

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

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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).

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D. Alaska	<u>United States v. Alan Veys</u>	<i>Bear Hunting/ Lacey Act, Conspiracy</i>
S.D. Calif.	<u>United States v. San Diego Gas and Electric</u>	<i>Asbestos Abatement/ Clean Air Act, False Statement</i>
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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, despite 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.

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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.

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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.

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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.

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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.

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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.

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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Apartment building

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.

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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.

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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 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.

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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 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.

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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.

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.



Container with concealed storage tanks

[Back to Top](#)**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 abatement 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.

[Back to Top](#)**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 AUSA: 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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