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# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

*December 2013*

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***HAPPY HOLIDAYS!***

**EDITOR'S NOTES:**

If you have significant updates and/or interesting photographs from a case, please email them to [REDACTED]. If you have information concerning state or local cases, please send it directly to the [Regional Environmental Enforcement Associations' Webpage](#).

REMINDER: We are now producing a *separate* public version of the Environmental Crimes Section Monthly Bulletin. When submitting details about your case developments please bear in mind that the information you provide could be disclosed to the public. As such, it would be very helpful if you would include a press release whenever possible to help ensure that the facts we are using are publically available. If a press release was not issued, then please only provide facts that are appropriate to disclose to the public.

NOTICE: The United States Fish and Wildlife Service and the Environmental Crimes Section have collaborated with West Services on the publication of an updated book of federal fish and wildlife statutes. To obtain a free copy please contact [REDACTED].

The [Environmental Crimes Section Webpage](#) is available to those who have access to United States Department of Justice operated sites.

**AT A GLANCE:**

DISTRICT	CASES	CASE TYPE/STATUTES
Northern District of California	<a href="#">United States versus Dean Trinh</a>	<i>Marine Wildlife Trade/Lacey Act, Wire Fraud, Conspiracy</i>
District of Colorado	<a href="#">United States versus Norman Teltow</a>	<i>Aircraft Painting Company/RCRA</i>
District of Delaware	<a href="#">United States versus Patrick H. Procino et al.</a>	<i>Electroplater/CWA, RCRA</i>
District of Columbia	<a href="#">United States versus B&amp;P Environmental, LLC</a>	<i>Wastewater Removal/CWA</i>
Northern District of Florida	<a href="#">United States versus Charles Kokesh</a> <a href="#">United States versus Thomas Z. Breeding</a>	<i>Elephant Tusk Sales/Lacey Act</i> <i>Illegal Fishing/False Statement, Obstruction</i>
Southern District of Florida	<a href="#">United States versus Dean Trinh</a>	<i>Marine Wildlife Sales/ Lacey Act, Wire Fraud, Conspiracy</i>

DISTRICT	CASES	CASE TYPE/STATUTES
District of Maryland	<a href="#">United States versus Michael D. Hayden, Jr., et al.</a>	<i>Striped Bass Investigation/Witness Tampering, Retaliation, Lacey Act, Conspiracy</i>
Western District of Missouri	<a href="#">United States versus Bogdan Nahapetyan et al.</a>	<i>Paddlefish Trafficking/Lacey Act</i>
District of New Hampshire	<a href="#">United States versus Ari Goldenberg</a>	<i>Rhino Horn Sales/Lacey Act, ESA</i>
Eastern District of New York	<a href="#">United States versus Michael Slattery, Jr.</a> <a href="#">United States versus Charles Wertz et al.</a>	<i>Rhino Horn Smuggling/Lacey Act</i> <i>Fish Underreporting/Wire Fraud, Records Falsification</i>
Northern District of New York	<a href="#">United States versus Edward Palmer</a>	<i>Asbestos Abatement/CAA</i>
Northern District of Ohio	<a href="#">United States versus James L. Hidey</a>	<i>Oil and Gas Drilling/CWA</i>
Southern District of Ohio	<a href="#">United States versus Marietta Industrial Enterprises, Inc., et al.</a>	<i>Minerals Processor/CAA, Accessory After-the-Fact</i>
Eastern District of Pennsylvania	<a href="#">United States versus Robroy MacInnes et al.</a> <a href="#">United States versus Gene Smith et al.</a>	<i>Snake Trafficking/Lacey Act, Conspiracy</i> <i>Asbestos Abatement/CAA, Conspiracy</i>
District of Puerto Rico	<a href="#">United States versus Manuel Garcia-Figueroa</a>	<i>Sea Turtle Parts Sales/Lacey Act</i>
District of Rhode Island	<a href="#">United States versus Southern Union Company</a>	<i>Mercury Storage/RCRA</i>
Eastern District of Texas	<a href="#">United States versus Ryan Thomas</a> <a href="#">United States versus William Lamar</a>	<i>Chemical Manufacturer/ RCRA, False Statement</i> <i>Snake Exports/Lacey Act</i>
District of Utah	<a href="#">United States versus Slade E. Barnett, Jr.</a>	<i>Bio-Diesel Fuel Manufacturer/CWA</i>

DISTRICT	CASES	CASE TYPE/STATUTES
Eastern District of Virginia	<a href="#">United States versus Billy J. Avery</a>	<i>Demolition Project/CAA</i>
District of Wyoming	<a href="#">United States versus Duke Energy Renewables, Inc.</a>	<i>Wind Farm/MBTA</i>

**Additional Quick Links:**

- ◇ [Trials](#) pp. 4 - 5
- ◇ [Informations/Indictments](#) pp. 5 - 7
- ◇ [Plea Agreements](#) pp. 7- 12
- ◇ [Sentencings](#) pp. 12– 17

**Trials**

**United States versus Robroy MacInnes et al., No. 2:12-CR-00623 (E.D. Pa.), ECS Trial Attorney Patrick Duggan, AUSA Mary Kay Costello, ECS Paralegal Ashleigh Nye, with assistance from ECS Paralegal Lisa Brooks.**



**Eastern indigo timber rattlesnake**

On November 15, 2013, Robroy MacInnes and Robert Keszey were found guilty of a Lacey Act conspiracy for trafficking in protected reptiles. MacInnes also was convicted of trafficking in protected timber rattlesnakes in violation of the Lacey Act (18 U.S.C. § 371; 16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1(B)). The convictions stem from the

defendants' operation of a reptile farm known as Glades Herp Farm, Inc. Charges against the corporation were dismissed.

From 2007 through 2008, MacInnes and Keszey collected protected snakes from the wild in Pennsylvania and New Jersey, purchased protected eastern indigo timber rattlesnakes (which had been illegally collected from the wild in violation of New York law), and transported threatened eastern indigo rattlesnakes from Florida to Pennsylvania. MacInnes also violated the Lacey Act by illegally purchasing eastern timber rattlesnakes and then transporting them to Florida from Pennsylvania. The evidence at trial showed that the snakes were destined for sale at reptile shows in Europe, where a single timber rattlesnake can sell for up to \$800. Snakes that were not sold in Europe were sold through the defendants' business in the United States.

This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement, with assistance from the New York Department of Environmental Conservation.

[Back to Top](#)

**United States versus Charles Kokesh, No. 3:13-CR-00048 (N.D. Fla.), ECS Trial Attorney Cassie Barnum, ECS Counsel Tom Ballantine, and ECS Paralegal Courtney Smith.**

On November 1, 2013, the court dismissed the case after the defense rested. Charles Kokesh had been charged in a three-count indictment with violating the Endangered Species Act and the Lacey Act (16 U.S.C. §§ 1540(b)(1), 3372(d)(2)) for selling two African elephant tusks and for providing officials with falsified documents and emails related to the sale.

In December 2011, Kokesh was alleged to have imported a sport-hunted African elephant trophy mount from Namibia, and then to have illegally sold the two tusks to a buyer in Florida. The sale price of approximately \$8,100 was to be paid in a combination of currency and guns. After the sale, the defendant allegedly sent an email to personnel at the United States Fish and Wildlife Service, stating he was making a shipment to an appraiser in anticipation of a donation to a non-profit entity. Kokesh similarly falsely accounted for the location and disposition of the tusks in subsequent correspondence.

This case was investigated by the United States Fish and Wildlife Service and the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives.

[Back to Top](#)

## **Informations/Indictments**

**United States versus Ryan Thomas, No.1:13-CR-00109 (E.D. Tex.), ECS Senior Counsel Rocky Piaggione and AUSA Joseph Batte.**

On November 15, 2013, a three-count indictment was filed charging Ryan Thomas with false statement violations (18 U.S.C. § 1001), for allegedly falsifying hazardous waste manifests.

Thomas was an employee at Port Arthur Chemical and Environmental Services (PACES). The company recovered hydrogen sulfide from spent caustics to create a product used by paper mills called NaSH. The production resulted in hydrogen sulfide wastewater that had to be disposed as a hazardous waste. Thomas was hired by Mathew Bowman and was responsible for directing the wastewater loads and ensuring that the truck drivers had the proper shipping papers and manifests. Thomas is charged

with false statement violations for allegedly altering hazardous waste manifests in November 2008 on three shipments of wastewater, giving the impression that the loads were not hazardous.

Bowman pleaded guilty to OSHA and false statement violations for his involvement in an incident that caused the death of an employee. He was sentenced to serve 12 months' incarceration, followed by one year of supervised release, and will pay a \$5,000 fine. PACES is scheduled for trial to begin on January 27, 2014.

This case was investigated by the U.S. EPA Criminal Investigation Division, United States Department of Transportation, the Texas Commission on Environmental Quality, the Houston Police Department, the United States Department of Labor, and the United States Coast Guard.

[Back to Top](#)

**United States versus Michael D. Hayden, Jr., et al., No. 1:13-CR-00649 (D. Md.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Shennie Patel, and ECS Paralegal Casey Layman.**

On November 19, 2013, a 26-count indictment was filed charging four commercial fishermen and one company with conspiracy and Lacey Act violations (18 U.S.C. § 371; 16 U.S.C. §§ 3372(d)(2); 3373(d)(1)(B); 3372(a)(2)) stemming from the illegal harvesting and interstate sale of Striped Bass on the Chesapeake Bay.

Michael D. Hayden, Jr., William J. Lednum, Kent Sadler, Daniel Murphy, and Hayden's company are alleged to have engaged in a multi-year conspiracy during which time they illegally harvested tens of thousands of pounds of Striped Bass on the Chesapeake Bay in violation of Maryland fishing regulations, falsified documents filed with the State of Maryland to cover up their over-harvesting, and then transported and sold those poached fish in interstate commerce. Additionally, after the investigation of these crimes began, it is alleged that Hayden attempted to manipulate some witnesses' testimony while trying to prevent the testimony and cooperation of others. In addition, it is alleged that in at least one incident, Hayden threatened to retaliate against another potential witness he believed to be cooperating with investigators (18 U.S.C. §§1512(b)(2), 1512(b)(1)).

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

[Back to Top](#)

**United States versus Ari Goldenberg, No. 1:13-CR-00123 (D.N.H.), ECS Trial Attorney Gary Donner and ECS Paralegal Ashleigh Nye.**

On November 6, 2013, a two-count indictment was returned charging Ari Goldenberg with Lacey Act and Endangered Species Act violations (16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1); 3372(d)(2); 3373(d)(3)(A)) stemming from the alleged interstate sale of a head mount of an endangered black rhinoceros to an undercover agent.

After Goldenberg was informed in December 2011 that it was a violation of the ESA to sell a black rhino head mount out of state, he placed an ad on Craigslist in April 2012 offering it for sale for \$35,000 or best offer. In May 2012, an undercover agent contacted the defendant who allegedly sold it to him for \$30,000. Goldenberg then drew up a bill of sale to inaccurately reflect that the mount was sold to someone who lived in New Hampshire, knowing the buyer was actually from another state.

The case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement.

[Back to Top](#)

**United States versus James L. Hidey, No.1:13CR-00462 (N.D. Ohio), SAUSA Brad Beeson.**

On October 17, 2013, a two-count information was filed charging James L. Hidey with discharging well drilling waste into Beecher Brook, a tributary of the Chagrin River, in violation of the Clean Water Act (33 U.S.C. § 1319(c)(2)(A)).

In 2008, Hidey worked for Great Plains Exploration, an oil and gas well drilling company based in Northeast Ohio. On two separate occasions in 2008, the defendant allegedly directed the discharge of brine into a stormwater sewer after the completion of gas wells in two different locations. The brine flowed from the stormwater sewers into Beecher Brook and eventually into the Chagrin River.

This case was investigated by the Northeast Ohio Environmental Crimes Task Force, which includes the U.S. EPA Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the Ohio Department of Natural Resources.

[Back to Top](#)

## **Plea Agreements**

**United States versus Manuel Garcia-Figueroa, No. 3:13-CR-00838 (D. P. R.), ECS Trial Attorney Christopher Hale and AUSAs Carmen Márquez and Hector Ramirez.**

On November 18, 2013, Manuel Garcia-Figueroa pleaded guilty to a felony violation of the Lacey Act (16 U.S.C. §§ 3372(a)(1), 3373(d)(1)(B)) for the illegal sale of sea turtle meat. Between December 2009 and January 2010, the defendant admitted to selling more than \$350-worth of meat and carapaces from endangered hawksbill sea turtles, and meat from a threatened green sea turtle.

In July 2013, the Justice Department's Environment and Natural Resources Division and the U.S. Attorney's Office in Puerto Rico announced the formation of the Puerto Rico Environmental Crimes Task Force to investigate and prosecute environmental crimes on the island. Under the new task force, federal investigative agencies are coordinating their efforts to investigate and prosecute those responsible for committing wildlife and pollution-related crimes. Sentencing is scheduled for February 18, 2014.

This case is the result of a joint undercover operation by the NOAA Office of Law Enforcement and the FBI.

[Back to Top](#)

**United States versus Marietta Industrial Enterprises, Inc. et al., No. 2:13-CR-00252 (S.D. Ohio), SAUSA Brad Beeson and AUSA Mike Marous.**



**Marietta Industrial Enterprises**

On November 13, 2013, Marietta Industrial Enterprises, Inc. (MIE) and William S. Elliott pleaded guilty to violations stemming from illegal air emissions from the MIE facility in Marietta, Ohio.

The MIE facility processes minerals, including the crushing of medium carbon ferromanganese (medium carbon). To ensure that air pollution from the facility is limited, emissions are drawn into a baghouse using a large electrically-powered fan.

Sometime in 2006, MIE employees began a practice of turning off the baghouse fan when processing medium carbon. Under the facility's Title V permit, anytime the baghouse fan is turned off, this must be reported to the Ohio EPA. Between 2006 and 2009, the company never reported to regulators when the fans were turned off during the processing of medium carbon. After Elliot was informed of this practice in May 2009, the fans were turned back on; however, the reports he submitted to the Ohio EPA did not mention those times when the fans had been turned off.

The company pleaded guilty to a Clean Air Act failure to report violation under Title V (42 U.S.C. § 7413(c)(2)(B)). Elliot pleaded guilty to being an accessory-after-the-fact for not notifying officials that the baghouse fans had not been in use in reports he submitted to officials (18 U.S.C § 3).

This case was investigated by the Central Ohio Environmental Crimes Task Force, which includes the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA Criminal Investigation Division.

[Back to Top](#)

**United States versus B&P Environmental, LLC, No. 1:13-CR-00298 (D.D.C.), ECS Senior Trial Attorney Lana Pettus and AUSA John Hooks.**



**Truck discharging into storm sewer**

On November 13, 2013, B&P Environmental, LLC, (B&P) pleaded guilty to a Clean Water Act misdemeanor violation (33 U.S.C. §§ 1311(a), 1319(c)(1)(A)) for the negligent discharge of wastewater into a storm drain that led directly into the Potomac River.

B&P was in the business of plumbing, waste water removal, and servicing septic tanks. It was hired by another company, Phoenix Industries, to assist in fulfilling a contract with the National Park Service to clean the storm water sewer system in and around the National Mall. Between May 23, 2011, and June 6, 2011, company employees using a vacuum truck collected liquid and solid waste from storm water inlets, catch basins, and oil-water separators located around the Mall. At the direction of a supervisor, they discharged the wastes into another storm water inlet that discharged into the Potomac River. Employee Earl Anderson previously pleaded guilty to a misdemeanor CWA charge.

This case was investigated by the U.S. EPA Criminal Investigation Division and the United States Park Police.

[Back to Top](#)

**United States versus Bogdan Nahapetyan et al., No. 13-CR-04016 (W.D. Mo.), ECS Trial Attorney Jim Nelson, AUSA Lawrence Miller, and ECS Paralegal Courtney Smith.**

On November 12, 2013, Bogdan Nahapetyan pleaded guilty to a misdemeanor Lacey Act violation (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(2)) for his role in the interstate and international trafficking of paddlefish “caviar.”

A total of eight defendants were charged with Lacey Act and conspiracy violations for engaging in multiple transactions involving the purchase and processing of paddlefish eggs in 2011 and 2012. In addition to traveling to Missouri for the purpose of buying the eggs and processing them into caviar, one defendant allegedly attempted to export some of the paddlefish eggs in checked luggage on an international flight departing from Dulles International Airport in Washington, D.C.

The global decline in other caviar sources, such as sturgeon, has led to an increased demand for paddlefish caviar. This increased demand has led to over-fishing of paddlefish, and the consequent decline of paddlefish populations. Trial is pending against Arkadiy Lvovskiy, Dmitri Elitchev, Artour Magdessian, Felix Baravik, Petr Babenko, Andrew A. Praskovsky, and Fedor Pakhnyuk.

This case was investigated by the U.S. Fish and Wildlife Service and the Missouri Department of Conservation, with assistance from the Oklahoma Department of Wildlife Conservation.

[Back to Top](#)

**United States versus Micheal Slattery, Jr., No. 2-mj-00799 (E.D.N.Y.), ECS Trial Attorney Gary Donner, AUSA Julia Nestor, and ECS Paralegal Lisa Brooks.**



**Black Rhino horn**

On November 5, 2013, Micheal Slattery, Jr., pleaded guilty to conspiracy to violate the Lacey Act (18 U.S.C. § 371) for his role in international rhinoceros horn smuggling. Sentencing is scheduled for January 10, 2014.

In 2010, Slattery traveled from England to Texas to acquire black rhinoceros horns. Slattery and others used a day-laborer with a Texas driver's license as a straw buyer to purchase two horns from an auction house in Austin. The defendant and his group then traveled to New York where they presented a fraudulent Endangered Species Bill of Sale and sold those two and two other horns to an individual for \$50,000.

The case is related to "Operation Crash," an on-going nation-wide effort led by the U.S. Fish and Wildlife Service and the Justice Department to investigate and prosecute those involved in the black market trade of endangered rhinoceros horns.

[Back to Top](#)

**United States versus Slade E. Barnett, Jr., No. 2:12-CR-00378 (D. Utah), AUSA Jared Bennett.**

On November 1, 2013, Slade E. Barnett, Jr., pleaded guilty to a felony violation of the Clean Water Act (33 U.S.C. § 1319(c)(2)(B)) related to the illegal discharge of grease into a sewer system.

Barnett was the principal agent for Denali Industries, LLC, which was in the business of manufacturing bio-diesel fuel from grease, vegetable oil, and other substances. From between March and June 2008, Barnett directed employees to dump grease and other waste oils into the sewer system. On two occasions, the discharges caused sewer system pumps to fail, and a third discharge clogged 300 feet of sewer pipe with grease, requiring that it be replaced. Sentencing is scheduled for January 16, 2014.

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

[Back to Top](#)

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**United States versus Billy J. Avery, No. 2:13-CR-00129 (E.D. Va.), AUSA Joseph Kosky and SAUSA David Lastra.**

On October 22, 2013, Billy J. Avery pleaded guilty to a Clean Air Act NESHAP violation (42 U.S.C. § 7413(c)(1)) for the illegal removal of asbestos.

Avery served as the Secretary and Treasurer of EC&C Environmental (EC&C), an environmental services company. In July 2012, a contractor was retained to demolish the Wayside Motor Inn in Virginia Beach. Prior to the demolition, the contractor subcontracted EC&C and Avery to conduct an asbestos inspection of the hotel to identify the presence and location of asbestos-containing materials (ACM). During the inspection, Avery took samples of suspected ACM and provided them to a laboratory for analysis. After test results confirmed the presence of asbestos, an asbestos removal permit was issued to EC&C to remove approximately 1,450 linear feet of the material from the inn.

EC&C and Avery did not follow the asbestos work practice standards, and admitted to dumping some of this material into dumpsters. Avery also has a previous Clean Water Act conviction where he was sentenced to serve nine months' incarceration. Sentencing is scheduled for January 28, 2014.

This case was investigated by the U.S. EPA Criminal Investigation Division; the Chesapeake, Virginia, Fire Marshal's Office; and the Virginia Department of Environmental Quality.

[Back to Top](#)

**United States versus Thomas Z. Breeding, No. 5:13-CR-00034 (N.D. Fla.), AUSA Gayle Littleton.**

On October 16, 2013, Thomas Z. Breeding pleaded guilty to obstruction and two false statement violations (18 U.S.C. §§ 1001(a), 1519).

Breeding was the captain of the *F/V Wolf* that was found to be inside a protected fishing area in January 2012. When confronted by authorities, Breeding denied knowing that he was within The Edges, an area of the Gulf of Mexico closed annually to commercial and recreational fishing from January 1 to April 30 to protect the spawning season for gag grouper. This species is managed under the Gulf of Mexico Individual Fishing Quota program. Investigation determined that the defendant altered his GPS device in an attempt to conceal the fact that he was intentionally fishing in the area. He also told investigators that he was in the area by accident, which was false. Sentencing is scheduled for January 8, 2014.

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

[Back to Top](#)

**United States versus Patrick H. Procino et al., No. 1:13-CR-00081 (D. Del.), AUSA Edmond Falgowski and SAUSA Joseph Lisa.**



**Abandoned hazardous waste**

On October 15, 2013, Patrick H. Procino and his company, Procino Plating, Inc., pleaded guilty to RCRA and Clean Water Act violations (33 U.S.C. § 1319(c)(2)(A); 42 U.S.C. § 6928(d2(A))) stemming from the illegal operation of an electroplating business.

Despite notifying officials in June 2009 that the company was ceasing operations, it continued to process chemicals that had been stored onsite through March 2010, in violation of its CWA permit. From December 2007 through May 2010, Patrick Procino illegally stored a tank containing approximately 450 gallons of liquid hazardous waste that had remained from the chrome plating line. The waste was characterized as corrosive under RCRA.

Sentencing is scheduled for February 27, 2014. This case was investigated by the U.S. EPA Criminal Investigation Division, and the Delaware Department of Natural Resources and Environmental Control.

[Back to Top](#)

## Sentencings

**United States versus Duke Energy Renewables, Inc., No. 13-CR-00268 (D. Wyo.), ECS Senior Counsel Bob Anderson and AUSA Jason Conder.**

On November 22, 2013, Duke Energy Renewables, Inc. (Duke Energy) was sentenced after pleading guilty to violating the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707(a)) in connection with the deaths of protected birds, including golden eagles, at two of the company's wind projects in Wyoming. The company will pay fines, restitution, and community service totaling \$1 million, complete a five-year term of probation, and spend an additional \$600,000 each year during probation to implement and support an environmental compliance plan aimed at preventing bird deaths at the company's four commercial wind projects. The company also will be required to apply for an Eagle Take Permit from the U.S. Fish and Wildlife Service, which, if granted, will provide a framework for minimizing and mitigating the deaths of golden eagles at the wind projects.

The charges stem from the deaths of 14 golden eagles and 149 other protected birds, including hawks, blackbirds, larks, wrens, and sparrows at two of the company's Wyoming wind project locations between 2009 and 2013. These two projects are comprised of 176 large wind turbines that sit on private agricultural land. Duke Energy failed to take all reasonable efforts to build the projects in a manner that would avoid the risk of avian deaths by collision with turbine blades, despite prior warnings from officials. The company cooperated with the investigation and already has begun to test and implement measures aimed at minimizing avian deaths at the sites.

A \$400,000 fine will be directed to the North American Wetlands Conservation Fund. The company also will pay \$100,000 in restitution to the State of Wyoming, and make a \$160,000 community service payment to the National Fish and Wildlife Foundation, designated for projects aimed at preserving golden eagles and increasing the understanding of ways to minimize and monitor interactions between eagles and commercial wind power facilities, as well as enhance eagle rehabilitation and conservation efforts in Wyoming. The company also will contribute \$340,000 to a conservation fund for the purchase of land, or conservation easements on land, in Wyoming containing high-use golden eagle habitat, which will be preserved and managed for the benefit of that species.

This case was investigated by the U.S. Fish and Wildlife Service.

[Back to Top](#)

**United States versus Charles Wertz et al., No. 2:13-CR-00282 (E.D.N.Y.), ECS Trial Attorney Christopher Hale and ECS Paralegal Casey Layman.**

On November 22, 2013, commercial fisherman Charles Wertz, Jr., was sentenced for the underreporting of thousands of pounds of summer flounder (fluke) over a three-year period. Wertz will serve one year and a day of incarceration, followed by three years' supervised release. He will pay a \$5,000 fine, \$99,800 in restitution, and perform 100 hours of community service. Fish dealer C&C Ocean Fishery Ltd. (C&C) was sentenced to pay a \$275,000 fine and was held jointly and severally liable for the restitution. The court also ordered the defendants to comply with additional conditions, including relinquishment of federal fishing permits, divestiture of any interest in the *F/V Norseman*, and the dissolution of the company within 90 days.

Wertz was a Long Island fisherman who fished primarily for fluke from a federally-licensed fishing vessel, the *F/V Norseman*, which he operated with his father until his father passed away in early 2013. The defendant's father, a fish dealer and the holder of a federal fisheries dealer permit, also operated C&C while his son was a company employee.

NOAA regulations require that federally-licensed vessels, like the *Norseman*, file Fishing Vessel Trip Reports (FVTRs) with the federal government. In addition, the first entity/person to purchase fish from a federal fishing vessel, such as C&C, is called a fish dealer. Regulations require that fish dealers inform NOAA on their federal dealer reports what and how much fish is purchased. This information is used by NOAA in its ongoing effort to manage for sustainable fisheries. Incorrect or missing data skews statistical catch models and can have a detrimental effect on the livelihood of the fishing community by disrupting the figures utilized by NOAA to allocate fishing quotas.

Between May 2009 and December 2011, the defendants overharvested approximately 86,000 pounds of fluke with an estimated value of almost \$200,000. In an effort to conceal their activities, they submitted falsified documentation to NOAA.

Wertz pleaded guilty to a wire fraud count and two falsification of federal records violations. C&C pleaded guilty to one wire fraud and three falsification of records counts (18 U.S.C. §§ 1519, 1343).

This case was investigated by the National Marine Fisheries Service, Office of Law Enforcement, with assistance from the New York State Department of Environmental Conservation Police.

[Back to Top](#)

**United States versus Gene Smith et al., No. 2:11-CR-00132 (E. D. Pa.), AUSAs Thomas Moshang and Elizabeth Abrahms.**

On November 19, 2013, Gene Smith was sentenced to serve 42 months' incarceration, followed by three years' supervised release. He also was ordered to pay \$451,936 in restitution to the U.S. EPA. Smith was previously convicted by a jury of conspiracy and six Clean Air Act violations (18 U.S.C. § 371; 42 U.S.C. § 7413 (c)(1)) for his role in an illegal asbestos abatement project. Co-defendant Clarence Cole was sentenced to serve 24 months' incarceration followed by three years' supervised release after pleading guilty to the same charges. Cole was held jointly and severally responsible for the restitution.

In September 2007, Smith purchased a large warehouse, which held a boiler and asbestos-insulated pipes running throughout the building. After being told the cost of properly removing the asbestos-containing material, Smith hired Cole, who in turn hired a group of day laborers to rip out the material. The workers were not told that they were removing asbestos and were only given paper masks for their protection. The dry asbestos was left for regular trash pickup on a curb in front of a group of rowhouses. The defendants continued to direct workers during the abatement even after authorities had told them to cease all activity.

This case was investigated by the U.S. EPA Criminal Investigation Division.

[Back to Top](#)

**United States versus Dean Trinh, No. 3:13-CR-00501 (N.D. Calif., S.D. Fla.), AUSAs Maureen Bessette and Tom Watts-FitzGerald.**



**Baby Nurse Sharks**

On November 13, 2013, Dean Trinh was sentenced to serve five months' home detention and was ordered to pay a \$10,000 fine to the Lacey Act Reward Fund, along with \$14,400 in restitution. Trinh previously pleaded guilty to conspiracy, Lacey Act, and wire fraud violations (18 U.S.C. §§ 371; 1343; 16 U.S.C. §§ 3372, 3373) stemming from the illegal take and sale of California leopard sharks from the San Francisco Bay and nurse sharks from Florida State waters.

Trinh operated a business in California known as Aquatop USA, LLC, which, among other things, advertised the sale of nurse sharks on eBay and Craig's List. Between August 2009 and

October 2009, Trinh admitted to taking undersized California leopard sharks from the San Francisco Bay and selling them to customers in Canada and Florida, through his businesses. The defendant also conspired to transport, sell, receive, and purchase illegally collected nurse shark pups over the Internet.

The California Academy of Sciences was paid \$5,400 of the restitution and \$9,000 is to be paid to the National Fish and Wildlife Foundation. Trinh will forfeit his truck and fishing vessel, and will relinquish all rights to any state fishing, hunting, or other wildlife collecting licenses.

This case was investigated by the U.S. Fish and Wildlife Service and the NOAA Office of Law Enforcement.

[Back to Top](#)

**United States versus Norman Teltow, No. 1:13-00027 (D. Colo.), ECS Trial Attorney Jim Nelson.**

On November 12, 2013, Norman Teltow was sentenced to serve a two-year term of unsupervised probation with a special condition of six months' home confinement. He also will pay a \$10,000 fine. Teltow previously pleaded guilty to a RCRA violation (42 U.S.C. § 6928(d)(2)(A)) for the illegal treatment of hazardous waste. Charges against his aircraft painting company Gold Metal Paint were dismissed.

After GMP was inspected in April 2010, Teltow sealed off a trench drain in the paint-stripping area which led to an underground tank. The owner of the hangar used by GMP hired a hazardous waste disposal company to pump out the contents of the underground tank, which Teltow knew contained methylene chloride, a listed hazardous waste. When the disposal company was unable to completely empty the tank, Teltow sent company employees into the tank to remove the sludge and solids that remained.

After the drain had been sealed, under Teltow's direction, employees started treating methylene chloride by evaporating it on the floor of the paint-stripping area overnight. This practice began in April 2010, and continued until May 2011.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from inspectors at the Occupational Safety and Health Administration and the Colorado Department of Public Health and Environment.

[Back to Top](#)

**United States versus Edward Palmer, No. 5:13-CR-00212 (N.D.N.Y.), AUSA Craig Benedict.**



**Asbestos insulation**

On November 8, 2013, Edward Palmer was

sentenced to pay a \$25,000 fine, complete a three-year term of probation with a special condition of six months' home detention, and perform 50 hours of community service. Palmer previously pleaded guilty to a Clean Air Act violation (42 U.S.C. §§ 7412, 7413 (c)(1)) for the illegal removal of asbestos.

Palmer is the owner of Carbonsted, LLC, a company that owns a former Nestlé's plant. Palmer directed individuals to remove pipes with asbestos insulation without wetting it or properly disposing of the asbestos at a state-approved landfill.

This case was investigated by the U.S. EPA Criminal Investigation Division and the New York State Department of Environmental Conservation, with assistance from the NYS Department of Labor.

[Back to Top](#)

**United States versus Southern Union Company, No. 1:07-CR-000134 (D.R.I.), ECS Trial Attorney Colin Black, Appellate AUSA Skip Lockhart, AUSA Terrence Donnelly, and RCEC Dianne Chabot.**



**Apartment complex where mercury was spilled**

On November 5, 2013, Southern Union Company was resentenced to complete a two-year term of probation, with special conditions that include an audit of the company's environmental compliance program. The company will make a \$500,000 community service payment.

On June 21, 2012, the Supreme Court reversed the criminal fine imposed upon Southern Union and remanded the case for further proceedings. The Court held that criminal fines should be treated the same as sentences of incarceration, and that the rule of Apprendi versus New Jersey, 530 U.S. 466 (2000), therefore was applicable. Apprendi held that the Sixth Amendment's jury trial guarantee requires that any fact (other than the fact of a prior conviction) that increases the maximum punishment authorized for a crime must be proved to a jury beyond a reasonable doubt.

In December 2012, the district court heard oral argument on three issues on remand: 1) whether to empanel a sentencing jury; 2) whether the \$12 million community service payment survived the Supreme Court's decision; and 3) whether, if the government loses on issues 1 and 2, the maximum fine is \$500,000 under 18 U.S.C. § 3571(c) (rather than \$50,000 under RCRA). The court ruled against the government on the first two issues, finding that the prosecution had waived its right to a jury determination of the number of days of violation by failing to request a special verdict form at trial and that the community service portion of the sentence did not survive the Court's ruling. It also concluded that the maximum statutory fine of \$500,000, not the RCRA per day fine maximum, capped both the criminal fine and any monetary community service that could be ordered by the court.

This case involved the illegal storage of mercury that was subsequently spilled in and around an apartment complex in September 2004.

[Back to Top](#)

**United States versus William Lamar, No. 6:13-CR-00042 (E.D. Tex.), AUSA Jim Noble.**

On October 28, 2013, eco-tourism guide William Lamar was sentenced to pay a \$2,300 fine and a three-year term of probation. Lamar previously pleaded guilty to a Lacey Act violation (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(A)) for illegally exporting seven live snakes (five pit vipers and two non-venomous species) out of Peru and into the United States.

In August 2012, TSA officials in Dallas stopped Lamar from boarding a commuter plane to Tyler, Texas, when the snakes were found in his jacket. He had purchased them at a market in Lima, Peru, flown into Miami, Florida, and taken another flight to Dallas. After he was barred from entering the commuter plane, Lamar took a ground shuttle to his home where game wardens met him and seized the snakes.

This case was investigated by the U.S. Fish and Wildlife Service, the Texas Parks and Wildlife Service, the Transportation Security Administration, and the Dallas Fort Worth International Airport Department of Public Safety.

[Back to Top](#)