm, a professor of pharmacology at the University of Washington, pleaded guilty in March of this year to a RCRA violation for disposing of containers of highly flammable ethyl ether down a sink in his lab. The illegal disposal of ethyl ether created a significant risk of explosion or fire.

In 2006, the University of Washington Environmental Health and Safety Department conducted a survey of Storm's lab and determined that three metal containers of ethyl ether and two glass bottles containing a mixture of ethyl ether and water needed to be disposed of. The cost for disposal was $15,000, which Storm was unwilling to pay from his laboratory operations account. He then used an axe to break open the metal containers and poured the ethyl ether down a sink in his laboratory, followed by an ethanol solution to flush out any remaining explosive material.

Storm subsequently devised an elaborate cover-up scheme, including creating a false invoice using a fictitious hazardous waste company. He then placed calls to other professors purporting to represent the waste company and offering to pick up their lab waste in an effort to legitimize the company. Finally, he gave investigators two written memoranda detailing his alleged disposal arrangement with the fictitious waste company. When the agents were unable to locate this company, they subsequently discovered the illegal disposal.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the University of Washington Police Department.

United States v. IMC Shipping Co. Pte. Ltd., No. 3:07-CR-00096 (D. Alaska), AUSA Aunnie Steward [redacted] and ECS Senior Trial Attorney Bob Anderson [redacted]

M/V Selendang Ayu

On August 22, 2007, IMC Shipping Co. Pte. Ltd., ("IMC") pleaded guilty to two Refuse Act violations and one violation of the Migratory Bird Treaty Act for spilling approximately 340,000 gallons of bunker fuel, as well as several thousand tons of soy beans, into the Bering Sea in the Alaska Maritime National Wildlife Refuge in the Aleutian Islands, resulting in the deaths of several thousand migratory birds. The company was sentenced to pay a $10 million criminal penalty.

On December 8, 2004, the *M/V Selendang Ayu,* a 738-foot Malaysian-flagged vessel, drifted for two days in stormy weather before grounding off the west side of Unalaska Island. After grounding, the ship severed into two nearly equal pieces. Twenty of the 26 crew members were rescued by the U.S. Coast Guard. Six crewmen died, though, when a Coast Guard helicopter that was hoisting them from the vessel crashed.

The spill was the largest in Alaska since the 1989 *Exxon Valdez* tanker spill. Approximately 1,600 dead seabirds were collected, but many more were likely killed and not found. The ship's captain, Kailash Bhushan Singh, previously pleaded guilty to making a false statement during the investigation regarding the time the engine was shut down prior to the ship's grounding. Cleanup, which was hampered by the site's harsh conditions and remote location, continued until the summer of 2006 and cost more than $100 million.

The $10 million criminal penalty includes $4 million in community service, specifically, $3 million to conduct a risk assessment and related projects for the shipping hazards off the area where the ship went aground near Unalaska Island and $1 million for the Alaska Maritime National Wildlife Refuge, Aleutian Chain Unit. IMC also will complete a three-year term of probation to include an audit of the company's maintenance program by an outside auditor. The court also specified that $1 million of the fine will be held in abeyance pending the defendant's compliance with the terms of probation.

This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigations, and the United States Coast Guard.

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United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla.), ENRD John Irving [redacted] AUSA John Sciortino [redacted] and Senior Trial Attorney Richard Poole [redacted]

On August 16, 2007, Kassian Maritime Navigation Agency, Ltd. ("Kassian") was sentenced to pay a $1 million fine, serve 30 months' probation, and pay $300,000 to fund community service projects through the United States Fish and Wildlife Foundation. In addition, the company will implement an environmental compliance program. Spyridon Markou, the second assistant engineer for the *M/V North Princess*, was sentenced to pay a $1,000 fine.

The company previously pleaded guilty to an APPS violation for maintaining a false oil record book. Markou pleaded guilty to making a false statement to the United States Coast Guard regarding his knowledge of the ship's use of an illegal bypass pipe to transfer oil-contaminated waste overboard. On or about November 20, 2006, after the Coast Guard inspected the *M/V North Princess* in Jacksonville, Florida, they found evidence that the company, through its employees, made false statements and used false documents during the course of the inspection by failing to maintain an accurate oil record book.

This case was investigated by the United States Coast Guard.

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United States v. Laidlaw Environmental Services a/k/a Safety Kleen Services, Inc., No. 5:07-CR-00317 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On August 15, 2007, Laidlaw Environmental Services (U.S.), Inc., now known as Safety-Kleen Services, Inc., pleaded guilty to an information charging one RCRA violation stemming from the mislabelling of hazardous waste.

On June 3, 1998, a company employee mislabelled mercury-contaminated waste by failing to include the proper designation on a hazardous waste manifest. On the same day as the plea, Laidlaw was sentenced to pay a $250,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation.

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United States v. Dennis Rodriguez, No. 3:05-02498 (W.D. Tex.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] AUSA Donna Miller [redacted] and AUSA Laura Franco Gregory [redacted]

On August 15, 2007 Dennis Rodriguez, the president and chief operator of North American Waste Assistance ("NAWA"), was sentenced to serve five months' imprisonment followed by five months' house arrest and two years' supervised released. He also will pay a $10,000 fine. Rodriguez pleaded guilty in February of this year to three RCRA violations. Specifically, he pleaded guilty to one count of making a false statement in a manifest, one count of transporting hazardous waste to an unpermitted facility in Texas, and one count of transporting hazardous waste to an unpermitted facility in South Carolina.

Drums containing hazardous waste

NAWA is a waste disposal company located in El Paso, Texas, that disposed of hazardous and non-hazardous waste. In March 2003, NAWA was hired by a local construction company to dispose of approximately 180 55-gallon drums of construction-related waste. About 84 of the drums contained an expired petroleum-based concrete curing compound, which was an ignitable hazardous waste. Rodriguez generated a manifest that stated that the drums contained "Non-RCRA, Non-Regulated" waste and made arrangements to transport the drums to disposal sites in Texas and South Carolina, which were not permitted to accept or dispose of hazardous waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Texas Commission on Environmental Quality.

United States v. Charles Powell, Jr., et al., No. 3:07-CR-30013 (S.D. Ill.), AUSAs Kevin Burke [redacted] and Jennifer Hudson [redacted]

On August 13, 2007, Charles Powell, Jr., the owner of Powell's Demolition Company, was sentenced to serve 15 months' incarceration followed by two years' supervised release. Powell pleaded guilty in June of this year to conspiracy to violate the Clean Air Act and one CAA count for failing to notify authorities prior to removing regulated asbestos-containing material. Powell directed others to remove asbestos without protective gear, without wetting the asbestos prior to removal, without notifying the contract waste haulers that they were hauling asbestos material, and without notifying the Illinois Environment Protection Agency prior to the removal work.

Powell originally had contracted with real estate developer Phil Cohn to renovate the Spivey Building in East St. Louis. The defendants had intended to rehabilitate the 12-story building, the tallest building in Southern Illinois, into an office and shopping center. Cohn previously pleaded guilty to a CAA violation and in 2005 was sentenced to serve five years' incarceration related to his

submitting false invoices to a school district for environmental cleanup work at the Clark Middle School site.

Co-defendant Isaiah Newton pleaded guilty in July 2007 to conspiracy to violate the Clean Air Act. Under Powell's direction, Newton supervised the crews that removed the asbestos from the Spivey Building. Newton is scheduled to be sentenced on October 17, 2007.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division, the Illinois Environmental Protection Agency, and the Federal Bureau of Investigation.

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United States v. Ronald Jagielo, No. 1:07-CR-00190 (W.D.N.Y.), AUSA Marty Littlefield [redacted]

Waste outside facility

On August 9, 2007, Ronald Jagielo pleaded guilty 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. 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.

Sentencing is scheduled for December 7, 2007. This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division and the New York State Department of Environmental Conservation.

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

On August 6, 2007, David Bachtel was sentenced to serve 24 months' home confinement followed by three years' supervised release. A fine was not assessed. Bachtel is appealing his sentence.

The defendant was convicted at trial in February of this year on six of the seven violations charged in this case stemming from the defendant's intentionally sinking or scuttling of 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 two water pollution violations: one count 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.

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.

United States v. Jan Swart, d/b/a Trophy Hunting Safaris, No. 07-CR-00022 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] ECS Trial Attorney Jim Nelson [redacted] and AUSA Greg Holloway [redacted].

On August 6, 2007, Jan Swart, a South African big-game outfitter, was sentenced to serve 18 months' incarceration followed by three years' supervised release.

Swart pleaded guilty in May of this year to a one-count indictment charging a felony smuggling violation. The charge stems from his involvement in a scheme to import, through Denver in 2004, five hides and three skulls of leopards illegally killed in South Africa and smuggled to Zimbabwe. False CITES permits were subsequently obtained for the parts prior to their shipment to the United States.

Swart and co-defendant Basson, another South African outfitter, who previously pleaded guilty, were arrested in Pennsylvania in February 2007 at a sports show where both were advertising their businesses. Basson was sentenced in April of this year to pay a $5,000 fine, serve 19 days' imprisonment (with credit for 19 days already served), followed by three years' unsupervised probation in South Africa. The probation term requires Basson to return to the United States, at his own expense, to cooperate in the government's prosecution, if summoned. The court determined that Swart was likely unable to pay the stipulated fine of $20,000 and further that the government would have difficulty collecting it from him after his return to South Africa when he is released from prison. He was remanded to custody immediately following the hearing. Swart also will be banned from advertising in this country and may have his sentenced reduced if he cooperates against three remaining U.S. leopard hunters under investigation.

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

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United States v. John Callahan, No. 7:06-CR-00085 (W.D. Va.) AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On August 3, 2007, John Callahan, a two-time convicted felon, was sentenced to serve 21 months' incarceration for illegally removing asbestos from a government building in Roanoke, Virginia. Callahan also used homeless men to conduct the work.

The City of Roanoke hired Callahan, who operated Environmental Construction, to remove asbestos-containing material from the building in March 2004. Callahan hired three homeless men to do the work, knowing the men were not certified or properly trained to remove asbestos, nor did he provide them with the necessary protective gear. Callahan paid each man $10 per hour for over three days of work and instructed them to cut the asbestos-containing material with knives and hack saws without first wetting it. After the material was placed in unmarked garbage bags, Callahan hired a trash hauler to dispose of the waste at a landfill in Roanoke. Although the landfill had a special area for asbestos-containing material, the waste was improperly disposed of because Callahan failed to identify it.

Another company had to be hired at a cost of $12,000 to properly remove the asbestos from the Roanoke building after Callahan started the job.

This case was investigated by the United States Environmental Protection Criminal Investigation Division with assistance from EPA's National Enforcement Investigations Center, the City of Roanoke Police Department and the Virginia Department of Environmental Quality.

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United States v. Jo et al., No's. 2:07-CR-00012 and 00044 (D. Maine), AUSA Halsey Frank [redacted]

On August 3, 2007, Jo Miller was sentenced to pay a $24,000 fine and complete two years' probation for being an accessory after-the-fact in transporting hazardous waste without a manifest. Miller's husband, Herbert Miller, owned Miller Industries, a business engaged in milling waste fiber into yarn, cloth, and finished textiles, using a variety of chemicals including dyes, bleaches, caustics and oils. The company has operated plants in at least three locations in Maine since the 1970s. Miller Industries was storing discarded or unusable chemicals at its Maine facilities, accumulating approximately 550 containers of waste ranging from gallon cans to 55-gallon drums. Many of the chemicals were identified as hazardous waste by federal and state regulations.

Discarded hazardous waste

In 2001, Miller Industries obtained bids from at least two licensed environmental contractors to dispose of the waste. The company, however, proceeded to do the work itself, without a license or permit to do so. The company did not generate any manifests for the hazardous waste it transported, properly label the containers or placard the trucks it used, or provide training associated with the hazards of handling such wastes to its employees, one of whom was exposed to reactive waste.

In April 2007, Jo Miller again began contacting qualified contractors to dispose of the waste until the Maine Department of Environmental Protection was notified about the procedures Miller Industries had been following.

Miller Industries was sentenced in June 2007 to pay a $75,000 fine and ordered to make a $75,000 community restitution payment to the Maine Hazardous Waste Fund. The company also must complete a one-year term of probation. Herbert Miller was not charged.

This case was investigated by United States Environmental Protection Agency Criminal Investigations Division, EPA's National Enforcement Investigations Center and the Maine Department of Environmental Protection.

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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 July 9, 2007, Robert Roberts was sentenced to serve two years' incarceration followed by three years' supervised release. He also was ordered to pay $12,279 in restitution to the Los Angeles Air Force Base. Roberts was convicted by a jury in January of this year of a false statement violation 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 was initially 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 it 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.

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.

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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

October 2007

EDITOR'S 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: [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*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- United States v. W.R. Grace et al., ___ F.3d ___, 2007 WL 2728767 (9th Cir. Sept. 20, 2007).

Districts	Active Cases	*Case Type* / Statutes
C.D. Calif.	United States v. Hai Nguyen	*Sea Lion Stabbing/* Marine Mammal Protection Act
D. Colo.	United States v. Carlos Barragan	*Int'l Trade of Exotic Skins/* Conspiracy, Money Laundering, Smuggling
D. Conn.	United States v. Ionia Management S.A. United States v. Petros Renieris	*Vessel/* APPS, False Statement *Vessel/* False Statement, Obstruction
M.D. Fla	United States v. Zane Fennelly	*Spiny Lobster Harvesting/* Destruction of Property to Avoid Seizure
S.D. Fla.	United States v. Janitse Martinez United States v. Karl Kuhn, II	*Queen Conch Harvest/* Lacey Act *Manatee Taking/* Lacey Act
S.D. Ind.	United States v. Midwest Sheets Company	*Cardboard Manufacturer /* Clean Water Act
M.D. La.	United States v. Honeywell Int'l, Inc.	*Mislabeled Cylinder/* Clean Air Act Negligent Release
D. Md.	United States v. MeTompkin Bay Oyster Company United States v. Terrance Yates	*Undersized Crab Harvesting/* Lacey Act *Asbestos Abatement/* False Statement
D. Mass.	United States v. Aristides Couto	*Fish Wholesaler/* False Statement, Evading Currency Transaction Reporting Requirements
[redacted]	[redacted]	[redacted]
D. Ore.	United States v. Great Cats of the World, Inc.	*Ocelot Purchase/* Endangered Species Act
D. P.R.	United States v. Nicanor Jumalon	*Vessel/* Conspiracy, APPS, Obstruction
N.D. Tex.	United States v. Fujicolor Processing, Inc.	*Photo Processing Plant/* Clean Water Act
S.D. Tex.	United States v. The Hunting Consortium	*Wild Game Hunting/* Lacey Act
W.D. Va.	United States v. Southern Finishing, Inc. [redacted]	*Furniture Manufacturer/* RCRA [redacted]

Additional Quick Links

Significant Opinions

9th Circuit

United States v. W.R. Grace et al., __ F.3d ___, 2007 WL 2728767 (9th Cir. Sept. 20, 2007).

On September 20, 2007, the Ninth Circuit Court of Appeals, on an interlocutory appeal, 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. Grace, 439 F. 3d 1119 (9th Cir. 2007)). The defendants have sought *en banc* review of the earlier decision. No new trial date has been set.

Trials

United States v. Ionia Management S.A. et al., No. 3:07-CR-00134 (D. Conn.), ECS Trial Attorneys Lana Pettus [redacted] and Malinda Lawrence [redacted] Supervisory AUSA Anthony Kaplan [redacted], AUSA William Brown [redacted], and CMDR Luke Reid.

On September 6, 2007, the jury returned guilty verdicts against Ionia Management S.A. ("Ionia") on all 18 counts, including several charges that were transferred from three other districts to Connecticut for trial. The charges in the other districts have been disposed of with the conclusion of this trial. Ionia was on probation in the Eastern District of New York for a similar case in 2004 at the time of these new charges.

On June 7, June 14, and June 20, 2007, Ionia, a Greek company that manages a fleet of tanker vessels, and second engineer Edgardo Mercurio were charged in four districts for their involvement in the overboard dumping of waste oil from the *M/T Kriton* into international waters and falsification of records to impede the United States Coast Guard and other authorities from learning of the illegal conduct.

The indictments, returned in Connecticut, Florida, New York, and the Virgin Islands, charged Ionia and Mercurio with falsifying records to conceal the illegal discharge of waste oil and using and presenting false oil record books to the Coast Guard during port inspections. Mercurio was additionally charged with encouraging other crewmembers to lie to the Coast Guard about the violations. Mercurio pleaded guilty in July of this year to four APPS violations, one from each of the districts charged. He is scheduled to be sentenced on October 12, 2007 and the company will be sentenced on November 28th.

This case was investigated by the Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigative Division. Assistance also was provided by the Netherlands Royal Military Police, Ministry of Transport, Public Works, and Water Management.

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Indictments

United States v. Aristides Couto, No. 1:07-CR-10319 (D. Mass.), AUSA Jon Mitchell [redacted]

On September 26, 2007, Aristides Couto was charged in a two-count information with concealing a scheme to pay cash to fishing vessel owners for their catches by falsifying reports to the National Oceanic and Atmospheric Administration ("NOAA") and by structuring hundreds of cash transactions.

The information alleges that for several years, Couto has operated a fish wholesale business through which he buys fish directly from commercial fishing vessels and resells it to wholesalers and retailers. Beginning in at least 2002, Couto allegedly 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, it is further alleged that 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.

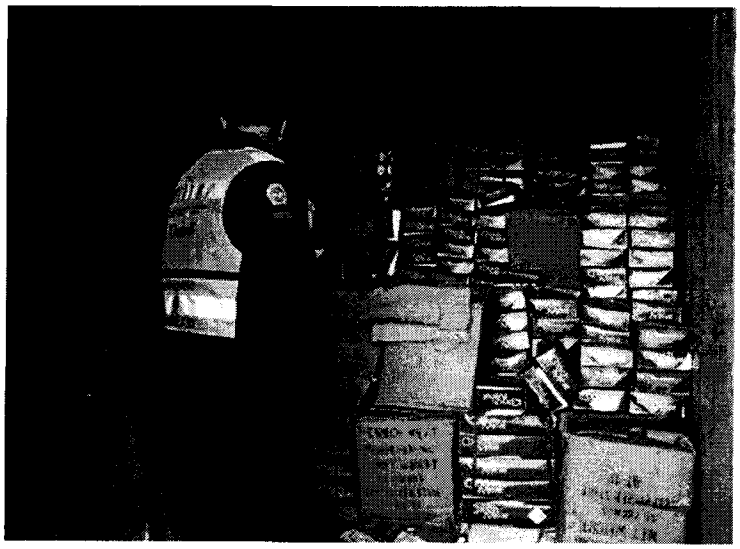
According to the information, Couto concealed his cash payments in two ways. First, he routinely lied in the dealer reports he was required to submit to NOAA by understating the amount of fish he purchased. NOAA relies on these reports to help it balance the interests of the fishing industry with the 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, it is alleged that 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.

United States v. Janitse Martinez et al., No. 1:07-CR-20690 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On September 25, 2007, Janitse Martinez and Ramone Placeres were charged with Lacey Act violations in connection with a conspiracy to smuggle large quantities of queen conch taken from Caribbean waters to customers throughout Canada and the United States.



Canadian inspector with seized conch

According to court documents, from approximately May 2004 through November 2006, Martinez and Placeres were, respectively, the owners of Caribbean Conch, Inc., and Placeres & Sons Seafood, Inc., and were engaged in the business of selling seafood products. During this time, the defendants are alleged to have caused the illegal shipment of more than 113,000 pounds of queen conch from Haiti, Honduras, and Columbia to Canada without proper permits.

Queen conch is a protected species under the Endangered Species Act and is a species listed for protection since 1992 in CITES Appendix II. 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.

The defendants' smuggling activities were detected in March 2006 when a shipment of 2,100 pounds of queen conch, falsely labeled as "Frozen Whelk meat, product of Canada" was intercepted by a Fish and Wildlife Service Inspector at the Peace River Bridge 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 for queen conch.

Investigative efforts 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.

This case was investigated by the United States Fish and Wildlife Service, the NOAA Office for Law Enforcement, and Environment Canada's Wildlife Enforcement Branch, Wildlife Enforcement Division.

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United States v. Karl F. Kuhn II, et al., No. 07-CR-60227 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On September 21, 2007, Karl F. Kuhn II and Charles V. Podesta, Jr., were charged with an Endangered Species Act violation for the illegal "taking" of a West Indian Manatee.

According to court documents, 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 by 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.

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United States v. Hunting Consortium et al., No. 4:07-CR-00381 (S.D. Tex.), ECS Senior Counsel Claire Whitney [redacted]

On September 12, 2007, The Hunting Consortium, a hunting outfitter based in Berryville, Virginia, and Robert Kern, company president, were charged with violating the Lacey Act for conducting illegal hunts in Russia.

According to the indictment, in the summer of 2002, Kern organized a 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 an airport in Houston.

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

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United States v. Carlos Barragan et al., No. 1:07-CR-00358 and 359 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted] Trial Attorney Colin Black [redacted], and AUSA Linda McMahan [redacted]

Exotic skin products

On September 6, 2007, five individuals were arrested for their roles in the illegal international trade of exotic skins and parts manufactured from sea turtles and other protected species. The arrests, which were part of a joint operation with Mexican authorities, were made following the return of two indictments on August 22, 2007.

The two indictments jointly charge 54 counts which include conspiracy, smuggling and money-laundering violations that took place over a two-year period. The defendants are alleged to have smuggled approximately 25 separate shipments of wildlife skins and products between Mexico and the United States between early 2005 and 2007. The shipments contained more than 700 tanned skins from sea turtle, caiman, python and other protected species and well over 100 items, such as boots, belts and wallets, manufactured from the skins of those species. The indictments allege that nearly $60,000 was paid to the Mexican suppliers of the illegal skins and products, in addition to "crossing fees" paid to the alleged smugglers.

Jorge Caraveo, Maria de los Angeles Cruz Pacheco, Carlos Leal Barragan, Octavio Anguiano Munoz, and Esteban Lopez Estrada all are charged in the first indictment with multiple counts of smuggling sea turtle skins, items manufactured from sea turtle skins, and other wildlife skins from Mexico into the United States and with money laundering by receiving payment for the smuggled goods via international payments from the undercover agents. Five of the seven species of sea turtles are listed as "endangered" and six species of sea turtles are found on and along the coasts of Mexico.

A second indictment charges Oscar Cueva, Miguel Vazquez Pimentel, Martin Villegas Terrones and Esteban Lopez Estrada with similar violations. Lopez Estrada also is named in the first indictment. They are charged with a conspiracy to smuggle exotic skins into the United States, and to transfer funds from the United States to Mexico, along with substantive counts of smuggling and money laundering.

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 between the Department of Justice; the United States Fish and Wildlife Service, Branch of Special Operations; and Mexican law enforcement authorities.

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United States v. Hai Nguyen, No. 2:07-CR–00880(C.D. Calif.), AUSA Craig H. Missakian [redacted]

On August 30, 2007, Hai Nguyen was charged with violating the Marine Mammal Protection Act for stabbing a California sea lion which had to later be euthanized.

The indictment states that, 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 Nguyen could reach down and stab the animal.

Witnesses in the area contacted the Newport Beach Police Department, which arrested Nguyen. 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 sea lion determined that its wounds were too severe for it to recover.

This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement, and the Newport Beach Police Department.

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Pleas / Sentencings

CORRECTION FROM LAST MONTH'S ISSUE:

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 August 6, 2007, Zane Fennelly, former captain of a Jacksonville, Florida-based commercial fishing vessel, was arrested on an indictment returned on August 2, 2007. The indictment alleges a violation of 18 U.S.C. §2232 for knowingly disposing of, and attempting to destroy, three bags containing spiny lobster tails 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 between August 6th and 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.

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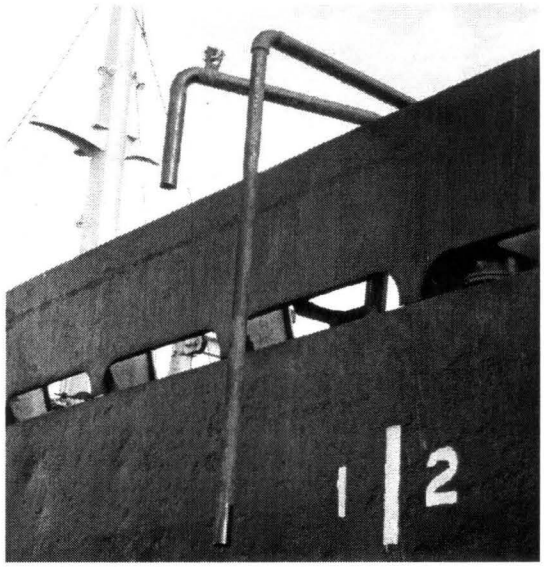
United States v. Nicanor Jumalon et al., Nos. 3:07-CR-00390 and 398 (D.P.R.), ECS Senior Trial Attorney David Kehoe [redacted] and Special Counsel to the USA AUSA Jacqueline Novas [redacted]

On September 27, 2007, Captain Nicanor Jumalon pleaded guilty for his involvement with the illegal dumping of oil-contaminated ballast water from the *M/V Sportsqueen,* a 479-foot general cargo vessel. Jumalon pleaded guilty to obstruction of justice and was sentenced to serve eight months' in prison. On September 20th, India-based shipping company Accord Ship Management ("Accord") and chief engineer Francisco Sabando also pleaded guilty to dumping sludge, bilge wastes, and oil contaminated ballast water from the ship.



Overboard discharge pipe

Accord pleaded guilty to a four-count criminal information charging conspiracy, an APPS violation, and two obstruction of justice charges. Accord was sentenced to pay a $1.75 million fine and to serve a three-year term of probation during which time all of the ships in its fleet will be banned from entering U.S. waters and ports. Sabando pleaded guilty to two obstruction violations and was sentenced to serve five months' incarceration for his involvement in bypassing the oily water separator.

On April 14, 2007, during the boarding of the ship in San Juan, Coast Guard investigators discovered that the captain had ordered crew members to discharge oil-contaminated ballast water into the ocean prior to arriving in port. Jumalon admitted to these actions and made false statements to the Coast Guard about the cause of the oil contamination in the ballast tanks. During the boarding, inspectors learned that Sabando had ordered crew members to dump oily sludge and bilge wastes into the ocean and had falsified the ship's oil record book to conceal these discharges. The bypass pipes and hoses were subsequently recovered by inspectors with help from lower level crew members. Five crew members were awarded $50,000 each as part of the APPS whistleblower provision.

This case was investigated by the United States Coast Guard.

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United States v. Southern Finishing, Inc., No. 4:07-CR-00027 (W.D. Va.), AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On September 19, 2007, Southern Finishing, Inc., a manufacturer of wood and metal components for the furniture and cabinet industry, pleaded guilty 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.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, the Roanoke Police Department, the Virginia Department of Environmental Quality and the Blue Ridge Environmental Task Force.

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United States v. MeTompkin Bay Oyster Company et al., No. 1:07-CR-00411 (D. Md.), ECS Senior Trial Attorney David Kehoe [redacted] and AUSA Christopher Romano [redacted]

On September 17, 2007, MeTompkin Bay Oyster Company ("MBOC") pleaded guilty to, and was sentenced for, selling undersized Chesapeake Bay crabs in interstate commerce in violation of the Lacey Act.

The investigation began when the government received information that crabbers from Tangier Island, Virginia, were selling soft shell blue crabs from the Chesapeake Bay to seafood dealers in Crisfield, Maryland, including MeTompkin. Many of these crabs were found to be less than three and a half inches in length in violation of Maryland State law. Posing as representatives from a business in West Virginia, United States Fish and Wildlife Service ("USFWS") agents and an officer from the Maryland Department of Natural Resources ("MDNR") purchased approximately $1,500 worth of undersized crabs on three occasions in 2005 and 2006 from the company. The subsequent execution of a search warrant at the facility's warehouse resulted in the seizure of approximately 3,274 dozen undersized crabs valued at approximately $26,000.

The company will pay a $50,000 fine and forfeit the undersized crabs seized during the execution of the search warrant. During its three-year term of probation, the defendant will allow agents and inspectors from the USFWS and the MDNR increased access to its facility, and it will implement employee training programs and more effective notice measures with its suppliers to prevent similar violations in the future.

This case was investigated by the United States Fish and Wildlife Service and the Maryland Department of Natural Resources.

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United States v. Petros Renieris, No. 3:07-CR-00199 (D. Conn.), ECS Trial Attorney Malinda Lawrence [redacted], AUSA Bill Brown [redacted] and Supervisory AUSA Anthony Kaplan [redacted]

On September 17, 2007, Petros Renieris, a chief engineer on the *M/T Kriton,* pleaded guilty for his role in falsifying oil record book entries, as well as for obstructing the U.S. Coast Guard and other authorities in their investigation.

The *Kriton* is owned and operated by Ionia Management, a Greek company that manages a fleet of tanker vessels. Renieris further 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.

Ionia Management was convicted by a jury last month and an engineer has previously pleaded guilty. [*See* Trial Section, p. 5 above for summary.] Renieris pleaded guilty to an APPS violation is scheduled to be sentenced on December 3, 2007.

This case was investigated by the Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigative Division. Assistance also was provided by the Netherlands Royal Military Police, Ministry of Transport, Public Works, and Water Management.

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United States v. Terrance Yates, No. 8:07-CR-00202 (D. Md.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Gina Sims [redacted]

On September 17, 2007, Terrance Gates was sentenced to serve a five-year term of probation, complete 200 hours of community service and pay $55,708.73 in restitution for clean-up costs. He pleaded guilty in June of this year to making false statements on a report submitted to the U.S. EPA in connection with the improper disposal of asbestos-containing waste materials.

Yates owned and operated Hazport Solutions, Inc., which contracted with asbestos abatement companies to transport regulated asbestos-containing material ("RACM") from asbestos abatement sites to authorized landfills. Between August 2004 and July 2006, Yates contracted with at least five hazardous waste removal companies to transport between 12 and

Asbestos warning labels

17 trailers full of RACM from locations in Maryland, Virginia, and the District of Columbia to an EPA-approved landfill in Pennsylvania. Instead of transporting the waste to the approved landfill, however, the defendant took the trailers to a lot in Severn, Maryland, where he abandoned them for more than a year until they were discovered by law enforcement. Some of the bags containing asbestos had been damaged, and loose asbestos-containing debris was found in the trailers.

Yates subsequently returned waste shipment records to the companies that had paid for the proper disposal, falsely certifying that the waste had been disposed of at the Pennsylvania landfill.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Maryland Department of the Environment.

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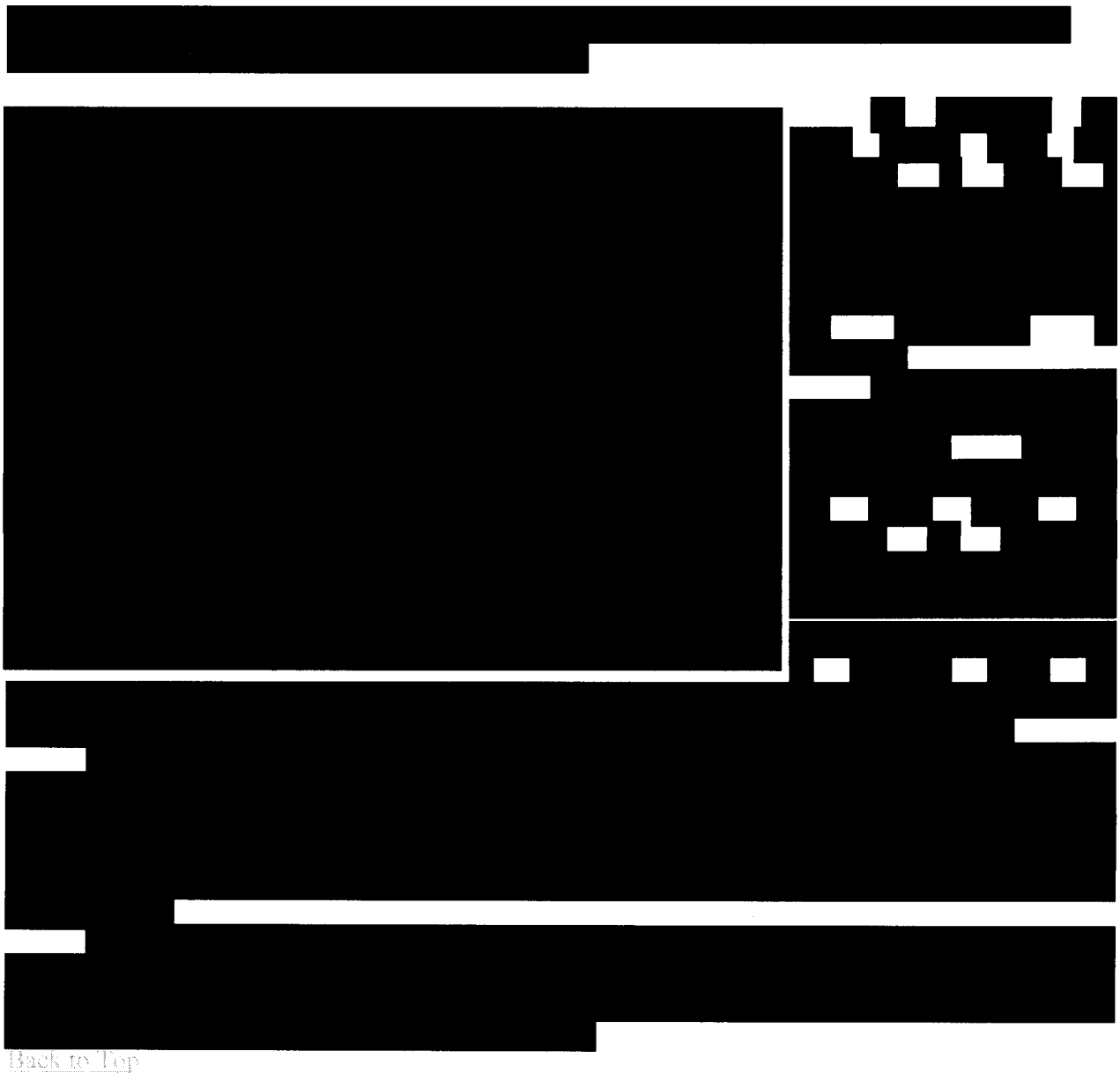

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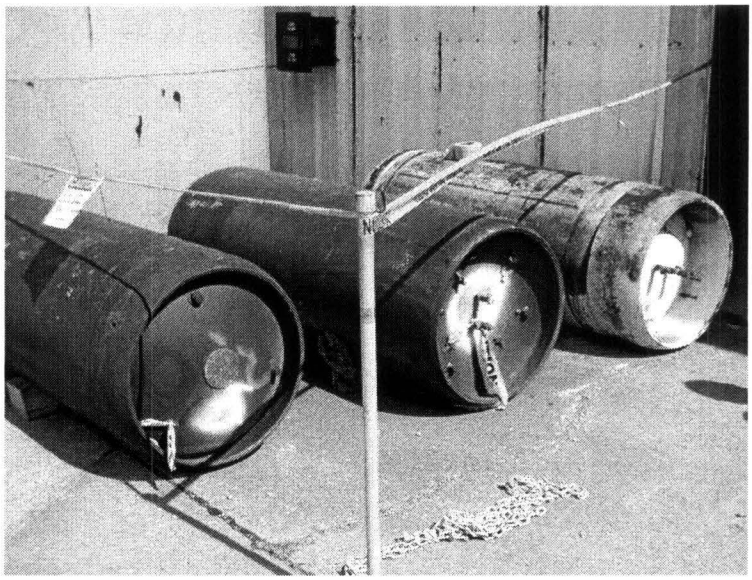
United States v. Honeywell International, Inc., No. 3:07-CR-00031 (M.D. La.), AUSA Corey Amundson [redacted] with assistance from ECS Senior Trial Jennifer Whitfield [redacted]

On September 13, 2007, Honeywell International, Inc. was sentenced as the result of a negligent release of hazardous air pollutants that caused the death of employee Delvin Henry. The company will pay an $8 million fine, complete a two-year term of probation, and pay the following in restitution: $2 million will be paid to Henry's three children, $1.5 million will be divided between the Louisiana Department of Environmental Quality and the Louisiana State Police Hazardous Materials Unit, and $500,000 will be paid to the Louisiana State Police Emergency Operations Center. This constitutes the largest criminal fine and restitution ordered in the Middle District of Louisiana.

On July 23, 2003, Henry, an employee at Honeywell's Baton Rouge plant, opened a one-ton cylinder that had been stored for five years and erroneously labeled as containing a relatively benign refrigerant. Once opened, approximately 1,800 pounds of spent antimony pentachloride, a highly toxic and corrosive hazardous material, were released from the cylinder. Henry was struck by the material and died the following day from his injuries.



Gas cylinders

The company pleaded guilty in February of this year to negligently causing the release of hazardous air pollutants and negligently placing another person in imminent danger of death in violation of the Clean Air Act.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the USEPA National Enforcement Investigations Center, the Louisiana State Police, and the Louisiana Department of Environmental Quality.

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United States v. Great Cats of the World, Inc., 3:06-CR-00314 (D. Ore.), AUSAs Dwight C. Holton [redacted] and Amy Potter [redacted]

On September 10, 2007, Great Cats of the World ("Great Cats") was sentenced to pay a $10,000 community service payment to the Oregon Zoo, and complete a one-year term of probation. The company pleaded guilty in June of this year to an Endangered Species Act violation.

Great Cats is an Oregon corporation located in Cave Junction, Oregon, which formerly operated in Minnesota under the name "Center for Endangered Cats." 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.

The Temple of Isis previously pleaded guilty to a misdemeanor ESA conspiracy violation for the illegal sale of six ocelots. This defendant was sentenced to serve a two-year term of probation and pay $60,000 to the Oregon Zoo.

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

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United States v. Fujicolor Processing, Inc., 3:07-00181 (N.D. Tex.), ECS Trial Attorney Joe Poux [redacted] and AUSA Shane Read [redacted]

On September 6, 2007, Fujicolor Processing, Inc. ("Fujicolor"), pleaded guilty to one count of negligently operating a source in violation of a pretreatment permit at its photo-processing facility in Terrell, Texas. Fujicolor admitted that it negligently discharged waste from the facility that exceeded the monthly concentration limit imposed by a pretreatment permit issued by the City of Terrell. The company was sentenced to pay a $200,000 fine.

On July 15, 2002, the Terrell facility was issued an administrative compliance order and fine by the City in the amount of $105,725. Inspectors had discovered through their analyses of wastewater samples that the facility had exceeded its monthly concentration limit for silver.

Fujicolor then initiated an extensive internal investigation of the Terrell facility, as well as its other photo-processing facilities. The investigation revealed that, from approximately 1999 through July 2002, employees at the Terrell facility "cherry picked" test samples by only reporting test results showing compliance with permit limits. The employees would send part of a sample to a laboratory for screening, while retaining the other part at the facility. If the analysis of the screened sample showed that it met the permit's limit, then the retained portion of the sample would be sent to a different laboratory for official analysis, and the results subsequently reported to the City of Terrell. If however, the analysis of the screened sample showed that the sample exceeded the silver limit, another sample would be drawn and the process repeated until a compliant sample was obtained. Fujicolor's internal investigation revealed that similar conduct had occurred at its facilities in New Britain, Connecticut, and Tukwila, Washington.

Fujicolor made a timely disclosure of its findings to federal and local officials, including the production of documents and information that substantially assisted the government's investigation. The company further undertook extensive actions to address the issues identified in its internal investigation. These actions included: firing local, regional, and national employees and managers found to be responsible for the violations and who had failed to properly oversee compliance efforts; and authorizing a multi-million dollar investment in a new environmental compliance program while restructuring its nationwide environmental, safety and health compliance organization to include an enlarged environmental staff with direct reporting lines to senior executives.

[redacted]

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Texas Department of Environmental Quality.

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United States v. Midwest Sheets Company, No. IP-07-CR-0007 (S.D. Ind.), AUSA Steve Debrota [redacted]

On September 6, 2007, Midwest Sheets Company pleaded guilty to a Clean Water Act violation for a discharge resulting in a fishkill in Cicero Creek. The company was sentenced to pay a $600,000 fine, $150,000 of which is suspended pending successful completion of a term of probation.

Midwest Sheets operates a corrugated cardboard sheet manufacturing facility. As the result of a storage tank overflow, the company discharged approximately 1,479 gallons of pure caustic soda with pH of nearly 14. The overflow went into the POTW and eventually the river, where it caused the fish kill. After the overflow, another 320 gallons of the solution was negligently discharged. The discharges disrupted treatment plant operations for seven days, and nearly 2,000 fish were killed in Cicero Creek.

At sentencing, the company also was ordered to implement an environmental compliance program, conduct an environmental audit, and publish an apology in a local newspaper and a trade journal.

This case was investigated by the Indiana Inter-Agency Environmental Crime Task Force for the Southern District of Indiana which includes the United States Environmental Protection Agency Criminal Investigation Division, the USEPA National Enforcement Investigations Center, the Indiana Department of Natural Resources and the Federal Bureau of Investigation.

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

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

November 2007

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*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

- United States v. McWane, Inc., et al. F.3d , 2007 WL 3087419 (11th Cir. Oct. 24, 2007).

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	[redacted] United States v. Polar Tankers United States v. Michael Zacharof United States v. Frederick Reynolds	[redacted] *Vessel/* APPS, Whistleblower Award *Sale of Marine Mammal Parts/* Marine Mammal Protection Act *Walrus Ivory Sale/* Conspiracy, Marine Mammal Protection Act, Lacey Act, False Statement
E.D. Calif.	United States v. Dimitrios Georgakoudis	*Vessel/* Conspiracy, APPS, False Statement, Obstruction
N.D. Calif.	United States v. Kenneth Eller	*Harbor Seal Pup Death/* Marine Mammal Protection Act
D. Colo.	United States v. Fu Yiner et al.	*Int'l Trade of Exotic Skins/* Conspiracy, Money Laundering, Smuggling
D. Conn.	United States v. Edgardo Mercurio	*Vessel/* APPS
M.D. Fla.	United States v. Zane Fennelly	*Spiny Lobster Harvesting/* Destruction of Property to Avoid Seizure
S.D. Fla.	United States v. Lawrence Beckman	*Coral and Sea Fan Harvest/* Lacey Act
N.D. Ga.	United States v. Daniel Schaffer	*Chemical Manufacturer/* Conspiracy, CWA
D. Idaho	United States v. Krister Evertson United States v. Gary Lehnherr et al.	*Chemical Manufacturer/* RCRA, HMTSA *Mule Deer Hunt/* Lacey Act
D. Md.	United States v. Mark Humphries United States v. Robert Langill United States v. Paul Prendergast United States v. Isabel Dryden	*Vessel/* Conspiracy, False Statement *Asbestos Abatement/* CAA *Bribery/* Travel Act *Undersized Crab Harvesting/* Lacey Act
[redacted]	[redacted]	[redacted]
D.N.H.	United States v. Kip's Seafood Company	*Shellfish Shipments/* Conspiracy, Lacey Act

Districts	Active Cases	*Case Type* / Statutes
W.D.N.C.	United States v. Ralph Rogers	*Grease Disposal/* Conspiracy, CWA
N.D. Ohio	United States v. David Geisen et al.	*Nuclear Facility/* Concealment, False Writings
D. Ore.	United States v. Spencer Environmental Inc. et al.	*Waste Recycler/* RCRA
D.P.R.	United States v. Ramallo Brothers Printing, Inc. et al.	*Waste Ink Discharges/* False Statements, Negligent Clean Water Act
D.R.I.	United States v. Southern Union Company	*Mercury Storage/* RCRA, Failure to Notify
E.D. Tex. (E.D. La.)	United States v. Rowan Companies, Inc. et al. United States v. Spindletop Drilling Company	*Sandblasting/* Clean Water Act, APPS, Negligent Clean Water Act, Failure to Report *Oil Drilling/* Migratory Bird Treaty Act
S.D. Tex. (D. Alaska)	United States v. British Petroleum et al.	*Refinery Explosion and Pipeline Spill/* CAA, CWA
D. Utah	United States v. Larkin Baggett	*Chemical Distributor/* CWA, RCRA
W.D. Wash.	United States v. Frankie Gonzales et al. United States v. Craig James et al. United States v. Calypso Maritime Corporation et al.	*Whale Hunt/* Conspiracy, Unauthorized Whaling, Marine Mammal Protection Act *Timber Harvesting/* Conspiracy, Depredation against Govt. Property, Theft of Govt. Property *Vessel/* APPS, False Statement, Whistleblower Award

Additional Quick Links

Significant Opinions

11th Circuit

United States v. McWane, Inc., et al. ___ F.3d___, 2007 WL 3087419 (11th Cir. Oct. 24, 2007).

On October 24, 2007, the Eleventh Circuit vacated the convictions in *United States v. McWane, Inc., et al.*a nd 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 alleged in Count 1, without discussion, and on the false statement violation charged in Count 24. *Slip op. at 45.*

The lion's share of the court's opinion is devoted to the CWA jurisdiction issue. After summarizing the facts and the *Rapanos* decision, the court considered at length the question of which of the three approaches to jurisdiction under the CWA it should follow. *Slip op. at 22.* The court noted that at least two different approaches have been adopted by other courts; the Seventh and Ninth Circuits have adopted Justice Kennedy's "significant nexus" approach, *N. Cal. River Watch v. City of Healdsburg, (*496 F.3d 993, 999-1000(9th Cir. 2007); *United States v. Gerke Excavating, Inc.*, 464 F.3d 723, 724-25 (7th Cir. 2006), *cert. denied*, 76 U.S.L.W. 3156 (2007), whereas the First Circuit has concluded that because the dissenting Justices would find jurisdiction under either Justice Scalia's plurality test or Justice Kennedy's "significant nexus" test, "the United States may elect to prove jurisdiction under either test." *United States v. Johnson*, 467 F.3d 56, 64 (1st Cir. 2006) (citations omitted), *cert. denied*, 76 U.S.L.W. (Oct. 9, 2007).

After some discussion, the court opted to follow Justice Kennedy's "significant nexus" approach for two primary reasons. *Slip op. at 25.* First the court, citing *Gerke,* 464 F.3d at 724-25, found that Kennedy's was narrower than the plurality and therefore deserved primacy under *Marks v. United States*, 430 U.S. 188 (1977), a case in which the Supreme Court held that "[w]hen a fragmented

Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding . . . may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 430 U.S. at 193. The narrowest ground is understood as the "less far-reaching" common ground. *Johnson v. Board of Regents*, 263 F.3d 1234, 1247 (11th Cir. 2001). Second, the court held that it should not be bound by the dissenting Justices, noting that "[d]issenters, by definition, have not joined the Court's decision" and that "[i]t would be inconsistent with *Marks* to allow the dissenting *Rapanos* Justices to carry the day and impose an "either/or" test, whereby CWA jurisdiction would exist when either Justice Scalia's test or Justice Kennedy's test is satisfied" (citations omitted). *Slip op. at 26-27.*

After finding Justice Kennedy's "significant nexus" approach to be applicable, the court then applied that standard to the present case. *Slip op. at 28-29.* First it noted that the trial court did not mention the phrase "significant nexus" in its instructions or advise the jury to consider the chemical, physical, or biological effect of Avondale Creek on the Black Warrior River. *Slip op. at 29.* The court concluded that the trial court's instruction, which provided that a continuous or intermittent flow into a navigable-in-fact body of water would be sufficient to bring Avondale Creek within CWA jurisdiction, was erroneous. *Id.*

The court then concluded that the government failed to meet its burden of showing that the error was not harmless. *Slip op. at 30-32.* Specifically, the court noted that although the government's witness testified as to the continuous and uninterrupted flow from the outfall at Avondale Creek to the Black Warrior River, he did not testify as to the "nexus" between those two waters, including any "possible chemical, physical, or biological effect that Avondale Creek may have on the Black Warrior River," nor was there evidence of "actual harm" to the River. *Slip op. at 31.* On this basis, the court concluded that the error was not harmless. *Id.*

Significantly, the court then went on to acknowledge that:

> This case arguably is one in which Justice Scalia's test may actually be more likely to result in CWA jurisdiction than Justice Kennedy's test, despite the fact that Justice Kennedy's test, as applied in *Rapanos*, would treat more waters as within the scope of the CWA. To be sure, the district court's jury instruction was still erroneous even under Justice Scalia's plurality opinion, because the instruction allowed the jury to find that defendants' discharges were into a "navigable water" even if the jury also concluded that Avondale Creek flowed "only intermittently." But under Justice Scalia's test, that error may well have been harmless, because Wagoner, the EPA investigator, clearly and unambiguously testified that there is a continuous, uninterrupted flow between Avondale Creek and the Black Warrior River. Under Justice Scalia's test, the district court's jury instruction error arguably "did not affect the verdict, 'or had but very slight effect.'" Thus, the decision as to which *Rapanos* test applies may be outcome-determinative in this case, and so it is not surprising that the government advocates a practical, *Johnson*-style approach whereby all votes – from plurality, concurring, and dissenting Justices – are counted.

Slip op. at 32-33 (citations omitted).

At the conclusion of the CWA jurisdiction discussion, the court then considered other issues raised by defendants. These were all rejected, except for the last one, which the court used a basis for reversing McWane's conviction for the 18 U.S.C. § 1001 false statement charge alleged in Count 24. Count 24 alleged that McWane and Robison falsely certified in submissions made to EPA that daily and monthly inspection forms were true, accurate, and complete, when in fact the defendants knew that

they were not. Specifically, the defendants argued that they should be acquitted because the representations made in the certifications that Robison signed were not false and the government presented no evidence that the certifications – as opposed to the underlying inspection reports prepared by others – were false. The court agreed, and reversed the defendants' convictions with respect to Count 24.

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Trials

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]

Hole in reactor lid

On October 30, 2007, after four days of deliberations and the court's reading the jury the *Allen* charge, the jury convicted David Geisen on three of the five counts charged and acquitted Rodney Cook on all counts. Specifically, Geisen was convicted on concealment and false writing violations, but acquitted on two false statement violations.

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, whose trial was severed, is now scheduled for trial to begin on May 19, 2008, with August 11, 2008, as a backup trial date. Jury selection will occur during the week preceding trial. This case was investigated by the NRC Office of Investigations.

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United States v. Mark Humphries, No. 1:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence [redacted], ECS Senior Trial Attorney Richard Udell [redacted] AUSA Tonya Kowitz [redacted] and ECS Paralegal Kate Hasty [redacted]

On October 16, 2007, Mark Humphries was convicted by a jury 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.

Oily residue in pipe leading to overboard discharge

Humphries was a former chief engineer for the *M/V Tanabata*, a vessel managed by Pacific Gulf Marine ("PGM"), who was involved in the illegal dumping of bilge waste.

The investigation began in September 2003 after the U.S. Coast Guard inspected the *Tanabata* and the *M/V Tellus* in Baltimore. During the inspection Humphries denied involvement in any illegal conduct. Evidence proved, however, that the pipe used to bypass the oily water separator on the *Tanabata*, was thrown overboard by Humphries after the Coast Guard had inspected the vessel in Baltimore.

A number of engineers already have pleaded guilty as a result of the investigation and PGM was sentenced to pay $1.5 million.

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

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United States v. Dimitrios Georgakoudis, No. 2:07-CR-00024 (E.D. Calif.), ECS Assistant Chief Kris Dighe [redacted] and ENRD Attorney John Irving [redacted].

On October 25, 2007, following a bench trial, the judge acquitted Dimitrios Georgakoudis.

Athenian Sea Carriers, Ltd. ("ASC"), the operator of the *M/T Captain X Kyriakou*, chief engineer Artemios Maniatis, and first engineer Georgakoudis, were variously charged in January 2007 in a seven-count indictment with conspiracy to violate APPS, false statements, obstruction, destruction of evidence, and substantive violations of the same statutes stemming from the routine illegal discharge of sludge and waste oil from the vessel.

Investigation began during the fall of 2006 when a crew member informed the Coast Guard National Response Center that he was routinely ordered to discharge oil overboard. Coast Guard inspectors subsequently discovered part of a bypass pipe. The crew member also alleged that the oil content sensor in the oil water separator had been removed to allow bilge holding tank waste to be discharged directly overboard. ASC and Maniatis were acquitted of all charges in June of this year.

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

Indictments

[redacted]

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United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.), ECS Trial Attorney Kevin Cassidy [redacted], AUSA Terrence Donnelly [redacted] and SAUSA Diane Chabot [redacted]

On October 16, 2007, a three-count indictment was returned charging Southern Union Company 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.

Beginning in 2002, Southern Union stored mercury waste, in the form of various containers of liquid mercury and mercury-contaminated obsolete gas regulators, without a permit at a company-owned vacant facility in Pawtucket, Rhode Island. Southern Union did not provide security for the property that was regularly accessed by vandals and homeless people. There were no signs posted indicating hazardous wastes were being stored on site.

Vacant building

Safety concerns regarding the mercury waste storage were raised during three separate company safety committee meetings in the summer of 2004. In September of 2004 vandals broke into the building where the mercury was stored, released it on the property, and brought some back to their apartment complex resulting in the exposure to mercury of dozens of people. When Southern Union discovered the release on October 19, 2004, it failed to immediately notify the local fire department as required by the Emergency Planning and Community Right to Know Act.

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

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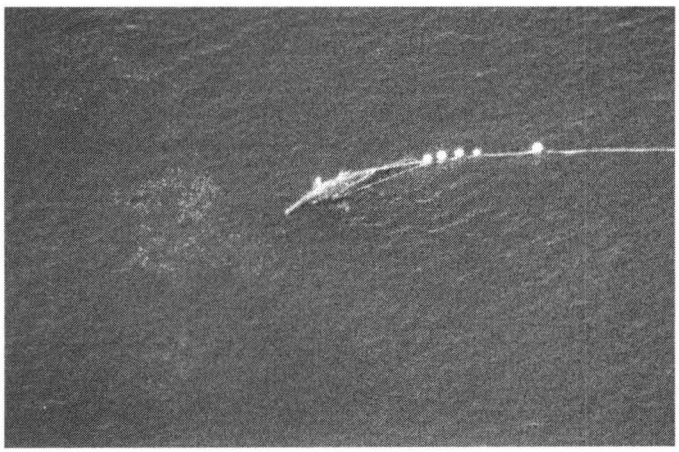
United States v. Frankie Gonzales et al., No.3:07-CR-05656(W.D. Wash.), AUSA Jim Oesterle [redacted]



Gray Whale

On October 4, 2007, Frankie Gonzales, Wayne Johnson, Andrew Noel, Theron Parker, and William Secor, all members of the Makah Tribe, were charged with conspiracy, unlawful taking of a marine mammal and unauthorized whaling violations for the illegal killing of a gray whale off the coast of Washington on September 8, 2007.

According to the indictment, the day before the hunt, Noel sought weapons and ammunition from the Makah Tribe, claiming he was going to use the weapons for practice. Noel 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 approximately16 times with the high powered weapons earlier obtained by Noel. 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. The buoys had been removed at the direction of the Makah tribal marine mammal biologist.

This case was investigated by the NOAA Fisheries Service Office of Law Enforcement and the United States Coast Guard.

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United States v. Kip's Seafood Company et al., No. 1:07-CR-00214 (D.N.H.), AUSA Donald Feith [redacted]

On October 3, 2007, Kip's Seafood Company and owner Karl Crute were charged in a two-count indictment after a two-year investigation for allegations that it shipped thousands of pounds of potentially dangerous shellfish to Philadelphia and New York fish dealers who sold it to restaurants and other businesses. Specifically, they were charged with conspiring to transport and sell in interstate commerce shellfish as well as a felony Lacey Act violation for shipping and selling it.

According to court documents, in September 2003, the Maine-based company shipped 16 loads of shellfish totaling 20,000 pounds after its interstate license was suspended because the water used to wash the seafood at its plant was unclean.

Crute is alleged to have obtained approximately 800 interstate certification tags from Young's Shellfish Company in Maine. All shellfish is required to have tags to allow authorities to track it back to the location where it was harvested in case there is a contamination issue. Kip's Seafood apparently used the Young's Shellfish tags to try to deceive law enforcement from being able to track their seafood shipments.

The shipments of clams and mussels were sent to the Boston area, Chicago, Virginia, Maryland, Rhode Island, Connecticut, and the Fulton Fish Market in the Bronx. The shipments had a wholesale value of about $54,000. Authorities are unaware of anyone getting sick from the shellfish.

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

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United States v. Larkin Baggett, No. 2:07-CR-00609 (D. Utah), AUSA Jared Bennett [redacted] **and SAUSA Alicia Hoegh** [redacted]

On September 24, 2007, an indictment was unsealed charging Larkin Baggett, doing business as Chemical Consultants, with two CWA and two RCRA violations stemming from his discharge of chemical waste with a pH of less than 5.0 into the local POTW and disposing of and treating hazardous wastes without a permit between 2003 and 2005.

Baggett is the owner and operator of Chemical Consultants, which is in the business of mixing, selling, and distributing various chemicals used in the trucking, construction, and concrete industries. The chemicals are transported to customers in 55-gallon drums, which then are returned to the business to be cleaned and reused. The defendant is alleged to have instructed employees to use a variety of techniques 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 is further alleged to have 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 chemicals from the drums, plus process wastewater and spilled chemicals from mixing operations, 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 clear, uncovered 55-gallon drums to allow the dye to evaporate. Once the chemicals in the drum were colorless, they then would dump the chemicals onto a gravel area outside. Chemicals used in this process included 49% hydrofluoric acid, muriatic acid, hydrochloric acid, sulfuric acid, xylene, and toluene.

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

United States v. Craig James et al., No. 3:07- CR-05642 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On September 19, 2007, Craig James, Bruce Brown and Floyd Stutesman were charged in a three-count indictment with violations stemming from their illegally cutting down of trees in the Olympic National Forest.

From between November 2006 and February 2006, the defendants are alleged to have damaged and stolen a variety of trees including 31 old growth western red cedar trees, some of which were over six hundred years old, to sell to timber mills for processing. They are further alleged to have 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.

Trial is scheduled to begin on November 26, 2007. This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

United States v. Fu Yiner et al., No. 1:07-CR-00357, 360 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [redacted], Trial Attorney Colin Black [redacted] and AUSA Linda McMahan [redacted]

On September 6, 2007, Fu Yiner and Wang Hong, both Chinese nationals, were arrested in Denver on charges of smuggling and money laundering in connection with the unlawful importation into the United States from China of Hawksbill sea turtle parts and products. The Hawksbill sea turtle is listed as endangered under the Endangered Species Act.

Yiner was charged in August 2007 with four smuggling violations and three counts of money laundering stemming from his alleged sale and shipment to the United States of 300 guitar picks made from Hawksbill sea turtle shell and approximately five kilograms of raw Hawksbill sea turtle shell.

Hong was charged separately along with another Chinese national, Stephen Cheng, with conspiracy to smuggle Hawksbill sea turtle parts and products into the United States from China. The indictment also charged Hong and Cheng with four counts of smuggling and three counts of money laundering for the alleged sale and shipment to the United States of eight violin bows decorated with Hawksbill sea turtle shell as well as 10 kilograms of raw Hawksbill sea turtle shell.

This case was investigated by the Special Operations Branch of the United States Fish and Wildlife Service.

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Pleas / Sentencings

United States v. BP Products North America, Nos. 4:07-CR-00434 and 3:07-CR-00125 (S.D. Tex. and D. Alaska), ECS Senior Trial Attorney Dan Dooher [redacted], ECS Trial Attorney David Joyce [redacted] and AUSA Mark McIntyre [redacted] ECS Trial Attorneys Chris Costantini [redacted] and Ron Sutcliffe [redacted] AUSA Aunnie Steward [redacted] SAUSA Daniel Cheyette [redacted] ECS Supervisory Paralegal Will Taylor [redacted] and former ECS Contract Paralegal Joyce Russell.

On October 25, 2007, British Petroleum and several of its subsidiaries agreed to pay approximately $373 million in fines and restitution for environmental violations stemming from a fatal explosion at a Texas refinery in March 2005, leaks of crude oil from pipelines in Alaska, and fraud for conspiring to corner the market and manipulate the price of propane carried through Texas pipelines.

Explosion aftermath

The total payments agreed to be paid by BP include: $50 million in criminal fines to be paid by BP Products North America Inc., as part of an agreement to plead guilty in the Southern District of Texas to a one-count felony violation of the Clean Air Act. The agreement resulted from a catastrophic explosion that occurred at the BP Texas City refinery on March 23, 2005, that killed 15 contract employees and injured more than 170 others. For the case in Alaska, British Petroleum Exploration (Alaska), Inc. (BPXA), will pay $12 million in criminal fines, $4 million in community service payments, and $4 million in restitution to the state of Alaska, for pleading guilty to a Clean Water Act violation for pipeline leaks.

BP America, Inc., will pay a criminal penalty of $100 million, a payment of $25 million to the U.S. Postal Inspection Consumer Fraud Fund, and restitution of approximately $53 million, plus a civil penalty of $125 million to the Commodity Futures Trading Commission, as part of an agreement to defer the prosecution of a one-count criminal information filed in the Northern District of Illinois charging the company with conspiring to violate the Commodity Exchange Act and to commit mail fraud and wire fraud.

Finally, a 20-count indictment was returned in the Northern District of Illinois charging four former employees of a subsidiary of BP America, Inc., with conspiring to manipulate and corner the TET propane market in February 2004, and to sell TET propane at an artificially inflated index price in

violation of federal mail and wire fraud statutes, along with substantive violations of the Commodity Exchange Act and wire fraud.

Specifically regarding the case in Texas, BP Products North America Inc., will plead guilty to a felony violation of the Clean Air Act for the fatal explosion. The explosion was the result of hydrocarbon liquid and vapor being released from a "blowdown stack" and igniting during the startup of a unit that is 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 from 1999 up until the morning of March 23, 2005, several procedures required by the Clean Air Act for ensuring the mechanical integrity and a safe startup had either not been established or were ignored. This is the first prosecution under a section of the Clean Air Act specifically enacted to prevent accidental releases that may result in death or serious injury. In addition to the $50 million criminal fine, the company will complete a three-year term of probation, which will include compliance with a settlement agreement with OSHA and an agreed order with the Texas Commission on Environmental Quality.

As to the case in Alaska, British Petroleum Exploration (Alaska), Inc., will plead guilty to a violation of the Clean Water Act stemming from pipeline leaks of crude oil onto the tundra as well as a frozen lake in Alaska. As part of the guilty plea, BPXA has agreed to pay a $12 million criminal fine, $4 million in community service payments to the National Fish and Wildlife Foundation (NFWF) for the purpose of conducting research and activities in support of the arctic environment in the state of Alaska on the North Slope, and $4 million in criminal restitution to the state of Alaska. A three-year term of probation will run concurrent with the term sentenced in Texas.

March 2006 oil pipeline spill

This investigation involved two different leaks from oil transit lines (OTLs) operated by BPXA. The leaks occurred in March and August of 2006, and were the result of BPXA's failure to heed many red flags and warning signs of imminent internal corrosion that a reasonable operator should have recognized. The first pipeline leak, discovered by a worker on March 2, 2006, resulted in more than 200,000 gallons of crude oil spreading over two acres of tundra, reaching a nearby frozen lake, where oil spread out onto the ice along one shore. This spill was the largest spill to ever occur on the North Slope. The second leak occurred in August of 2006, but was quickly discovered and contained after leaking approximately 1,000 gallons of oil. Nevertheless, the second leak led to the shut down of Prudhoe Bay oil production on the eastern side of the field. BPXA shut down production because it could not guarantee the condition of the line and whether it was fit for service.

During the investigation the government obtained a section of pipe where the March 2006 leak occurred. Approximately six inches of sediment were found on the bottom of the 34-inch-diameter pipe. When sediment builds up in a pipeline it creates conditions in which acid-producing bacteria can thrive undisturbed by the flow of oil and chemicals intended to protect the pipe from corrosion. The acid produced by these bacteria can cause corrosion, which causes pits or, if unchecked, holes in the wall of the pipe.

Knowing this, BPXA should have cleaned the OTLs with a piece of equipment called a maintenance (or cleaning) pig and inspected the pipes for corrosion with a smart pig, an inspection tool able to make a complete evaluation of a pipeline's integrity. A maintenance pig would have disturbed the bacteria and cleared out the stagnant water and sediment that harbor the acid-producing bacteria. A smart pig would have provided a clear picture of the corrosion activity that was occurring in both areas where leaks eventually occurred.

The case in Texas was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI in cooperation with the Texas Commission on Environmental Quality. The case in Alaska was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI with assistance from the Department of Transportation's Office of Inspector General. Technical assistance was provided by the Pipeline and Hazardous Materials Safety Administration and the Alaska Department of Environmental Conservation.

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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 October 31, 2007, Zane Fennelly, the former captain of a Jacksonville, Florida-based commercial fishing vessel, pleaded guilty 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 between August 6th and 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.

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United States v. Robert Langill, No. 8:07-CR-00425 (D. Md.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Gina Simms [redacted]

Asbestos stored in truck

On October 26, 2007, Robert Langill pleaded guilty to violating the Clean Air Act in connection with an illegal 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 8, 2004, Langill directed the removal of transite panels containing asbestos from three Buildings 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 and allowing the transite to fall to the ground and break, causing asbestos fibers to be released into the environment. The transite panels from one building had not been adequately wet 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 one building were stored on the grounds of the naval facility overnight in a truck owned by the company.

Langill is scheduled to be sentenced on January 11, 2008. The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Naval Criminal Investigative Service.

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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 October 24, 2007, guilty pleas were taken from Ramallo Brothers Printing, Inc. ("Ramallo Bros."), and Angel Ramallo for violations stemming from illegal waste ink discharges onto property owned by the company.

These guilty pleas have 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 employees of Ramallo Bros. 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 after burner 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 for information 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 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 in 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. Ramallo could be sentenced to pay a $25,000 fine and could serve six to 12 months' incarceration for pleading guilty to this negligent discharge. He has been scheduled for sentencing on January 16, 2008.

This case was investigated by the United States Environmental Protection Agency Office of the Inspector General, United States Environmental Protection Agency Criminal Investigation Division and the Puerto Rico Environmental Quality Board.

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United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Michelle Mallard [redacted].

On October 23, 2007, Krister Evertson, a.k.a. Krister Ericksson, was sentenced to serve 21 months' incarceration followed by three years' supervised release for illegally transporting hazardous materials and illegally storing hazardous waste. Evertson also was ordered to pay $421,049 in restitution to the United States Environmental Protection Agency for cleanup costs.

Evertson, the owner and president of SBH Corporation, was convicted by a jury in June of this year 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 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. According to the indictment, 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.

On May 27, 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 FBI.

United States v. Gary Lehnherr et al., No. 1:07-CR-00008 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA George Breitsameter [redacted]

On October 22, 2007, Gary Lehnherr and Ronnie Gardner each were sentenced to serve three years' probation, during which time they may not hunt. Gardner was further ordered to pay a $2,500 fine and $1,000 in restitution to the Idaho Department of Fish and Game. Lehnherr was ordered to pay a $2,300 fine and $1,700 in restitution to the Idaho Department of Fish and Game.

The defendants pleaded guilty in July of this year to misdemeanor Lacey Act violations stemming from illegal mule deer hunting.

In October and November 2004, both hunters illegally killed mule deer and then made false statements to investigators concerning where and how the deer were killed. Specifically, they used a center-fire rifle in a traditional muzzle-loading-only game management unit and then falsely told investigators they had killed the deer in a different hunt area. DNA from blood and hair found at the actual site was matched to DNA from the deer's antlers, proving the deer was shot there.

Investigators said the deer was so big it would have gone into the record books had it been taken with a traditional muzzleloader. The deer also had an extremely rare antler configuration.

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

United States v. Polar Tankers, No. 3:07-CR-00124 (D. Alaska), AUSA Kevin Feldis [redacted]

On October 15, 2007, Polar Tankers, a wholly-owned subsidiary of ConocoPhillips, pleaded guilty to, and was sentenced for, an APPS violation for failing to maintain an oil record book. The charge stems from a ship's captain faking a man overboard drill in January 2004 to allow crew members to clean oily sludge from the side of the U.S. flagged crude oil tanker, *Polar Discovery*.

This "highly dangerous" maneuver came after oily sludge from the engine room leaked en route to a holding tank on deck as the ship left an Alaskan port. Rain then washed the oil down the side of the ship and into the ocean. The captain responded by slowing down and turning the ship away from the wind to allow the crew to remove evidence of the spill, passing it off as a man overboard drill. He then falsified the bridge logbook to hide the fact the crew had discharged oil directly into the ocean. The chief engineer further failed to record the oil transfer correctly in the oil record book.

In May 2004, a crewmember notified Coast Guard officials in Valdez of the spill and later provided a video tape of crew members cleaning the oil off the side of the ship.

The judge sentenced Polar Tankers to pay a $500,000 fine, half of which was paid to the whistleblower crew member. An additional $2 million went to the National Fish and Wildlife Foundation, to help fund projects to protect coastal waters near Valdez and in Prince William Sound. The company also will complete a three-year term of probation and implement an environmental compliance plan. Polar Tankers confirmed the captain and chief engineer had been dismissed following the episode.

This case was investigated by the United States Coast Guard.

United States v. Kenneth Eller, No. 3:06-CR-00735 (N.D. Calif.), AUSA Derek Owens [redacted]

On October 15, 2007, Kenneth Eller was sentenced to serve nine months' incarceration. A fine was not assessed.

Eller was convicted in June of this year for the unlawful taking of a marine mammal, a misdemeanor violation of the Marine Mammal Protection Act. The jury, after deliberating for just over an hour, found that Eller did in fact take a baby harbor seal pup from Centerville Beach, near Eureka.

The defendant removed the seal from the beach, drove around with it for several hours, and took it to a friend's house the next day despite being told by many people that it was illegal to remove the seal from the beach. After the friend arranged to have marine officials pick it up for treatment, the seal died several days later. This was the first federal criminal jury trial in Eureka in more than 40 years.

This case was investigated the National Oceanic Atmospheric Administration and the National Marine Fisheries Service.

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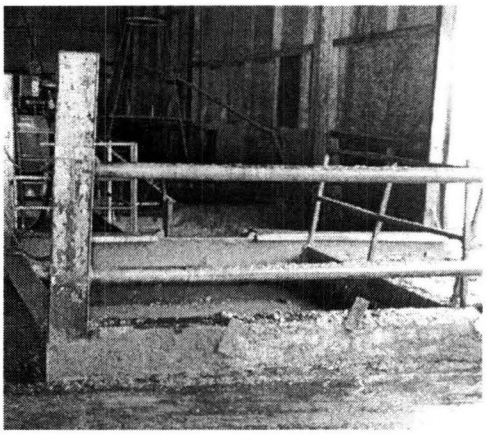
United States v. Spencer Environmental Inc. et al., No. 3:07-00381 (D. Ore.), ECS Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted].

On October 12, 2007, Spencer Environmental Inc. ("SEI") and company president Donald Spencer pleaded guilty 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 resulting spills between 1999 and 2003.



Waste oil pit

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.

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

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United States v. Edgardo Mercurio, No. 3:07-CR-00134 (D. Conn.), ECS Trial Attorneys Lana Pettus [redacted] and Malinda Lawrence [redacted] Supervisory AUSA Anthony Kaplan [redacted] AUSA William Brown [redacted], and USCG CMDR Luke Reid.

On October 12, 2007, second engineer Edgardo Mercurio was sentenced to pay a $1,000 fine and complete a one-year term of probation. He pleaded guilty in July of this year to four APPS

violations, one from each of the four districts he had been charged. Ionia Management S.A. ("Ionia"), a Greek company that manages a fleet of tanker vessels, was convicted by a jury last month on all 18 counts charged, 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 violations.

Ionia and Mercurio were involved in the overboard dumping of waste oil from the *M/T Kriton* into international waters and falsified records to impede the United States Coast Guard and other authorities from learning of the illegal conduct.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from Secret Service.

United States v. Paul Prendergast, No.8:07-CR-00430 (D. Md.), ECS Trial Attorney Noreen McCarthy [redacted] and AUSA Gina Simms [redacted]

On October 11, 2007, Paul Prendergast pleaded guilty to violating the Travel Act in connection with accepting bribes in violation of the West Virginia Bribery and Corrupt Practices Act.

According to the plea agreement, from 1998 to March 2003, Prendergast worked as the Occupational Health and Safety Coordinator at the West Virginia Department of Administration, General Services Division ("GSD"), receiving and reviewing bids submitted for asbestos and lead abatement projects. For certain asbestos and lead abatement jobs, Prendergast had primary authority to award contracts to the lowest bidder.

Two of these contractors were Maryland corporations engaged in asbestos and lead abatement work in Maryland and West Virginia. Immediately upon leaving his employment with GSD, Prendergast worked for one of these companies.

Prendergast admitted that he unlawfully provided one of these contractors with confidential bid information that he received from other abatement firms regarding contracts to perform asbestos and lead abatement at various buildings in the West Virginia State Capitol Complex. This contractor then used the bid information to submit bids to the state of West Virginia that were lower than those submitted by other abatement companies. Prendergast would then award the contracts, and approve payments to the contractor, and cause the state of West Virginia to mail checks to the contractor. While he maintained bid and operational authority over contracts of interest to the contractor, Prendergast also received money and other benefits from the contractor, including three checks from 2000 to 2003, two for $2,500 and one for $6,000.

Additionally, in April 2003, following negotiations that had begun in or about 2002, the other contractor involved hired Prendergast at nearly triple the salary he received from GSD; from April 2003 to January 2005, Prendergast received $85,000 as "salary" from this second contractor; and from December 2003 to December 2004, Prendergast accepted $55,000 from a subcontractor over whom he had oversight responsibility in his position as project manager for the second contractor.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the West Virginia Legislature's Commission on Special Investigations, and the United States Naval Criminal Investigative Service.

United States v. Ralph Rogers, No. 3:07-CR-00098 (W.D.N.C.), AUSA Steven Kaufman [redacted] with assistance from ECS Senior Trial Attorney Jennifer Whitfield [redacted].

On October 11, 2007, Ralph Rogers, the owner and president of Ecosolve pleaded guilty to conspiracy to violate the CWA. Under the terms of the plea agreement Rogers will serve 12 months in home confinement to be followed by three years' supervised release. He also will publish a letter of apology in the local newspaper and the leading FOG industry trade magazine. The fine amount will be determined by the court at sentencing.

Ecosolve removed, hauled, pre-treated, and disposed of waste from grease traps of restaurants and other establishments. The 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.

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

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United States v. Rowan Companies, Inc., No. 2:07-CR-00298 (E.D. La., E.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] ECS Trial Attorney David Kehoe [redacted] and AUSAs Joe Batte [redacted] and Dee Taylor [redacted]

On October 9, 2007, Rowan Companies, Inc., ("Rowan") pleaded guilty to three felonies in connection with the routine discharge of pollutants and garbage into the Gulf of Mexico from one of the firm's oil rigs.

Rowan will pay a $7 million fine, along with community service payments totaling $1 million to five state regional enforcement organizations for the purposes of environmental training, education, and enforcement coordination concerning violations of the Clean Water Act. Rowan also will make a community service payment of $1 million to the National Marine Sanctuaries Foundation to be used for preservation and protection projects at the Flower Garden and Stetson Banks National Marine Sanctuary located in the Gulf of Mexico off the coasts of Texas and Louisiana. In addition, as a condition of probation, Rowan will re-organize its corporate structure to add an environmental division and will implement a comprehensive environmental compliance plan.

According to the plea agreement, the operation and cleaning of offshore drilling rigs created substantial amounts of waste. For example, the hydraulic cranes on board the Rig Midland required the use of large amounts of fresh hydraulic oil, and routine maintenance and operation of the rig necessitated the use of chemicals, paint, and other materials.

The government's investigation revealed that between 2002 and 2004, employees on the Rig Midland routinely discharged waste hydraulic oil mixed with water, used paint, paint cans, and other pollutants and garbage into the Gulf of Mexico and failed to notify the government of the discharges in violation of the CWA and APPS. The charges associated with these violations were filed in the Eastern District of Texas. In the Eastern District of Louisiana, Rowan pleaded guilty to one CWA felony count for discharging pollutants into the Sabine River as a result of sand blasting operations used to clean the rig in Port Fourchon in 2004.

Nine supervisory employees of Rowan who worked on the Rig Midland also pleaded guilty to charges related to Rowan's violations. Carl Smith, James Rawson, Warren James, and Randy Hoover each pleaded guilty to negligently discharging pollutants into U.S. waters in violation of the CWA in connection with the sandblasting operations and have agreed to pay a $2,500 fine. David Burcham and Murphy Comardelle each pleaded guilty to a failure to report knowledge of a felony in connection with

the illegal discharges of waste oil from the Rig Midland and have agreed to pay $5,000 in criminal fines. Terry Glen Fox and Michael Friend pleaded guilty to misdemeanor charges for negligently discharging waste oil into U.S. waters in violation of the CWA and have agreed to pay $2,500 in fines. Finally, Michael Freeman pleaded guilty to a felony violation of the CWA for knowingly discharging waste oil into U.S. waters and faces a maximum fine of $250,000, the exact amount to be determined by the court.

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

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United States v. Lawrence Beckman, No. 9:07-CR-801137 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted].

On October 7, 2007, Lawrence Beckman pleaded guilty 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 the MARY ANNE running without required navigation lights and intercepted the vessel.

Live coral

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 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.

Sentencing is scheduled for December 20, 2007. This case was investigated by the NOAA Fisheries Office of Law Enforcement and the United States Coast Guard.

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United States v. Spindletop Drilling Company, No. 5:07-CR-00016 (E.D. Tex.), AUSA Jim Noble [redacted]

On October 4, 2007, Spindletop Drilling Company ("Spindletop") was sentenced to serve a two-year term of probation and pay $10,000 in restitution to the National Fish and Wildlife Foundation stemming from the deaths of migratory birds. The company pleaded guilty in June of this year to a misdemeanor violation of the Migratory Bird Treaty Act.

On September 6, 2006, U.S. Fish and Wildlife agents inspected Spindletop's "Pewitt D" lease in rural Titus County. The inspection led to the discovery of approximately twelve dead Northern Mockingbirds and one dead Mourning Dove in an oil sludge pit on the property. While Spindletop had originally covered the pit with a net to prevent such an occurrence, over time portions of the net had sunk below the surface.

At the time of the plea, the company offered photographs and testimony demonstrating that it already had made the necessary repairs to the netting over the oil sludge pit and was implementing additional compliance mechanisms to avoid any future incidents.

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

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United States v. Michael Zacharof, No. 3:07-CR-00026 (D. Alaska), AUSA Aunnie Steward [redacted]

On October 4, 2007, Michael Zacharof was sentenced to serve three years' probation and pay a $1,500 fine. Zacharof pleaded guilty in June of this year to violating the Marine Mammal Protection Act for illegally selling genitalia from northern fur seal, a depleted species, to be re-sold in a Korean gift shop.

Zacharof is an Alaska native who illegally sold marine mammal parts in June 2005. Specifically, he sold more than 100 raw seal genitalia also known as "oosiks" to be re-sold at a Korean gift shop in Anchorage, Alaska, for approximately $100 a piece. The defendant was the president of the Aleut Community of St. Paul Island Tribal Government. He also was the co-signatory with the National Marine Fishery Service on the agreement for cooperation in the conservation of the northern fur seals in 2000. Marine mammal parts are illegal to sell unless they have been converted into an authentic native handicraft by a Native Alaskan.

This case was investigated by the National Marine Fisheries Service.

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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 October 3, 2007, Daniel Schaffer, the former environmental manager of Acuity Specialty Products, Inc. (" Acuity"), was sentenced to pay a $5,000 fine and complete a five-year term of probation. Schaffer pleaded guilty in February 2006 to conspiracy to violate the Clean Water Act 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 showed 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.

Acuity was previously sentenced to pay a $3.8 million fine and must complete a three-year term of probation. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

United States v. Isabel Dryden, No. 1:07-CR-00410 (D. Md.), ECS Trial Attorney David Kehoe [redacted] and AUSA Christopher Romano [redacted]

On October 2, 2007, Isabel Dryden, owner of N.R. Dryden and Company, pleaded guilty to illegally selling undersized Chesapeake Bay crabs, a felony Lacey Act violation.

The investigation began when the government received information that crabbers from Tangier Island, Virginia, were selling soft shell blue crabs from the Chesapeake Bay to seafood dealers in Crisfield, including N.R. Dryden and Company. Many of these crabs were found to be under 3 ½ inches in length in violation of Maryland state law. Posing as representatives from a business in West Virginia, United States Fish and Wildlife Service ("USFWS") agents and an officer from the Maryland Department of Natural Resources ("MDNR") purchased 240 dozen crabs worth approximately $1,500 on three separate occasions in 2005 and 2006 from the defendant, with approximately 80% determined to be undersized.

The subsequent execution of a search warrant at the facility's warehouse resulted in the seizure of approximately 648 dozen undersized soft shell crabs labeled as "COCKTAILS", valued at approximately $3,888. Additionally, records seized during the search showed total sales of about $4,400 worth of undersized "COCKTAIL" crabs in 2005 and 2006.

Dryden was sentenced to pay a $10,000 fine and to forfeit the undersized crabs seized during the search. During the two-year term of probation the defendant will allow agents and inspectors from the USFWS and the MDNR increased access to her facility, and will implement employee training programs and more effective notice measures with her suppliers to prevent similar violations in the future.

This case was investigated by the United States Fish and Wildlife Service and the Maryland Department of Natural Resources.

United States v. Frederick Reynolds et al., No. 1:06-CR-00004 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [redacted] and SAUSA Todd Mikolop [redacted]

On October 1, 2007, Frederick Reynolds was sentenced to serve eight months' incarceration followed by one year of supervised release. A fine was not assessed.

Reynolds pleaded guilty in May of this year to conspiracy to violate the Lacey Act, Marine Mammal Protection Act, and to make false statements. Co-defendant Michael Sofoulis pleaded guilty earlier this year to a similar conspiracy violation and was sentenced to serve six months' incarceration, followed by one year of supervised release. Sofoulis will pay a $15,000 fine and a $5,000 community service payment.

The defendants were charged in September 2006 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 beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration or tagging. The ivory also subsequently may be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

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 more 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.

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United States v. Calypso Maritime Corporation et al., No's 3:07-05367 and 05412 (W.D. Wash.), AUSA Jim Oesterle [redacted] and SAUSA Benes Aldana.

On September 21, 2007, Greek shipping company Calypso Marine Maritime Corp. ("Calypso") was sentenced to pay a $1.4 million fine with $400,000 to be paid into the Columbia River Estuarine Coastal Fund. Two employee whistleblowers each were paid $125,000 and the company also will implement an environmental compliance plan along with a four-year term of probation.

Calypso pleaded guilty in June of this year to one APPS and one false statement violation for the chief engineer's failure to maintain the oil record book for the *M/V Tina* and for his presenting the book with the false entries to investigators. Engineer Jesus Reyes earlier was sentenced to serve a one-year term of probation and no fine was imposed. He pleaded guilty to a false statement violation.

After the Coast Guard inspected the ship on May 21, 2007, while it was anchored in Kalama, Washington, crew members were ordered to use two sections of pipe, at night, to bypass the oil water separator. Reyes, acting under the direction of an engineering superintendent who had boarded the ship in Astoria, Oregon, ordered crew members to paint over and conceal the flanges where the bypass pipe had been.

This case was investigated by the United States Coast Guard.

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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

December 2007

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.

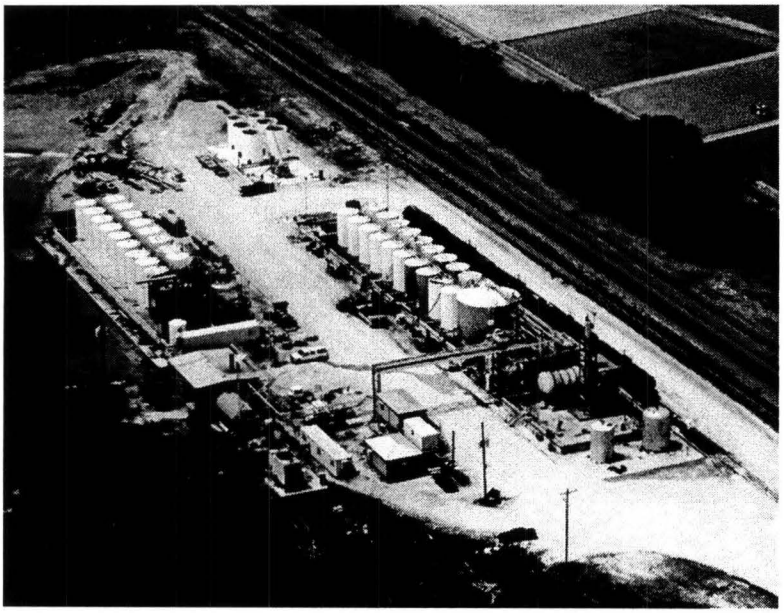
AT A GLANCE

Districts	Active Cases	*Case Type* / Statutes
D. Alaska	United States v. British Petroleum et al.	*Refinery Explosion and Pipeline Spill/* CAA, CWA
D. Colo.	United States v. John Boyer et al.	*Mountain Lion Hunt/* Lacey Act
N.D. Ga.	United States v. Deryl Parker	*Drum Storage/* RCRA
S.D. Ind.	United States v. Anthony McCullough et al.	*Used Oil and Chemical Facility/* CWA
D. Maine	United States v. Petraia Maritime Ltd.	*Vessel/* APPS
D. Mass.	United States v. Scott LeBlanc United States v. Aristides Couto	*Black Bear Hunt/* Lacey Act *Fish Wholesaler/* False Statements, Avoiding Currency Transaction Reporting Req's
[redacted]	[redacted]	[redacted]
S.D. Miss.	United States v. Dennie Pridemore	*Sham Recycling Facility/* RCRA/ False Statements
D. Nev.	United States v. Cody Bartolini	*Reptile Sales/* Lacey Act
N.D.N.Y.	United States v. John Brewer et al.	*Asbestos Removal/* CAA Conspiracy
W.D. Pa.	United States v. Barry McMaster	*Tiger Skin Sale/* Endangered Species
E.D. Tex. (E.D. La.)	United States v. Rowan Companies, Inc. et al.	*Sandblasting/* Clean Water Act, APPS, Negligent Clean Water Act, Failure to Report
S.D. Texas	United States v. Texas Oil and Gathering et al.	*Used Oil Facility/* SDWA, RCRA

Additional Quick Links

Indictments

United States v. Texas Oil and Gathering et al., No. 4:07-CR-00466 (S.D. Tex.), ECS Trial Attorneys Lary Larson ([redacted]) and David Joyce [redacted]



Texas Oil and Gathering

On November 14, 2007, a 14-count indictment was returned charging Texas Oil and Gathering ("TOG"), company president and owner John Kessel, and operations manager Edgar Pettijohn, with charges stemming from the illegal disposal of hazardous waste streams purchased by the defendants for processing into gasoline feed stock. The defendants are further alleged to have illegally disposed of industrial refinery waste (including hazardous waste) into a class II injection well.

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 2000 through 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 it is alleged that the defendants instructed the truck drivers to falsify bills of lading to conceal the waste shipments.

The indictment further states that the defendants purchased waste streams from plastic manufacturing facilities and other chemical manufacturing plants. These waste streams were used as the primary feed stocks for TOG's distillation facility. The companies that generated the waste previously identified it as ignitable hazardous waste before selling it to TOG. The defendants are specifically charged with conspiracy to violate the Safe Drinking Water Act ("SDWA") and RCRA, plus the following substantive offenses: three RCRA violations for illegal disposal of hazardous wastes without a permit, three illegal transportations of hazardous waste to an unpermitted facility in violation of RCRA, and six SDWA counts for the illegal disposal of waste other than oil and gas production waste into a Class II injection well.

This case was investigated by the Texas Environmental Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the Texas Department of Fish and Game, and the United States Department of Transportation.

United States v. Cody Bartolini, No. 2:07-CR-00237 (D. Nev.), AUSA Christina Brown [redacted]

On September 28, 2007, Cody Bartolini was charged with 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 is also illegal to possess indigenous snakes without proper permits (such as the rattlesnakes charged in the indictment), even those designated under state law as "unprotected," when the snakes are possessed for a commercial purpose.

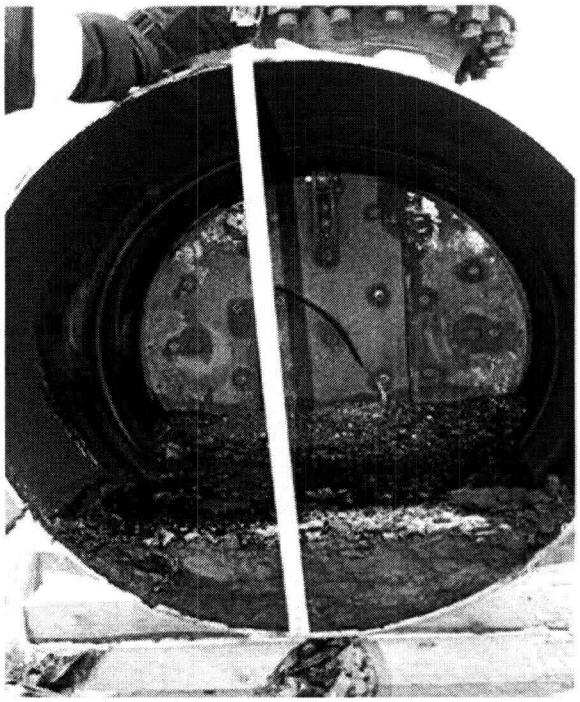
Wildlife agents were notified by an Ohio game warden that Bartolini was offering to sell and trade venomous reptiles via the Internet. Agents were able to determine that Bartolini had been offering venomous snakes for sale or trade over the Internet from his residence in Las Vegas since at least September of 2004. A search warrant was executed at the defendant's residence in March of this year wherein 48 snakes of various species were seized, 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.

Pleas / Sentencings

United States v. BP Products North America, Nos. 4:07-CR-00434 and 3:07-CR-00125 (S.D. Tex. and D. Alaska), ECS Senior Trial Attorney Dan Dooher [redacted], ECS Trial Attorney David Joyce [redacted] and AUSA Mark McIntyre [redacted] ECS Trial Attorneys Chris Costantini [redacted] and Ron Sutcliffe [redacted] AUSA Aunnie Steward [redacted] SAUSA Daniel Cheyette [redacted] ECS Supervisory Paralegal Will Taylor [redacted] and former ECS Contract Paralegal Joyce Russell.

On November 29, 2007, British Petroleum Exploration (Alaska), Inc. ("BPXA") was sentenced in the District of Alaska to pay $20 million in fines, restitution and community service. The company officially pleaded 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. BPXA will pay $12 million as a criminal fine, $4 million will be paid as community service payments to the National Fish and Wildlife Foundation for the purpose of conducting research and activities in support of the arctic environment on the North Slope, and $4 million in restitution will be paid to the state of Alaska. A three-year term of probation also was imposed.



Oil sludge in pipeline

This investigation involved two different leaks from oil transit lines operated by BPXA. The leaks occurred in March and August of 2006 and were the result of BPXA's failure to heed many warning signs of imminent internal corrosion that a reasonable operator should have recognized. The first pipeline leak, discovered by a worker on March 2, 2006, resulted in more than 200,000 gallons of crude oil spreading over two acres of tundra and reaching a nearby frozen lake, where oil spread out onto the ice along one shore. This spill was the largest ever to occur on the North Slope. The second leak occurred in August of 2006, but was quickly discovered and contained after leaking approximately 1,000 gallons of oil. Nevertheless, the second leak led to the shut down of Prudhoe Bay oil production on the eastern side of the field. BPXA shut down production because it could not guarantee the condition of the line and whether it was fit for service.

On November 28th, Judge Lee Rosenthal in the Southern District of Texas, held a status conference regarding the pending guilty plea from BP Products North America to a Clean Air Act violation and the subsequent sentencing stemming from a fatal explosion at a Texas refinery in March 2005 in which 15 people perished. The explosion was the result of hydrocarbon liquid and vapor being released from a "blowdown stack" and igniting during the startup of a unit that is used to increase octane content in unleaded gasoline. Several procedures required by the Clean Air Act for ensuring the

mechanical integrity and a safe startup had either not been established or had been ignored for several years.

Prior to the status conference, civil plaintiffs' attorneys for the victims of the explosion had filed motions to appear before the court. The attorneys for the victims filed the motions pursuant to the Crime Victims Rights Act. The motions also sought to have the plea agreement rejected and to have a presentence report ordered by the court. The judge ruled that, in lieu of a presentence report, the court will afford the victims the opportunity to provide information supporting their objections to the plea agreement. The victims' submissions are to be filed with the court by December 19th. The court ordered the government's responses by January 21, 2008, and a hearing was set for February 4, 2008.

The case in Texas was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI in cooperation with the Texas Commission on Environmental Quality. The case in Alaska was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the FBI with assistance from the Department of Transportation's Office of Inspector General. Technical assistance was provided by the Pipeline and Hazardous Materials Safety Administration and the Alaska Department of Environmental Conservation.

[redacted]

Investigation Division.

United States v. Petraia Maritime Ltd., No. 2:06-CR-00091 (D. Maine), ECS Trial Attorneys Wayne Hettenbach [redacted] and Kevin Cassidy [redacted] and AUSA Rick Murphy [redacted]

On November 27, 2007, Petraia Maritime Ltd., was sentenced to pay a $525,000 fine and must complete two years' probation. The company was convicted by a jury in May 2007 on all three APPS violations charged, but was acquitted of obstruction.

Petraia Maritime Ltd. ("PML"), for the actions of its employees, was originally charged 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 since they were not recorded in the ORB. The obstruction charge stems from the company's allegedly concealing and destroying the equipment used to carry out the discharges.

Two chief engineers, Felipe Arcolas and Alfredo Lozada, previously pleaded guilty to making false entries in the ORB. They each were sentenced to serve one month's home confinement as part of a two-year term of probation and were further ordered to pay a $3,000 fine.

This case was investigated by the United States Coast Guard.

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United States v. Rowan Companies, Inc., No. 2:07-CR-00298 (E.D. La., E.D. Tex.), ECS Senior Counsel Rocky Piaggione [redacted] ECS Trial Attorney David Kehoe [redacted] AUSAs Joe Batte [redacted] and Dee Taylor [redacted]

Rig Midland

On November 20, 2007, Rowan Companies, Inc., was sentenced to pay a $7 million dollar criminal fine along with $2 million in community service payments. In addition, as a term of probation, Rowan will reorganize its corporate structure to add an environmental division and to implement a comprehensive environmental compliance plan under which the company will commit that all of its rigs operating in U.S. waters will comply with U.S. and international environmental laws. In cooperation with the U.S. Environmental Protection Agency and the U.S. Coast Guard, Rowan will develop new sandblasting techniques and help establish new industry standards for the minimization and containment of sandblasting debris over water. On November 2nd, Employees David Burcham and Murphy Comardelle each were sentenced to pay a $5,000 fine. Burcham will complete a three-year term of probation and Comardelle will serve a two-year term of probation.

Rowan pleaded guilty October 9, 2007, to three felonies in connection with the routine discharge of pollutants and garbage into the Gulf of Mexico from one of the firm's oil rigs, the Rig Midland. Burcham and Comardelle each pleaded guilty to a failure to report knowledge of a felony in connection with the illegal discharges of waste oil from the Rig Midland.

According to the plea agreement, the operation and cleaning of offshore drilling rigs created substantial amounts of waste. The hydraulic cranes on board the Rig Midland required the use of large amounts of fresh hydraulic oil, and routine maintenance and operation of the rig necessitated the use of chemicals, paint, and other materials. The government's investigation revealed that between 2002 and 2004, employees on the Rig Midland routinely discharged waste hydraulic oil mixed with water, used paint, paint cans, and other pollutants and garbage into the Gulf of Mexico and failed to notify the government of the discharges in violation of the CWA and APPS. The charges associated with these violations were filed in the Eastern District of Texas. In the Eastern District of Louisiana, Rowan pleaded guilty to one CWA felony count for discharging pollutants into the Sabine River as a result of sand blasting operations used to clean the rig in Port Fourchon in 2004.

Nine supervisory employees of Rowan who worked on the Rig Midland also pleaded guilty to charges related to Rowan's violations. Carl Smith, James Rawson, Warren James, and Randy Hoover each pleaded guilty to negligently discharging pollutants into U.S. waters in violation of the CWA in connection to the sandblasting operations and each has agreed to pay a $2,500 fine. Terry Glen Fox and Michael Friend pleaded guilty to misdemeanor charges for negligently discharging waste oil into U.S. waters in violation of the CWA and each has agreed to pay $2,500 in fines. Finally, Michael Freeman pleaded guilty to a felony violation of the CWA for knowingly discharging waste oil into U.S. waters and faces a maximum fine of $250,000, the exact amount to be determined by the court.

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

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 November 20, 2007, Deryl Parker pleaded guilty 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 actions.

Sentencing is scheduled for February 26, 2008. This case was investigated by the United States EPA Criminal Investigation Division.

United States v. Barry McMaster, No. 2:07-CR-00247 (W.D. Pa.), AUSA Luke Dembosky [redacted]

On November 16, 2007, Barry McMaster pleaded guilty to a violation of 16 USC § 1538, a misdemeanor Endangered Species Act violation, for offering for sale, and causing the shipment of, an

endangered species in interstate commerce. In November 2004, McMaster offered a tiger skin for sale in interstate commerce and then caused the skin to be shipped on or about December 14, 2004.

Sentencing is scheduled for February 15, 2008. This case was investigated by the United States Fish and Wildlife Service.

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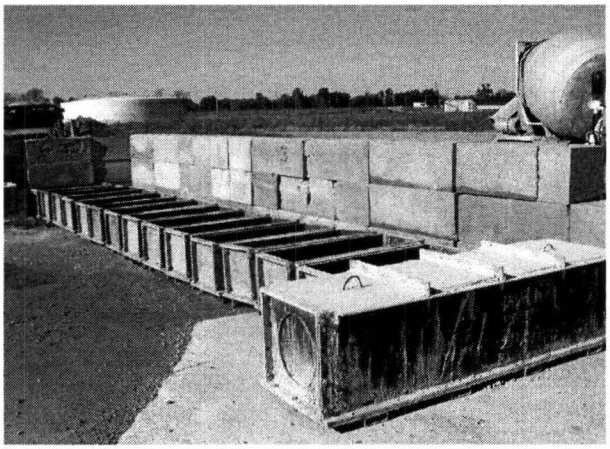
United States v. Dennie Pridemore, No. 5:06-CR-00043 (S.D. Miss.), ECS Senior Trial Attorney Jeremy Korzenik [redacted] and Trial Attorney Malinda Lawrence [redacted]



Cement blocks

On November 15, 2007, Dennie Pridemore pleaded guilty 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 being 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.

Sentencing is scheduled for February 7, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Mississippi Department of Environmental Quality.

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United States v. Scott LeBlanc, No. 07-CR-10243 (D. Colo., D. Mass.), ECS Senior Trial Attorney Robert Anderson [redacted] ECS Trial Attorney Jim Nelson [redacted] AUSA Linda McMahan [redacted] and AUSA Kenneth Shine [redacted]

On November 14, 2007, Scott LeBlanc pleaded guilty in Boston to a misdemeanor violation of the Lacey Act. LeBlanc admitted that, in September 2002, he traveled to Dolores County, Colorado, for a lawful elk hunt guided by Eric Butt d/b/a Outdoor Adventures. During that hunt, Butt and LeBlanc encountered a black bear. Butt informed LeBlanc that he (Butt) had a license to kill a black bear and urged LeBlanc to shoot and kill the bear, which he did. After the bear had been skinned, Butt and LeBlanc lied to a Colorado Division of Wildlife game warden, claiming that Butt, not LeBlanc, had shot and killed the bear. Based on that false information, the game warden "sealed" the bear in

Butt's name. Butt and LeBlanc then traveled to "Memories on the Wall Taxidermy", which was owned and operated by Paul Weyand. LeBlanc paid Weyand to turn the bear skin into a rug and ship the finished product to LeBlanc's home in Massachusetts. The bear rug was later seized from LeBlanc's home by federal agents.

LeBlanc was sentenced to pay a $3,000 fine and $5,000 in restitution to the Colorado Division of Wildlife's "Operation Game Thief", a fund used to offer financial incentives to citizens who provide information which leads to the arrest or citation of a wildlife poacher. LeBlanc also will complete a two-year term of probation and will be banned from hunting in Colorado and in the other Wildlife Violator Compact States for a five-year period. LeBlanc will forfeit both the bear rug and the bow and arrow used to kill the bear.

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

United States v. John Boyer et al., Nos. 1:07-mj-01190 and 01191 (D. Colo.), ECS Trial Attorney Jim Nelson [redacted] and AUSA Linda McMahan [redacted]

On November 7, 2007, John Boyer and his wife Deborah Boyer, owners of "Let's Tree It Outfitters" in Reserve, New Mexico, pleaded guilty to an information charging them with a Lacey Act misdemeanor violation for an illegal hunting trip.

The Boyers admitted that they participated in the unlicensed hunting and killing of a mountain lion near Hot Sulphur Springs, Colorado, in January 2006, and that they later transported the illegally killed mountain lion to New Mexico.

Each defendant was sentenced to pay a $3,000 fine and will each serve three years' probation. During the term of probation, neither will be allowed to hunt or accompany anyone hunting within the State of Colorado. Additionally, Deborah Boyer agreed not to accept, receive, or perform any taxidermy services on any wildlife hunted or killed within the State of Colorado. John Boyer also agreed to forfeit his ability to apply for or receive a Colorado hunting license for the remainder of his life. The Boyers were each ordered to pay an additional $3,000 in restitution to the Colorado Division of Wildlife's "Operation Game Thief".

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

United States v. Aristides Couto, No. 1:07-CR-10319 (D. Mass.), AUSA Jon Mitchell [redacted]

On November 2, 2007, Aristides Couto pleaded guilty 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 has operated a fish wholesale business through which he buys fish directly from commercial fishing vessels and resells 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.

Sentencing is scheduled for January 31, 2008. This case was investigated by the NOAA Fisheries Office of Enforcement and the Internal Revenue Service.

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United States v. John Brewer et al, No. 5:06-CR-00383 (N.D.N.Y.), AUSA Craig Benedict [redacted]

On November 2, 2007, John Russo, John Brewer, and Mario Rolla, were sentenced for their involvement in illegal asbestos removal and disposal activities. All three defendants pleaded guilty to conspiring to violate the Clean Air Act.

In April and August of 2005, Rolla hired Russo and Brewer to remove asbestos from facilities located in Massachusetts and New York. The asbestos was not properly removed nor were regulatory officials notified of the removals. The defendants scattered substantial amounts of asbestos throughout the facilities, where it was left until discovered by the USEPA. Rolla paid coconspirators $40,000 in cash for the two projects. Clean up resulting from the illegal asbestos activities has cost well in excess of $2.5 million.

Russo and Brewer each were sentenced to serve 18 months' incarceration, followed by two years' supervised release. Russo's request for a stay of his sentence pending appeal was denied. Rolla was sentenced to serve a five-year term of probation and will pay a $40,000 fine. Rolla was not sent to prison based upon his age (77) and his substantial assistance to federal authorities in prosecuting Russo. Rolla also paid the $2.5 million in clean-up costs.

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United States v. Anthony McCullough et al., No. 1:07-CR-00082 (S.D. Ind.), AUSA Gayle Helart [redacted]

On October 19, 2070, Anthony McCullough, the owner of Miller Environmental, was sentenced to serve four months' imprisonment and was ordered to pay a $340,000 fine. Miller Environmental, a used oil and chemical manufacturing facility, will pay a $170,000 fine and complete a five-year term of probation. Both defendants are jointly and severally liable for $980 in restitution to the Rushville City Utility Company.

The defendants each pleaded guilty to three felony violations of the Clean Water Act, which included 34 discharges from three separate facilities into publicly-operated wastewater treatment facilities between July 2002 and November 2003. Miller Environmental employees, at the direction of McCullough, illegally discharged the wastes down the floor drains that went directly to the city of Shelbyville and city of Rushville's wastewater treatment plant.

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 SECTION

MONTHLY BULLETIN

November 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: www.regionalassociations.org.

Defendant Joseph Barringer (shown above) pleads guilty to illegal sale of elephant ivory [click here for more details]

AT A GLANCE:

✓ United States v. Overseas Shipholding Group, Inc., 2010 WL 4104663 (1st Cir. Oct. 18, 2010).

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
D. Ariz.	United States v. Clinton Dean Pavelich [redacted]	*Saguaro Cacti Theft*/ Lacey Act [redacted]
C.D. Calif.	United States v. Jim Nguyen et al.	*Asian Arowana imports*/ Smuggling
D. Colo.	United States v. Jeffrey M. Bodnar et al.	*Bobcat Trapping*/ Lacey Act, Conspiracy, Felon in Possession of a Firearm
M.D. Fla.	United States v. Joseph Barringer	*Elephant Ivory Sales*/ ESA
S.D. Fla.	United States v. Guillermo Molina	*Direct Discharge to Sewer*/ CWA
[redacted]	[redacted]	[redacted]
E.D. La.	United States v. Michael Murphy et al.	*Vessel*/ False Statement
M.D. La.	United States v. Gregory K. Dupont et al.	*Alligator Hunting*/ Lacey Act
N.D.N.Y.	United States v. Certified Environmental Services et al.	*Asbestos Air Monitoring*/ CAA, Conspiracy, Mail Fraud, False Statement
D.N.M.I.	United States v. Yuqiong Zheng	*Pesticide Shipment*/ HMTA, Federal Aviation Act
D. Nev.	United States v. Joseph Dematteo	*Vehicle Emissions Testing*/ CAA
S.D. Ohio	United States v. William Ringler	*CAFO*/ CWA misdemeanor
[redacted]	[redacted]	[redacted]
W.D. Wash.	United States v. Wolfgang "Tito" Roempke et al.	*Asbestos Demolition*/ CAA
S.D.W.V.	United States v. Christopher Mills et al.	*Electroplating Facility*/ RCRA Storage

Additional Quick Links:

Significant Environmental Decisions

First Circuit

United States v. Overseas Shipholding Group, Inc.,2010 WL 4104663 (1st Cir. Oct. 18, 2010).

On October 18, 2010, the First Circuit issued an opinion regarding an appeal by Texas attorney Zack Hawthorn who was appointed by the Court under the Criminal Justice Act to represent a whistleblower in the investigation of Overseas Shipholding Group (OSG). OSG pleaded guilty and was sentenced in 2007 to pay a total of $37 million in criminal penalties in a six-district prosecution. After the conclusion of the case, Hawthorn represented the same client and another whistleblower at sentencing asking that they be included in an award under the Act to Prevent Pollution from Ships which provides that a court may award up to half the fines collected under that statute to those providing information leading to conviction. In granting an award to 12 whistleblowers in the case, the court adopted the government's suggestion that any attorney seeking more than $10,000 in legal fees would need to apply to the court. Over the government's objections, contending that Hawthorn had done very little work, Hawthorn sought a 33 percent contingency fee from the two whistleblowers each of whom had been awarded $437,500.

In an opinion issued December 1, 2009, the district court held that Hawthorn's fees were "unethically excessive" and that he had acted unethically in contacting the second whistleblower who was represented. The district court restricted Hawthorn to a $25,000 fee for one client. The First Circuit agreed that Hawthorn's 33 percent contingency fee was excessive, but not unethically so. The opinion suggests that excessive amounts such as that sought by Hawthorn would undermine the statute:

> The whole purpose of the discretionary award to whistleblowers under this statute is to create incentives for the whistleblower to take risks that may disadvantage the whistleblower in his relationship to his employer. The amount of the fee that will be siphoned off by the lawyer significantly affects the size of that award and the power of

the incentive. The court in administering this statute is obligated to ensure his excessive legal fees will not diminish the statutory incentive.

While upholding the district court in most respects, the First Circuit held that Hawthorn did not violate ethics rules by contacting the represented whistleblower for the purpose of the award since the award was a different matter from representation in the criminal investigation, and remanded the case so that Hawthorn could collect a $25,000 fee from both of the whistleblowers as had originally been recommended by a Magistrate Judge.

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Trials

United States v. Certified Environmental Services, et al., No. 5:09-CR-00319 (N.D.N.Y.), ECS Trial Attorneys Todd Gleason [redacted] and Jessica Alloway [redacted] AUSA Craig Benedict [redacted], and ECS Paralegal Katherine Loomis [redacted]

Dirty respirator hanging from asbestos-laden pipe

On October 12, 2010, after four weeks of trial, the jury returned guilty verdicts against Certified Environmental Services, Inc. (CES), an asbestos air monitoring company and laboratory, along with two managers, Nicole Copeland and Elisa Dunn; and one of its employees, Sandy Allen, for conspiring to aid and abet Clean Air Act (CAA) violations, commit mail fraud, and defraud the United States. The defendants were convicted of substantive CAA violations and mail fraud, while CES and Elisa Dunn also were convicted of making false statements to federal law enforcement.

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 convince building owners that the asbestos had been properly removed. In other instances where asbestos was properly removed, fraudulent air monitoring still occurred.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the New York State Department of Environmental Conservation.

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Informations and Indictments

United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., No. 3:10-CR-00140 and United States v. Clint Martinez et al., No. 3:10-CR-00038 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [redacted] and ECS Trial Attorney Shennie Patel [redacted]

On October 27, 2010, a grand jury returned two superseding indictments against defendants charged with violations stemming from illegal alligator hunting and guiding activities. The charges against Gregory K. Dupont now include a forfeiture count along with the three Lacey Act violations previously charged. The charges against brothers Clint and Michael Martinez now include two false statements and a forfeiture allegation along with the nine Lacey Act violations previously charged.

All three defendants were involved in the illegal hunting of alligators at various times between 2005 and 2009. 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. Clint Martinez, a licensed alligator hunter and his brother Michael Martinez, a licensed alligator helper were hired by Dupont on some of these hunts. In 2005, 2006 and 2009, the Martinez brothers are alleged to have taken clients to hunt in areas for which they did not have authority to hunt.

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 from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

The fees charged 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 charged trophy fees of up to $2,000, depending on the size of the alligator. Several of the alligators taken on the dates of the alleged 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

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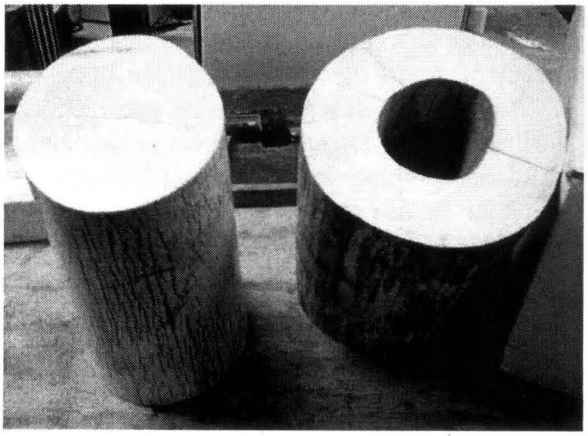
Plea Agreements

United States v. Joseph Barringer, No. 6:10-CR-00272 (M.D. Fla.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Bruce Ambrose [redacted].

On October 28, 2010, Joseph Barringer pleaded guilty to an information charging him with an Endangered Species Act violation for the illegal sale of elephant ivory.



Tusk sectioned with bandsaw

In December 2005, while conducting an Internet search for businesses dealing in ivory, Fish and Wildlife Service agents located a website for Cue Components, a manufacturer of custom pool cue parts. Among the items advertised for sale were components made from elephant ivory including ferrules, joint collars, butt caps and inlay slabs. According to its web page at the time, Cue Components (owned by Barringer) advertised that it sold "pre ban, legal and well documented" ivory and that it was for sale only to individuals in the United States. The website included the following statement: "Please Note: All pre ban elephant ivory must be sold to U.S. customers only-no exceptions. It is illegal to transport to a foreign country." The website included detailed descriptions and color photographs of a raw elephant tusk being processed into various finished pool cue parts. Neither the defendant nor Cue Components has ever been issued any CITES permits for the export of ivory.

Over the course of this two-year undercover operation (which also included participation by British law enforcement officials) the defendant offered for sale and sold pool cues that were advertised as containing "genuine elephant ivory" via eBay using an alias. In one transaction, the defendant provided a false customs declaration so that an agent, posing as a buyer, could evade British customs payments.

Items seized in December 2007 as a result of search warrants executed at the defendant's home and business included approximately 197 pounds of cut ivory pieces, 24 elephant tusk tips weighing 33.6 pounds, and a bag of ivory ferrules weighing 1.2 pounds. Evidence was not obtained to establish whether the ivory was illegally smuggled into the United States, although the defendant made a practice to obtain statements from sellers indicating that the ivory he purchased was lawful.

This case was investigated by the Fish and Wildlife Service and Immigration and Customs Enforcement with assistance from the London Metropolitan Police.

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United States v. Michael Murphy et al., No. 2:10-CR-00235 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] AUSA Dee Taylor [redacted] and ECS Paralegal Jessica Egler [redacted]

R/V Gould

On October 20, 2010, Michael Murphy, a former chief engineer employed by Offshore Vessels, LLC ("OSV"), pleaded guilty to a one-count information charging him 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. On or about September 27, 2005, Murphy knowingly and willfully presented an oil record book containing false entries to Coast Guard personnel during an inspection.

The company previously pleaded guilty to an APPS violation, admitting that on or about September 8, 2005, crew members knowingly discharged oily wastewater on the high seas directly overboard from the ship's bilge tank. The company is scheduled to be sentenced on November 4, 2010.

This case was investigated by the Coast Guard Criminal Investigative Service.

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United States v. Clinton Dean Pavelich, No. 2:10-CR-00841 (D. Ariz.), AUSA Jennifer Levinson [redacted]

On October 19, 2010, Clinton Dean Pavelich pleaded guilty to a Lacey Act violation for his involvement in the theft of government property. Pavelich was previously charged in a four-count indictment with two Lacey Act violations and two counts of theft of government property for his role in stealing six Saguaro Cacti from public lands managed by the Department of the Interior with the intent to sell the Saguaros. The defendant is scheduled to be sentenced on January 3, 2011.

This case was investigated by the Bureau of Land Management.

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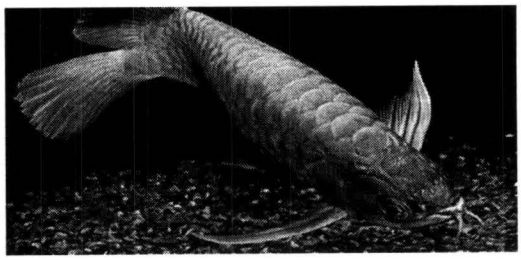
United States v. Jim Nguyen et al., Nos. 2:10-CR-00470 - 476 (C.D. Calif.), AUSAs Christine Ewell [redacted] and Joseph Johns [redacted]

On October 13, 2010, Sam Lam pleaded guilty to a single smuggling violation for his involvement in the illegal importation of Asian Arowana or "lucky fish" into the United States. Lam is the sixth of seven defendants to plead guilty in this case. Lam, Jim Nguyen, Andree Gunawan, Tom Ku, Everette Villota, Thy Tran, and Tien Le were previously charged with smuggling and Endangered Species Act violations.



Asian Arowana

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.

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United States v. Joseph Dematteo Nos. 2:10-CR-0004 and 00011 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted], Trial Attorney Sue Park [redacted] and AUSA Roger Yang [redacted]

On October 14, 2010, Joseph Dematteo pleaded guilty to a Clean Air Act violation for falsifying emissions data. To date, six defendants have pleaded guilty in this case stemming from 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. Dematteo was captured by authorities in June of this year after being posted on the EPA's fugitive website.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

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United States v. Wolfgang "Tito" Roempke et al., No. 2:10-CR-00062 (W.D. Wash.), AUSA Jim Oesterle [redacted].

Asbestos demolition

On October 13, 2010, Wolfgang "Tito" Roempke pleaded guilty to a Clean Air Act violation for his role in the illegal removal of asbestos during a demolition project. Co-defendants Michel Neureiter and James "Bruce" Thoreen previously pleaded guilty to a CAA conspiracy charge.

Roempke is the owner of a vacant building that was demolished in late August and early September of 2008. The four-count indictment alleged that Roempke and two contractors, Neureiter of A&D Company Northwest, Inc., and 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. Having been told it would cost approximately $20,000, he contacted co-defendants Thoreen and Neureiter for the purpose of conducting 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 informed Roempke that 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.

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Sentencings

United States v. William Ringler, No. 2:10-CR-00118 (S. D. Ohio), AUSA Michael Marous [redacted]

On October 19, 2010, William Ringler was sentenced to serve three months' imprisonment followed by three months' home confinement stemming from an unpermitted discharge that caused a fish kill in June 2007. Ringler also will pay a $51,750 fine and make an additional $17,250 community service payment to the Ohio EPA. Of this amount, $6,123 will be used as restitution to reimburse the agency for its emergency response activities.

Fish in distress from discharge of whey

The defendant previously pleaded guilty to a misdemeanor CWA violation 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 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.

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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 15, 2010, Jeffrey M. Bodnar was sentenced to serve 27 months' incarceration, followed by three years' supervised release during which time he will be prohibited from hunting, trapping or fishing. His wife Veronica Anderson-Bodnar will complete a five-year term of probation during which time she will not be allowed to possess firearms and will also be prohibited from hunting, trapping or fishing.

The Bodnars engaged in the illegal trapping and interstate sale of bobcats. 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.

Jeffrey Bodnar previously 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. 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.

This case was investigated by the Fish and Wildlife Service and the Colorado Division of Wildlife.

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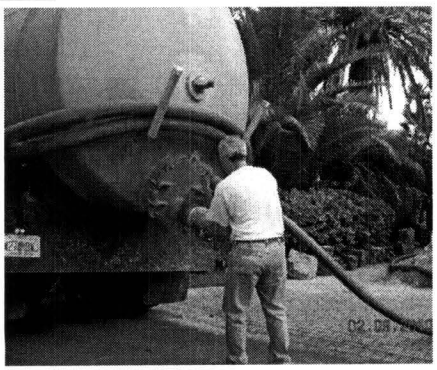
United States v. Guillermo Molina, No.1:10-CR-20702 (S.D. Fla.), AUSA Jose Bonau [redacted]



Defendant preparing to pump waste into sewer

On October 7, 2010, Guillermo Molina was sentenced to pay a $2,500 fine, complete a three-year term of probation, and perform 750 hours of community service after pleading guilty to a Clean Water Act violation.

Molina was the owner and operator of a septic pumping truck and was in the business of septic and grease trap waste disposal. The defendant was hired to pump out residential and commercial septic systems filled with sludge, sewage, and chemicals, as well as to empty out grease traps from restaurants. He was then responsible for hauling these wastes to the POTW

for treatment and disposal.

On March 18, 2010, in order to avoid paying the POTW discharge fee and to obtain additional jobs, Molina dumped the untreated wastes directly into the sewer system. As part of his sentence he will be barred from any involvement in pumping, trucking, hauling or discharging pollutants during the period of probation.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Miami-Dade Police Department's Environmental Crimes Unit, and the Florida Department of Environmental Protection.

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United States v. Yuqiong Zheng, No. 1:10-CR-00027 (D.N.M.I.), AUSA Beverly McCallum ([redacted]

On September 30, 2010, Yuqiong Zheng was sentenced to serve two years' probation after previously pleading guilty to a violation of the Hazardous Materials Transportation Law. This case stemmed from the defendant's importation of undeclared pesticides from the People's Republic of China.

On October 9, 2008, Zheng attempted to transport the pesticide Buprofezin, a hazardous material, onboard an airplane. She originally was charged with a violation of the Federal Aviation Act along with the HMTL charge.

Pesticides disguised in bags of tea

This case was investigated by the Department of Transportation Office of Inspector General and the Environmental Protection Agency Criminal Investigation Division, with assistance from the Coast Guard Investigative Service, the Federal Aviation Administration, and the Commonwealth of the Northern Mariana Islands Divisions of Environmental Quality and Customs.

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United States v. Christopher Mills et al., Nos. 5:09-CR-00215 - 216 (S.D.W.V.), SAUSA Perry McDaniel [redacted] **and AUSA Eric Goes** [redacted]


Hazardous wastes stored in open pails

On September 29, 2010, Christopher Mills, a co-owner of an electroplating business, was sentenced to serve 18 months' incarceration with credit for time served, followed by a three-year term of supervised release. A fine was not assessed; however, Mills is jointly and severally liable with co-defendant Rodney Mills for $133,819 in restitution to the U.S. Environmental Protection Agency for cleanup costs.

Hoffman and Mills 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 through February 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, and he recently was sentenced in the current case to serve a 30-month prison term.

This case was investigated by the 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,a nd the Federal Bureau of Investigation.

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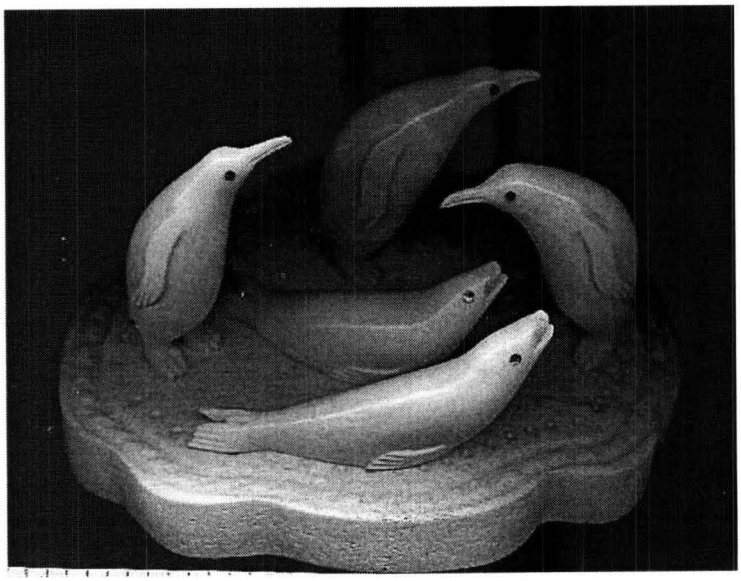
ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

December 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: www.regionalassociations.org.



Scrimshaw from the *U.S. v. Place Trial* [click here for more details]

AT A GLANCE:

- ✓ United States v. Michael Panyard et al., WL 2010 4669637, (6th Cir. Nov. 10, 2010)(unpublished slip opinion).

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
D. Ariz.	United States v. Eugene Mansfield et al.	*Golden Eagle Taking*/ BGEPA
C.D. Calif.	United States v. Davis Wire Company	*Wire Manufacturer*/ CWA Misdemeanor
C.D. Ill.	United States v. Leroy Hill	*Falsified Discharge Monitoring Reports*/ CWA
E.D. La.	United States v. Offshore Vessels, LLC et al.	*Vessel*/ APPS, False Statement
D. Md.	United States v. Jerry Decatur, Jr. et al.	*Rockfish Poaching and Bird Baiting*/ Lacey Act, MBTA
D. Mass.	United States v. David Place United States v. Albania Deleon et al.	*Sperm Whale Teeth Imports*/ Lacey Act, Conspiracy, Smuggling *Fugitive Arrested*/ CAA, Conspiracy, False Statement, Mail Fraud, False Tax Returns
E.D Mich.	United States v. Wayne Duffiney	*Vessel Scuttling*/ *CWA*
W.D.N.Y.	United States v. Keith Gordon-Smith et al. United States v. Daniel Black	*Asbestos Abatement*/ CAA, False Statement *Asbestos Abatement*/ CAA, False Tax Return
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
D. Nev.	United States v. Todd Davis et al.	*Wild Horse Killing*/ Wild Horses and Burros Protection Act
S.D. Tex.	United States v. John Porunnolil Zacharias	*Vessel*/ APPS, Obstruction
D. Vt.	United States v. Mace Security International, Inc.	*Tear Gas Producer*/ RCRA
W.D. Wash.	United States v. James "Bruce" Thoreen et al.	*Asbestos Demolition*/ CAA, Conspiracy

Additional Quick Links:

Significant Environmental Decisions

Sixth Circuit

United States Michael Panyard et al., WL 2010 4669637,(6th Cir. Nov. 10, 2010)(unpublished slip opinion).

On November 10, 2010, the Sixth Circuit Court of Appeals affirmed Michael Panyard's conviction and sentence. Panyard, a former president, general manager, and sales manager for Comprehensive Environmental Solutions Inc. ("CESI"), was sentenced to serve 15 months' incarceration in April 2009. Panyard, along with two co-defendants, was convicted by a jury in October 2008 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 with 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 was sentenced to pay $750,000, which included a $600,000 fine. Mallindine previously was sentenced to serve a three-year term of probation, to include 90 days' home confinement, and Long was sentenced to serve 24 months' incarceration.

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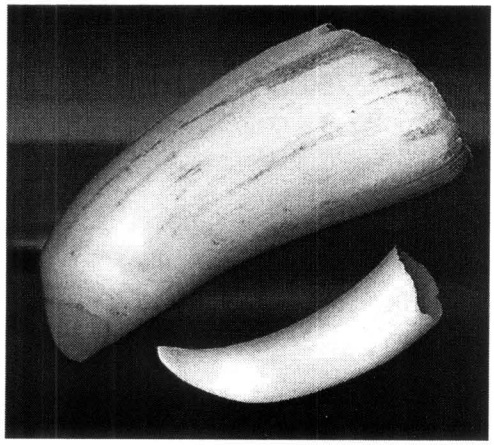
Trials

United States v. David Place, No. 1:09-CR-10152 (D. Mass.), ECS Trial Attorneys Gary Donner [redacted] and Jim Nelson [redacted] and ECS Paralegal Ben Laste [redacted].



Sperm whale teeth

On November 19, 2010, David Place was convicted by a jury on seven felony counts related to the illegal importation and trafficking of sperm whale teeth and narwhal tusks. Place was found guilty of conspiracy, Lacey Act, and smuggling violations for buying and importing sperm whale teeth and narwhal tusks into the United States, as well as for selling the teeth after their illegal importation. He was acquitted on one Lacey Act misdemeanor violation.

Evidence at trial proved that, from 2001 to 2006, Place knowingly purchased and imported sperm whale teeth and narwhal tusks into the United States in violation of federal law. He conspired with others located in Ukraine to import the protected whale teeth for resale in the United States. Place owns Manor House Antiques Cooperative in Nantucket. Sperm whale teeth are commonly used for scrimshaw and can fetch large sums of money from collectors and tourists. Scrimshaw is an art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any whale, dolphin or porpoise. Sentencing is scheduled for February 10, 2011.

This case was investigated by the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, with assistance from Immigration and Customs Enforcement.

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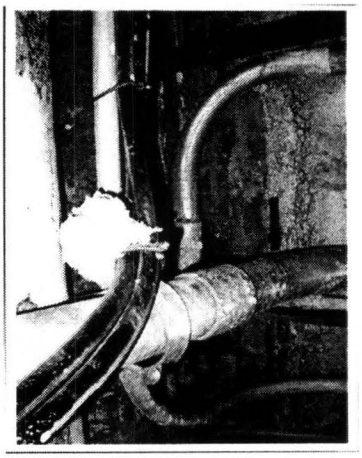
United States v. Keith Gordon-Smith et al., No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Dooher [redacted] AUSA Craig Gestring [redacted], and ECS Paralegal Lisa Brooks [redacted].

On November 12, 2010, after a three-week trial, Keith Gordon-Smith and his Rochester-based asbestos abatement company, Gordon-Smith Contracting, Inc., (GSCI) were convicted by a jury of 11 counts, including eight Clean Air Act violations and three false statements.



Asbestos clump

Evidence at trial proved that GSCI workers violated asbestos work practice standards at the west wing of the Genesee Hospital complex, which was scheduled to be 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. 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.

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

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Fugitive Arrests

United States v. Albania Deleon et al., No. 1:07-CR-10277 (D. Mass.), AUSA Jonathan Mitchell [redacted] and SAUSA Peter Kenyon [redacted]


WANTED

by the

U.S. Environmental Protection Agency

CRIMINAL INVESTIGATION DIVISION

CAPTURED

Name:	Deleon, Albania
Alias:	
Sex:	Female
Race:	White
Date of Birth:	11-10-1969
Place of Birth:	Dominican Republic
Height:	5'6"
Weight:	160 lbs
Eyes:	Brown
Hair:	Brown
Scars/Tattoos:	
FBI #:	732669BC9
NIC #:	W186210351
Last Known Address:	Salem, New Hampshire

Case Summary:

- Deleon was convicted in Federal District Court, District of Massachusetts on November 19, 2008, on twenty-eight felony charges relating to her role as President of Environmental Compliance Training (ECTT), a certified asbestos training provider.
- Deleon, through ECTT, [illegible] asbestos training certificates to hundreds of individuals who did not complete the training mandated by state and federal law.
- Deleon and others significantly benefitted from the illegal enterprise by selling fraudulent training certificates and making the statements to the Commonwealth of Massachusetts. Additionally, she employed the fraudulently licensed workers in her temporary employment agency, Methuen Abatement Staffing.
- An arrest warrant was issued for Deleon for violating post-trial release conditions. She additionally failed to appear for her sentencing hearing that was scheduled for March 23, 2009.
- Deleon is a naturalized United States Citizen who is originally from the Dominican Republic and her whereabouts are unknown.

Anyone with information regarding this fugitive should contact the U.S. Environmental Protection Agency, Criminal Investigation Division - Boston, Massachusetts at: 1-617-918-2300 or complete the form located at: http://www.epa.gov/compliance/criminal/fugitives/report-location-form.html

U.S. EPA (2720) Printed Date: April 2, 2009 www.epa.gov/fugitives

On October 30, 2010, Albania Deleon, a fugitive since March 2009, was arrested in the Dominican Republic after absconding just prior to her sentencing. She was subsequently returned to Massachusetts and is scheduled to be sentenced on January 20, 2011.

Deleon, owner of the Environmental Compliance Training School (ECTS), was convicted by a jury two years ago on charges that she sold asbestos-removal training certificates to hundreds of undocumented workers who had not taken the mandatory training course. She then sent them out to perform asbestos removal work, for which she paid them but 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 the 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. Finally, the mail fraud convictions stem from Deleon's mailing to insurance representatives workers compensation insurance documentation 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.

Co-defendant Jose Francisco Garcia-Garcia previously pleaded guilty to a false statement violation for issuing the false certifications and is currently a fugitive.

This case was investigated by the 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.

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Informations and Indictments

United States v. Mace Security International, Inc., No. 5:10-CR-00147 (D. Vt.), AUSA Joseph Perrella

On November 17, 2010, Mace Security International, Inc. (Mace), and company president Jon Goodrich were charged with a RCRA violation for allegedly storing hazardous waste at the Mace facility without a permit.

The Bennington facility of Mace produces tear gas and pepper spray products, and generates hazardous wastes during the manufacturing process. The charges stem from an emergency removal action conducted by the EPA and Vermont Department of Environmental Conservation beginning in January 2008. During the initial inspection, inspectors observed more than 80 drums of unlabeled chemicals in the mill buildings. There were no signs indicating the storage of hazardous chemicals or hazardous waste in these areas although some of the containers were found to contain hazardous waste.

According to the allegations, Mace and Goodrich knowingly stored hazardous waste at the Vermont Mill Properties facility for several years in excess of allowable amounts. The charges further allege that the defendants obtained multiple estimates for proper removal of the hazardous waste, but never followed through with the removal.

This case was investigated by the Environment Protection Agency Criminal Investigation Division.

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United States v. Aramais Moloian, No. 2:10-CR-20666 (E.D. Mich.), AUSA Jennifer Blackwell and SAUSA Crissy Pellegrin

On November 9, 2010, Aramais Moloian, the president and owner of Chem-Serve Corporation, Inc., a chemical soaps and dyes business incorporated in Michigan since 1968, was charged with four RCRA violations for the illegal storage and disposal of hazardous waste over approximately a three-year period.

Dilapidated drums spilling hazardous waste

Moloian 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 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. EPA sampling of the property in January 2008 confirmed that the contents of numerous drums tested positive for corrosivity.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Natural Resources and Environment.

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Plea Agreements

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United States v. James Robert Soyars, Jr., No. 10-CR-00090 (D. Colo.), AUSA Linda Kaufman [redacted] and SAUSA Linda Kato [redacted].

On October 27, 2010, James Robert Soyars, Jr.,plea ded guilty to two of nine counts charged in an indictment stemming from illegal asbestos abatement projects. Soyars pleaded guilty to two Clean Air Act violations for failing to properly dispose of regulated asbestos-containing material (RACM) and with transporting this material in unmarked vehicles.

Soyars was the owner and operator of Talon Environmental, an asbestos abatement company located in Colorado. He also was a certified asbestos abatement supervisor. In February 2005, after the company began having financial difficulties, Talon instructed employees to store RACM in storage units that had been rented from a public storage company.

Storage unit stuffed with RACM

In September 2005, Talon removed RACM from a bowling alley, most of which ultimately ended up in a public storage unit, after Soyars assured state inspectors that the material was going to be properly disposed of. In August 2006, the defendant engaged in similar illegal storage activities during the abatement of an office building by directing employees to place approximately 100 bags of RACM inside another public storage unit.

After inspectors were tipped off to this activity, they found some of the storage units to be so full that the doors were bulging outward, with a significant amount of loose dry powder spread inside the units. After the execution of a search warrant in 2006, a cleanup was undertaken at the public storage facility at the cost of approximately $436,000. Soyars is scheduled to be sentenced on February 3, 2011.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center, with assistance from the Colorado Department of Public Health and the Environment.

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United States v. Daniel Black, No. 1:10-CR-00303 (W.D.N.Y.), AUSA Aaron Mango [redacted]

On October 22, 2010, Daniel Black pleaded guilty to two-count information charging a Clean Air Act violation for failure to conduct an inspection before starting an asbestos abatement and to a tax violation for filing a false tax return.

In July 2008, Black, the president of Blackstone Business Enterprises, Inc. (BBEI), authorized the cleanup of a four-story building in Jamestown, New York. Using an employment agency, Black hired four temporary workers to complete the project. The work included the removal of steam pipes later confirmed by inspectors to contain asbestos insulation from three floors.

The income tax offense involved Black's failing to report a total of $536,196 over a three-year period in reportable income that he received from BBEI, which resulted in a total tax loss of $191,669.

As part of the plea agreement, the company agreed to pay a penalty of $205,000 to OSHA to resolve citations issued during the agency's inspection of the project. BBEI also will pay $25,000 to the New York State Department of Labor Asbestos Control Bureau to resolve the notice of violations issued during its inspection.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, and the Internal Revenue Service Criminal Investigation Division.
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United States v. Leroy Hill, No. 4:09-CR-40045 (C.D. Ill.), AUSA Matt Cannon [redacted] and RCEC Crissy Pellegrin [redacted]

On October 14, 2010, Leroy Hill, the former wastewater treatment operator of a John Deere facility in Moline, Illinois, pleaded guilty to three felony Clean Water Act violations stemming from violations of the facility's discharge permit.

This case was initiated after John Deere self-disclosed that Hill failed to report more than 100 violations of the company's discharge permit from 2000 through January 2005. The company has since made changes to its monitoring procedure, including the addition of new updated equipment as well as a notification system to detect any future violations. If a discharge occurs at the facility that does not meet the permitted parameters, an e-mail notification is sent to multiple recipients,includi ng more than one person at corporate headquarters.

Hill was initially charged in a 26-count indictment (24 counts of failure to report permit discharge violations and two CWA false statements for discharge monthly reports submitted to the City of Moline). The defendant pleaded guilty to two counts charging him with failure to report and with one false statement violation. Sentencing is scheduled for February 4, 2011.

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

United States v. John Porunnolil Zacharias, No. 6:10-CR-00039 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted]

On November 17, 2010, chief engineer John Porunnolil Zacharias was sentenced to pay a $300 fine and to complete a five-year term of probation. Zacharias previously pleaded guilty to a two-count indictment charging an APPS violation for failing to maintain an oil record book and 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.

In October 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 then was 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.

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.
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United States v. Wayne Duffiney, No. 1:07-CR-20501 (E.D. Mich.), AUSA Janet Parker [redacted]

The Misty Morning

On November 16, 2010, Wayne Duffiney was sentenced to serve 50 months' incarceration and was ordered to pay $57,308 in restitution to the Coast Guard. Duffiney was convicted by a jury in April 2009 on three of the four counts charged stemming from the intentional sinking of his boat in waters connected to Lake Huron. In October 2009, his wife Michelle was arrested on a criminal complaint for allegedly helping her husband avoid his sentencing, by, among other things, claiming her husband had committed suicide. After failing to appear for sentencing he was arrested eight months later in Costa Rico.

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.

Duffiney was convicted of violating the Clean Water Act by discharging pollutants into the navigable waters of the United States; of 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.

This case was investigated by the Coast Guard and the Michigan Department of Environmental Quality.

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United States v. Jerry Decatur, Jr., et al., Nos. 8:09-CR-00164 - 165 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [redacted] and Wayne D. Hettenbach [redacted], ECS Trial Attorney Jeremy Peterson [redacted] AUSA Stacy Belf [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On November 9, 2010, Jerry Decatur, Jr., and Jerry Decatur, Sr., were sentenced to serve 10 months and eight months' incarceration, respectively, followed by three years' supervised release. The defendants also each will pay a $1,000 fine and $18,999 in restitution to the National Fish and Wildlife Fund. The father and son previously pleaded guilty to a Lacey Act violation for illegally taking and over-harvesting striped bass. Jerry Decatur, Jr., also pleaded guilty to a Migratory Bird Treaty Act baiting violation for placing corn in an area to attempt to attract and take migratory birds.

On approximately 13 occasions between 2004 through 2007, the Decaturs illegally harvested a total of more than 10,000 pounds of striped bass from the Potomac River. The commercial fishermen fished out of season and kept over-sized fish or used nets that violated applicable regulations. They then sold the catch to two fish wholesalers in Washington, D.C. Additionally, they failed to affix tags

to the majority of the striped bass that they caught, thereby exceeding their limit by thousands of pounds. In 2003 through 2007, Decaturs harvested a total of more than 65,000 pounds over their 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 Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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United States v. Offshore Vessels, LLC et al., No. 2:10-CR-00 183, 235 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] AUSA Dee Taylor [redacted], and ECS Paralegal Jessica Egler [redacted]

On November 4, 2010, Offshore Vessels, LLC, was sentenced to pay a $1,750,000 fine, to make a $350,000 community service payment, and to complete a three-year term of probation, while operating under an environmental compliance plan. OSV was the owner and operator of the *R/V Laurence M. (L.M.) Gould (R/V Gould)*, a 2,966 gross ton U.S.-flagged ship that served as an ice-breaking research vessel for the National Science Foundation on research voyages to and from Antarctica.

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. The company previously pleaded guilty to an APPS violation and Michael Murphy, a former chief engineer, previously pleaded guilty to submitting a false statement, in violation of 18 U.S.C. § 1001. Murphy presented a false ORB to inspectors during an inspection of the ship.

This case was investigated by the Coast Guard Investigative Service.

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United States v. Todd Davis et al., No. 3:10-CR-00030 (D. Nev.), AUSA Sue Fahami [redacted]

On November 4, 2010, two men who shot and killed five mustangs in violation of the Wild Horses and Burros Protection Act each were sentenced to serve six months' incarceration followed by one year of supervised release.

Todd Davis and Joshua Keathley admitted to shooting the horses last fall on government-owned rangeland near the California state line about 150 miles northwest of Reno. According to 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.

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.

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United States v. James "Bruce" Thoreen et al., No. 2:10-CR-00062 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On October 29, 2010, James "Bruce" Thoreen, the owner of JT Environmental, Inc., was sentenced to pay a $4,000 fine and will complete a two-year term of probation for his involvement in the illegal removal of asbestos during a 2008 demolition project.

Demolition waste

Wolfgang "Tito" Roempke was the owner of a vacant building that was demolished. Roempke conspired with Thoreen and Michael Neureiter, owner of A&D Company Northwest, Inc., to conceal the fact that regulated asbestos containing material ("RACM") was present in the building. They did this by submitting falsified documentation to the authorities, thereby preventing the required monitoring of the demolition and asbestos disposal project.

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. Having been told it would cost approximately $20,000, he contacted co-defendants Thoreen and Neureiter for the purpose of implementing 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 informed Roempke that it would cost $8,000 to remove the material. When Thoreen gave the samples to a lab for analysis, he instructed that the lab to use a specific 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.

Roempke recently pleaded guilty to a Clean Air Act violation, and Neureiter and Thoreen pleaded guilty to a CAA conspiracy charge.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Puget Sound Clean Air Agency.

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United States v. Eugene Mansfield et al., No. 3:10-mj-04215 (D. Ariz.), AUSA Camille Bibles [redacted]

On October 26, 2010, five Hopi tribal members were sentenced for their involvement in the taking of two golden eagles in violation of a permit. Eugene Mansfield, Brendan Mansfield, Eldrice Mansfield, Emmett Namoki, and Lucas Namoki, Jr., were all sentenced to pay $250 each in restitution to the Hopi Wildlife and Ecosystems Management program and will complete a one-year term of unsupervised probation.

According to the three-count complaint, one of the defendants who received the permit told the others that they could collect the eaglets when apparently it was too early to do so. Two eaglets were subsequently removed from their nest which was located at Elephant Butte on the Navajo Nation.

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.

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United States v. Davis Wire Corp., No. 2:10-CR-00966 (C.D. Calif.), AUSA Dennis Mitchell [redacted]

On October 26, 2010, Davis Wire Corp., a wire manufacturer, was sentenced to pay $1.5 million in restitution to the Los Angeles County Sanitation District for discharging acidic wastewater into the public sewer system. The company also was ordered to pay a $25,000 fine.

Davis Wire previously pleaded guilty to a misdemeanor CWA violation for negligently discharging industrial wastewater with acidic levels in excess of permitted levels on several occasions between February and April 2008.

Davis Wire has an extensive history of noncompliance from approximately 2004, including repeated discharges of highly acidic wastewater. In February 2008, a Los Angeles County Sanitation District employee traced acidic wastewater he found in the Irwindale trunk line to the company's plant, which uses sulfuric acid in manufacturing galvanized and reinforcement wire products. Under its discharge permit, Davis Wire is supposed to pretreat its wastewater to neutralize the acid before discharging it to the public sewer system.

The case was prosecuted by the Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, Los Angeles County Public Works, Los Angeles County Fire Department, and the California Department of Toxic Substances Control.

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ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

January 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 to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Logo from defendant Jeff Foiles' business; click here for more details.

AT A GLANCE:

- United States v. Southern Union Company, F.3d. 2010 WL 5175181 (1st Cir. Dec. 22, 2010.)
- United States v. Bengis, F. 3d. 2011 WL 9372 (2nd Cir. Jan. 4, 2011).
- United States v. Howard William Ledford, 389 Fed. Appx. 259 (4th Cir. 2010).
- United States v. Stutesman, 2010 WL 3070025, slip op. (9th Cir. Aug. 6, 2010).

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N.D. Calif.	United States v. Rogelio Lowe	*Falsified Asbestos Certification*/ Mail Fraud
D. Colo.	[redacted] United States v. Richard O'Brien et al.	[redacted] *Rhino Horn Sales*/ Conspiracy, Smuggling, Money Laundering
D.D.C.	United States v. Oceanpro Industries Ltd d/b/a Profish Ltd.	*Striped Bass Harvesting*/ Lacey Act
M.D. Fla.	United States v. Kevin Montgomery United States v. Atlas Ship Management Ltd	*Trash Dumping*/ Degradation of Forest Service Land *Vessel*/ APPS, False Statement
S.D. Fla.	United States v. Palm Beach Polo Holdings, Inc. et al. United States v. Rufino Blanco et al. United States v. Hugo Pena et al. United States v. Prime Airport Services, Inc.	*Wetlands*/ CWA *Pigeon Egg Imports*/ Lacey Act, Smuggling, False Statement *Vessel*/ APPS, False Statement *Uninspected Plant Imports*/ Plant Protection Act
N.D. Ga.	United States v. Corey Beard et al.	*HCFC-22 Release*/ CAA
D. Hawaii	United States v. Kaua'i Island Utility Cooperative	*Newell's Shearwater Deaths*/ ESA, MBTA

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
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W.D. Mo.	United States v. Oak Mill, Inc. et al.	*Wastewater Discharges/* CWA Misdemeanor
S.D.N.Y.	United States v. Saverio Todaro	*Lead and Asbestos Falsification/* False Statement, TSCA
D. Nev.	United States v. David Eugene Nelson United States v. Eduardo Franco et al.	*Vehicle Emissions Testing/* CAA
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[redacted]	[redacted]	[redacted]
D. P. R.	United States v. EPPS Shipping Company	*Vessel/* APPS, False Statement
D. Utah	United States v. Andrew Costa	*Hazardous Waste Storage/* RCRA
E.D. Wash.	United States v. William Wahsise et al.	*Eagle Deaths/* BGEPA

Additional Quick Links:

Significant Environmental Decisions

First Circuit

United States v. Southern Union Company, ___F.3d. ___ 2010 WL 5175181 (1st Cir. Dec. 22, 2010.)

On December 22, 2010, the First Circuit affirmed the convictions and sentencing of the Southern Union Company. As to the fine, in referring to the Supreme Court decision in *Oregon v. Ice, 550 U.S. 160 (2009),* the Circuit Court noted that *Apprendi* does not apply to statutorily prescribed fines: "[we] agree with the prosecution that we must follow the logic of *Ice's* reasoning, which further supports the conclusion that Apprendi does not apply to criminal fines."

Southern Union was sentenced in October 2009 to pay a $6 million 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.

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. Company 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.

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 approximately 140 pounds of 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.

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Second Circuit

United States v. Bengis, ___F.3d.___ 2011 WL 9372 (2nd Cir. Jan. 4, 2011).

On January 4, 2011, the Second Circuit held that a country (in this case South Africa) does have property interest in wild creatures, specifically,r ock lobsters that were unlawfully harvested from its waters. The court further found that a country may be defined as a victim under the Mandatory Victims Restitution Act (MVRA) and the Victim Witness Protection Act, making it entitled to receive restitution.

The property interest was described as the proceeds from the sale of seized illegally harvested lobsters. In short, once the lobsters were illegally harvested, South Africa had a right to seize and then dispose by sale of the lobsters. The defendants' conspiring to conceal the illegal trade deprived South Africa of the proceeds from those sales.

South Africa was a victim of the defendants' acts because they smuggled the illegally harvested lobsters out of South Africa, thus depriving the country of its right to seize and sell the illegal lobsters, thereby causing direct harm to its government.

The court further stated that, despite the complexity involved in crafting a restitution order in this case, that is an insufficient reason to preclude the entry of such an order under the MVRA. The loss calculation method approved by the court multiplied the number of poached lobsters by the corresponding market price (that could have been gained at the time through seizure and sale), which in this case was estimated to be approximately $62 million.

In May 2004, Arnold Bengis, Jeffrey Noll, and David Bengis were sentenced for their involvement in a seafood poaching and smuggling scheme in which massive amounts of South African rock lobster and Patagonian toothfish (known as Chilean seabass) were over-harvested. Arnold Bengis was sentenced to serve 46 months' incarceration, Noll was sentenced to serve 30 months' incarceration and David Bengis was sentenced to serve 12 months' incarceration. Arnold Bengis and Noll also were ordered to forfeit $5.9 million and David Bengis was ordered to forfeit $1.5 million from the proceeds of the sale of his fish processing factory. The three operated seafood companies in South Africa, New York, and Maine.

Between 1987 and 2001, the defendants engaged in a practice of deceiving and sometimes bribing inspectors, as well as destroying documents in order to conceal the smuggling. After one of their shipments was seized in 2001 by U.S. Customs inspectors, the defendants went so far as to hire a

private investigator to keep track of the government investigators. The three pleaded guilty in April 2004 to conspiracy to violate the Lacey Act and three substantive Lacey Act violations.
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Fourth Circuit

United States v. Howard William Ledford, 389 Fed. Appx. 259 (4th Cir. 2010).

On October 26, 2010, Howard William Ledford filed a motion pursuant to 28 U.S.C. §2255 alleging that he had received ineffective assistance of counsel in the negotiation of his plea agreement and in counsel's dealings with the government after the plea was entered. After briefing of the issues, on December 6th, the court, finding judicial error during the sentencing hearing, vacated the defendant's sentence and ordered that he be resentenced. On December 8th, the defendant was resentenced to time served, which was approximately 55 days, rather than the original one-year term of incarceration imposed. Other significant aspects of the original plea agreement remained in place, including the defendant's plea of guilty to two Lacey Act violations (Class A misdemeanors), the payment of a $50,000 fine, and the publication of an apology.

In July 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 that his sentencing arguments fell within the scope of the waiver. The Court rejected his claim of ineffective assistance of counsel in this direct appeal because the record did not conclusively establish that his trial counsel was ineffective. The Court noted that Ledford could bring his ineffective assistance claim in a 28 U.S.C. §2255 motion.

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. Ledford unlawfully purchased wild ginseng worth approximately $109,000.
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Ninth Circuit

United States v. Stutesman, 2010 WL 3070025, slip op. (9th Cir. Aug. 6, 2010).

In an order filed August 6, 2010, the 9th Circuit affirmed the amount of restitution ordered to be paid to the United States Forest Service, but vacated and remanded the sentence with regard to joint and several liability. The court specifically affirmed the district court's consideration of the ecological value of the old-growth trees stolen and damaged by the defendants.

Defendants Floyd Stutesman, Craig James, and Bruce Brown conspired to steal timber resources belonging to the United States, and between them they felled 13 old-growth western red cedar trees in a protected area of the Olympia National Forest. Some of the trees were nearly 600 years

old. In addition to sentencing the three to serve terms of incarceration, the district court found the defendants jointly and severally liable for $336,466.33 in restitution to the Forest Service. All three defendants appealed the restitution amount and Stutesman appealed the imposition of joint and several liability.

The 9th Circuit found that the government met its burden under the Mandatory Victims Restitution Act by proving that the defendants were responsible for the destruction of the 13 old-growth cedars. The government adequately documented the value of the trees by submitting methods of valuation that allowed the district court to choose a reasonable restitution amount between these two estimates. The government further presented testimony from four expert witnesses as to the soundness of these estimates, which did not include punitive damages, but was a strict valuation of the immediate loss to the public caused by the defendants' acts, including the loss of the ecological and aesthetic value of the downed trees.

The government, however, did not submit enough evidence to prove that Stutesman's actions and involvement in the conspiracy were the cause of the destruction of more than one of the 13 trees. Therefore, the circuit court ordered that the amount of restitution Stutesman will pay must correspond to the amount of loss he actually caused. The government and defendants have been ordered to submit to the district court their positions with respect to restitution allotment on or before January 14, 2011.

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Trials

United States v. Palm Beach Polo Holdings, Inc. et al., No. 9:10-CR-80087 (S.D. Fla.), AUSA Jose Bonau [redacted] and AUSA Jaime Raich [redacted]

Wetlands covered with wood chips

On December 17, 2010, the trial of Palm Beach Polo Holdings, Inc., and company owner Glen Straub ended in acquittals after a five-day jury trial. The defendants were Polo Club owners and developers in Palm Beach County, Florida, who, over the course of several years, had received numerous cease and desist orders from the Army Corps of Engineers for clear-cutting, filling, and seeding wetlands to make polo fields. Undeterred by these admonitions, the defendants clear-cut another 60 acres of wooded wetlands in 2005 and left a foot-high carpet of woodchips on the wetlands. The wetlands are adjacent to man-made canals that are pumped during periods of significant rainfall into the Loxahatchee National Wildlife Refuge. The indictment charged the defendants with illegally filling these wetlands. The judge excluded the prior history of cease and desist orders, and the jury acquitted the defendants after seven hours of deliberation.

This case was investigated by the Army Corps of Engineers and the Environmental Protection Agency Criminal Investigation Division.

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Informations and Indictments

[redacted]

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United States v. Jeffery B. Foiles, No. 3:10-CR-30100 (C.D. Ill.), ECS Trial Attorney Colin Black [redacted] and AUSA Gregory Gilmore [redacted]

On December 9, 2010, Jeffrey B. Foiles was charged in a 23-count indictment with conspiracy, wildlife trafficking, and making false writings in connection with the illegal sale of guided waterfowl hunts.

Defendant Foiles

The indictment alleges that, between 2003 and 2007, Foiles conspired with others to knowingly transport and sell ducks and geese that had been hunted and killed in violation of federal laws protecting migratory birds. In particular, Foiles is alleged to have sold guided waterfowl hunts at the Fallin' Skies Strait Meat Duck Club in Pike County, Illinois, for the purpose of illegally hunting and killing ducks and geese in excess of hunters' individual daily bag limits. Foiles and his associates also are alleged to have falsified hunting records at the club in order to conceal the excesses and to have filmed the illegal hunts for inclusion in commercial hunting videos.

This case was investigated by the Fish and Wildlife Service, with assistance from the Illinois Department of Natural Resources, the Iowa Department of Natural Resources, and the Canadian government.

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United States v. United Water, Inc. et al., No. 2:10-CR-00217 (N.D. Ind.), ECS Assistant Chief Kris Dighe [redacted], and ECS Trial Attorneys Jeremy Peterson [redacted] AUSA Toi Houston [redacted], RCEC Dave Mucha [redacted] and ECS Paralegal Christina Liu [redacted]

On December 8, 2010, a 26-count indictment was returned charging United Water Services, Inc., (UWS) and two of its employees with conspiracy and felony violations of the Clean Water Act. Specifically, UWS, Dwain Bowie, and Gregory Ciaccio are charged with manipulating daily wastewater sampling methods by increasing disinfectant treatment levels just before sampling and then decreasing them shortly after sampling.

UWS, the former contract operator of the Gary Sanitary District wastewater treatment works in Gary, Indiana, entered into a ten-year contract to operate the Gary Sanitary District wastewater treatment works in 1998 in exchange for $9 million annually. As contract operator, UWS handled the operation and maintenance of the treatment works and was responsible for environmental compliance. To ensure compliance with the discharge permit, UWS was required to take periodic representative wastewater samples, including a daily sample to determine the concentration of *E. coli* bacteria in the wastewater.

The indictment alleges that, from approximately 2003 through October 2008, the defendants directed that the daily samples for *E. coli* testing be taken *after* chlorine dosing had been increased, in violation of the NPDES permit. Chlorine, in the form of sodium hypochlorite, was the disinfectant used at the facility during the April through October disinfection season. After the *E. coli* sample was taken, the chlorine dosing level was decreased.

Bowie was the UWS project manager for the Gary facility beginning in 2002 and was in charge of the Gary operation. Ciaccio joined Bowie's staff in July 2003 and eventually became the plant superintendent in charge of day-to-day operations.

This case was investigated by the Northern District of Indiana Environmental Crimes Task Force, which includes the Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the Indiana State Police.

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United States v. Stricker Refinishing Company et al., No. 1:10-CR-00505 (N.D. Ohio), SAUSA Brad Beeson [redacted]

On December 3, 2010, Stricker Refinishing Company (SRC), Thomas J. Stricker, and Gregory T. Stricker were charged in a one-count information with a Clean Water Act pretreatment violation for illegal wastewater discharges into the City of Cleveland's sewer system during 2007.

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 use of copper, nickel, silver, zinc, and cyanide are generated. According to the facility's permit, this rinse water must be pretreated prior to its discharge into the sewer system.

The information alleges that 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 Environmental Protection Agency Criminal Investigation Division.
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United States v. Richard O'Brien et al., No. 1:10-CR-00588 (D. Colo.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] and AUSA Linda McMahan [redacted].

On November 29, 2010, Irish Nationals Richard O'Brien, Michael Hegarty, and John Sullivan were charged in a three-count indictment with conspiracy, smuggling, and money laundering violations. The charges arose from the defendants' involvement in the unlawful purchase of four rhinoceros horns from an undercover Fish and Wildlife agent. O'Brien and Hegarty were arrested and released on bond. Sullivan remains a fugitive in Ireland.

According to the indictment, immediately prior to their arrest, O'Brien and Hegarty purchased four rhinoceros horns from an undercover agent for 12,850 euros (about $17,600). During a prior visit to the U.S., the defendants told the undercover agent that they worked for an antiques dealer (John Sullivan) in Ireland. After being informed several times that the purchase and transport of the rhinoceros horn would be illegal, the defendants said that they too were antiques dealers and intended to transport the rhinoceros horn to Ireland inside furniture, such as a large chest of drawers, packed in a shipping container. A large chest of drawers was found in the defendants' rental car following their arrest. In weeks leading up to the arrests, Sullivan emailed the agent stating he would claim to have purchased the rhino horn at a "car boot sale" and he further boasted that he has paid off so many customs agents that he would have no problem getting these items into the country. The defendants remain scheduled for trial to begin on February 7, 2010.

This case was investigated by the Fish and Wildlife Service.
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Plea Agreements

United States v. David Eugene Nelson, No. 2:10-CR-000 09 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] ECS Trial Attorney Sue Park [redacted], and AUSA Roger Yang [redacted]

On December 15, 2010, David Eugene Nelson pleaded guilty to a single Clean Air Act false statement count for engaging in a practice known as "clean scanning" vehicles. Nelson is scheduled to be sentenced on March 23, 2011. [*See U.S. v. Franco, below, for more details.*]
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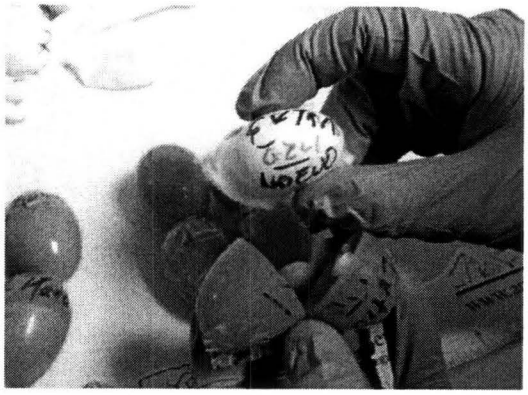
United States v. Rufino Blanco et al., No. 2:10-CR-20782 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On December 22, 2010, Rufino Blanco and Claribel Blanco Cuellar pleaded guilty to smuggling, false statement, and Lacey Act violations for attempting to import into the United States 72 undeclared pigeon eggs from Cuba.

According to the court documents, in June 2010, Cuellar returned to Miami from Cuba with the eggs hidden in her luggage. When customs inspectors located the contraband, she claimed they were for her father Rufino Blanco, to be used in Santeria ceremonies. In fact, Blanco's intention was to hatch the viable eggs and market them through his pet store, El Morrillero, and over the Internet, to devotees of the homing/racing pigeon community.



Concealed Pigeon Eggs

The package Cuellar was carrying was color-coded, with the eggs divided into six sets, each secured inside a cotton-padded plastic Easter egg shell. Information regarding the eggs was written on the plastic shells, documenting the source and parentage of the eggs. Blanco offered Cuban-origin pigeons for sale through an on-line chat room, referring potential buyers to his pet store. Agents who visited the store found it catered exclusively to the sale of racing and homing pigeons.

Federal law prohibits the importation of fish or wildlife into the United States without providing proper documentation to both customs and wildlife officials, including a valid import/export license, which the defendants did not possess.

Additionally, USDA regulations specifically prohibit the importation of viable pigeon eggs unless accompanied by a certificate from a veterinary officer of the country of origin, certifying the eggs derive from a flock found free of communicable diseases. Several such diseases, notably Newcastle disease and European fowl pest (fowl plague), are of particular concern and carry mandatory quarantine requirements preceding any importation to avoid the risk of spreading diseases to domestic poultry stocks and wild birds.

Sentencing is scheduled for March 3, 2011. This case was investigated by the Department of Agriculture, the Fish and Wildlife Service, and Customs and Border Protection.

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United States v. EPPS Shipping Company, (D.P.R.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Marshal Morgan [redacted].

On December 21, 2010, EPPS Shipping Company agreed to plead guilty to a two-count information charging an APPS violation and a false statement violation stemming from the unlawful discharges of oily waste at sea.

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 ORB as required.

This case was investigated by the Coast Guard.

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United States v. Linda Allen Knox, No. 1:10-CR-00086 (W.D.N.C), AUSA Steven Kaufman [redacted]

On December 17, 2010, Linda Allen Knox pleaded guilty to a one-count information charging her with mail fraud.

In 1988, Knox founded a company called If Its Water, which was in the business of collecting water samples, arranging for sample analysis with a state-certified lab, and submitting the required paperwork to regulatory agencies on behalf of its customers.

Investigation revealed that from approximately 2005 until May 2010, Knox frequently did not collect water samples for which she billed customers and, in some instances, customers were fined by the state for failure to submit sample analysis results which they had paid Knox to handle. In other cases, Knox used ordinary tap water, which was purported to be samples taken on behalf of customers who paid for its collection and analysis. In 2007, approximately 100 such samples were submitted to a state-certified lab, all of which were found to have identical levels of chlorine.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

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United States v. Corey Beard et al., No. 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones [redacted]

On December 14, 2010, Corey Beard and Justin Joyner pleaded guilty to conspiracy and Clean Air Act violations. In addition to conspiracy, Joyner pleaded guilty to one CAA violation and Beard pleaded guilty to nine CAA violations.

A 13-count indictment was returned last June charging Beard, Joyner, Daniel Arnot, and Sabrina Westbrooks Arnot, with conspiracy to release ozone-depleting substances into the environment, along with 12 substantive CAA 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.

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United States v. Oak Mill, Inc., et al., No. 5:08-CR-06016 (W.D. Mo.), AUSA Jane Brown [redacted] and SAUSAs Anne Rauche and Kristina Gonzales [redacted]

On November 30, 2010, Oak Mill and company vice president Robert Arundale pleaded guilty to Clean Water Act violations.

Oak Mill, a soybean oil recycler, and Arundale were variously charged in an eight-count indictment with CWA violations for discharging pollutants into the City of St. Joseph's POTW. The defendants admitted that, on October 5 and 12, 2006, they violated federal pretreatment standards relating to the zinc and nickel levels they were permitted to discharge. The permit limits for zinc were 3.00 mg/l and .99 mg/l for nickel. On October 5th, the zinc levels discharged were measured at 20.9 mg/l, and nickel was 2.47 mg/l. On October 12th, the zinc level resulting from the discharge by Oak Mill was 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 Environmental Protection Criminal Investigation Division.

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Sentencings

United States v. Eduardo Franco et al., No. 2:10-CR-0005, 0006, 0008, 0012 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted], ECS Trial Attorney Sue Park [redacted] and AUSA Roger Yang [redacted].

Four Nevada men were sentenced on December 3rd, 6th, 13th, and 16th for felony violations of the Clean Air Act by manipulating test results in hundreds of Nevada vehicle emissions inspections. Eduardo Franco will complete a five-year term of probation; Adolpho Silva-Contreras, Alexander Worster, and Louis Demeo each will complete three-year terms of probation.

A total of ten defendants were charged with a single CAA violation for causing false test results to be transmitted to the Nevada Department of Motor Vehicles (DMV). Typically the testers would use 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. 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 Environmental Protection Agency and the Nevada Department of Motor Vehicles.

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United States v. Saverio Todaro, No. 1:10-CR-00268 (S.D.N.Y.) AUSA Anne Ryan [redacted]

On December 21, 2010, Saverio Todaro was sentenced to serve 63 months' incarceration, followed by three years of supervised release, for falsifying lead and asbestos inspection and testing reports for residences and other locations throughout the New York City area. In addition, he was ordered to pay a $45,000 fine, forfeit $304,395 to the government, and pay $107,194 in restitution to the victims of his crimes. In his capacity as an EPA-certified lead risk assessor, 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 charges 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 operated a company called SAF Environmental Corporation, which was in the business of performing environmental inspection and testing services throughout the New York City area. During this period, the defendant failed to have an EPA approved laboratory analyze dust samples as part of lead clearance procedures in connection with lead abatements, and generated false lab reports that purported to show the results of laboratory analysis of samples when in fact no laboratory analysis had been conducted. Todaro submitted false documents to the New York City Department of Housing Preservation and Development and the New York City Department of Health, which regulate lead-based paint hazards in local buildings. He also admitted that, for years, he defrauded building management companies, landlords, building contractors, and others, by submitting fraudulent invoices and false laboratory reports for lead clearance testing and asbestos air monitoring that he never actually performed. Finally, Todaro admitted that he lost his New York City asbestos investigator's certificate in February 2004 but prepared backdated asbestos inspection forms for filing with New York City after that date, that he did so without performing actual inspections, and billed customers, for inspections that he had not actually conducted. The forfeiture count stems from the proceeds derived from these mail fraud violations.

In noting the seriousness of the defendant's crimes at sentencing, the court remarked: "The inventiveness of your lies was outstripped only by the callousness with which you put the health and lives of New York City children and adults at risk."

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.

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United States v. Hugo Pena et al., No. 0:10-CR-60158 (S.D. Fla.), AUSA Jaime Raich [redacted]

On December 20, 2010, three individuals were sentenced for their involvement in the illegal discharge of oily bilge wastes at sea. Hugo Pena was sentenced to complete a five-year term of probation, to include six months' home detention, and 250 hours of community service. Ronald Ramon and Northon Eraso each will complete three-year terms of probation and perform 150 hours of community service.

A jury convicted Pena and his company HP Maritime Consultant, Inc., 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. Coastal Maritime was sentenced to pay a $350,000 fine and will complete a three-year term of probation. The court further ordered the company to make a $350,000 community service payment.

Coastal Maritime was the owner of the 155-foot cargo freighter, which was registered in Panama. 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 pump wastes directly overboard and by falsely certifying (just 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 in February and May 2010.

The conviction of Pena and HP Maritime Consultants represented the first criminal case brought against a classification surveyor for failure to fulfill its pollution prevention responsibilities in the United States. Subsequent to trial, the government learned that HP Maritime was a completely fictitious entity. The company, therefore, cannot be sentenced and the indictment has been dismissed against it.

This case was investigated by the Coast Guard and the Coast Guard Investigative Services.

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United States v. Kevin Montgomery, No. 5:10-CR-00027 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Cherie Krigsman [redacted]

Garbage from excavated pit

On December 17, 2010, Kevin Montgomery was sentenced to serve 18 months' incarceration followed by three years' supervised release. Montgomery also will work with the Forest Service to post a public announcement in which he admits to destroying a portion of the Ocala National Forest. He also will pay $200,000 in restitution to the Forest Service.

Montgomery previously pleaded guilty to a one-count information charging him with the destruction and degradation of Forest Service land. Between 2004 and 2007, the defendant lived on property adjacent to Ocala National Forest. He also was the owner of an excavation business. During this three-year period he buried, among other things, 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 carried out 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.
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United States v. William Wahsise, et al., 2:09-CR-02034 (E.D. Wash.), ECS Senior Trial Attorney Elinor Colbourn [redacted] ECS Trial Attorney Todd Mikolop [redacted] and AUSAs Stacie Beckerman [redacted] and Timothy Ohms [redacted]

On December 17, 2010, Yakama tribal members Alfred L. Hawk, Jr., and William R. Wahsise were each sentenced to serve six months' confinement followed by one year of supervised release after previously pleading guilty to killing bald eagles and conspiring to take and sell bald and golden eagle parts. Hawk and Wahsise hunted and killed eagles by baiting them with wild horses that were killed to attract the eagles. There have been five defendants prosecuted as the result of an undercover operation in 2008, with wildlife agents seizing a significant number of golden and bald eagle parts.

This case was investigated by the Fish and Wildlife Service with assistance from state, federal, and tribal law enforcement agencies.
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United States v. Andrew Costa, No. 2:09-CR-00744 (D. Utah), AUSA Jared Bennett [redacted]

On December 16, 2010, Andrew Costa was sentenced to serve 21 months' incarceration and will pay $70,392 in cleanup costs. Costa previously pleaded guilty to a RCRA violation for storing 67 drums containing liquid and dry hazardous waste.

In May 2005, Costa purchased two semi-truck trailers that contained these drums. 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. 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.
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United States v. Tamba Kaba, No. 1:09-CR-00858 (E.D.N.Y.), AUSA Vamshi Reddy [redacted]

On December 15, 2010, Tamba Kaba was sentenced to serve 33 months' incarceration and to pay a $25,000 fine, which will be paid into the Lacey Act Fund. The court further ordered a $73,000 forfeiture judgment.

Kaba was previously 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 of African statues imported from Uganda and

Ivory concealed in statue

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.

This case was investigated by the Fish and Wildlife Service.

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United States v. Lawrence Aviation Industries, Inc. et al., No. 2:06-CR-00596 (E.D.N.Y.), AUSA Mark Lesko [redacted] and AUSA Richard Lunger [redacted]

On December 14, 2010, Lawrence Aviation Industries, Inc., ("LAI") and its owner and operator, Gerald Cohen, were sentenced. Cohen will serve a year and a day of incarceration followed by three years' supervised release. Cohen and the company are jointly and severally liable for $105,816 in restitution to be paid to the Environmental Protection Agency.

Cohen and LAI pleaded guilty in 2008 to RCRA violations for the storage of more than 12 tons of hazardous waste at the facility. The company began operating in 1959 and manufactured titanium sheets used primarily in the aeronautics industry. Cohen became the sole owner and company operator 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 converted two of the tanks in the manufacturing operations in order to store liquids and sludge.

An inspection and testing of the tanks' contents in 2003 by state and federal officials confirmed that they contained corrosive hazardous waste that had been stored without a permit.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Conservation.

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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 December 14, 2010, Paul McConnell and Donna McConnell, along with co-defendant James Renshaw, were each sentenced to pay a $2,500 fine and will complete two-year terms of probation. All three defendants will be held jointly and severally liable for restoration costs 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 channelized Clear Creek adjacent to the Clear Creek Property in an effort to prevent flooding during spring runoff. Renshaw performed the stream channelization work with a bulldozer in August 2007 for the McConnells and a neighbor Barton Wilkinson who owned adjacent property. 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. The McConnells and Renshaw previously pleaded guilty to a two-count information charging them with a negligent Clean Water Act violation

and an Endangered Species Act violation. Wilkinson was previously sentenced to pay a $2,000 fine and will complete a two-year term of probation.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

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United States v. Kaua'i Island Utility Cooperative, No. 10-CR-00296 (D. Hawaii), ECS Assistant Chief Elinor Colbourn [redacted] and ECS Trial Attorney Todd Mikolop [redacted]

On December 2, 2010, Kaua'i Island Utility Cooperative (KIUC) pleaded guilty to, and was sentenced for, one Endangered Species Act violation and one Migratory Bird Treaty Act violation. Specifically, KIUC pleaded guilty a violation of the ESA for knowingly "taking" at least 14 Newell's shearwaters, a threatened species, at or near Keÿlia Beach. The Cooperative also pleaded guilty to a violation of the MBTA for the "taking" of at least 18 Newell's shearwaters, also protected as a migratory species, at KIUC's Port Allen facility. The seabird is endemic to Hawaii and found predominantly on the island of Kaua'i.

KIUC was sentenced to the maximum statutory fine of $40,000 and it will complete an 18-month term of probation with the following specific conditions: KIUC has agreed to modify and reconfigure power lines associated with the highest incidences of bird deaths. It also must monitor two stretches of inland power lines to help determine the number of protected birds colliding with those lines. KIUC also is required to apply for an incidental take permit that would authorize the taking of such threatened species under certain conditions and requirements.

The agreement further requires that KIUC make a community service payment of $225,000 to the Save Our Shearwaters program, a federally-established program that KUIC has been supporting since 2003. In its plea KIUC admitted to knowing that the birds will 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 may also hit 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 to be unable to regain flight and may succumb to a predator, be run over by a car, or starve to death.

KIUC had knowledge of a scientific report made public in 1995 that recommended actions to reduce the take of seabirds by utility lines, including modifying the configuration and locations of power lines. According to court documents, KIUC did not undertake any of the recommended line modification/reconfiguration actions except for a limited stretch of power line near Keÿlia Beach after being notified in March 2007 that it was a target of a federal investigation.

This case was investigated by the Fish and Wildlife Service.

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United States v Rogelio Lowe, No. 3:09-CR-01013 (N.D. Calif.), AUSA Stacey Geis [redacted]

On December 2, 2010, Rogelio Lowe was sentenced to serve five months' incarceration plus three months' home confinement followed by three years' supervised release. Lowe also will perform 300 hours of community service

Lowe previously 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.

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.

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United States v. Atlas Ship Management Ltd., No. 8:10-CR-00863 (M.D. Fla.), ECS Trial Attorney Ken Nelson [redacted] **and AUSA Jay Hoffer** [redacted]

On December 2, 2010, Atlas Ship Management Ltd., (ASM) a Turkish Corporation, pleaded guilty to making false statements and to an APPS violation for failing to accurately maintain an oil record book. The company was sentenced to pay an $800,000 criminal fine, pay $100,000 in community service to the Pinellas County Environmental Fund, and to implement a comprehensive environmental compliance program.

ASM operated the *M/V Avenue Star,* a 10,965 ton, commercial ocean-going bulk cargo carrier. In October 2009, during a Coast Guard inspection at the port of Tampa, two crewmembers provided information indicating that senior engineers on the vessel were illegally dumping oily waste from the engine room directly into the sea. They informed the inspectors that oily waste was being stored in the clean sea water ballast tanks on the vessel, which was confirmed by Coast Guard personnel. Inspectors further confirmed that engineers had installed a bypass hose made to fit between the sludge pump discharge line and the "gooseneck" on the oil water separator discharge line in order to bypass pollution prevention equipment.

The company admitted that, between October 10 and October 21, 2009, engineering officers and other crew members transferred oily bilge wastes into the aft port peak ballast tank. The ballast tanks are used to adjust the stability of the vessel and are filled with clean sea water. They are not intended to be used to store oily waste. Prior to October 21, 2009, while the *Avenue Star* was travelling from Honduras to Tampa, a large quantity of the oily waste was discharged from the ballast tank directly into international waters. None of these discharges were recorded in the ORB.

Chief engineer Gunduz Avaz and second assistant engineer Yavuz Molgultay previously pleaded guilty to and were sentenced for their roles in covering up the illegal overboard oil discharges. Two whistleblower crewmembers were each awarded $125,000 of the criminal fine to be paid by the company.

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

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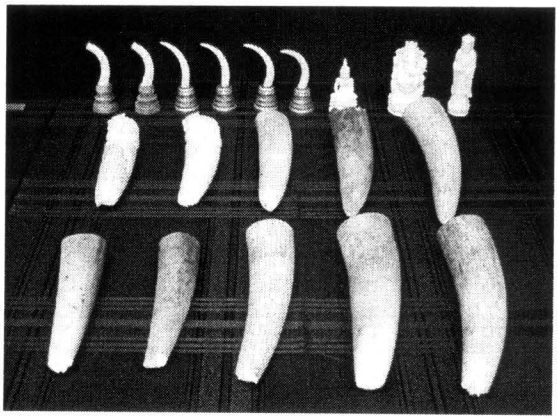
United States v. Moun Chau et al., No. 2:10-CR-00048 (C.D. Calif.), AUSA Bayron Gilchrist [redacted]

On November 29, 2010, Moun Chau was sentenced to pay a $3,800 fine and will complete a two-year term of probation after previously pleading guilty to conspiracy to illegally import elephant ivory.



Seized ivory

Chau and Thai national Samart Chokchoyma 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 eBay. 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 business, many of which came from African elephants. Chokchoyma is in Thailand and is being prosecuted there for his actions. The government is waiting for the final results of that proceeding to determine whether it will seek extradition to the United States.

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.
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United States v. Oceanpro Industries, Ltd d/b/a Profish, Ltd et al., No. 8:09-CR-00634 (D. Md.), Former ECS Senior Trial Attorney Kevin Cassidy, ECS Senior Trial Attorney Wayne Hettenbach [redacted] AUSA Stacy Belf [redacted], and ECS Paralegal Kathryn Loomis [redacted]

On November 24, 2010, Ocean Pro Ltd., d/b/a Profish, one of the District of Columbia's largest seafood wholesalers, as well as its vice-president and its fish buyer, were sentenced for their roles in a conspiracy spanning more than a decade to illegally harvest striped bass from the Potomac River. Timothy Lydon, a co-owner and company officer, was sentenced to serve 21 months in prison and will pay a $60,000 fine. Fish-buyer Benjamin Clough was sentenced to serve 15 months in prison and ordered to pay a $7,500 fine. The company was sentenced to complete a three-year term of probation, pay a $575,000 fine, and pay restitution in the amount of $300,000 (for which both Lydon and Clough are held jointly and severally liable). The defendants' fines will be paid into the Cooperative Endangered Species Conservation Fund, and the restitution will be paid to the Commonwealth of Virginia Marine Resources Commission and the State of Maryland Department of Natural Resources.

Also sentenced was Gordon Jett, the last of seven fishermen who supplied the striped bass that Lydon, Clough, and Profish knew were illegal. Jett was sentenced to serve five months' incarceration followed by five months' home detention and will pay $4,572 in restitution.

Lydon, Clough and Profish were found guilty by a jury after a five-week trial of purchasing illegally harvested striped bass, known locally as rockfish. The rockfish had been illegally harvested from the Potomac River in Virginia and Maryland from 1995 through 2007. All the defendants were convicted of conspiracy and violations of the Lacey Act. Clough also was convicted of making a false statement when he denied to law enforcement of having purchased illegally harvested fish. The evidence at trial proved that Profish and Lydon began buying striped bass from Virginia fishermen fishing on the Potomac River in 1995. Lydon and Profish agreed to buy striped bass that they knew were 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 212,700 pounds of striped bass illegally harvested from Maryland and Virginia waters, with a fair market retail value of more than $875,000. Evidence also showed that they altered records regarding their striped bass purchases, and they changed records indicating shellfish harvest date to make it appear that they were harvested more recently than they were. Profish, Lydon and Clough also bought commercially caught striped bass above the applicable size limit during the spawning season and did not have the required tags affixed. This allowed commercial fishermen to catch and sell more striped bass than they were allowed and to catch and sell protected spawning striped bass.

Jett, who, along with a number of other fishermen testified at trial, pleaded guilty to a Lacey Act felony for his role in the scheme. Jett admitted that in 2007 he caught 14,850 pounds of rockfish from the Potomac River in Virginia that were either above size limits designed to protect spawning fish, were untagged, or were falsely tagged. Profish, Lydon and Clough then bought those illegal rockfish.

These sentencings cap a multi-state investigation of illegal commercial striped bass harvesting and sales that began in 2003 in the Chesapeake Bay watershed, and resulted in the conviction of 19

individuals in Maryland, Virginia, and the District of Columbia, in addition to three corporate fish wholesalers. Combined, the individuals have been sentenced to more than 140 months in prison, and total fines and restitution have exceeded $1,361,000.

These prosecutions are the result of an investigation by an interstate task force formed by the Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police, Special Investigative Unit.

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United States v. Jim Nguyen et al., Nos. 2:10-CR-00470 - 476 (C.D. Calif.), AUSAs Christine Ewell [redacted] and Joseph Johns [redacted]

On November 15, 2010, Everette Villota was sentenced to pay a $3,800 fine and to complete a two-year term of probation. Thy Tran was sentenced on November 29th to pay a $5,000 fine and to complete a two-year term of probation. The two defendants previously pleaded guilty to a smuggling violation for their involvement in the illegal importation of Asian arowana or "lucky fish" into the United States.

Sam Lam, Jim Nguyen, Andree Gunawan, Tom Ku, Tien Le, Villota, and Tran were charged as the result 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.

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United States v. Prime Airport Services, Inc., No. 1:10-CR-20671 (S.D. Fla.), AUSA Jaime Raich [redacted]

On October 22, 2010, Prime Airport Services, Inc., (PAS) pleaded guilty to violations of the Plant Protection Act and was sentenced to pay a $1,000,000 fine.

Enacted in 2000 in response to the outbreak of citrus canker, the Plant Protection Act requires importers of plants and plant products to follow regulations designed to stem the release of harmful plant pests. This conviction represents the first felony case for a violation of the Plant Protection Act nationwide.

PAS operates as a ground cargo handler at the Miami International Airport. In May 2006, Customs and Border Protection officials detected the pest *coleoptera* on 198 kilograms of imported hydrangeas in the custody of PAS and placed a "hold" on the plants. *Coleoptera* is an order of insects that includes the Colorado potato weevil, the boll weevil, and the bark beetle, which have caused billions of dollars of damage to American agriculture and forests. Despite the hold, the defendant released the pest-laden hydrangeas to their buyer. In December 2006, the company received 685 kilograms of imported asparagus. Two weeks later, inspectors discovered the asparagus next to an open-air dumpster. The boxes and insect-proof mesh holding the asparagus were broken and torn.

This case was investigated by Customs and Border Protection and the Department of Agriculture Animal and Plant Health Investigative Services.

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ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

February 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 to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.

Tarantula Making an Escape - See *U.S. v. Koppler* inside for more details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
S.D. Ala.	United States v. Karen Blyth et al.	*Seafood Mislabeling/* Conspiracy, Lacey Act, Smuggling
	United States v. DHS, Inc., d/b/a Roto Rooter Plumbing Service	*Oil and Grease Disposal/* CWA, CWA Misdemeanor, Conspiracy, Mail Fraud
D. Ariz.	United States v. Clinton Dean Pavelich	*Saguaro Cacti Theft/* Lacey Act
C.D. Calif.	United States v. Atsushi Yamagami et al.	*Reptile Imports/* Conspiracy, Endangered Species Act, Smuggling
	United States v. Koppler	*Tarantula Imports/* Smuggling
M.D. Fla.	United States v. Stephen J. Spencer et al.	*Asbestos Abatement/* CAA, Conspiracy
S.D. Fla.	United States v. Northern Fisheries Ltd., et al.	*Seafood Mislabeling/* Conspiracy, Lacey Act
	United States v. Miami Air International, Inc.	*Charter Airline/* RCRA
	United States v. MKG Provisions, Inc.	*Seafood Mislabeling/* Lacey Act
S.D. Iowa	United States v. G&K Services, Inc.	*Laundry Facility/* Misdemeanor CWA
E.D. La.	United States v. DRD Towing Company, LLC, et al.	*Tugboat Owner/* PWSA, Misdemeanor CWA, Obstruction
	United States v. Michael Murphy et al.	*Vessel/* False Statement
W.D. La.	United States v. J. Jeffrey Pruett et al.	*Wastewater Treatment/* CWA
D. Mass.	United States v. Andriy Mikhalyov et al.	*Sperm Whale Teeth Imports/* Smuggling, Conspiracy, False Statement
D. Md.	United States v. Dimitrios Grifiakis	*Vessel/* Obstruction, APPS, False Statement, Witness Tampering
N.D. Ohio	United States v. Stricker Refinishing Company	*Metal Plater/* CWA Pretreatment

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. P. R.	[redacted] United States v. Carlos Diaz-Rivera et al. United States v. Jorge Ortega-Rodriguez	[redacted] *Sea Turtle Parts/* ESA *Sea Turtle Parts/* ESA, Lacey Act
W.D. Wash.	United States v. Wolfgang "Tito" Roempke et al. United States v. Philip A. Smith	*Asbestos Abatement/* CAA, Conspiracy *Wetlands Destruction/* CWA

Additional Quick Links:

Trials

United States v. Stephen J. Spencer et al., No. 8:10-CR-00059 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] AUSA Cherie Krigsman ([redacted] and ECS Paralegal Rachel Van Wert [redacted]

Demolition debris

On January 28, 2011, Stephen J. Spencer, Guy Gannaway, and Keith McConnell were found guilty by a jury of conspiracy to violate the Clean Air Act and various Clean Air Act charges related to the mishandling of asbestos. Gannaway also was convicted of making a false statement. The jury acquitted John Loder on five counts and could not reach a verdict on two remaining counts.

According to evidence presented during the eleven-day trial, 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., the general contractor on the project. McConnell was the Gannaway Builders superintendent for renovation operations. Spencer was a partner in Sun Vista Indian Pass, LLC, the developer of the project and was also the architect for the project.

The evidence showed that asbestos-containing materials located throughout the property 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 the popcorn ceiling material without notifying regulators and without following the work practice standards for asbestos.

Photographs admitted during trial showed wide-ranging disturbances of asbestos-containing material as well as improper disposal of those materials in general construction debris dumpsters. Photographs also showed Gannaway employees dry sweeping debris, resulting in clouds of dust in the areas where asbestos disturbances were 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 Environmental Protection Agency Criminal Investigation Division, with assistance from the Florida Department of Law Enforcement.

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United States v. J. Jeffrey Pruett et al., No. 09-CR-00112 (W.D. La.), AUSA Earl Campbell ([redacted]) and SAUSA Tom Walsh ([redacted]).

On January 25, 2011, a jury returned guilty verdicts against Jeffrey Pruett and his companies, Louisiana Land & Water Co., (LLWC) and LWC Management Co. (LWC), after a two-week trial.

Crumbling Aeration Basin

Pruett and his public water and wastewater treatment businesses were charged with 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.

The jury found Pruett and LLWC guilty 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. Sentencing is scheduled for May 9, 2011.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Louisiana Department of Environmental Quality, and the Louisiana Department of Health and Hospitals.

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Informations and Indictments

United States v. Atsushi Yamagami et al., No. 2:11-CR-00082 (C.D. Calif.), AUSA Dennis Mitchell [redacted].

Concealed turtles and tortoises

On January 28, 2011, Japanese nationals Atsushi Yamagami and Norihide Ushirozako were charged in a three-count indictment with conspiracy, smuggling, and Endangered Species Act violations for allegedly smuggling more than 50 live turtles and tortoises into the United States.

The indictment states that the turtles and tortoises were hidden in snack food boxes found in a suitcase. At the time of their arrests, one of the defendants allegedly stated 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. 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.

This case is part of an undercover investigation conducted by the Fish and Wildlife Service into reptile smuggling.
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United States v. Dimitrios Grifakis, No. 1:11-CR-00011 (D. Md.), ECS Counsel Tom Ballantine [redacted] and AUSA Justin Herring [redacted].

On January 11, 2011, a grand jury returned an eight-count indictment charging Dimitrios Grifakis, a former chief engineer for the *M/V Capitola,* on charges of obstructing an agency proceeding, maintaining a false oil record book, making false statements, and tampering with witnesses.

Beginning March 2009, and ending May 3, 2010, Grifakis allegedly ordered his subordinates on several occasions to illegally pump oil-contaminated bilge waste directly into the ocean without processing it through the required pollution prevention equipment, using a bypass hose and other means. Crew members from the *Capitola* provided the Coast Guard with video of this bypass hose. The defendant is further charged with falsifying documents for the purpose of concealing these discharges from port inspectors.

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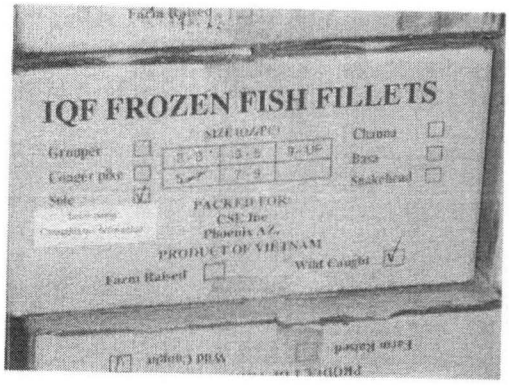
Plea Agreements

United States v. Karen Blyth 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 January 24, 2011, on the eve of trial, Karen Blyth and David H.M. Phelps pleaded guilty to 13 felony offenses for their roles in the mislabeling of seafood. The two had been charged in a 28-count indictment with conspiracy, as well as Lacey Act, smuggling, and misbranding violations. They pleaded guilty to the conspiracy, nine violations of the Lacey Act, two counts of receiving smuggled goods, and one misbranding count.



Falsified Label

Blyth and Phelps owned a seafood supply company in Arizona and also were co-owners with co-defendant John L. 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. The defendants 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 sold live oysters for which the harvest date had been altered to a more recent date.

Co-defendant Popa previously pleaded guilty to 15 counts, which included smuggling and Lacey Act misbranding violations. Popa is scheduled to be sentenced on February 22, 2011, and Blyth and Phelps are scheduled to be sentenced on May 4, 2011. Blyth has agreed to serve a 33-month term of incarceration and Phelps has agreed to serve a 24-month term of incarceration.

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.

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United States v. Sven Koppler, No. 2:10-CR-01338 (C.D. Calif.), AUSA Mark Williams [redacted]

Tarantula

On January 18, 2011, Sven Koppler, a German national pleaded guilty to a smuggling violation for using the U.S. Mail to illegally import hundreds of tarantulas, some of which are protected under CITES. Koppler was arrested last month soon after arriving in Los Angeles to meet with an associate.

According to the plea agreement, in March 2010, the defendant knowingly sold approximately 247 tarantulas to a confidential informant in Los Angeles, California. To complete the sale, Koppler packaged and shipped the tarantulas from Germany to the informant in Los Angeles using the United States Postal Service. 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 violated United States law, the defendant took steps to conceal the illegal importation by mislabeling some of the containers. In a separate shipment, he sold to the informant approximately 22 Mexican red-kneed tarantulas (*Brachypelma smithi*), a CITES-protected species. From January 2009 through November 2010, Koppler sold and shipped approximately $69,000 in tarantulas to the informant and to undercover agents in the United States.

Sentencing is scheduled for April 11, 2011. "Operation Spiderman" was conducted by the Fish and Wildlife Service, with assistance from the Postal Inspection Service, Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration.

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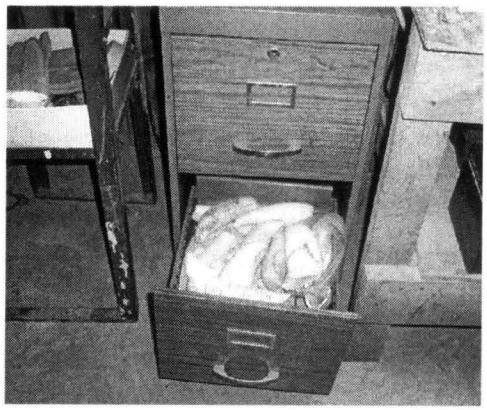
United States v. Andriy Mikhalyov et al., No. 1:08-CR-10090 (D. Mass.), AUSA Nadine Pellegrini [redacted]



Sperm Whale Teeth Found in Drawer

On January 11, 2011, Andriy Mikhalyov pleaded guilty to a conspiracy violation, was sentenced to time served, and the court ordered that he be deported back to Ukraine. Co-defendant Charles Manghis was convicted a year ago 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. Motions for acquittal and new trial remain pending and are currently scheduled for hearing on February 4, 2011.

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. Manghis and Mikhalyov were charged in a sealed indictment in April 2008, but Mikhalyov was not arrested until April 2010.

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. Assistance also was provided by the Nantucket Police Department and the Massachusetts Environmental Police.

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United States v. Northern Fisheries, Ltd., et al., No. 1:10-CR-20678 (S.D. Fla.), AUSA Norman O. Hemming III [redacted]

On January 12, 2011, Shifco, Inc. and company president Mark Platt pleaded guilty to a four-count superseding information, charging them with conspiracy and Lacey Act violations.

A total of four defendants previously were indicted in this case involving the mislabeling of seafood. According to the indictment, between January and February 2010, Northern Fisheries, Ltd., its president Brian D. Eliason, Shifco, and 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." In addition, Platt and Shifco admitted to their involvement in the relabeling of more than a

million pounds of less marketable shrimp from Thailand, Malaysia, and Indonesia as being from Panama, Ecuador, and Honduras. The shrimp had an estimated retail value of between $250,000 and $1,000,000.

Sentencing for both Platt and Shifco is scheduled for March 11, 2011. Northern previously pleaded guilty to the salmon mislabeling offense and has been scheduled for sentencing on February 24, 2011. Charges against Eliason have been dismissed.

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Department of Agriculture and Consumer Services.

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United States v. Stricker Refinishing Company et al., No. 1:10-CR-00505 (N.D. Ohio), SAUSA Brad Beeson [redacted]

On January 6, 2011, Stricker Refinishing Company (SRC), Thomas Stricker, and Gregory Stricker pleaded guilty to a one-count information charging them with a Clean Water Act pretreatment violation for illegally discharging wastewater into the City of Cleveland's sewer system in 2007.

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 Environmental Protection Agency Criminal Investigation Division.

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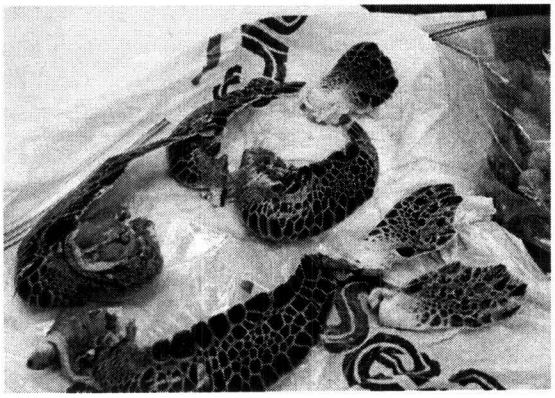
Sentencings

United States v. Carlos Diaz Rivera et al., No. 3:10-CR-00297 (D.P.R.) SAUSA Silvia Carreño-Coll [redacted]



Green Turtle Parts

On January 31, 2011, two men were sentenced after pleading guilty to Endangered Species Act violations for possessing meat from a green sea turtle, an endangered species. Alfredo Velez Camaño will complete a one-year term probation with a special condition of four months' home confinement. Carlos Diaz Rivera will complete a one-year term of probation. A fine was not assessed; however, both men will complete a two-hour environmental awareness course offered by the USFWS.

On February 13, 2010, Diaz Rivera was pulled over by police and arrested for driving while under the influence. Passenger Camaño had a bag containing the sea turtle meat on his lap. Rivera admitted to trying to get rid of the bag by throwing it outside the vehicle at the time of their arrest. The bag was subsequently turned over to Fish and Wildlife Service agents who verified forensically that the bag contained parts from two green turtles, an endangered species.

This case was investigated by the Fish and Wildlife Service, the National Oceanic and Atmospheric Association, the Special Services Unit of the Puerto Rico Department of Natural and Environmental Resources, and the Puerto Rico Police Department.

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United States v. Jorge Ortega-Rodriguez, No. 3:10-CR-00300 (D. P. R.), SAUSA Silvia Carreño-Coll [redacted]

On January 19, 2011, Jorge Ortega-Rodriquez was sentenced to complete a one-year term of probation after previously pleading guilty to a Lacey Act and an Endangered Species Act violation for illegally selling turtle meat from his residence. The defendant admitted that on several occasions between October 2006 and November 2007, he offered to sell and possessed Hawksbill Sea Turtles, an endangered species, without a permit.

An undercover operation began in October 2006 when investigators were informed that Ortega-Rodriquez was selling sea turtle meat from his house. Wildlife investigators assumed the roles of computer technicians and cable installers in order to gain access to the defendant's home. While within the house agents observed several carapaces of protected sea turtles.

This case was investigated by Fish and Wildlife Service, the Special Services Unit of the Puerto Rico Department of Natural and Environmental Resources, and the National Oceanic and Atmospheric Association.

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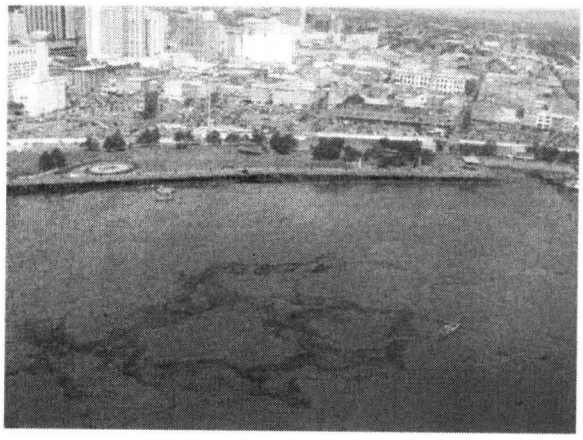
United States v. DRD Towing Company, LLC, et al., Nos. 2:10-DR-00190 and 191 (E.D. La.), AUSA Dorothy Taylor [redacted]

On January 19, 2011, Randall Dantin was sentenced to serve 21 months' incarceration followed by two years' supervised release, and he will pay a $50,000 fine. His company, DRD Towing Company LLC, was sentenced to pay a $200,000 fine and will complete a two-year term of probation.

Maritime company DRD Towing previously pleaded guilty to a felony violation of the Ports and Waterways Safety Act and a misdemeanor violation of the Clean Water Act. Co-owner Dantin pleaded guilty to obstruction of justice.



Oil Spill after Collision

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.

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

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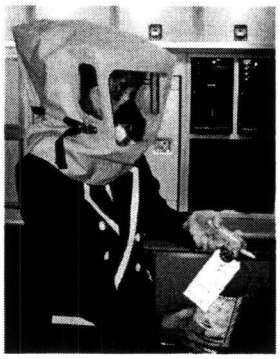
United States v. Miami Air International, Inc., No. 1:10-CR-20901 (S. D. Fla.), AUSA Tom Watts-FitzGerald [redacted] and SAUSA Jodi Mazer [redacted].

On January 18, 2001, Miami Air International, Inc. (MAI), pleaded guilty to a RCRA violation and was sentenced for the illegal storage and disposal of hazardous oxygen generators and protective breathing equipment (PBEs) that had been illegally removed from commercial aircraft operated by MAI. The company will pay a $125,000 fine, complete a three-year term of probation, and be required to implement a comprehensive environmental compliance plan.



Protective Breathing Equipment

MAI is a charter airline with a fleet of approximately nine aircraft that transported public and private-sector clients around the world. As part of its business activities, the defendant used various pieces of equipment on its aircraft, including chemical oxygen generators and chemical oxygen PBEs, which when removed from service constituted hazardous waste under RCRA due to their characteristics of ignitability and reactivity.

In April 2008, an employee of a waste disposal company heard an explosion while compacting a load in his truck. Upon returning to his employer's facility, and while fueling his truck, the driver observed smoke coming from the truck. He stopped fueling while another employee began spraying water over the truck body. At that time, a second low-level explosion was heard. The truck was moved from the fueling area to an open parking lot where the entire load was dumped on the ground and an active fire was discovered. Several unmarked, burned canisters were found. It was determined that they were oxygen generators that belonged to MAI and had been discarded into a dumpster at its facility at Miami International Airport, and subsequently collected by a trash disposal company.

The Miami-Dade Police Department Bomb Squad took possession of six canisters and subsequently detonated them. Later that month thirteen aircrew smoke hood type PBEs were found at a waste disposal facility. An employee recalled those oxygen generators had also been collected from the dumpster located at the MAI facility at the airport. Investigation revealed that when the planes were temporarily taken down for service, the PBEs were permanently removed from the aircraft and then unlawfully stored and disposed of. New ones were placed on the aircraft when the planes were placed back into charter service.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Department of Transportation Office of Inspector General, the Florida Department of Environmental Protection Criminal Investigation Bureau, the Federal Aviation Administration, the Florida Department of Environmental Protection Criminal Investigations Bureau, and the Miami-Dade Police Bomb Squad.

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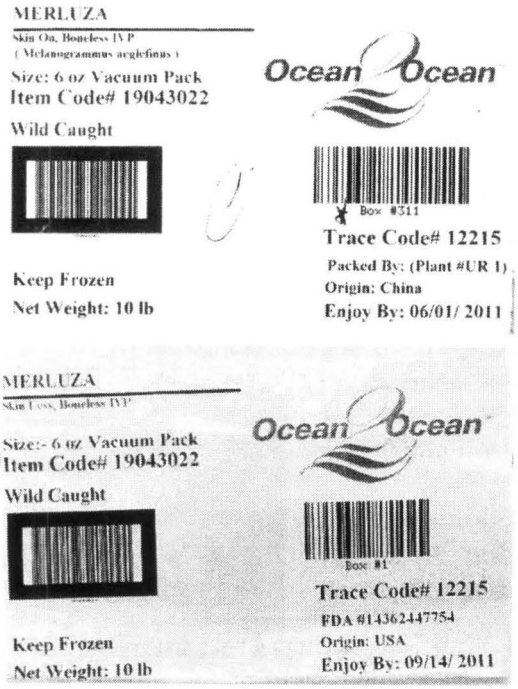
United States v. MKG Provisions, Inc.,No . 1:10-CR-20902 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]



Original and Falsified Labels

On January 20, 2011, MKG Provisions, Inc. (MKG), pleaded guilty to and was sentenced for violating the Lacey Act by mislabeling imported haddock. The company was sentenced to pay a $20,000 fine to be paid into the Magnuson-Stevens Fishery Conservation and Management Act Fund. The court further ordered the implementation of a compliance plan as a condition of a one-year term of probation, along with the forfeiture of 74 cases of falsely labeled haddock.

In approximately June 2010, MKG purchased 10,600 pounds of haddock from a Boston-area supplier that had imported the fish from China. An inspection conducted in mid-September revealed that employees at MKG were falsely re-boxing and relabeling some of the fish as "Product of USA," and selling it to a South Florida customer. Inspectors issued a warning to the company, which then claimed through its employees that the relabeling was a clerical error. The employees were advised that the haddock must be properly labeled as the product of China.

The following day, at one of MKG's customer's businesses, inspectors found the same 54 ten-pound cases still bearing the false "Product of the USA" labels. An additional 20 cases of haddock were located in the customer's place of business, also falsely labeled to conceal the product's Chinese origins.

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Department of Agriculture and Consumer Services.

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United States v. Michael Murphy et al., No. 2:10-CR-00235 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [redacted] AUSA Dee Taylor [redacted], and ECS Paralegal Jessica Egler [redacted]

On January 12, 2011, Michael Murphy, a former chief engineer employed by Offshore Vessels, LLC (OSV), was sentenced to pay a $5,000 fine and will complete a two-year term of probation. Murphy previously pleaded guilty to a one-count information charging him with submitting a false statement, in violation of 18 U.S.C. §1001.

Murphy served aboard the *R/V Laurence M. (L.M.) 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 voyages to and from Antarctica. On or about September 27, 2005, Murphy knowingly and willfully presented an oil record book containing false entries to Coast Guard personnel during an inspection.

The company previously pleaded guilty to an APPS violation, admitting that on or about September 8th, 2005, crew members knowingly discharged oily wastewater on the high seas directly overboard from the ship's bilge tank. OSV was sentenced to pay a $1,750,000 fine, to make a

$350,000 community service payment, and to complete a three-year term of probation, while operating under an environmental compliance plan.

This case was investigated by the Coast Guard Criminal Investigative Service.

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United States v. G & K Services, Inc., No. 4:10-CR-00106 (S.D. Iowa), AUSA John Beamer [redacted]

On January 7, 2011, G & K Services, Inc., was sentenced to pay a $450,000 fine and ordered to comply with the requirements of its permits. The company previously pleaded guilty to a Clean Water Act violation for negligently discharging wastewater from its 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 company also failed to disclose these permit violations to the proper authorities.

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

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United States v. Wolfgang "Tito" Roempke et al., No. 2:10-CR-00062 (W.D. Wash.), AUSA Jim Oesterle [redacted].

On January 7, 2011, Wolfgang "Tito" Roempke was sentenced to serve 30 days' incarceration followed by three years' supervised release. He also was ordered to pay a $50,000 fine and to make an additional $50,000 community service payment to the National Environmental Education Foundation. Michael Neureiter will serve 12 months and one day of incarceration followed by three years' supervised release. A fine was not imposed against Neureiter.

Roempke was the owner of a vacant building that was demolished in late August and early September of 2008. The four-count indictment charged Roempke and two contractors, Neureiter (working with A&D Company Northwest, Inc.) and James Thoreen (working with JT Environmental, Inc.) with conspiring 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. Having been told it would cost approximately $20,000, he contacted co-defendants Thoreen and Neureiter for the purpose of conducting 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 informed Roempke that 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.

Roempke pleaded guilty to a Clean Air Act violation and Neureiter and Thoreen each pleaded guilty to a CAA conspiracy charge. Thoreen was previously sentenced to complete a two-year term of probation and was ordered to pay a $4,000 fine.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Puget Sound Clean Air Agency.
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United States v. Philip A. Smith, No. 3:09-CR-05590 (W.D. Wash.), AUSA Jim Oesterle [redacted]

On January 10, 2011, Phillip Smith was sentenced to a three-year term of probation, including 120 days' home confinement. He must perform 100 hours of community service, and he also must pay $20,000 in restitution.

Smith previously 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. A system of wetlands and water bodies covered approximately 65 percent of the 190 acres Smith owned. Included in this system are tributaries 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.

Wetland Destruction

This case was investigated by the Army Corps of Engineers, the Washington State Department of Ecology, and the Environmental Protection Agency Criminal Investigation Division.
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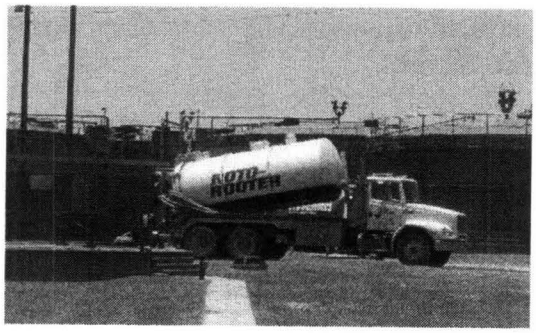
United States v. DHS, Inc., d/b/a Roto Rooter Plumbing Service, et al., Nos. 1:09-CR-00216 and 00242 (S.D. Ala.), ECS Senior Trial Attorney Jeremy Korzenik [redacted], AUSA Michael Anderson [redacted] and ECS Paralegal Lisa Brooks [redacted]



Roto Rooter Truck

On January 7, 2010, DHS, Inc., doing business as Roto Rooter Plumbing Service, was sentenced to pay a $238,000 fine plus $5,975 in restitution, and it will complete a three-year term of probation. Company president Donald Gregory Smith will pay a $150,000 fine, and was held jointly and severally liable for the restitution, which is to be paid to the Mobile Area Water and Sewer Service (MAWSS). Smith also will complete a one-year term of probation. Manager William Wilmoth, Sr., will serve 30 days of incarceration, followed by 60 days' home confinement. Wilmoth also will perform 200 hours of community service.

The defendants were convicted by a jury in August 2010 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.

The defendants were involved in the dumping of 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. Over a ten-year period 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 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 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.

Employee Michael Edington previously pleaded guilty to conspiracy to violate the CWA, to commit mail fraud, and to make false statements for his role in the dumping of 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. Edington was sentenced on January 19th to complete a one-year term of probation and was held jointly and severally liable for the restitution.

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

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United States v. Clinton Dean Pavelich, No. 2:10-CR-00841 (D. Ariz.), AUSA Jennifer Levinson

[redacted]

On January 4, 2011, Clinton Dean Pavelich was sentenced to complete a three-year term of probation and will pay $1,245 in restitution to the Bureau of Land Management.

Pavelich previously pleaded guilty to a Lacey Act violation for his involvement in the theft of Saguaro Cacti from public lands. The defendant had been charged in a four-count indictment with two Lacey Act violations and two counts of theft of government property for his role in stealing six Saguaro Cacti from public lands managed by the Department of the Interior with the intent to sell the Saguaros.

This case was investigated by the Bureau of Land Management.

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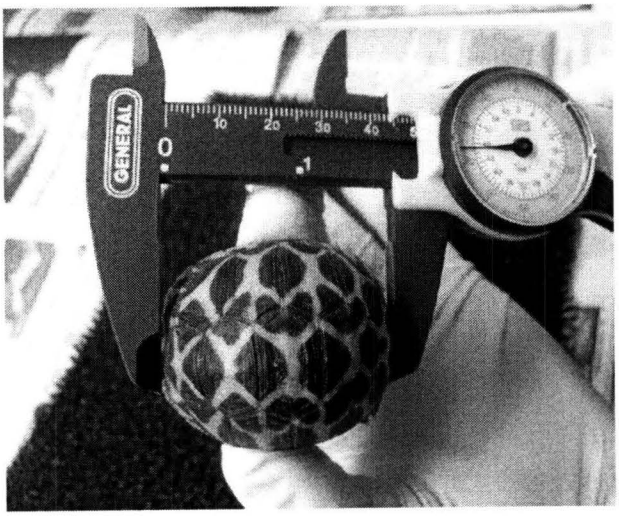
ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

March 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.



Burmese Star Tortoise rescued from defendant's luggage.Se e *U.S. v. Uetsuki* inside for more details.

AT A GLANCE:

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Alaska	United States v. David Skrzynski	*Halibut Sales/* Lacey Act
C.D. Calif.	United States v. John Bostick et al.	*Building Renovation/* CAA
D. Colo.	[redacted] United States v. James Robert Soyars, Jr.	[redacted] *Asbestos Abatement/* CAA
M.D. Fla.	United States v. James Roger Edwards et al. United States v. Joseph Miata, Jr.	*Asbestos Abatement/* CAA *Manatee Death/* ESA
S.D. Fla.	United States v. Harp USA Inc. United States v. Pescanova Inc.	Refrigerant Gas Supplier/ Smuggling *Seafood Importer/* Lacey Act
D. Hawaii	United States v. Hiroki Uetsuki	*Turtle Imports/* Smuggling
S.D. Iowa	United States v. Robert Joe Knapp et al.	*Building Renovation/* CAA, Conspiracy
W.D. La.	United States v. John Tuma et al.	*Wastewater Treatment/* CWA, Pretreatment, Conspiracy, Obstruction
D. Md.	United States v. Cardiff Marine, Inc. et al.	*Vessel/* Obstruction, APPS
E.D. Mich.	United States v. Donald M. Patterson	*Lead Inspector/* Bribery, Wire Fraud, False Statements
D. Nev.	United States v. William Joseph McCown et al.	*Vehicle Emissions/* CAA
D.N.H.	United States v. American Refrigeration Company, Inc.	*Refrigeration System Repair/* CWA
E.D.N.Y.	United States v. Dov Shellef et al.	*Ozone Depleting Substances/* CAA, Conspiracy, Money Laundering, Tax Evasion, Wire Fraud

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D.N.D.	United States v. Charles Meechance et al.	*Deer Rack Sales/* Lacey Act, Smuggling
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
D.P.R.	United States v. EPPS Shipping Company	*Vessel/* APPS, False Statement
E.D. Texas	United States v. Cole Brothers Circus et al.	*Asian Elephant Sales/* ESA
D. Utah	United States v. Bugman Pest and Lawn et al.	*Child Deaths/* FIFRA
D. Vt.	United States v. Mace Security International, Inc.	*Tear Gas Manufacturer/* RCRA

Additional Quick Links:

Informations and Indictments

United States v. John Tuma et al., No. 5:11-CR-00211 (W.D. of La.), ECS Trial Attorney Leslie Lehnert [redacted] and AUSA Mignonne Griffing [redacted]

On February 24, 2011, a five-count indictment was returned charging John and Cody Tuma with violations of the Clean Water Act, conspiracy, and obstruction of justice related to illegal wastewater discharges from the Arkla Disposal Services, Inc., facility located in Shreveport. The Arkla facility received off-site hazardous and non-hazardous wastewater from industrial processes and from oilfield exploration and production facilities for treatment at the facility.

The indictment alleges that, from July 2006 and continuing until at least October 2007, John Tuma (the wastewater treatment general manager) and Cody Tuma (a shift supervisor) conspired to discharge and in fact caused discharges to the local POTW in violation of their facility's industrial user permit. They are further alleged to have discharged untreated wastewater directly into the Red River without a permit, all in violation of the Clean Water Act. In addition, the defendants are charged with obstructing an EPA inspection by intentionally operating certain equipment improperly.

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

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United States v. Bugman Pest and Lawn et al., No. 1:11-CR-00017 (D. Utah), AUSA Jared Bennett [redacted]

On February 3, 2011, Bugman Pest and Lawn and employee Coleman Nocks were charged with three FIFRA violations for allegedly applying a pesticide inconsistent with its labeling leading to the deaths of two girls last year.

Rebecca Toone, 4, and her 15-month-old sister, Rachel, died in February 2010, a few days after a rodenticide called Fumitoxin had been used around their home. Investigators allege that Nocks used

too much Fumitoxin and placed it too close to the residence. Additional charges are pending regarding the inappropriate residential application of Fumitoxin near other homes in May and September 2009.

As a result of the deaths, the Environmental Protection Agency no longer permits the use of Fumitoxin in residential areas.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Layton City Police Department.

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United States v. Charles Meechance et al., No. 2:11-CR-00007 (D.N.D.), AUSA Cameron Hayden [redacted] and ECS Trial Attorney Richard Powers [redacted]

On January 11, 2011, a grand jury returned a six-count indictment charging Charles and Neal Meechance with Lacey Act and smuggling violations. This case involves allegations that the defendants falsely labeled and smuggled white tail deer racks from Canada to the U.S. Charles Meechance is also alleged to have sold white tail deer racks, each having a retail value in excess of $350. The defendants are Native Americans from Canada. Arrest warrants have been issued.

This case was investigated by the Fish and Wildlife Service.

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Plea Agreements

United States v. John Bostick et al., No. 2:10-CR-00793 (C.D. Calif.), ECS Senior Trial Attorney David Kehoe [redacted] AUSA Bayron Gilchrist [redacted], and ECS Paralegal Kathryn Loomis [redacted]

On February 23, 2011, John Bostick pleaded guilty to conspiracy to violate the Clean Air Act's asbestos work practice standards during the renovation of a 204-unit apartment building in January and February of 2006.

According to the plea agreement, in January 2006, Bostick knew that asbestos was present in the ceilings of the units of the apartment building known as Forest Glen. Despite this knowledge, the defendant and his co-conspirators hired a group of workers who were not certified to conduct asbestos abatements to scrape the ceilings of the apartment units without telling the workers about the asbestos in the ceilings. The illegal scraping resulted in the repeated release of asbestos-containing material throughout the apartment complex and the surrounding area and also caused the unlicensed workers to potentially be exposed to asbestos. After the illegal work was halted the asbestos was cleaned up at a cost of about $1.2 million.

A six-count indictment charging conspiracy and multiple CAA violations is pending against Charles Yi, the owner of the apartment complex. Yi is scheduled for trial beginning on March 15, 2001. Project manager Joseph Yoon previously pleaded guilty to a one-count information charging him with a CAA conspiracy violation. Yoon is scheduled to be sentenced on April 25, 2011.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the California South Coast Air Quality Management District.

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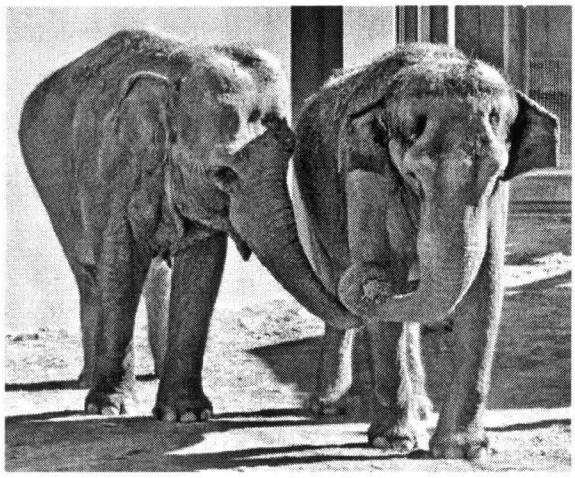
United States v. Cole Brothers Circus et al., No. 9:11-CR-00011 (E.D. Tex.), ECS Trial Attorney Jessie Alloway [redacted] and AUSA Joe Batte [redacted]



Tina and Jewel c/o Los Angeles Zoo

On February 22, 2011, Cole Brothers Circus, Inc., its president John Pugh, and former employee Wilbur Davenport, pleaded guilty to an Endangered Species Act violation for their involvement in the sale of two Asian elephants, an endangered species, in interstate commerce without a permit.

Cole Brothers Circus performs in locations across the eastern United States. In late 2005, Pugh was approached by Davenport about the purchase of two Asian elephants named "Tina" and "Jewel." In January 2006, the defendants executed a five-year lease agreement for the elephants. All parties understood the agreement to be a lease to purchase, with the total purchase price of both elephants being $150,000. Davenport provided final payment for the purchase of the elephants in late 2006 and then transported the elephants to his property in Leggett, Texas.

Pugh and Davenport each were sentenced to complete three-year terms of probation and will be required to perform 300 hours of community service. Pugh will pay a $4,000 fine and will make a $1,200 community service payment to an organization involved in the conservation or rehabilitation of Asian elephants. Davenport will pay a $5,200 fine, and the company will pay a $150,000 fine plus complete a four-year term of probation.

In August 2009, the Department of Agriculture confiscated Jewel for alleged violations of the Animal Welfare Act. Around that time Davenport abandoned Tina to the Fish and Wildlife Service, which enabled the USDA to transport and place the two elephants together in the San Diego Zoo. The San Diego Zoo recently transferred both elephants to the Los Angeles Zoo. The elephants have lived together for almost 30 years.

This case was investigated by the Fish and Wildlife Service.

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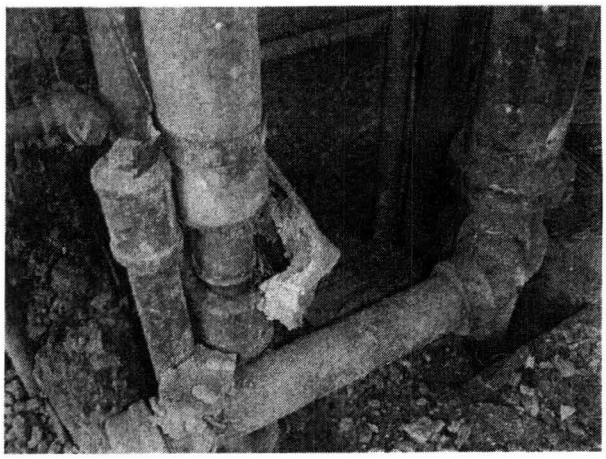
United States v. Robert Joe Knapp et al., No. 4:10-CR-00025 (S.D. Iowa), ECS Trial Attorneys Gary Donner [redacted] and Mark Romley [redacted] AUSA Debra Scorpiniti [redacted] SAUSA Kristina Gonzales [redacted] and ECS Paralegal Lisa Brooks [redacted]



Pipe with crumbling insulation

On February 23, 2011, the eve of trial, Robert Joe Knapp agreed to plead guilty to a Clean Air Act conspiracy and to a substantive Clean Air Act violation. Knapp, the owner of Equitable, L.P., had been charged in an 11-count indictment with committing violations of the Clean Air Act while overseeing the demolition and renovation of The Equitable Building. Co-defendant and construction supervisor Russell Coco pleaded guilty on February 15th to a CAA conspiracy and to a CAA violation for failure to remove all regulated asbestos-containing material (RACM) from the building.

From 2006 through February 2008, Coco oversaw the renovation, which involved converting several floors of the building into luxury residential condominium units and renovating other floors to attract additional commercial tenants. Coco reported directly to Knapp, the building owner, and both admitted to conspiring 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 disposed of illegally in an uncovered dumpster. None of the workers involved in the project were properly trained to perform asbestos abatement work.

Coco is scheduled to be sentenced on May 20, 2011. This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Iowa Department of Natural Resources.

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United States v. EPPS Shipping Company, No. 3:11-CR-00058 (D.P.R.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Marshal Morgan [redacted]

On February 15, 2011, EPPS Shipping Company pleaded guilty to a two-count information charging an APPS violation and a false statement violation stemming from the unlawful discharges of oily waste at sea.

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 ORB, as required. The company is scheduled to be sentenced on June 17, 2011.

This case was investigated by the Coast Guard.

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United States v. William Joseph McCown et al., Nos. 2:10-CR-00007 and 00011 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted], ECS Trial Attorney Sue Park [redacted] and AUSA Roger Yang [redacted].

On February 3, 2011, William Joseph McCown pleaded guilty to the single Clean Air Act count charged. To date, eight of the ten defendants charged in this "clean scanning" investigation have pleaded guilty to Clean Air Act violations for causing false test results to be transmitted to the Nevada Department of Motor Vehicles (DMV). Typically the testers would use 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. 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. The trial of Wadji Waked has been continued until March 1, 2011.

These cases were investigated by the Environmental Protection Agency and the Nevada Department of Motor Vehicles.
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United States v. Mace Security International, Inc., No. 5:10-CR-00147 (D. Vt.), AUSA Joseph Perrella

On February 9, 2011, Mace Security International, Inc. (Mace), a pepper spray and tear gas manufacturer, pleaded guilty to a RCRA charge without a permit for storing hazardous waste at its Bennington facility. The indictment, filed in November 2010 against the company and its president, Jon Goodrich, charged them with illegally storing hazardous waste from 1998 to 2008.

The indictment states that containers labeled "toxic" were located behind the facility close to the Walloomsac River. In July 2006, Federal Emergency Management Agency officials voiced concerns with the Town of Bennington that the shipping containers were located too close to the river and might be in the flood plain. In April 2007, Bennington 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 allegedly 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.

The company said that it has already spent more than $ 785,000 to clean up the facility. Sentencing is scheduled for May 26, 2011.

This case was investigated by the Environment Protection Agency Criminal Investigation Division.
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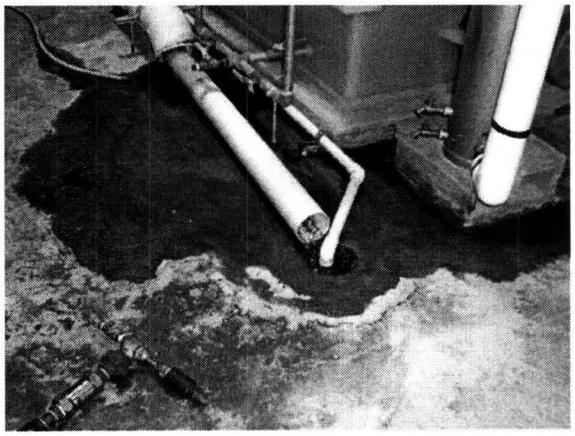
United States v. American Refrigeration Company, Inc., No. 10-CR-00178 (D.N.H.), AUSA Bill Morse.

On January 19, 2011, American Refrigeration Company, Inc., (ARC) 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.



Pipe leading to drain

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 river.

The company is scheduled to be sentenced on April 18, 2011. This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

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Sentencings

United States v. Cardiff Marine Inc., No. 1:11-CR-00058 (D. Md.), ECS Counsel Tom Ballantine [redacted] AUSA Justin Herring [redacted], and ECS Paralegal Jessica Egler [redacted]

On February 23, 2011, Cardiff Marine Inc., a Liberian-registered shipping company, was sentenced after pleading guilty to an APPS violation and obstruction. The company admitted to falsifying records of illegal discharges of oily waste from the *M/V Capitola*, making false statements to the Coast Guard, and other acts of concealment. The company was sentenced to pay a $2.4 million fine, complete a three-year term of probation, and will be subject to an environmental compliance plan.

Cardiff was a Liberian corporation and the operator of the *M/V Capitola*, a 40,437 gross ton vessel. The *Capitola* carried a range of dry bulk cargo to and from ports throughout the world. According to court documents, 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.

During its inspection, the Coast Guard interviewed members of the ship's engine room crew, including the whistleblower. Three of these crew members had served on the *Capitola* for more than six months and during that time had witnessed multiple occasions when a hose was used to discharge the waste oil, sludge, and water overboard, as directed by a senior engineering officer. None of these illegal discharges were recorded in the oil record book. Additionally, when Coast Guard officials asked to see the daily sounding record, they were told by crew members that the vessel did not have one, which was untrue.

Chief Engineer Dimitrios Grifakis remains charged in an eight-count indictment with APPS, obstruction, false statement and witness tampering violations. Trial is scheduled for May 2, 2011.

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

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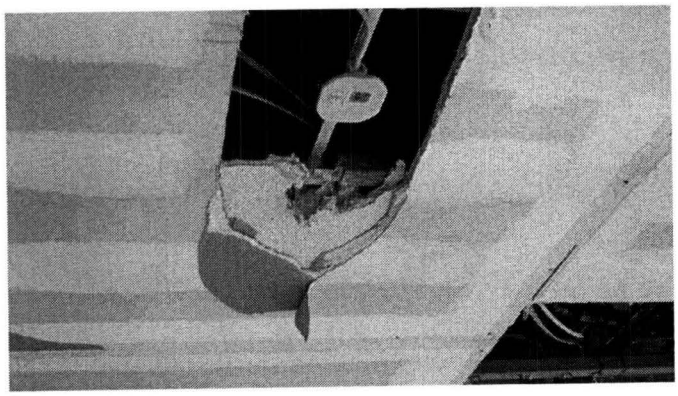
United States v James Roger Edwards et al., No. 8:10-CR-00013, 00059 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] AUSA Cherie Krigsman [redacted], and ECS Paralegal Rachel Van Wert [redacted]



Exposed asbestos

On February 15, 2010, James Roger Edwards was sentenced to complete a one-year term of probation but a fine was not assessed. Edwards previously pleaded guilty to being an accessory-after-the-fact for his failure to notify or report an improper removal of asbestos during an apartment-to-condominium conversion project, which took place between November 2004 and September 2005.

Co-defendants Stephen J. Spencer, Guy Gannaway, and Keith McConnell recently were found guilty by a jury of conspiracy to violate the Clean Air Act and various Clean Air Act charges related to the mishandling of asbestos. Gannaway also was convicted of making a false statement.

Edwards was an employee of Gannaway Builders, Inc., which was the general contractor on the renovation and conversion project. Edwards learned after the fact that the materials removed from the apartment/condominium complex in the form of "popcorn" ceiling coating were asbestos-containing materials and that the local regulators were unaware of the removal. In an effort to assist his employer, he submitted written materials to regulators that continued to omit information concerning the improper removal.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, with assistance from the Florida Department of Law Enforcement.

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United States v. Harp USA Inc., No. 1:11-CR-20092 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On February 11, 2011, Harp, USA Inc. (Harp), pleaded guilty and was sentenced for false statements made on documents required for the lawful importation of ozone depleting substances

(ODS). The company admitted to illegally bringing into the U.S. approximately 1,874 cylinders of the refrigerant gas hydrochlorofluorocarbon-22 (HCFC-22) using false invoices and statements. HCFC-22 is a widely-used refrigerant for residential heat pump and air-conditioning systems.

Harp was sentenced to pay a $206,140 criminal fine, and will make a $25,000 community service payment to the Southern Environmental Enforcement Network Training Fund. As a special condition of a three-year term of probation, the company will implement an environmental compliance plan and will reimburse the government $3,465 for costs associated with the storage and handling of the merchandise. Finally, Harp was ordered to forfeit to the United States $206,140, which represents the sum of money equal in value to proceeds received as a result of the crime.

According to court records, Harp is a wholly-owned subsidiary of Harp Overseas Limited, a United Kingdom Private Limited Company, which is a wholly owned subsidiary of Harp International Limited. Harp International Limited is a market leader in the supply of refrigerant gas throughout the United Kingdom and overseas markets. In July 2010, Harp submitted a petition to the EPA in a bid to import approximately 25,497 kilograms of HCFC-22, claiming that the entire amount came from a single source. The EPA will not approve any petitions with refrigerants from multi-use or multi-source facilities because of the inability to verify whether the product is new or used.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Immigration and Customs Enforcement, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

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United States v. Pescanova Inc., No. 1:10-CR-20526 (S.D. Fla.), AUSA Tom Watts FitzGerald [redacted]

On February 9, 2011, Pescanova Inc. was sentenced to pay a $10,000 fine to be deposited into the Magnuson Stevens Fisheries Conservation and Management Fund.

The seafood importer previously 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.

This case was investigated by the National Oceanic and Atmospheric Administration, Immigration and Customs Enforcement, and Customs and Border Protection.

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United States v. Donald M. Patterson, No. 2:10-CR-20247 (E.D. Mich.), AUSAs Jennifer Blackwell [redacted] **and Lynn Helland** [redacted]

On February 8, 2011, Donald M. Patterson, a former City of Detroit Health Department lead inspector, was sentenced to serve 46 months' incarceration followed by two years' supervised release stemming from his actions that caused a child to be harmed from lead poisoning. Patterson previously pleaded guilty to a wire fraud violation after being charged in a four-count indictment that included charges of soliciting bribes, making false statements concerning lead inspections, and wire fraud.

According to the plea agreement, during the summer of 2009, Patterson was employed as a lead inspector for the City of Detroit. In that capacity, he was responsible for ensuring that houses with an unacceptably high lead level were treated appropriately to make them safe for human habitation. Due

to his experience, Patterson was aware that proper lead abatement required specialized procedures by trained personnel and that lead exposure is particularly dangerous to children.

In the course of his duties, the defendant was assigned to perform a lead inspection at a home in which a lead-poisoned child resided. Rather than perform a proper inspection and ensure that proper lead abatement took place, Patterson instructed the home renter to give him $200 for worthless lead abatement training and then took the money. The defendant further instructed the landlord for this property to pay him an additional $200 for the same training.

On July 24, 2009, in response to his request, the landlord wired $200 from Tampa, Florida, to Patterson in Detroit, Michigan. Patterson was aware, at the time he requested this money, that the training he would provide would not appropriately abate the lead problem at this residence and, in fact, would aggravate it by introducing additional lead into the home environment. The defendant was further aware that since the lead problem would not be appropriately controlled, this sick child would be placed back into an environment which would expose him to an even more aggravated lead level.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

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United States v. James Robert Soyars, Jr., No. 10-CR-00090 (D. Colo.), AUSA Linda Kaufman [redacted] and SAUSA Linda Kato [redacted].

On February 8, 2011, James Robert Soyars, Jr., was sentenced to complete six months' incarceration followed by six months' home confinement. Soyars also will pay $437,437 in restitution to a public storage facility for its cleanup costs, and he will complete a three-year term of probation. Soyars previously pleaded guilty to two Clean Air Act violations for failing to properly dispose of regulated asbestos-containing material (RACM).

Bags of RACM in storage unit

Soyars was the owner and operator of Talon Environmental, an asbestos abatement company located in Colorado. He also was a certified asbestos abatement supervisor. In February 2005, after the company began having financial difficulties, Talon instructed employees to store RACM in storage units that had been rented from a public storage company.

In September 2005, Talon removed RACM from a bowling alley, most of which ultimately ended up in a public storage unit, after Soyars assured state inspectors that the material was going to be properly disposed of. In August 2006, the defendant engaged in similar illegal storage activities during the abatement of an office building by directing employees to place approximately 100 bags of RACM inside another public storage unit.

After inspectors were tipped off to this activity, they found some of the units to be so full that the doors were bulging outward, with a significant amount of loose dry powder spread around inside the units. After the execution of a search warrant in 2006, a cleanup was undertaken at the public storage facility.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Enforcement Investigations Center, with assistance from the Colorado Department of Public Health and the Environment.
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United States v. Joseph Miata, Jr., No. 6:10-CR-00271 (M.D. Fla.), AUSA Daniel Irick [redacted]

On February 2, 2011, Joseph Miata, Jr., was sentenced to pay a $600 fine and will complete a one-year term of probation for killing a manatee with his boat while speeding within a manatee refuge. After previously pleading guilty to two Endangered Species Act violations, Miata also is required to forfeit his 1987 Mach 1, the boat that struck and killed a manatee that was nursing a calf.

On July 11, 2011, Miata was speeding through the Sykes Creek Manatee Refuge, located in Brevard County, Florida. His boat hit the manatee with so much force that the boat jumped out of the water; he then sped away, leaving the manatee to bleed to death. A fisherman who witnessed the event recognized his neighbor as the driver of the boat and notified authorities. Miata is only the second person in nearly 40 years to be successfully prosecuted for killing a manatee.

When investigators told the defendant he had killed the animal, he said he had not realized what he had hit before he sped away. A passenger in Miata's boat, however, stated that the defendant was fully aware of what he had hit.

This case was investigated by the Fish and Wildlife Service and the Florida State Fish and Wildlife Conservation Commission.
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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 January 31, 2011, Dov Shellef was sentenced 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 a retrial in January 2010 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 William 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. The case 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. Rubenstein previously pleaded guilty to the conspiracy violation but has not yet been scheduled for sentencing.

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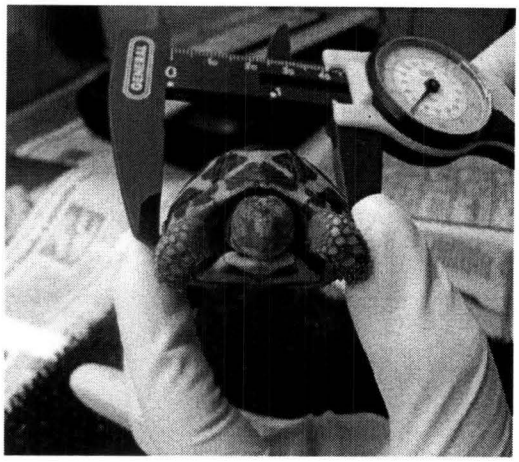
United States v. Hiroki Uetsuki, No. 1:10-CR-00660 (D. Hawaii), AUSA Tom Brady [redacted] with assistance from ECS Assistant Chief Elinor Colbourn [redacted].



Burmese Star Tortoise

On January 27, 2011, Hiroki Uetsuki, a Japanese citizen, was sentenced to time served followed by three years' supervised release. Uetsuki previously pleaded guilty to a smuggling charge for concealing exotic turtles in his suitcase after arriving in this country on a flight from Japan. On August 30, 2010, the defendant attempted to import three CITES-protected species, specifically 20 Fly River Turtles, 20 Burmese Star Tortoises, and two White-Fronted Box Turtles, without acknowledging that he possessed this wildlife.

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.

This case was investigated by the Fish and Wildlife Service and Customs and Border Protection.

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United States v. David Skrzynski et al., No. 1:09-CR-00002 (D. Alaska), AUSA Bryan Schroder [redacted]

On October 28, 2010, David Skrzynski was sentenced to serve 12 months and a day of incarceration, followed by three years' supervised release. Co-defendant Jason Maroney will complete ten months' incarceration followed by one year of supervised release. Fines were not assessed. The two previously pleaded guilty to Lacey Act violations stemming from their involvement in illegally selling and shipping halibut caught under the halibut subsistence program.

In December of 2007, an employee of Doc Waters Pub (now out of business) approached fisheries agents with information about possible illegal sales and purchases of halibut. The employee reported that the proprietor, Jason Maroney, purchased unprocessed halibut from individual fishermen, often at unusual hours. The employee, along with others, then was asked to process the halibut.

Investigators subsequently identified the primary seller as David Skrzynski. Skrzynski is a commercial fisherman with permits to catch salmon, but not halibut. He was in possession, however, of a Subsistence Halibut Registration Certificate (otherwise known as a "SHARC card"), which allows him to catch halibut for subsistence purposes only. Persons catching halibut under a SHARC card are prohibited from selling that halibut commercially.

In March 2008, NOAA agents executed a search warrant at the restaurant and seized a number of documents, including notes, ledger sheets, and checks indicating purchases of halibut from Skrzynski.

This case was investigated by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

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