



Monthly

Bulletin

Environmental Crimes Section

March 2018

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Send your federal case updates to:

“Illegal pollution of our wetlands will be prosecuted vigorously by this office,” said Acting U.S. Attorney Tse [for the Northern District of California]. “The verdicts returned by the jury today demonstrate that our community will not tolerate illegal dumping.” [From [press release](#) for trial conviction in *U.S. v. Lucero*. See [inside](#) for more details on the case.]

District/Circuit	Case Name	Case Type/Statutes
Central District of California	[REDACTED] [REDACTED] United States v. Tyler R. Vela United States v. Kevin Duc Vu	[REDACTED] [REDACTED] Feather Sales/BGEPA Fish and Reptile Sales/ Smuggling
Northern District of California	United States v. James P. Lucero	Wetlands/CWA
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
Middle District of Florida	United States v. Patrick W. Riley United States v. Andre Bernard	Animal Fighting/Conspiracy RINS Fraud/CAA, Wire Fraud
Central District of Illinois	United States v. Joseph J. Chernis, IV	Demolition/CAA
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
District of Kansas	United States v. Robert P. McConnell	Deer Importing/Lacey Act
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
District of Maine	United States v. Robert Bowdoin et al.	Eel Harvesting/Lacey Act
[REDACTED]	[REDACTED]	[REDACTED]
District of Massachusetts	United States v. Guan Zong Chen	Wildlife Exports/Conspiracy, Lacey Act, Smuggling
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
Western District of Missouri	United States v. Tyson Poultry Inc.	Wastewater Discharge/CWA
District of North Dakota	United States v. Jason Halek et al.	Fracking Waste/Conspiracy, Falsification of Records, False Statement, SDWA
District of Oregon	United States v. Dyno-Nobel, Inc.	Ammonia Discharges/CERCLA
Western District of Pennsylvania	United States v. Wayne A. George d/b/a A Rooter Man	Employee Death/OSHA
Southern District of Texas	[REDACTED] United States v. Sea World Management & Trading, Inc., et al.	[REDACTED] Vessel/ APPS
Western District of Washington	United States v. Matthew Hutto et al.	Timber Cutting/Depredation to Government Property

Trials

United States v. James P. Lucero, No. 4:16-CR-00107(N.D. Calif.), AUSA Philip J. Kearney.

On February 21, 2018, a jury took 20 minutes to convict James P. Lucero of three Clean Water Act (CWA) violations for the unpermitted discharge of fill material into waters of the United States. This wetland area is located in Newark, California, which is adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge (33 U.S.C. §§ 1311, 1319(c)(2)(A), 1344). Lucero is scheduled to be sentenced on June 4, 2018.

Beginning in July 2014, and continuing until his illegal operation was shut-down in September 2014, Lucero (a self-described “dirt broker”) dumped approximately 1,800 industrial-sized truckloads of dirt and construction debris (e.g., metal, asphalt, concrete, and plastic) into more than 13 acres of wetland and tributary areas on a 560-acre undeveloped parcel that he neither owned nor had permission to enter. After a tip provided by an environmental watchdog organization, local police and the landowners’ representatives arrived at the property to find a cut padlock, dump trucks actively dumping dirt on the property, and a bulldozer mixing the illegal fill into existing soil.

The U.S. Army Corps of Engineers had previously determined that the wetlands and tributary areas, separated from navigable waters by a man-made levee, were subject to CWA jurisdiction, a determination that landowners did not challenge.

In March 2014, Lucero



Wetlands prior to illegal dumping



Wetlands afterwards

(Continued on page 4)

Trials

(Continued from page 3)

pleaded guilty to conspiracy and bribery violations in California state court, after bribing Santa Clara County landfill employees to allow truckloads of intentionally misclassified waste to be dumped in a county landfill at a reduced rate, resulting in a loss to Waste Management Corporation of more than \$13 million, and lost tax revenue for the City of San Jose. He was sentenced in December 2014 to a three-year term of incarceration, with credit for time-served.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Federal Bureau of Investigation.

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Guilty Pleas

United States v. Dyno-Nobel, Inc., No. 3:18-CR-00063 (D. Ore.), AUSA Ryan Bounds and RCEC Karla Perrin.

On February 23, 2018, Dyno-Nobel, Inc., pleaded guilty to violating the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), following a series of large-scale ammonia discharges from a urea-manufacturing plant outside St. Helens, Oregon, in July and August 2015 (42 U.S.C. § 9603(b)(3))

The company’s St. Helens urea plant discharged more than six tons of anhydrous ammonia vapor into the air over the course of a three-day period starting on



Dyno-Nobel facility

July 30, 2015. A subsequent investigation revealed that several failed attempts to restart the plant had caused a series of massive discharges from the facility, triggering numerous complaints of foul odors, eye irritation, and difficulty breathing from citizens living nearby.

Although company personnel were aware of the emissions, the company did not alert the National Response Center until August 7, 2015, which was more than a week after the first discharge. Sentencing is scheduled for June 4, 2018.

This case was investigated by the U.S. EPA Criminal Investigations.

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Guilty Pleas

March 2018

Sentencings

United States v. Tyson Poultry Inc., No. 3:17-CR-00541 (W.D. Mo.), ECS Senior Counsel Kris Dighe and AUSAs Patrick Carney and Casey Clark.

On February 27, 2018, Tyson Poultry Inc. was sentenced to pay a \$2 million fine, complete a two-year term of probation, and make a \$500,000 community service payment, to directly remedy the harm it caused by violating the Clean Water Act (CWA) (33 U.S.C. §§ 1319 (c)(1)(A), (c)(1)(B)). The charges stemmed from discharges at Tyson's slaughter and processing facility in Monett, Missouri, that led to a major fish kill event in 2014.



Segment of Alimet piping system

Tyson Poultry, the nation's largest chicken producer, is a subsidiary of Tyson Foods Inc., which owns and operates multiple companies in the food supply and food service industry. The conduct leading to the charges began with a spill at Tyson Poultry's feed mill in Aurora, Missouri, where the facility mixed ingredients to produce chicken feed. One ingredient of the feed was a liquid food supplement called "Alimet," which has a pH of less than one.

In May 2014, the tank used to store Alimet at the Aurora feed mill sprang a leak, allowing it to flow into a secondary containment area. Tyson hired a contractor to remove the Alimet from the containment area and transport it to the Monett plant. At Tyson's Monett plant, the Alimet was unloaded into the plant's in-house treatment system that was not designed to treat waste with Alimet's characteristics. Some of the chemical passed through Tyson's system and into the local municipal waste water treatment plant. There, the Alimet killed bacteria used to reduce ammonia in discharges from the treatment plant into Clear Creek, killing approximately 100,000 fish.

As part of the sentencing, Tyson Poultry will implement an environmental compliance program (ECP). The ECP will require Tyson Poultry to hire an independent third-party auditor to examine all Tyson poultry facilities throughout the country to assess their compliance with the CWA and hazardous waste laws; conduct specialized environmental training at its poultry processing plants, hatcheries, feed mills, rendering plants, and waste water treatment plants; and implement improved policies and procedures to address the circumstances that gave rise to these violations. The community service payment will be used to maintain and restore waters in the Monett area, with a particular focus on Clear Creek and adjoining waterways.

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

Sentencings

United States v. Sea World Management & Trading, Inc., et al., Nos. 2:18-CR-00098, 00099 (S.D. Tex.), ECS Trial Attorney Stephen DaPonte, AUSA Julie K. Hampton, and ECS Law Clerk Christopher Kopf.

On February 26, 2018, a tank vessel operating company and the vessel's master pleaded guilty to, and were sentenced for, violating the Act to Prevent Pollution from Ships (33 U.S.C. § 1908 (a)).

Sea World Management & Trading, Inc. (Sea World Management) operated the T/V *Sea Faith* and Edmon Fajardo was the ship's master. Between March 10 and March



T / V *Sea Faith*

18, 2017, while the vessel was in the Caribbean and Gulf of Mexico, Fajardo ordered crew members to make illegal oily waste discharges from various locations in the vessel's cargo/ deck spaces. These discharges bypassed the oil discharge monitoring equipment and were not recorded in the Oil Record Book. During this same week, Fajardo ordered crew members to throw plastics, empty steel drums, oily rags, batteries, and empty paint cans directly overboard. None of these garbage discharges were recorded in the vessel's Garbage Record Book.

The company will pay a \$2.25 million fine and complete a three-year term of probation, during which all vessels operated by the company and calling on U.S. ports will be required to implement an environmental compliance plan. Fajardo was sentenced to six months' incarceration, followed by two years' supervised release, and a \$2,000 fine.

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

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Sentencings

March 2018

Sentencings

***United States v. Jason Halek et al.*, Nos. 1:14-CR-00114, 1:15-CR-00130 (D.N.D.), ECS Senior Trial Attorney Christopher J. Costantini, ECS Trial Attorney Stephen Foster, AUSA Gary Delorme, and ECS Law Clerk Christopher Kopf.**

On February 16, 2018, Nathan Garber and Jason Halek were ordered to pay restitution to the North Dakota Industrial Commission Oil and Gas Division for violations regarding the Safe Drinking Water Act (SDWA). Garber will pay \$5,000 and Halek will pay \$35,000.

The two previously pleaded guilty to violations stemming from the illegal operation of a saltwater disposal well. The well, named the Halek 5-22, received “produced” and “flowback” water consisting of “brine and other wastes,” commonly referred to as “saltwater.” “Saltwater” is a generic term used for a variety of waste liquids from oil wells, including waste fracking water, as well as brine-laden formation water. .

Halek improperly injected fluids down the backside of the well, and instructed co-conspirator Garber to move a safety device called a “packer” out of its proper location, in violation of the well’s permit.

Garber previously pleaded guilty to conspiracy to violate the SDWA and defraud the United States. He also pleaded guilty to five substantive SDWA counts, two counts of making false statements, two counts of falsification of records, and one count of concealment or cover up of a tangible object. Halek pleaded guilty to three SDWA violations (18 U.S.C. §§ 371, 1001, 1519; 42 U.S.C. § 300h-2). Halek was also sentenced to time-served, followed by three years’ supervised release, and ordered to pay a \$50,000 fine. He also will be placed in a halfway house for up to one year. Garber was sentenced to time served, followed by three years’ supervised release.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from the North Dakota Industrial Commission.



Halek well

Sentencings

A photograph of a workshop or storage area. In the foreground and middle ground, several large, cut logs and stumps are stacked on a light-colored floor. The logs are of varying sizes and are cut into rectangular blocks. In the background, there are white shelves filled with smaller, stacked logs. A yellow and black striped safety line is visible on the floor in the lower right corner. The walls are light-colored, and there are some tools and equipment visible in the background.

(Continued on page 14)

Sentencings

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reported similar activity a few nights later. Rangers subsequently arrested Michael Welches, Hutto, and Richard Welches as they were cutting and loading a felled maple. A receipt found at the time of their arrest indicated that one of them had earlier taken a piece of the tree to a music wood supplier. The block of wood retrieved from the shop matched the wood from the felled tree, which had been cut over a few days. The tree was part of the Elwha restoration project lands ecosystem and is irreplaceable.

As part of their sentencing, Welches and Hutto are jointly and severally responsible for \$8,766 in restitution, which is the value of the timber as music wood. Welches also was previously convicted in 2004 of illegally cutting trees on state timber trust land. Richard Welches is a fugitive.

This case was investigated by the National Park Service.

***United States v. Robert Bowdoin et al*, Nos. 2:17-CR-00062,00063, 2:16-CR-00128 (D. Maine), ECS Trial Attorneys Cassie Barnum and Shane Waller and ECS Paralegal Ashley Patterson-Chandler.**

On February 14, 2018, Robert Bowdoin was sentenced to pay a \$10,000 fine, complete a three-year term of probation, and is jointly and severally responsible for \$141,000 in restitution to Massachusetts and New Jersey along with Michael Squillace. A court sentenced Squillace and John Pinkham on February 1 for their involvement in the trafficking of more than \$1.9 million worth of juvenile American eels, also known as “elvers”. Both will complete two-year terms’ of probation. In addition to the restitution, Squillace will pay a \$5,000 fine and perform 300 hours of community service. Pinkham will pay a \$3,000 fine. All previously pleaded guilty to violating the Lacey Act for eel trafficking (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B)).

Pinkham, Squillace, and their co-defendants illegally harvested, sold, transported, or exported elvers, knowing they had been harvested in violation of state law. Further, as a means of concealing the illegal sale and export of elvers, the defendants used Maine or Florida eel harvest licenses (theirs or others) to claim that the eels were obtained legally from Maine or Florida waters. Elver export declaration packages submitted to authorities included this false documentation used to disguise the illegal origins of the elvers and to facilitate their export from the United States.

Eels are highly valued in East Asia for human consumption. Historically, Japanese and European eels were harvested to meet this demand; however, overfishing has led to a decline in their population. As a result, harvesters have turned to the American eel to fill the void, harvesting elvers in the United States and raising them to adulthood overseas.

These cases were investigated by the U.S. Fish and Wildlife Service.

Sentencings

***United States v. Guan Zong Chen*, No. 1:15-CR-10348 (D. Mass.), ECS Senior Litigation Counsel Richard Udell, ECS Trial Attorney Gary Donner, and ECS Law Clerk Christopher Kopf.**

On February 14, 2018, Chinese national Guan Zong Chen was sentenced to time served (19 months' incarceration). The court also ordered him to forfeit the seized ivory and pay \$700,000 in substituted assets. Chen previously pleaded guilty to charges that he led a conspiracy to illegally export (smuggle) \$700,000 worth of endangered and protected wildlife items made from rhinoceros horn, elephant ivory, and coral from the United States to China (18 U.S.C. §§ 371, 554; 16 U.S.C. §§ 3372(d), 3373(d)(3)(A)).

Chen, who owned an antiques business in China, was previously arrested in Chengdu, China, and convicted in China in 2009 of trafficking ivory carvings that had been purchased in the United States. Unable to travel outside of China due to his conviction, Chen continued to traffic wildlife by procuring the help of others to smuggle wildlife merchandise to China that he purchased at U.S. auction houses located in California, Florida, Ohio, Pennsylvania, New York, and Texas.

Jin Jie Yang, a Chinese national, and Carla Marsh, who owned a shipping business in Concord, Massachusetts, both aided Chen in his illegal activities. Yang traveled to the United States at Chen's expense and purchased wildlife items at various auction houses. He shipped or brought the wildlife to Marsh in Concord, where she re-packed and mailed the items to Hong Kong with documents that falsely stated the contents and value and without required declarations and permits. Once the packages arrived in Hong Kong, other members of the conspiracy picked them up and brought them to mainland China. The conspiracy also involved the purchase and smuggling of a rhinoceros horn libation cup from a New York auction house that was packed inside a porcelain vase and exported without required paperwork. Chen also admitted that he had twice purchased raw rhinoceros horns from an individual associated with an auction house in Beverly Hills, California.

In one instance in 2014, after serving his sentence in China, Chen traveled to the United States and visited Marsh in Massachusetts. During the visit, Chen instructed Marsh that a sculpture made from elephant ivory be mailed to him in Hong Kong. The ivory sculpture was falsely declared as wood worth only \$50.

In December 2014, Yang pleaded guilty to his role in the conspiracy and was sentenced in May 2015 to time-served. Marsh pleaded guilty in May 2015 and was sentenced to one year of probation in April 2016. Chen was arrested in 2016 in Australia,



Libation cup carved from Rhino Horn

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Sentencings

(Continued from page 15)

when he traveled from China. Australia extradited him to the United States in July 2017.

This case is part of Operation Crash, an ongoing effort by the Department of the Interior's Fish and Wildlife Service, in coordination with the Department of Justice, to deter and prosecute those involved in the illegal killing of and trafficking in protected species, including rhinoceros and elephants.

This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement, with extradition support from the Office of International Affairs and the U.S. Marshals Service.

United States v. Andre Bernard, No. 2:17-CR-00061 (M.D. Fla.), ECS Trial Attorney Adam Cullman and AUSA Sarah Sweeney.

On February 6, 2018, Andre Bernard was sentenced to 87 months' incarceration for conspiracy to commit wire fraud, making false statements, and for participating in a multi-state scheme to defraud biodiesel buyers and U.S. taxpayers by fraudulently selling biodiesel credits and fraudulently claiming tax credits. Bernard also will forfeit \$10.5 million, after receiving credit for funds already seized worth in excess of \$1.5 million.

Bernard previously pleaded guilty to conspiracy to commit wire fraud and Clean Air Act false statement violations (18 U.S.C. § 1349; 42 U.S.C. § 7413(c)(2)(A)). He conspired with Thomas Davanzo, Robert Fedyna, and Scott Johnson in a scheme to defraud biodiesel credit (known as RINs), buyers, and U.S. taxpayers. The conspiracy involved having Gen-X Energy Group (Gen-X), headquartered in Pasco, Washington, and its subsidiary, Southern Resources and Commodities (SRC) of Dublin, Georgia, generate fraudulent RINs and tax credits multiple times on the same material. Bernard and his co-conspirators operated several shell companies that claimed to purchase and sell the renewable fuel. The co-conspirators also cycled the funds through these shell companies' bank accounts to perpetuate the fraud scheme and conceal the proceeds.

From March 2013 to March 2014, the co-conspirators generated approximately 60 million RINs that were based on fuel that was either never produced or was merely re-processed at the Gen-X or SRC facilities. They received at least \$42 million from the sale of these fraudulent RINs to third parties. In addition, Gen-X received approximately \$4,360,724 in false tax credits for this fuel.

This case was investigated by the U.S. Secret Service, the U.S. EPA Criminal Investigation Division, and the Internal Revenue Service Criminal Investigations.

Sentencings

***United States v. Tyler R. Vela*, No. 8:17-CR-00052 (C.D. Calif.), AUSA Amanda M. Bettinelli.**

On February 5, 2018, Tyler R. Vela was sentenced to complete a one-year term of probation and perform 60 hours of community service. Vela previously pleaded guilty to violating the Bald and Golden Eagle Protection Act (16 U.S.C. § 668(a)). Between January and June 2016, Vela offered to sell 40 feathers from a bald eagle without being permitted to do so.

This case is a result of Operation Jungle Book, a law enforcement initiative led by the United States Fish and Wildlife Service targeting wildlife smuggling.

***United States v. Kevin Duc Vu*, No. 17-CR-00568 (C.D. Calif.), AUSA Erik Silber.**

On February 5, 2018, Kevin Duc Vu was sentenced to pay a \$35,000 fine and complete a three-year term of probation, to include 15 months' home detention. Vu pleaded guilty to smuggling asian arowana fish (said to be the world's most expensive aquarium fish) in addition to a variety of turtle species (18 U.S.C. § 545).

In September 2016, Customs and Border Protection intercepted a package addressed to Vu's wife that contained six arowanas and a variety of turtles including: seven big-headed turtles, six Asian box turtles, and one black-breasted turtle. Six of the turtles ultimately died as a result of the smuggling efforts. In October 2016, agents searched Vu's residence and recovered two black-breasted turtles, in addition to four dead arowanas in a freezer. Agents determined that Vu sold arowanas for \$1,900, big-headed turtles for \$850, and a pair of black-breasted turtles for \$2,000.

This case is a result of Operation Jungle Book, a law enforcement initiative led by the United States Fish and Wildlife Service targeting wildlife smuggling.

***United States v. Joseph J. Chernis, IV*, No. 3:16-CR-30033 (C.D. Ill.), AUSA Katherine Boyle and SAUSA James Cha.**

On February 5, 2018, Joseph J. Chernis, IV, was sentenced to 37 months' incarceration, followed by three years' supervised release. Chernis previously pleaded guilty to three Clean Air Act violations for his involvement in the illegal removal of asbestos from the former Pillsbury Mills/Cargill facility in Springfield, Illinois (42 U.S.C. §§ 7412, 7413(c)(1)).

In October 2014, Chernis hired an untrained individual to illegally remove dry asbestos pipe



Asbestos debris

(Continued on page 18)

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

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Announcements

News from state, local, and Canadian cases is posted on the Regional Environmental Enforcement Associations [website](#) .

Please send [REDACTED] any pleadings you believe would be useful for posting in the [Brief Bank](#). Older materials are still available on the [Document Bank Archives](#) page.

If you are in need of sentencing data for your wildlife or pollution cases, please contact [REDACTED] with your search requests.

Please notify ECS of any appeals taken in your cases, as per [Section 5-11.118](#) of the U.S. Attorneys' Manual.

Environmental Crimes Section Attorneys: (Main # 202-305-0321)

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Assistant Chief	Thomas Ballantine	████████
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Assistant Chief	Jennifer Whitfield	████████
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