ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

January/February 2009

EDITOR'S NOTE:

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We apologize for the delay in distributing the ECS Bulletin to you, as well as for having to combine two months' worth of news. We will be back on schedule beginning with the March 2009 Edition. Please continue to keep us in mind when you have new case developments.

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AT A GLANCE

- **United States v. McWane 129 S. Ct. 630 (Dec. 1, 2008).**
- **United States v. Ionia Management, __F.3d.__ 2009 WL 116966 (2nd Cir. Jan. 20, 2009).**
- **United States v. Continental Airlines, No. 8:08-MJ-1284 (M.D. Fla.).**
- **United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).**

Districts	Active Cases	*Case Type* / Statutes
D. Ak.	United States v. Christopher Rowland United States v. Larry Hooton et al.	*Otter/Sea Lion Hunting/* Lacey Act, Marine Mammal Protection Act *Illegal Brown Bear Guides/* Lacey Act Conspiracy
D. Ariz.	United States v. Craig Van Sickle	*Tree Destruction on Public Land/* Conspiracy to Destroy Trees
W.D. Ark.	United States v. Tyson Foods, Inc., et al.	*Employee Death/* OSHA
C.D. Calif.	United States v. Joseph Xie et al.	*Mislabled Catfish/* Lacey Act
D. Colo.	United States v. Paul Weyand et al.	*Big Game Guiding/* Lacey Act
D.D.C.	United States v. Cannon Seafood et al.	*Striped Bass Harvesting/* Lacey Act
M.D. Fla.	United States v. Jesse Barresse United States v. Robert Racho et al. United States v. Continental Airlines et al.	*Eagle Shooting/* Bald and Golden Eagle Protection Act *Vessel/* APPS *Wildlife Shipments/* ESA
S.D. Fla.	United States v. Max Moghaddam et al. United States v. David Dreifort et al. United States v. Fresh King Inc., et al.	*Caviar Export/* Lacey Act, Conspiracy, ESA *Lobster Harvesting/* Lacey Act, Conspiracy *Pesticide-Contaminated Produce/* FDA, Conspiracy
D. Idaho	United States v. Robert Webb	*Methamphetamine Lab Waste/* RCRA
E.D. La.	United States v. Cypress Bayou Industrial Painting, Inc.	*Sandblasting Debris/* CWA Misdemeanor
D. Mass.	United States v. ExxonMobil Pipeline Corporation United States v. Consultores De Navegacion et al.	*Diesel Oil Spill/* CWA Misdemeanor *Vessel/* APPS, False Statement, False Records, Obstruction, Conspiracy
D. Md.	United States v. Keith Collins et al.	*Striped Bass Harvesting/* Lacey Act
D. Minn.	United States v. Tia Yang et al.	*Exotic Wildlife Imports/* Smuggling, Conspiracy
E.D. Mo.	United States v. Matthew Burghoff	*Asbestos Removal/* CAA, Bank Fraud
W.D. Mo.	United States v. Oak Mill, Inc. et al. United States v. HPI Products Inc., et al.	*Wastewater Discharges/* CWA *Pesticide/Herbicide Discharges/* CWA, RCRA

Districts	Active Cases	*Case Type* / Statutes
D.N.J.	**United States v. Igor Krajacic et al.**	***Vessel*/ APPS**
E.D.N.Y.	**United States v. Bandjan Sidime et al.**	***Ivory Imports*/ Smuggling, Conspiracy**
D. Ore.	**United States v. Larry Anson**	***Plating Waste*/ RCRA, CWA Misdemeanor**
E.D. Pa.	**United States v. Pendulum Ship Management, Inc., et al.** **United States v. Martin Schneider** **United States v. Moshe Rubashkin et al.**	***Vessel*/ APPS, False Statement, Conspiracy, Obstruction** ***Whale Teeth Imports*/ Marine Mammal Protection Act, Lacey Act, ESA, Smuggling** ***Textile Waste*/ RCRA, False Statement**
E.D. Tenn.	**United States v. Heraeus Metal Processing, Inc.**	***Refinery Emissions*/ CAA False Statement**
E.D. Va.	**United States v. Robert Whiteman**	***Abandoned Plating Waste*/ RCRA**
W. D. Va.	**United States v. KIK (Virginia) LLC** **United States v. Novozymes Biologicals, Inc.**	***Bleach Discharge*/ CWA Misdemeanor** ***Chemical Discharge*/ CWA**
E.D. Wash.	**United States v. Gypsy Lawson et al.**	***Monkey Smuggling*/ ESA, Smuggling Conspiracy**
W.D. Wash.	**United States v. Hae Wan Yang et al.**	***Vessel*/ APPS, Misprision of Felony**
S.D. W.V.	**United States v. David Blevins**	***Paint Waste*/ RCRA**

Additional Quick Links

Significant Environmental Decisions

Supreme Court

United States v. McWane, et al., 129 S. Ct. 630 (Dec. 1, 2008).

On December 2, 2008, the Supreme Court denied the government's petition for certiorari. In October 2008, the government filed its reply in support of its petition and the opposition to respondents' conditional cross-petition in the Supreme Court.

This case involves a criminal prosecution of a corporation and two individuals involved in an extensive history of CWA violations at one of its plants in Birmingham, Alabama. The case was prosecuted and the jury verdict was returned before the *Rapanos* decision was issued. In October 2007, the Eleventh Circuit issued a published decision vacating the CWA convictions and remanding to the district court for a new trial.

Specifically, the panel rejected the government's argument that waters are within the scope of the CWA if they satisfy either (a) the standard articulated in Justice Kennedy's concurring opinion (commonly known as the "significant nexus" standard) or (b) the standard articulated in the plurality opinion. The panel acknowledged that, under the plurality standard, the "error may well have been harmless." But the panel concluded that it was constrained by the Supreme Court's decision in *Marks v. United States*, 430 U.S. 188 (1977), to consider the "significant nexus" standard the sole governing principle from the fractured decision. The panel further stated that, because the government had not presented evidence demonstrating such a nexus and because defendants had lacked any incentive to put on evidence showing the absence of a significant nexus, the error in the jury instruction was not harmless.

Back to Top

Second Circuit

United States v. Ionia Management, __F.3d.__ 2009 WL 116966 (2nd Cir. Jan. 20, 2009.)

On January 20, 2009, the Second Circuit published a *per curiam* opinion, addressing the APPS interpretation question in *U.S. v. Jho, 534 F.3d. 398* (i.e., what "maintaining" an oil record book means), whether there was sufficient evidence to apply *respondeat superior* law, whether a materiality instruction caused a constructive amendment of the indictment, and whether the court erred by grouping under the sentencing guidelines.

In its brief, the defendant raised the issue of whether "maintain" means "maintain a complete and accurate record," as the government consistently argues, or whether it means "preserve with all lies intact." The Court, after interpreting international law and the plain text of the APPS regulation, emphatically held that the government's reading is the accurate one. "We therefore hold that the APPS requirement that subject ships 'maintain' an ORB, 33 C.F.R. § 151.25, mandates that these ships ensure that their ORBs are accurate (or at least not knowingly inaccurate) upon entering the ports or navigable waters of the United States. This requirement is in compliance with international law, supported by the plain text of the regulation, and necessary to advance the aims of the international treaties governing international pollution in marine environments."

Ionia claimed that it was error not to instruct the jury that corporate criminal liability can only stem from the actions of "managerial" employees. The court noted that this claim seemed at odds with Second Circuit precedent, but held that there was "overwhelming evidence" that Ionia's chief engineers specifically directed crew members to use the "magic hose" and that this was certainly enough to hold the corporation accountable.

The second *respondeat superior* argument raised by *amicus* stated that there must be additional proof that a defendant corporation lacked effective policies and procedures to deter and detect criminal actions by its employees. The Second Circuit ruled that this argument is contrary to precedent, citing *United States v. Twentieth Century Fox Film Corp., 882 F. 2d at 660* (holding that a compliance program, "however extensive, does not immunize the corporation from liability when its employees, acting within the scope of their authority, fail to comply with the law"). The court noted that "new Supreme Court cases in other areas of the law" did not affect this precedent. It also noted that a corporate compliance program may be *relevant* to determining an employee's scope of employment, but that it does not rise to the level of an element.

The indictment in this case was quite specific as to how certain false statements were material. The jury instruction, however, followed circuit precedent, which was less specific. The court held that because Ionia was on notice of the "core criminality" at issue in the case, the difference between the indictment and the instruction did not cause a constructive amendment.

Finally, the defendant argued that the district court erred in grouping under the guidelines. The Second Circuit stayed out of the weeds on this issue, and emphasized that it appeared that the district court had determined an appropriate fine "by applying the provisions of 18 U.S.C. §§ 3553 and 3572," in accordance with the Guidelines. Although it was not explicit, the Court seemed to be relying on the idea that the Guidelines are now advisory.

Back to Top

District Courts

United States v. Continental Airlines, No. 8:08-MJ-1284 (M.D. Fla.).

Defendant company was charged with an Endangered Species Act violation (16 U.S.C. §1538 and 50 C.F.R. §14.52) for exporting wildlife without clearance by the United States Fish and Wildlife Service. Specifically, fish/invertebrates were shipped from Tampa to Canada via air shipment in January 2008.

In its motion to dismiss, Continental claimed that a criminal charge was inappropriate given that the wildlife exported was not endangered, interpreting subsections (d-f) of 16 U.S.C. §1538 to be merely civil "record-keeping" provisions. The company further interpreted the legislative intent for criminal sanctions to apply only if endangered species are at issue.

The government stated, and the district court agreed, that a plain reading of the statute *does* indicate congressional intent to criminalize the record-keeping offense charged here. Additionally, given that 50 C.F.R. §14.52 requires that "all wildlife" be cleared by a Fish and Wildlife officer before being exported onto a plane, whether endangered or not, Continental clearly committed a criminal act by not ensuring that the fish/invertebrates were inspected.

Back to Top

United States v. Beau Lee Lewis, No. 04-CR-00217 (N. D. Calif.).

On December 10, 2008, the district court issued an order pursuant to the Ninth Circuit's directive (*U.S. v. Lewis, 518 F.3d 1171*) that the district court examine all periods of delay between the indictment of this case in 1998 and the trial of defendant Lewis in early 2001 and determine whether the indictment should be dismissed with or without prejudice. The court's order addressed the first part of the analysis, concluding that 145 days of non-excludable time occurred between indictment and trial, including the 117-day period previously declared by the appellate court to have been un-excludable because it deemed a government motion pending during this period insufficient to toll the speedy trial clock. ((Judge Hamilton noted that, were she empowered to decide the issue without the prior Ninth Circuit ruling, she would find (as the government argued successfully at the trial court level and unsuccessfully to the Ninth Circuit panel) the 117-day period was properly excluded and that only 28 non-excludable days had elapsed, resulting in no speedy trial violation.)) The parties must now brief the issue of whether the indictment should be dismissed with or without prejudice.

Back to Top

Trials

United States v. Gypsy Lawson et al., No. 2:08-CR-00026 (E.D. Wash.), AUSA Stephanie Van Marter [redacted]

On December 8, 2008, Gypsy Lawson, and her mother Fran Ogren, were convicted by a jury of two Endangered Species Act violations for smuggling and conspiring to smuggle a rhesus macaque monkey into the United States.

The defendants traveled from Thailand to Los Angeles International Airport in November 2007 and did not declare to customs officials that they were bringing any animals into this country. During the execution of a search warrant at Ogren's home in January 2008, several pieces of documentation were seized, including photographs and notes confirming how Ogren and Lawson obtained the monkey in Thailand and smuggled it into the United States. The monkey was later found at Lawson's home and taken into quarantine after the execution of a search warrant at her home.

Among the items seized from Lawson were travel journals detailing the defendants' attempts to acquire a monkey small enough to conceal, as well as photographs of Lawson wearing loose fitting clothes with a bulge around her abdomen. The journals confirm that Lawson and her mother smuggled the monkey into the United States by hiding it under her shirt, pretending she was pregnant in order to get past authorities.

Co-defendant James Pratt previously pleaded guilty to a misdemeanor Lacey Act violation for possession and transportation of prohibited wildlife for his role in the case. All three defendants are scheduled to be sentenced on March 3, 2009.

This case was investigated by the United States Fish and Wildlife Service and Immigration and Customs Enforcement with assistance from the Royal Thai Police and Natural Resources and Environmental Crime Suppression Division, which is based in Bangkok, Thailand.

Back to Top

United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On December 4, 2008, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were convicted by a jury on charges of conspiring to violate the Lacey Act, Lacey Act false labeling violations, and Endangered Species Act violations for the illegal export of internationally protected fish roe (eggs) between July 2005 and April 2007. Specifically, the defendants did not have the necessary permits for these exports and also had falsely stated on shipping invoices and customs documents that the shipment contained bowfin roe, which is sometimes used as a caviar substitute.

The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and it is now listed as an endangered species. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish has become a substitute for sturgeon caviar and, as such, has become quite valuable.

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

Back to Top

Informations and Indictments

United States. v. Keith Collins et al., No. 8:09-CR-00049 (D. Md.); United States v. Cannon Seafood, Inc. et al., No. 1:09-CR-00023(D.D.C.); ECS Senior Trial Attorney Wayne D. Hettenbach [redacted], ECS Trial Attorneys Madison Sewell ([redacted] and Jeremy Peterson [redacted], and AUSA Stacy Belf [redacted]

On January 27 and January 30, 2009, single count felony informations were filed against Robert Moore, Sr., Robert Moore, Jr., and Cannon Seafood, Inc., in the District of Columbia, and against Keith Collins, Willie Dean, Charles Quade, Thomas Hallock, and Thomas Crowder in the District of Maryland for violations of the Lacey Act stemming from their involvement in the selling, buying, illegal harvesting, and systemic under-reporting of striped bass taken from the Chesapeake Bay and Potomac River between 2003 and 2007. Each of the defendants has entered into an agreement with the government to plead guilty and is cooperating in the on-going investigation into two remaining corporate and four individual defendants for related illegal conduct. In a related case, indictments were previously filed in the District of Maryland against Joseph Nelson and Joseph Nelson, Jr.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit. The Task Force conducted undercover purchases and sales of striped bass in 2003, engaged in covert observation of commercial fishing operations in the Chesapeake Bay and Potomac River area, and conducted detailed analysis of area striped bass catch reporting and commercial business sales records from 2003 through 2007. The investigation is ongoing.

Back to Top

United States v. Jesse Barresse, No. 8:08-CR-00304 (M.D. Fla.), AUSA Cherie Krigsman ([redacted]

On January 16, 2009, an indictment was unsealed charging Jesse Barresse with shooting and killing a bald eagle, in violation of the Bald and Golden Eagle Protection Act. The maximum penalties Barresse faces, if convicted, are one year of imprisonment and a fine of $5,000.

According to the indictment, Barresse knowingly shot the bald eagle in Ruskin, Florida, on January 13, 2008. Trial is scheduled to begin on March 2, 2009. This case was investigated by the United States Fish and Wildlife Service.

Back to Top

United States v. David Dreifort et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

Seized undersized spiny lobster tails

On December 4, 2008, an indictment was filed charging David Dreifort, Denise Dreifort, Sean Reyngoudt, Robert Hammer, John Niles, and Michael Delph with conspiracy to illegally harvest lobsters. The six are alleged to be involved in an out-of-season lobstering operation that included the use of illegal artificial habitat placed in the Florida Keys National Marine Sanctuary ("Sanctuary") and the stockpiling of approximately 1,500 pounds of lobster tail for sale after the opening of Florida's commercial lobster season on August 6, 2008. This amount of lobster tail is 1,000 times greater than the legal bag limit for a mini-season sport diver. David and Denise Dreifort are further charged with a Lacey Act violation for transporting the illegally harvested lobster.

As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendants, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

According to court documents, investigators became aware of a group constructing artificial lobster habitats in the lower Keys. Agents then tracked a boat owned by the Dreiforts as it traveled within the Sanctuary, harvesting out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads. A forfeiture count against the Dreiforts will require them to relinquish three trucks, two boats, the harvested lobster, miscellaneous equipment, and all proceeds generated by this activity.

This case was investigated by National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

Back to Top

United States v. Bandjan Sidime et al., No. 1:08-mj-01065 (E.D.N.Y.), AUSA Patrick Sean Sinclair

On December 3, 2008, six individuals were arrested on a complaint filed November 24, 2008, for conspiring to smuggle hundreds of thousands of dollars worth of African elephant ivory into the United States. The ivory was concealed within boxes from Africa marked "African Wooden Handicraft" and "Wooden Statues," which were confiscated at Kennedy Airport. Within the boxes and hidden inside objects such as statues and musical instruments were pieces of elaborately carved ivory tusks, some coated with clay to look like pottery or stone.

Ivory concealed within fake instrument

The defendants are suspected of participating in a trans-Atlantic ring that routinely smuggled ivory out of Uganda, Ivory Coast and Cameroon, which are three African countries that prohibit such exports.

According to the complaint, investigators discovered eight shipments of highly valued ivory sent to the U.S., one of which a trafficker was paid $15,000 to bring from Cameroon. The ivory in just one shipment was worth $165,000. Rather than seize all the illegal shipments when they arrived at Kennedy, investigators allowed some of the hidden ivory, detected by X-rays of the art objects, to go through and then tracked them as they were delivered to various locations in New York.

This two-year investigation culminated in the arrests of Bandjan Sidime, a native of Guinea; Kemo Sylla, a native of Liberia; Seidou Mfomboutmoun from Cameroon; Mamadi Doumbouya, a native of Ivory Coast; and Drissa Diane and Mamadou Kone, both of whom are naturalized United States citizens.

This case was investigated by the United States Fish and Wildlife Service, Immigration and Customs Enforcement, and the Department of Homeland Security.

Back to Top

United States v. Oak Mill, Inc., et al., No. 5:08-CR-06016 (W.D. Mo.), AUSA Jane Brown and SAUSAs Anne Rauch and Kristina Gonzales .

On December 2, 2008, Oak Mill, Inc., a recycler of soybean oil, was charged with eight Clean Water Act violations for discharging pollutants into the City of St. Joseph's POTW. The discharges are alleged to have occurred between August 24, 2005, and October 12, 2006. Robert Arundale, the company vice president, is charged with two of the CWA violations.

According to court documents, Oak Mill discharged wastewater with a pH level below 5.0 into the city's POTW on six occasions in August 2005, in violation of the NPDES permit. The pH level was as low as .5 on one day. In October, 2006, the company and Arundale are alleged to have discharged wastewater containing zinc and nickel above the permitted limits. Specifically, 20.9 and 19.6 milligrams of zinc were discharged above the permitted level of 3.0. Nickel was discharged in amounts of 2.47 and 2.94 milligrams over the permitted level of .99 milligrams.

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

Back to Top

Pleas

United States v. Fresh King Inc., et al., No. 1:08-CR-20416 (S.D. Fla.), AUSAs Jose Bonau ([redacted] Roger Gural [redacted] and Barbara Papademetriou ([redacted]

On January 29, 2008, Rebecca Bazan pleaded guilty to a smuggling conspiracy for her role as a warehouse manager in a scheme to smuggle Guatemalan peas contaminated with pesticide residue. Fresh King, Inc., ("FKI") a South Florida produce company; company owner and president, Denisse Serge; and her husband, Peter Schnebly, a former part owner of FKI and a company salesman, also pleaded guilty in December of last year to conspiracy charges. Schnebly specifically pleaded guilty to a misdemeanor charge of introducing and delivering into interstate commerce snow peas and sugar snap peas that were adulterated and misbranded, a food and drug violation. FKI and Serge pleaded guilty to a conspiracy charge to smuggle snow peas and sugar snap peas that "could be or would be" contaminated with pesticide residues.

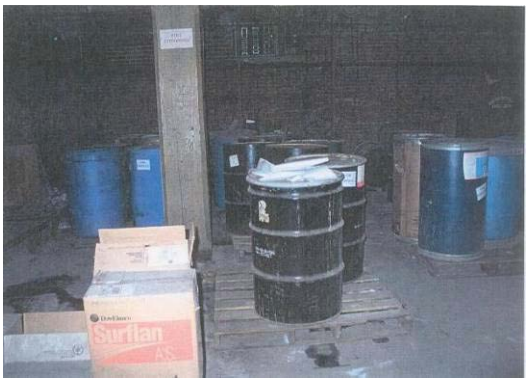
The 15-count indictment states that, from approximately June 2000 through May 2004, defendants sought to circumvent automatic testing by the Food and Drug Administration by supplying the FDA with "biased" and "rigged" samples of the produce that were pesticide-free rather than supplying random samples for testing. Additionally, false invoices, declarations, and other documents were filed to obscure the fact that peas contaminated with methamidophos and chlorothalonil were being brought into this country.

There are four remaining defendants charged. Sentencing for FKI, Serge, and Schnebly is scheduled for March 27, 2009 and Bazan is scheduled to be sentenced on April 10, 2009.

Back to Top

United States v. HPI Products Inc., et al., No. 4:09-CR-00024 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [redacted] with assistance from AUSA William Miners [redacted]

On January 27, 2009, HPI Products Inc., ("HPI") a producer of pesticides and herbicides, pleaded guilty to a felony CWA and a RCRA violation stemming from dumping wastes and spilled product into floor drains and illegally storing these wastes. William Garvey, the company president and majority owner, pleaded guilty to a felony CWA violation.



Drums containing hazardous waste

From approximately 2003 through 2006, HPI through its employees, washed wastes, spills and equipment rinses into floor drains, which connected to the City of St. Joseph POTW without a NPDES permit.

The company also stored hazardous waste with characteristics of ignitability, toxicity and/or corrosivity well over 90 days without a permit. Several 55-gallon drums were found variously to be dated from November 1994 through April 2005 and contained, among other things, chlordane, selenium or heptachlor.

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

United States v. Consultores De Navegacion et al., No. 1:08-CR-10274 (D. Mass.), ECS Trial Attorney Todd Mikolop [redacted], AUSA Linda Ricco [redacted] and SAUSA Christopher Jones.

On January 22, 2009, a plea agreement was filed wherein Consultores De Navegacion ("Consultores") and Iceport Shipping Co. Ltd. ("Iceport") agreed to plead guilty to a six-count superseding indictment charging them with conspiracy, falsification of records, false statements, obstruction, and an APPS violation for failing to maintain an accurate ORB. The change of plea hearing has not yet been scheduled.

Consultores and Iceport are the owner and operator of the *M/T Nautilus*, an ocean-going chemical and petroleum products tanker flagged in Cyprus. Between June 2007 and March 2008, the companies, acting through chief engineer Carmelo Oria and other employees, directed engine room crew members to use a metal pipe to bypass the ship's oil water separator and instead discharged the oil-contaminated waste directly overboard. The charges stem from a Coast Guard inspection that began in the port of St. Croix and continued in the port of Boston. Inspection and subsequent investigation revealed the ORB failed to accurately reflect the overboard discharge of oily waste water.

Oria, who also was charged in the superseding indictment remains charged with conspiracy, APPS and false statement violations. This case was investigated by the United States Coast Guard.
Back to Top

United States v. Robert Whiteman, No. 4:08-CR-00111 (E.D. Va.), AUSA Brian Samuels [redacted]

Abandoned plating bath

On January 16, 2009, Robert Whiteman pleaded guilty to a RCRA storage violation in connection with the storage and abandonment of approximately 40 55-gallon drums containing toxic and corrosive waste at a property he owned in Gloucester, Virginia.

From 1998 through 2005, Whiteman operated Control Products, USA, which was an on-site metal plating operation. The operation required the use of large nickel and tin plating tanks or "baths" and generated sulfuric acid and nickel sulfamate which were stored in 55-gallon drums at a property in Hayes, Virginia.

In May 2006, Whiteman transported numerous 55-gallon drums with plating waste and one plating bath to his residence in Gloucester. In March 2007, after the property was foreclosed upon, the abandoned drums and plating bath containing hundreds of pounds of corrosive and toxic liquids were discovered and subsequently determined to be hazardous waste.

Disposal of the drums and a large quantity of contaminated soil resulted in approximately $128,000 in cleanup costs. Whiteman is scheduled to be sentenced on April 17, 2009.

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

Federal Bureau of Investigation, the Virginia Department of Environmental Quality, the Department of Housing and Urban Development, the Gloucester County Sheriff's Office, the Virginia State Police, and police departments in Memphis, Tennessee, and Walls, Mississippi.
Back to Top

United States v. KIK (Virginia) LLC No. 7:09-CR-00001 (W.D. Va.), ECS Trial Attorney Lana Pettus [redacted] AUSA Jennie Waering [redacted] and SAUSA David Lastra ([redacted]

On January 13, 2009, KIK (Virginia) LLC ("KIK"), pleaded guilty to a one-count misdemeanor Clean Water Act violation for negligently discharging bleach into the sanitary sewer system in Salem, Virginia.

KIK operated a facility that manufactured bleach and other household products. On September 4, 2003, local authorities discovered elevated concentrations of bleach in the sanitary sewer lines servicing the KIK Virginia facility. Investigation revealed that, from approximately November 2001 through September 2003, employees washed spilled and "off-spec" bleach into the plant's floor drains, which led to the City of Salem's POTW. The plant did not have a permit to discharge bleach to the sewer system and it was not monitoring its discharges. Sentencing has been scheduled for April 24, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the United States Fish and Wildlife Service and other members of the Blue Ridge Environmental Task Force.
Back to Top

United States v. Tyson Foods, Inc., et al., No. 4:09-mj-04001(W.D. Ark.), ECS Assistant Chief Deborah Harris ([redacted] and AUSA Katrina Spencer [redacted]

On January 6, 2009, Tyson Foods, Inc., pleaded guilty to a willful OSHA violation, which resulted in the death of an employee.

Tyson operated several plants that recycled poultry products into protein and fats for the animal food industry. As part of the rendering process in four of the plants, the company used high-pressure steam processors called hydrolyzers to convert the poultry feather into feather meal. Decomposition of biological material such as poultry feathers produces hydrogen sulfide gas, an acute-acting toxic substance. Employees at the Tyson facilities often were exposed to the toxic gas when working on or near the hydrolyzers, which required frequent adjustment and replacement.

This case arose out of the death of Jason Kelley, who was exposed to this gas while repairing a leak from a hydrolyzer in October 2003. Another employee and two emergency responders were hospitalized due to exposure during the rescue attempt, and two employees were treated at the scene.

Although well aware of the presence of this deadly gas, Tyson Foods had neither taken sufficient steps to alleviate the problem nor informed employees of its presence. As part of the plea agreement, the company has agreed to pay the maximum fine of $500,000. Sentencing is to be scheduled for April.

This case was investigated by the United States Occupational Safety and Health Administration.
Back to Top

United States v. David Blevins, No. 5:08-CR-00107 (S.D.W.V.), SAUSA Perry McDaniel [redacted]

On January 6, 2009, David Blevins, the former president and owner of Clearfork Coatings, Inc, a commercial painting operation, pleaded guilty to a RCRA storage violation.

From February 2001 through May 2003, Blevins stored paint waste without a permit at the company's facility in Mullens, West Virginia, some of which was classified as hazardous for ignitability. The defendant's failure to properly treat or dispose of the waste resulted in significant cost to the property owner, Norfolk Southern Railroad, which had to pay for proper removal and disposal of the hazardous waste and other materials left at the site.

Sentencing is scheduled for May 4, 2009.

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

Back to Top

United States v. Christopher Rowland, No. 5:08-CR-00001 (D. Alaska.), AUSAs Aunnie Steward and Steve Skrocki [redacted], and USCG SAUSA John Reardon [redacted].

On December 22, 2008, Christopher Rowland pleaded guilty to a four-count information charging him with violations of the Lacey Act and the Marine Mammal Protection Act for the illegal hunting, killing, and export of sea otters, sea lions and harbor seals, and the illegal sale of their pelts.

Otter pelt

The investigation began as a response to a concerned citizen's tip that evolved into a two-year undercover operation, which is still ongoing, into the illegal commercialization of sea otters, seals, and sea lions. At various times in 2007, Rowland and other individuals shot approximately 60 sea otters and sold several of the pelts and skulls, some of them to undercover agents. Whole tanned sea otter pelts were illegally sold for $1,000 and raw, unprocessed pelts were sold for $100 per foot.

Rowland is scheduled to be sentenced on March 9, 2009. This case was investigated by the United States Fish and Wildlife Service with assistance from Alaska Wildlife Troopers, National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the United States Forest Service, Immigration and Customs Enforcement, the United States Marshals Service, the State of Alaska Attorney General's Office, and the Alaska Bureau of Alcohol and Drug Enforcement.

Back to Top

United States v. ExxonMobil Corporation, No. 1:08-CR-10404 (D. Mass.), ECS Trial Attorney Gary Donner [redacted] AUSA Jonathan Mitchell [redacted] RCEC Andrew Lauterback [redacted] and SAUSA LCDR Russell Bowman.

On December 23, 2008, an information and plea agreement were filed against ExxonMobil Pipeline Company, a wholly-owned subsidiary of ExxonMobil Corporation. The company pleaded guilty to a misdemeanor CWA violation in connection with a spill in January 2006 of approximately 15,000 gallons of diesel oil into the Mystic River from ExxonMobil's oil terminal in Everett, Massachusetts.

The Everett Terminal includes an inland "tank farm," which is comprised of a tank loading rack and 29 large-scale oil storage tanks in which oil products were stored. Various above-ground pipes and valves connected those tanks to the Terminal's marine transfer area located at the confluence of the Mystic and Island End Rivers. The Island End River flows into the Mystic River, which flows into Boston Harbor. Three berths were available for barges and ships to offload petroleum products that were piped to and stored in the tanks within the tank farm.

On January 9, 2006, the oil tanker *M/V Nara* docked at Berth 3 to unload petroleum products, including approximately 3.1 million gallons of low sulfur diesel ("LSD") fuel. Later that morning, hoses running from the *Nara*'s tanks were attached to a product intake manifold on Berth 3. By mid-afternoon, pumps aboard the *Nara* began to pump LSD fuel from the vessel through the manifold into a product receipt line that was connected to storage tanks on the tank farm. As it was being pumped from the *Nara*, the LSD flowed past a 10-inch seal valve located on Berth 3, which closed off a product receipt line from Berth 1. As a result of wear and tear, the valve did not close completely and leaked oil into the Berth 1 product receipt line.

ExxonMobil was aware of this defective valve after a contractor pressure-tested the valve in September 2005 and informed ExxonMobil that it leaked. Nevertheless, the company had failed to replace the valve by the time the *Nara* arrived in January 2006. As a result, LSD pumped from the *Nara* leaked through the defective valve into the Berth 1 product receipt line. At the other end of the line was a pressure relief valve capped by a 3/4-inch coupling, which had not been replaced in more than 30 years and was badly corroded.

As the fuel continued to pump, this coupling burst causing the fuel to leak into a line that already contained 2,500 gallons of low sulfur kerosene which spilled along with 12,700 gallons of diesel fuel into the Mystic River over a 24-hour period. A visible blue-green sheen on the Mystic River eventually spread up the Island End River and down to Boston Harbor, prompting several reports to the Coast Guard. ExxonMobil personnel did not discover the ruptured coupling and the full containment pan on Berth 1 until approximately 11:00 A.M. on January 11th, when the Coast Guard arrived at the facility to ask questions.

As part of the plea agreement, ExxonMobil has agreed to pay a total of $6.1 million. This includes paying the maximum possible fine of $359,018 (twice the cost of the clean up), $179,634 in clean-up costs, and a community service payment of $5,640,982 to the North American Wetlands Conservation Act fund to be used to restore wetlands in Massachusetts. The defendant further agreed that for the next three years, the Everett facility will be monitored by a court-appointed official and will be subject to a rigorous environmental compliance program.

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

Back to Top

Sentencings

United States v. Joseph Xie et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted], ECS Trial Attorney Mary Dee Carraway [redacted] and AUSA Joe Johns [redacted]

On January 30, 2009, Joseph Xie was sentenced to pay a $3,000 fine and will complete a six-month term of probation. Xie previously pleaded guilty to a Lacey Act violation for purchasing and re-selling frozen fillets of *Pangasius hypophthalmus*, a member of the catfish family, marketed by trade names of swai or tra, also referred to in some seafood markets as basa, when he should have know that the fish had been illegally imported.

Thus far 12 individuals and companies, including Xie, have been convicted for criminal offenses related to a scheme to avoid paying tariffs by falsely labeling fish for import and then selling it in the United States at below-market price.

Between December 2004 and June 2005, in three separate transactions, Xie purchased, on behalf of his employer, Agar Supply Co., Inc., approximately $15,000 worth of frozen fish fillets from Blue Ocean Seafood Corporation, Virginia Star Seafood Company, and the Silver Seas Company. The fish Xie ordered and received was *Pangasius hypophthalmus* but it was labeled as sole, thus avoiding payment of the anti-dumping import duty.

An anti-dumping duty or tariff was placed on *Pangasius hypophthalmus* imports from Vietnam in January 2003, after a petition was filed by the catfish farmers of America. The petition alleged that this fish was being imported from Vietnam at less than fair market value.

According to evidence presented during the October 2008 trial of co-defendants Peter Lam and Arthur Yavelberg, between July 2004 and June 2005, Virginia Star and International Sea Products Corporation illegally imported from Vietnamese companies Binh Dinh, Antesco, and Anhaco, over ten million pounds of Vietnamese catfish by identifying the fish to customs officials as other species of fish, including but not limited to sole, grouper, flounder, and conger pike. Evidence further proved that after the Vietnamese catfish was imported into the United States, salesman for the Virginia companies marketed and sold the illegally imported catfish to seafood buyers including Xie, Henry Yip of T.P. Company, David Wong of True World Foods, Inc., and David Chu of Dakon International.

Sentencings in all but three of these cases are pending and are scheduled for February 23, 2009.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement, the Food and Drug Administration Office of Criminal Investigations, and the United States Immigration and Customs Enforcement.

Back to Top

United States v. Heraeus Metal Processing Inc., No. 3:08-CR-00159 (E.D. Tenn.), former ECS Trial Attorney David Joyce [redacted] and AUSA Matthew Morris [redacted]

On January 21, 2009, Heraeus Metal Processing, Inc. ("Heraeus"), a precious metals refinery, pleaded guilty to a one-count information charging a Clean Air Act false statement violation. Specifically, Heraeus admitted to falsifying its baghouse pressure logs and scrubber logs at its Wartburg, Tennessee, facility. The company was sentenced to pay a $350,000 fine and will complete an 18-month term of probation. Heraeus cooperated with the government's investigation once it was informed of the violation.

The scrubber and baghouse systems are air pollution control devices that require the maintenance of emissions logs and the submission of annual reports to state regulators. Between October 2004 and at least February 2005, neither baghouse nor scrubber system logs were maintained at this facility. In late February 2005, the facility's operations manager, acting on behalf of Heraeus, created a false baghouse pressure drop log and further directed an employee to retroactively create a log for the scrubber system. The manager subsequently submitted these falsified logs with its 2005 annual report to the Tennessee Department of Environment and Conservation.

This case was investigated by the East Tennessee Environmental Crimes Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the United States Environmental Protection Agency Office of Inspector General, and the Tennessee Valley Authority Office of Inspector General.

Back to Top

United States v. Larry Anson (D. Ore.), ECS Senior Trial Attorney Kevin Cassidy [redacted] and AUSA Scott Kerin [redacted]

Drums containing plating waste

On January 15, 2009, Larry Anson, the former president and owner of the Columbia American Plating Company, was sentenced to serve 12 months and one day of imprisonment, followed by two years' supervised release for RCRA and CWA violations. Anson also must pay a $3,000 fine.

Anson pleaded guilty in March of last year to a RCRA violation for storing spent cyanide plating bath solutions generated from electroplating operations between March 2001 and May 9, 2003, without a valid permit. He also pleaded guilty to a misdemeanor violation of the CWA for negligently discharging wastewater into the POTW without a permit.

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

Back to Top

United States v. Tia Yang et al., No. 0:08-CR-00150 (D. Minn.), AUSA LeeAnn Bell [redacted]

On January 14, 2009, Tia Yang was sentenced to pay a $9,000 fine and will complete a two-year term of probation. Co-defendant Pa Lor was sentenced to complete two year's probation. The mother and daughter team pleaded guilty last year to one count of conspiracy to smuggle wildlife.

Between October 2005 and August 2006, the two women brought exotic wildlife into the U.S. and offered it for sale at a booth at the International Marketplace in St. Paul, Minnesota. On October 23, 2005, Lor arrived at the Minneapolis-St. Paul International Airport from Laos and did not declare any animal or wildlife items on her Customs and Border Protection declaration form. During an inspection of her baggage, inspectors discovered approximately 1,388 individual pieces of undeclared wildlife,

Exotic wildlife parts

including two Asian elephant teeth, 17 serow horns, 51 pieces of douc langur (a primate), mongoose, slow loris and leopard cat.

A search warrant was executed in August 2006 at the Marketplace booth, with several wildlife items recovered including: black-striped weasel, gibbon, leaf monkey, monitor lizard, tapir, slider turtles, reticulated python and small-clawed otter.

Back to Top

United States v. Larry Hooton et al., No. 1:08-CR-00002 (D. Ak.), ECS Senior Trial Attorney Robert Anderson [redacted] and AUSA Steven Skrocki [redacted]

On January 14, 2009, big-game outfitter Larry Hooton and his two outfitter sons, Shawn and Shane Hooton, pleaded guilty to conspiring to violate the Lacey Act for illegally guiding clients on brown bear hunts on federal property in Alaska, in violation of Forest Service regulations.

Shawn Hooton was sentenced to serve three months' home confinement as a condition of two years' probation. He also must pay a $30,000 fine, forfeit his hunting equipment and is barred from any commercial guiding or hunting while on probation. Shane Hooton was sentenced to serve a one-year term of probation, pay a $20,000 fine and is subject to the same forfeiture and hunting/guiding restrictions as his brother.

Larry Hooton is scheduled to be sentenced on March 24, 2009.

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

Back to Top

United States v. Pendulum Ship Management, Inc., et al., No. 2:08-CR-00765 (E.D. Pa.), AUSA Jonathan Shapiro [redacted] and SAUSA Joseph Lisa [redacted]

Oil contaminated ballast tank

On January 13, 2009, Pendulum Shipmanagement Inc., ("Pendulum"), a ship management company headquartered in Greece, pleaded guilty to a four-count information charging conspiracy, APPS, false statement and obstruction violations for actions taken by the master and chief engineer for the *M/V Quantum*, a commercial cargo ship. The company was sentenced to pay a $1.3 million fine, to complete a three-year term of probation, and to implement an environmental compliance plan. Ship's master Nestor Alcantara and chief engineer Alfredo Onita, both of the Philippines, were sentenced on February 6, 2009, to complete three-year terms of probation. Alcantara also will pay a $1,000 fine and Onita will pay a $500 fine.

On July 3, 2008, the *Quantum* was inspected by Coast Guard personnel in the Port of Philadelphia. Evidence that the oily water separator was not working properly was uncovered, indicating that oily waste had been discharged directly overboard since at least May of 2008. At the time of the inspection the oil record book was presented to investigators with false entries as to the treatment of the oily waste as well as omissions regarding the bypasses.

In February of 2008, the vessel's ballast system became contaminated with oil. Efforts by the company to clean the ballast system resulted in the further discharge of oil-contaminated ballast water directly into the ocean. This event was not noted in the ORB. To further the effort to hide the ballast system's contamination, the crew installed a false hose into a ballast tank sounding tube that was closed at one end and filled with sea water to make it appear that the tank contained clean water.

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

United States v. Craig Van Sickle, No. 4:06-CR-00112 (D. Ariz.), AUSA Robert Miskell ([redacted]

On January 22, 2009, Craig Van Sickle was sentenced to serve a three-year term of unsupervised probation. Charges against co-defendant Wilbur Wax were dismissed.

Van Sickle was found guilty after a bench trial in May of last year of 20 counts of unlawfully destroying trees on the Tohono O'odham Nation, in violation of 18 USC § 1853, and one count of conspiracy to unlawfully destroy trees that have been purchased by the U.S. for public use or are on lands occupied by any Indian tribe. Van Sickle owned the Vekol Mine, which was an old silver mine of approximately 100 acres that was completely surrounded by Indian Reservation land. Numerous trees and other vegetation were destroyed when a roadway was bulldozed to gain access to the mine. The evidence at trial showed that Van Sickle was responsible for causing a roadway of about 16 miles to be bulldozed onto the Nation's land without permission. Approximately 80 palo verde trees, 45 ironwood trees, 29 mesquite trees and 11 Saguaro cactuses were destroyed.

In addition to the criminal prosecution, the Tohono O'odham Nation civilly sued Van Sickle for these damages. The Nation settled that suit by obtaining title to the Vekol Mine and a cash payment of $23,967.41. They agreed that the mine and the money was adequate restitution for the damage.

This case was investigated by the Tohono O'odham Police Department, the Natural Resource Department of the Tohono O'odham Nation, and the United States Fish and Wildlife Service.
Back to Top

United States v. Martin Schneider, No. 2:06-CR-00456 (E.D. Pa.), AUSA Maureen McCartney [redacted]

On January 6, 2009, Martin Schneider was sentenced to complete a two-year term of probation and will pay a $5,000 fine stemming from his importing hundreds of Sperm whale teeth from England into the United States. Schneider previously pleaded guilty to Lacey Act, Endangered Species Act, and Marine Mammal Protection Act violations, as well as to two smuggling charges. The teeth had been extracted from Sperm whales illegally hunted and killed by fishing fleets.

Investigation revealed that Schneider had been illegally smuggling the whale teeth into this country and re-selling them to merchants who specialize in scrimshaw etchings from at least 2002. Former school teacher John Levasseur was recently sentenced in the District of Massachusetts to complete a five-year term of probation, with the first six months under home confinement. He was further ordered to pay a $40,000 fine and will also publish an apology in the *Newton Bee*, an antiques periodical, and the *Cape Cod Times*. Levasseur pleaded guilty to two ESA violations and one MMPA violation.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, and the Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

Back to Top

United States v. Paul Weyand et al., No. 1:07-CR-00331 (D. Colo.), ECS Senior Trial Attorney Robert Anderson [redacted] ECS Trial Attorney Jim Nelson [redacted] and AUSA Linda McMahan [redacted]

On December 30, 2008, Paul Weyand was sentenced to serve six months' home confinement as a condition of three years' probation. He also will pay a $2,000 fine and complete 50 hours of community service.

Weyand pleaded guilty last year to three misdemeanor Lacey Act violations stemming from the interstate sale and transport of deer, elk and black bear killed unlawfully in Colorado between 2002 and 2005. Weyand d/b/a *Memories on the Wall Taxidermy*, provided taxidermy and shipment services to hunting clients of defendant Eric Butt, *d/b/a Outdoor Adventures*.

Butt, who was recently sentenced to serve a one-year term of incarceration, was a registered outfitter who provided guided hunts for big game animals in Colorado. Butt encouraged hunters who did not possess the appropriate big-game license to kill animals that Butt later falsely tagged using his license or another hunter's. Butt referred clients to Weyand who was aware that the carcasses he received for mounting had been illegally killed.

Weyand is the seventh and final defendant (including five client-hunters) convicted and sentenced in this investigation. Butt faces additional felony state charges in Utah.

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

Back to Top

United States v. Hae Wan Yang, et al., No.'s 3:08-CR-05653 and 5686 (W.D. Wash.), AUSA Jim Oesterle [redacted] and SAUSA LCDR Mark Zlomek.

On December 30, 2008, Hae Wan Yang was sentenced to serve two months of home confinement followed by two years' supervised release for an APPS violation for knowingly failing to maintain an accurate garbage record book. Yang was the captain of the *M/V Pan Voyager*, a South Korean-flagged 17,000 ton ocean-going bulk carrier owned by STX Pan Ocean Co., Ltd., ("STX"), a South Korean Shipping Company.

In July 2008, the ship was in South Korea unloading grain when crew members discovered a hole in one of the vents leading to a fuel oil tank. A substantial amount of grain spilled into the hole, entered the tank, and contaminated the fuel oil. Senior officers subsequently ordered lower level crew members into the tank to remove the contaminated grain. Crew members used buckets and dust pans to remove the grain/fuel oil waste and dumped it into several drums, 30 plastic lined rice sacks, and approximately 200 large plastic garbage bags. The crew used one of the vessel's cargo cranes to lift the grain/fuel oil waste onto the main deck and dumped the bags of waste overboard at night during the voyage from Korea to Longview, Washington. The plastic bags and rice sacks were punctured in hopes that they would sink and reduce the risk of detection. Upon inspection, Coast Guard personnel further discovered that a section of the deck railing had been cut away and then welded back into place to facilitate the illegal dumping.

STX pleaded guilty and was sentenced in October 2008 to pay a $500,000 fine, and made a $250,000 community service payment to the National Fish and Wildlife Foundation for use in projects to restore Puget Sound. The company also implemented an environmental compliance plan with outside auditing. Two senior officers, Emilio Canillo and Bong Jun Gang, pleaded guilty to misprision of a felony for failing to notify Coast Guard inspectors of the false book. Canillo and Gang were each sentenced to serve a one-year term of probation and must pay a $2,500 fine.

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

Back to Top

United States v. Moshe Rubashkin et al., No. 2:07-CR-00498 (E.D. Pa.), SAUSA Joseph Lisa [redacted] and AUSA Michelle Morgan-Kelly [redacted]

On December 29, 2008, Moshe Rubashkin was sentenced to serve 16 months' incarceration, followed by three years' supervised release. He was further ordered to pay a $7,500 fine and a total of $450,000 in restitution, with $396,728 to be paid to the United States Environmental Protection Agency and $53,271 to the City of Allentown, Pennsylvania.

Moshe Rubashkin and his son Sholom operated the Montex Textile plant. Moshe previously pleaded guilty to illegally storing hazardous waste generated from the plant. Sholom pleaded guilty to a false statement related to the ownership and operation of the family's textile dyeing, bleaching and weaving business when it was declared a superfund site.

After being in operation for 12 years, the plant closed in 2002 with numerous containers of hazardous waste left behind. After local authorities responded to two fires at the plant, EPA and the City of Allentown initiated a clean-up of the property in October 2005. In responding to a CERCLA 104(e) letter sent in February 2006 regarding the parties responsible for cleanup at the site, Sholom denied that his family had owned and operated the plant.

Sholom Rubashkin is scheduled to be sentenced on March 29, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, and the Environmental Protection Agency Office of Inspector General.

Back to Top

United States v. Robert Racho et al. (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [redacted] AUSA Cherie Krigsman [redacted], and SAUSA Lt. William George.

On December 19, 2008, Robert Racho was sentenced to serve a one-year term of probation and will pay a $1,000 fine. Racho, along with Francisco Bagetela, both Phillipine citizens who served as chief engineers aboard a cargo ship operated by Hiong Guan Navegacion Japan Co. Ltd., previously pleaded guilty to falsifying and failing to properly maintain the ORB for the commercial vessel *M/V Balsa-62*. Bagetela recently was sentenced to serve three years' probation and will pay a $1,500 fine.

From June 2007 through February 2008, chief engineer Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass as well. On February 25, 2008, Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the Coast Guard by not recording them in the ORB. During Port calls in Tampa on December 31, 2007, and May 31, 2008, the ORB that contained the false entries and omissions regarding the bypasses was presented to inspectors. Based in part on information from crew members aboard the ship, the Coast Guard subsequently located evidence on the ship corroborating allegations that the ship had been unlawfully discharging oily waste.

This case was investigated by the United States Coast Guard.

Back to Top

United States v. Novozymes Biologicals, Inc., No. 7:08-CR-00056 (W.D. Va.), AUSA Jennie Waering [redacted] and SAUSA David Lastra [redacted]

On December 19, 2008, Novozymes Biologicals, Inc., ("Novozymes") an international bio-technology firm with a manufacturing plant in Salem, Virginia, pleaded guilty to a felony violation of the Clean Water Act and was sentenced to serve a five-year term of probation, complete a $250,000 community service project, and initiate an environmental management system with annual inspections conducted by an independent auditor. This case came to the attention of authorities after three children who were playing in Mason's Creek were exposed to foaming agent and suffered skin and eye irritation. The company was further ordered to pay a $275,000 fine plus a $20 co-pay to the mother of one child who received medical care.

In October 2004 and again in April 2005, company employees dumped a total of approximately 4,015 gallons of "off specification" material down a floor drain that went to Mason's Creek, a tributary to the Roanoke River, killing nearly 7,000 fish. Novozymes already has paid $375,000 in various cleanup costs, as well as $3,178 to local law enforcement agencies for investigation costs, $3,864 to the state to replace the fish and about $750 to Salem as a penalty for permit violations. Another $16,300 civil penalty for a state permit violation is pending.

This case was investigated by members of the Blue Ridge Task Force, which include the United States Environmental Protection Agency Criminal Investigation Division, the Roanoke City Police Department, the Salem Police Department, the City of Salem Fire and Emergency Management System Department, the Virginia Department of Environmental Quality, the Western Virginia Water Authority, the Virginia Department of Game and Inland Fisheries and the Salem Water and Sewer Department.

Back to Top

United States v. Matthew Burghoff, No. 4:08-CR-00199 (E.D. Mo.) SAUSA Anne Rauch ([redacted] and AUSA Michael Reap ([redacted]

On December 18, 2008, Matthew Burghoff was sentenced to serve 24 months' incarceration followed by five years' supervised release. He was further ordered to pay $524,548 in restitution as the result of pleading guilty to one Clean Air Act violation and one bank fraud violation. Burghoff was previously charged with multiple counts of bank fraud, money laundering, false statements, and violations of the CAA stemming from his renovation of a building in St. Louis, Missouri, and numerous other buildings and businesses in the St. Louis area.

In September 2007, the City of St. Louis Air Pollution Control Division received an anonymous tip stating that unqualified personnel were removing asbestos-insulated piping at the Ford Building. An inspector with the Missouri Department of Natural Resources conducted an inspection in October 2007 and observed asbestos debris swept into piles and approximately 60 black bags containing dry asbestos material. As the owner and operator of the building, Burghoff was present during this inspection.

The bank fraud violation stems from a loan the defendant obtained from the Great Southern Bank, stating that he needed the loan to purchase a building he had said he was going to develop into a restaurant. After obtaining a $273,000 loan for this project, however Burghoff kept the money instead.

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

Back to Top

United States v. Cypress Bayou Industrial Painting, Inc., No. 2:08-CR-00211 (E.D. La.), ECS Senior Trial Attorney David Kehoe [redacted] ECS Senior Counsel Rocky Piaggione [redacted] and AUSA Dorothy Manning Taylor [redacted]

On December 17, 2008, Cypress Bayou Industrial Painting, Inc. ("Cypress Bayou"), an industrial painting company, was sentenced to serve a three-year term of probation to include implementation of an employee training program targeting the containment of sandblasting debris. The company was further ordered to pay a $60,000 fine as the result of pleading guilty to a misdemeanor violation of the Clean Water Act.

Cypress Bayou was hired to clean and remove rust and paint from an oil drilling rig owned by Rowan Companies, Inc. The company provided the materials and its own employees for the cleaning operation, which was performed in March and April, 2004, by sandblasting the rig off the Gulf of Mexico at Port Fourchon, Louisiana. During the sand blasting process, Cypress Bayou failed to install tarps to prevent the overspray of sandblasting debris into the water. Its employees also failed to notify the government that the sand blasting operations resulted in the discharge of pollutants into U.S. waters off the Gulf of Mexico.

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

Back to Top

United States v. Robert Webb, No. 2:08-CR-00216 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Nancy Cook [redacted].

Drums of hazardous waste

On December 16, 2008, Robert Webb was sentenced to serve one year and one day in prison followed by three years' supervised release after previously pleading guilty to two RCRA storage counts. Webb also will pay $71,246.79 in restitution and perform 120 hours of community service.

Webb is the owner of Alliance Environmental Inc., which performed methamphetamine laboratory cleanups throughout the Pacific Northwest under various DEA contracts. Webb failed to properly store the wastes accumulated from the lab cleanups, instead storing them at the Little Tree Storage, an unpermitted facility. DEA alerted the EPA after discovering the illegal storage as a result of an audit of their cleanup contracts.

A subsequent EPA investigation led to the additional discovery of 71 containers of hazardous waste inside Webb's mother's garage in Spokane, Washington, which had been stored for approximately three years. No security measures were taken to ensure that general public and neighboring property owners were not exposed to this waste. The garage door was left open at various times during storage of the hazardous waste.

The ensuing cleanup has cost the EPA approximately $67,000.

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

Back to Top

United States v. Igor Krajacic, et al. No. 1:08-CR-00824 (D.N.J.), ECS Trial Attorney Gary Donner [redacted] and AUSA Ron Chillemi [redacted]

On December 16, 2008, Igor Krajacic, a chief engineer for the *M/V Snow Flower*, was sentenced to pay an $18,000 fine and will complete a one-year term of probation. Krajacic previously pleaded guilty to one APPS violation for failing to maintain an accurate ORB. Krajacic further admitted to discharging oily waste overboard as well as to ordering crew members to do the same. Holy House Shipping AB ("Holy House"), the operator of the *Snow Flower*, pleaded guilty in November 2008 to one APPS violation and to one 18 U.S.C. §1001 false statement violation.

Court documents state that crewmembers on the ship alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port call in New Jersey, inspectors were presented with an ORB containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which was then pumped overboard.

As part of the plea, Holy House has agreed to pay a $1 million fine plus a $400,000 community service payment to the National Fish and Wildlife Fund. The company has further agreed to complete a three-year term of probation and to implement an environmental compliance plan.

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

Back to Top

United States v. Continental Airlines and Northwest Airlines, No. 8:08-mj-1284 (M.D. Fla.), AUSAs Stacie Harris and Cherie Krigsman [redacted]

On December 9, 2008, Continental Airlines was found guilty of an Endangered Species Act violation after a one-day bench trial. The court sentenced Continental to pay a $2,500 fine.

According to court documents and evidence presented at trial, on January 7, 2008, Continental knowingly exported a commercial fish and wildlife shipment from Tampa International Airport to Canada without the proper United States Fish and Wildlife Service clearance.

Also on December 9th, Northwest Airlines pleaded guilty to exporting three commercial fish and wildlife shipments to Canada in 2005, without the proper clearance, in violation of the ESA. Northwest was sentenced to pay a $750 for the three citations.

These cases were investigated by the United States Fish and Wildlife Service.

Back to Top

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Back to Top