ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

May 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

A special thanks to Herb Johnson for this month's summaries of Significant Decisions.

Also, an article written by David Kehoe entitled "*United States v. Abrogar*, Did the Third Circuit Miss the Boat?" has been published in Vol. 39, Issue No. 1 of *Environmental Law* published by Lewis and Clark Law School [http://www.lclark.edu/org/envtl/]. The article addresses charging and sentencing issues that have arisen in the prosecution of chief engineers in vessel cases. It analyzes the Third Circuit's holding that the sentencing guideline enhancement for discharges into the environment does not apply to chief engineers convicted of violating the Act to Prevent Pollution from Ships by maintaining a false Oil Record Book that conceals the discharges of oily wastes into the ocean in violation of MARPOL.

If you have other significant updates and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [redacted]). If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: http://www.regionalassociations.org.

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AT A GLANCE

- **United States v. Evertson, 2009 WL 728391 (9th Cir. Mar. 20, 2009).**
- **United States v. Hagerman, 555 F.3d 553 (7th Cir. 2009).**
- **United States v. Holden, 557 F.3d 698 (6th Cir. 2009).**
- **United States v. Cundiff, 555 F.3d 200 (6th Cir. 2009), aff'g 480 F. Supp. 2d 940 (W.D. Ky. 2007).**
- **Ohio Valley Environmental Coalition v. Aracoma Coal Co., ___ F.3d ___, 2009 WL 350899 (4th Cir. Feb. 13, 2009), rev'g 479 F. Supp. 2d 607 (S.D. W. Va. 2007) and 2007 WL 2200686 (S.D. W. Va. June 13, 2007).**
- **United States v. Vankesteren, 553 F.3d 286 (4th Cir. 2009).**
- [redacted]
- **United States v. Apollo Energies, Inc., 2009 WL 211580 (D. Kan. 2009).**
- **United States v. King, 2008 WL 4055816 (D. Idaho 2008).**
- **In re Grand Jury Empanelled April 24, 2008, ___ F. Supp. 2d ___, 2008 WL 5712649 (D.N.J. Dec. 15, 2008).**

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N.D. Calif.	[redacted] **United States v. John Cota**	[redacted] ***Vessel*/ MBTA, OPA**
M.D. Fla.	**United States v. Jeong Gyu Lee** **United States v. Jesse Barresse**	***Vessel*/ APPS, False Statement** ***Eagle Shooting*/ BGEPA**
S.D. Fla.	**United States v. David Dreifort et al.** **United States v. Larkin Baggett**	***Lobster Harvesting*/ Smuggling, Conspiracy** ***Fugitive*/ Assault, Firearms Possession**
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E.D.N.C.	**United States v. Daniel Smith, et al.**	***POTW Operator*/ SDWA, CWA**

Districts	Active Cases	*Case Type* / Statutes
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Additional Quick Links

Significant Environmental Decisions

Second Circuit

[redacted]

[redacted]

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Fourth Circuit

Ohio Valley Environmental Coalition v. Aracoma Coal Co., ___ F.3d ___, 2009 WL 350899 (4th Cir. Feb. 13, 2009), rev'g 479 F. Supp. 2d 607 (S.D. W. Va. 2007) and 2007 WL 2200686 (S.D. W. Va. June 13, 2007).

Under "mountaintop removal" coal mining, mining companies in southern West Virginia blast soil and rock atop mountains to expose coal deposits below. They then excavate mountaintop rock and soil located above the coal seams (overburden) and haul or push the excavated overburden ("spoil") into adjacent valleys. The exposed coal is extracted and the excavated rock and soil are then replaced in an effort to restore the original mountain contour. Stability concerns limit the amount of spoil that can be returned to its original location, however, and substantial amounts of excess overburden remain in the valley, resulting in "valley fills" that permanently bury pre-existing intermittent and perennial streams and drainage areas. In order to move water that collects in the valley fills, an underdrain system is constructed and collected water is channeled into a treatment pond, where sediment is allowed to settle. After sediments have settled out, the treated water is discharged back into existing streams. Once a valley fill has been stabilized, embankments of sediment ponds are removed and the ponds and streams are restored to their original condition.

Under the federal Surface Mining Control and Reclamation Act (SMCRA), those engaging in surface coal mining must first obtain a permit from the state regulatory agency whose program has been approved by the Secretary of the Interior, which in West Virginia is the Department of Environmental Protection (WVDEP). Since the overburden is "fill material" under the Clean Water Act, coal companies must also obtain section 404 permits from the U.S. Army Corps of Engineers ("Corps") for such discharges into the streams, which are waters of the United States. After extensive review of voluminous application materials, preparation of an environmental assessment concluding that the permitted activity (given planned mitigation measures) would have no significant environmental impacts, and issuance of a "finding of no significant impact," the Corps issued such a permit to defendant Aracoma Coal Company, and similarly thereafter to many other coal companies with respect to several mining locations. A group of environmental organizations then filed consolidated suits against the Corps claiming that the permits had been issued in violation of substantive and procedural provisions of the National Environmental Policy Act ("NEPA") and the CWA, frequently amending the complaint to include newly-issued permits. Plaintiffs claimed that the Corps had been required under NEPA to prepare an Environmental Impact Statement for each project before issuing a permit, and that the Corps had failed properly to determine the adverse individual and cumulative impacts upon the affected aquatic ecosystems.

The district court, after a six-day bench trial, entered judgment for plaintiffs, rescinded the permits, enjoined further activities authorized by the permits, and remanded the matter to the Corps for

further proceedings. It found that the Corps had failed to comply with NEPA and the CWA in issuing the permits, including not adequately addressing impacts of the mining activities upon the environment, and improperly evaluating mitigation plans for each permit. It found that the Corps had limited its scope of review to the impact only on jurisdictional waters rather than to the broader impact of the entire valley fill project, and it had inadequately evaluated cumulative impacts of the projects. *See 479 F. Supp. 2d 607* (S.D. W. Va. 2007). The court later granted summary judgment to plaintiffs on a separate claim that stream segments running from the valley fill "toes" to the sediment ponds were "waters of the United States," and thus the Corps did not have authority to allow discharge of pollutants into those segments by means of a section 404 permit. Such discharges would require a section 402 permit from U.S. EPA or from an appropriate state authority. *See 2007 WL 2200686* (S.D. W. Va. June 13, 2007).

Held: The Fourth Circuit (in a divided decision in which one judge joined in the majority opinion and a third judge dissented in part and concurred in part with respect to that opinion) *inter alia* (1) reversed and vacated the district court's opinion and order rescinding the challenged permits, (2) vacated that court's injunction regarding those permits, (3) reversed the district court's finding that the stream segments were "waters of the United States," and (4) remanded for further proceedings. The court held that responsibility for evaluating the impact of the entire valley fill project lay with the WVDEP under SMCRA rather than with the Corps. It rejected the district court's findings that (1) the Corps analysis of the impact of the permitted fills on the structure and function of affected streams had been lacking, (2) the proposed mitigation measures had been insufficient, and (3) the Corps' assessment of cumulative impacts of the fills had been inadequate. It also found that the Corps (contrary to the plaintiffs' view) had not been required to conduct a "full functional assessment" of both the structural and functional effects of fill permits on affected streams, but merely to use its "best professional judgment." The Corps also was not required to ensure compensatory mitigation measures that precisely replicated the functions of the impacted streams, or to require only in-kind, on-site measures. The finding by the Corps that no cumulatively significant impacts would occur under the permits was not arbitrary or capricious. Finally, the court reversed the district court's holding that the stream segments were "waters of the United States" requiring a permit to discharge under section 402 rather than under section 404. It agreed with the Corps that the segments were "waste treatment systems" excluded from the CWA definition of "waters of the United States."

The judge whose opinion dissented in part and concurred in part refused to join in the view of the majority that the Corps' assessment of the impact of the valley fills upon the aquatic ecosystem and of the mitigation measures imposed had been adequate. Thus, he would have affirmed the district court's judgment rescinding the permits and directed the district court to remand them to the Corps for further consideration. However, he concurred in the majority's view that responsibility for evaluating the impact of the entire valley fill project had rested with WVDEP rather than with the Corps. He also concurred in the majority's upholding of the Corps' interpretation of the regulatory definition of "waters of the United States" regarding the stream segments.

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United States v. Vankesteren, 553 F.3d 286 (4th Cir. 2009).

The Virginia Department of Game and Inland Fisheries (VDGIF) received a telephone call reporting that a protected bird was trapped in a cage in defendant farmer's fields. An agent responded and observed a trap of a type previously advertised on the internet for the purpose of hawk trapping. Without a warrant agents then installed a video camera on the property, from which surveillance footage was obtained showing birds being trapped and killed by the defendant. An agent then went to the area and found carcasses of red-tailed hawks just outside the camera's viewing range. Agents from

VDGIF and the U.S. Fish and Wildlife Service interviewed the defendant at his residence, where he admitted to catching the birds and placing their carcasses on the site.

The defendant was charged in district court with two counts of taking or possessing a migratory bird without a permit in violation of the Migratory Bird Treaty Act. A magistrate judge denied the defendant's motion to suppress the video surveillance footage and found him guilty on both counts. The defendant appealed the magistrate judge's evidentiary ruling to the district court, which denied that appeal and entered judgment against him. The defendant appealed in turn to the Fourth Circuit.

Held: The Fourth Circuit affirmed the decision of the district court. The court observed that video surveillance in and of itself does not violate a reasonable expectation of privacy and found under *Hester*, *Oliver* and *Dunn* that the camera, while installed on private property, had been placed in a constitutionally unprotected open field used for farming, well away from the curtilege of the defendant's home. Citing *Dow Chemical Co*. and distinguishing *Kyllo*, the court further found that use of the video camera was simply a more resource-efficient method than direct observation by agents in the same location.

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Sixth Circuit

United States v. Holden, 557 F.3d 698 (6th Cir. 2009).

Defendant Mike Holden was the operator of a municipal wastewater treatment facility in Tennessee, and his father, defendant Larry Holden, was the Superintendent of Public Works for the municipality. Mike was responsible for testing pollutant levels, keeping records, reporting results to the Tennessee Department of Environment and Conservation ("TDEC"), and certifying the accuracy of those reports. Larry administratively supervised the plant and monitored its operation.

Because of compliance problems at the facility, TDEC conducted an investigation and found that the plant's testing laboratory was in disrepair and that testing records were blank. Spot testing indicated that actual fecal coliform discharge levels were from approximately 500 to 2200 times higher than levels reported to TDEC. As a result, large amounts of untreated wastewater were being released from the facility. Subsequent execution of a search warrant at the facility revealed that testing records previously found to have been blank subsequently had been filled in.

Both defendants were convicted by a jury of knowingly falsifying and concealing material facts in a matter within the jurisdiction of the U.S. EPA, and Mike also was convicted of falsifying documents with intent to impede an investigation within that agency's jurisdiction. An assistant to Mike, who collected samples and data for him and was instructed by Larry on filling in test result records, cooperated with the government, pleaded guilty to falsely reporting test results to the TDEC, and testified at trial as to the defendants' complicity and direction in the false reporting.

Held: On appeal, the Sixth Circuit affirmed the convictions of both defendants. It held *inter alia* that evidence of an evaluation of the facility conducted eight years before the TDEC investigation that led to the criminal charges had properly been admitted at trial. It rejected the defense claim that the evaluation (which showed reporting inaccuracies similar to those found in the later TDEC investigation) constituted "propensity" evidence, but rather that it was relevant to rebut the defendants' theory that the assistant (who had not been substantially involved in testing at the earlier time) had fabricated the more recent test results without the defendants' knowledge.

Finally, the court found that the disparities between the fecal coliform test results and the levels reported to the TDEC supported an inference that the reported results were false or fraudulent. It

further found that, because the tested amounts were greater than the permit limits, while the reported amounts were less than those limits, the misrepresentations were material.
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United States v. Cundiff, 555 F.3d 200 (6th Cir. 2009), aff'g 480 F. Supp. 2d 940 (W.D. Ky. 2007).

Defendants owned two adjoining parcels of land situated adjacent to two creeks that are tributaries of the Ohio River via the intervening Green River. After purchasing one of the parcels, which included about 85 acres of wetlands (impacted by highly acidic water that had drained out of a nearby abandoned coal mine), one of the defendants began excavating drainage ditches and clearing trees (without a Section 404 permit) in order to render the wetlands suitable for farming. Upon learning of this, the Army Corps of Engineers sent him a cease and desist letter, met with him, and referred the matter to the U.S. EPA. Over several years the defendant continued his draining and excavation activities, despite the EPA's directing him to stop. The second defendant purchased the other parcel, which included about 100 acres of wetlands, and leased it back to the first defendant, who began excavating and clearing that area as well. State officials also notified the first defendant that he was violating state law, which he ignored.

The federal government finally sued both defendants and was granted summary judgment. After a bench trial, the district court permanently enjoined the defendants from their dredging and filling activities and imposed civil penalties. The defendants appealed, but while that appeal was pending the U.S. Supreme Court decided *Rapanos*. The Sixth Circuit remanded the matter for reconsideration whether jurisdiction over the wetlands was proper. The district court concluded that the wetlands on the properties were "waters of the United States" and granted summary judgment to the government. Defendants again appealed.

Held: The Sixth Circuit affirmed the judgment of the district court and the assessment of civil penalties on the defendants. The court analyzed the Supreme Court's decision in *Rapanos* in detail and found that regulatory jurisdiction over the wetlands here was supported under the approaches outlined by the plurality, Justice Kennedy and the dissenting justices. The court found that the defendants' sidecasting of dredged and excavated material from dug ditches constituted an "addition" that was the "discharge of pollutants" and went far beyond "incidental fallback" with "de minimis effect on the area." Furthermore, the defendants' activities did not qualify for either the "farming" or "drainage ditch maintenance" exceptions to the permit requirement. Finally, the court denied as "specious" the defendants' counterclaim alleging that the government had owed them a mandatory duty to prevent and mitigate damage to their property caused by the acid water runoff from the nearby abandoned coal mine that the government never owned or operated.
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Seventh Circuit

United States v. Hagerman, 555 F.3d 553 (7th Cir. 2009).

A corporation operated a facility that treated industrial liquid waste and then discharged the treated waste into a river. An NPDES permit issued by the Indiana Department of Environmental Management limited the type and amount of pollutants in the discharges and required the company to file monthly Discharge Monitoring Reports disclosing the results of discharge tests. The company and

its president were convicted by a jury on ten counts of making materially false statements in monitoring reports that the company was required to file under the Clean Water Act.

Held: The Seventh Circuit affirmed the defendants' convictions. The court rejected their argument that the district court had erred in admitting into evidence copies of electronic spreadsheets that recorded test results. Those sheets recorded results that were not charged in the indictment, but were in conflict with what the company had reported. Those results were not inadmissible as "prior bad acts," and this evidence of simultaneous criminal acts necessarily was so entangled that evidence of the uncharged crime unavoidably would be revealed in the course of presentation of the evidence to the court. The fact that the spreadsheets had been found in the individual defendant's office was relevant to his state of knowledge when he completed the submitted reports and undercut his claim that he had never seen them.

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Ninth Circuit

United States v. Evertson, 2009 WL 728391 (9th Cir. Mar. 20, 2009).

On March 20, 2009, the Ninth Circuit upheld the 21-month prison sentence handed down to an amateur chemist for transporting and abandoning hazardous materials after his failed attempt to develop a cheaper way of making a chemical compound used in the production of hydrogen fuel cells. The case was remanded, however, for a second look at the restitution ordered to reimburse the U.S. EPA for cleanup costs.

Krister Evertson, a.k.a. "Krister Ericksson", the owner and president of SBH Corporation, was convicted by a jury of two RCRA storage and disposal violations and with violating the Hazardous Materials Transportation Safety Act.

Evertson transported 10 metric tons of sodium metal from Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant arranged for the transportation of sodium metal not used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transportation, despite the fact that sodium metal and the materials in the tanks were highly reactive with water. The material subsequently was abandoned.

In remanding the restitution award, the circuit court said that at the time Evertson committed the violations, the federal sentencing guidelines did not allow a court to order such a payment to be made while a defendant was in prison. Instead, the Ninth Circuit said, restitution could only be ordered as a condition of supervised release, payable after the defendant's release from prison.

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District Courts

United States v. Apollo Energies, Inc., 2009 WL 211580 (D. Kan. 2009).

A landowner telephoned the U.S. Fish and Wildlife Service (the Service) to report discovering dead birds in a "heater-treater" (a device used to process crude oil) owned by the defendant company. An agent who went to the facility found no birds in the heater-treater in question, but did find numerous birds in several other such devices at the facility, including ten birds protected under the MBTA. The Service subsequently undertook an educational campaign and gave the industry more than a year to implement corrective action regarding heater-treater dangers to migratory birds.

Four months after the deadline for corrective action had passed, the Service executed a search warrant on a heater-treater at a facility owned by the defendant company, discovering two dead birds (one of which was protected under the MBTA). At approximately the same time, agents executed other warrants on heater-treaters at two facilities owned by a different (individual) defendant, discovering a total of four dead protected birds. The defendants were charged with one and two counts, respectively, of violating the MBTA and were convicted on all counts before a magistrate judge.

Held: On appeal to the district court, the judgments of the magistrate judge were affirmed. Following Tenth Circuit precedents, the court held that the misdemeanor violations of the MBTA are strict liability crimes not requiring proof of specific intent or guilty knowledge. It rejected the defendants' arguments that (1) the Tenth Circuit precedent and the other cases it cited involved some threshold awareness by the defendants of engaging in activity affecting birds, implying mental awareness on the part of the defendants, and (2) applying criminal liability without proof of scienter was impermissibly vague. It distinguished a single case in which a court refused on due process grounds to convict a farmer when migrating geese accidentally had been killed by eating crops sprayed with pesticides, noting that here, the defendants had clear notice of the dangers posed by heater-treaters and easily could have avoided them by use of a grill over the exhaust stack and other entrances to the devices. Finally, the court noted that "the MBTA is a regulatory act, and regulatory acts presumptively are considered strict liability crimes."

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United States v. King, 2008 WL 4055816 (D. Idaho 2008).

The defendant manager of a farm and feedlot was indicted on four counts of willfully failing to comply with the Safe Drinking Water Act ("SDWA") and with corresponding Idaho law by injecting water into waste disposal and injection wells without a permit and on one count of making a false statement to an investigator. He filed a motion to dismiss on various grounds.

Held: The district court denied the motion. The court rejected the defendant's argument that the government had been required to allege and prove that the fluid or liquid injected contained a contaminant and endangered a source of drinking water, noting that the defendant could assert those points as affirmative defenses. It also rejected his argument that the definition of a drinking water source under Idaho law was broader in scope than the parallel definition under the federal SDWA and thus that the federal government could not rely upon that definition in its prosecution here. While state protections that are broader in scope than the SDWA lie outside the federal program and cannot be prosecuted federally, here the definition in question is relevant only to defendant's affirmative defense

(that his injection did not endanger a drinking water source) and thus was not relevant to the federal government's case. Furthermore, the federal government here was relying only upon the SDWA definition, not on the state definition. In any event, it is unclear whether the U.S. EPA-approved state program for the protection of drinking water sources in Idaho protects a broader scope of aquifers or that the defendant was being prosecuted for injecting into a state-only protected aquifer.

The court also rejected the defendant's claim that the SDWA required U.S. EPA to give 30 days' notice to the state prior to bringing a criminal action, which EPA had failed to do, and prohibited any suit unless the state was failing to enforce its own program. It held that the notice requirement applied only to civil suits, not criminal actions. The court also rejected the defendant's argument that the federal government could not prosecute conduct that was the subject of a prior state action. Double jeopardy does not apply to prosecutions brought by separate sovereigns pursuant to different statutory provisions, and Congress provided only that states would have *primary* enforcement authority under the Act (with the federal government retaining shared *secondary* authority), not that states would have *exclusive* authority. Finally, the court held that the Act does not preclude the federal government from prosecuting past, as well as current, violations thereof.

NOTE: In a subsequent decision in the same case, the court reaffirmed these holdings, but found that its ruling that the defendant could establish an affirmative defense if he could prove a lack of a contaminant or a lack of endangerment had been in error. The statute does not provide for such an affirmative defense. In fact, U.S. EPA-approved Underground Injection Control programs in states such as Idaho must not allow movement of fluid containing any contaminant into underground sources of drinking water. The prohibited act under Idaho law is to inject a fluid down a well without a permit. Whether a contaminant will be injected or whether an injection will endanger an underground source of drinking water are issues to be addressed by an applicant for a permit and determined (with the setting of permit conditions) by the permitting agency. Unpermitted injection is a crime regardless of whether the fluid is a contaminant or whether the injection actually endangers or contaminates an underground source of drinking water. *United States* v. *King*, 2008 WL 5070329 (D. Idaho 2008).

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In re Grand Jury Empanelled April 24, 2008, ___ F. Supp. 2d ___, 2008 WL 5712649 (D.N.J. Dec. 15, 2008).

The federal government opened a grand jury investigation of a marine vessel docked at Port Newark for violations of the Act to Prevent Pollution from Ships. In exchange for departure clearance for the vessel, the owner and operator agreed to post surety bonds and to leave nine crew members in the United States for questioning. (None of the crew members were party to that agreement or gave consent to the travel restrictions.)

A law firm subsequently filed a motion in district court seeking to compel return of the passports of four of the crew members so that they could leave the United States. A magistrate judge granted an application by the government to designate those crew members as material witnesses and issued material witness arrest warrants for them. At a bail hearing, the magistrate judge expressed concern about the law firm's multiple representations due to possible testimony by some of the material witnesses that might implicate the others. Despite waivers of conflict-free representation executed by each material witness, the court appointed an individual conflict counsel for each material witness to report to the court regarding any potential or actual conflicts of interest. She did not purport, however, to disqualify the law firm from representing the material witnesses. Before a hearing could be held, the law firm appealed the decision of the magistrate judge to the district court.

Held: The district court affirmed *inter alia* the magistrate judge's decision appointing conflict counsel for the purpose of advising the Magistrate Judge and the court regarding any potential or actual conflicts and of aiding them in evaluating the propriety of waivers of conflict-free representation. The court reviewed in detail the applicable caselaw and noted that "[T]he public has an interest in a truth-seeking grand jury investigation unhindered by the obstacles that arise from multiple representations" and that "[A] court is not obligated to accept a witness's waiver of conflict-free representation".

TRIALS

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

On April 1, 2009, a jury convicted Michael Delph, the last remaining defendant in this case involving the illegal harvest of spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary. Delph was convicted of conspiring to smuggle lobster. According to evidence presented at trial, Delph was directly involved in the harvest of 922 whole lobsters, as part of a conspiracy wherein 1,197 lobsters were taken on the opening day of Florida's commercial lobster season in August 2008. Additionally stockpiled were approximately 1,700 pounds of wrung lobster tail (where the edible tail is separated from the discarded body) which was harvested during the closed season and intended for sale after opening day.

Five other co-conspirators, David Dreifort, Denise Dreifort, Sean Reyngoudt, Robert Hammer, and John Niles previously pleaded guilty to conspiracy to illegally harvesting lobsters. Niles was sentenced to serve a one-year term of probation after providing substantial assistance in the investigation and after testifying during the trial.

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.

Hammer and Reyngoudt are scheduled to be sentenced on June 1, 2009, the Dreiforts are both scheduled to be sentenced on June 2nd, and Delph is scheduled to be sentenced on June 10th.

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.

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Informations and Indictments

United States v. Douglas Smith, No. 5:09-CR-0003 (D. Alaska), AUSAs Steven Skrocki [redacted] and Aunnie Steward [redacted]

On April 22, 2009, Douglas Smith was charged in a three-count indictment with violations stemming from the illegal killing and attempted illegal sale of sea otters and the illegal sale of a Steller Sea Lion hide in 2007. Smith is specifically charged with a Lacey Act conspiracy and two Lacey Act violations.

The Steller Sea Lion is an endangered species in Southeast Alaska and currently is listed as a threatened species. The indictment alleges that, beginning in July 2007 and continuing through October 2008, Smith conspired with an unnamed co-conspirator in an illegal scheme to unlawfully harvest sea otters in order to sell their hides. It is alleged that Smith agreed to permit the unnamed co-conspirator to use his boat for the illegal killing of sea otters. In exchange for permitting the use of his boat, Smith received a percentage of profits from the subsequent sale of their hides by his co-conspirator. Neither Smith nor the co-conspirator were Alaskan Natives and they are prohibited from hunting or killing sea otters. The Marine Mammal Protection Act further bars non-Alaskan Natives from possessing any non-authentic Native handicraft made from marine mammals or their parts.

In 2007, Smith is also alleged to have sold part of the hide of a Steller Sea Lion to an undercover agent for $2,600, and in December 2007, of attempting to sell two sea otter hides for $750 apiece to an undercover agent.

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

United States v. John Evans, 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach ([redacted]) and AUSA Stacy Belf [redacted]

On April 20, 2009, commercial fisherman John Evans was charged with a one felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, he falsely recorded the amount of striped bass that he harvested with the assistance of a Maryland-designated fish check-in station. Within each year, he failed to record some of the striped bass that was caught, or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested, and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On April 20, 2009, fish wholesaler Golden Eye Seafood, LLC, and its owner Robert Lumpkin, were charged with four felony counts including conspiracy to violate the Lacey Act and three substantive Lacey Act violations.

According to the indictment, Golden Eye Seafood and Lumpkin operated the check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Golden Eye and Lumpkin also purchased fish that were outside the legal size limit from an undercover agent and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than were actually being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

To date, a total of 14 individuals and two fish wholesale companies have been charged. The investigation is ongoing.

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.

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United States v. Larkin Baggett, No. 4:09-CR-10016 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted] and SAUSA Jody Mazer [redacted].

On April 16, 2009, Larkin Baggett was charged with assaulting law enforcement officers and illegally possessing eight firearms. Larkin, who was found to be residing in Marathon, Florida, is a fugitive from the District of Utah where he remains charged with RCRA and CWA violations. Baggett now stands charged in the Southern District of Florida in a five-count indictment with using a deadly weapon against three Environmental Protection Agency agents and a sergeant with the Monroe County Sheriff's Office.

According to the indictment, Baggett violated the conditions of his pre-trial release in Utah when he became a fugitive and obtained firearms. On March10, 2009, the defendant is alleged to have had in his possession four rifles and four pistols of various calibers when he was confronted by law enforcement. During the course of his arrest, he allegedly used a .308 caliber semi-automatic assault rifle to threaten the officers. Baggett was wounded, but now is in custody without bond pending his ability to appear in court on the charges in Utah. Trial is scheduled for the new case on July 6, 2009.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the Bureau of Alcohol, Tobacco, and Firearms; and the Monroe County Sheriff's Office.

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United States v. Danny Parrott, 2:09-CR-00045 (S.D. Ohio), AUSA Mike Marous [redacted] and SAUSA Heather Robinson [redacted]

On February 26, 2009, Danny Parrott was charged in a 15-count indictment with conspiracy, Lacey Act, and wire fraud violations stemming from his involvement in an illegal deer hunting operation.

Parrot owned the River Ridge Ranch which operated as a wild animal hunting reserve in Ohio and catered to hunters from states such as South Carolina, Florida and Georgia. Between August and November 2005, Parrot is alleged to have conspired with James Schaffer in South Carolina to transport 54 white tail deer from Ohio to South Carolina, without the proper paperwork and without required testing.

Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. The required documentation, including state permits allowing transport of the deer into South Carolina, was not obtained. Without this paperwork and proper testing for diseases, the imported deer could potentially infect the local deer population in South Carolina.

Parrot is further charged with wire fraud for arranging for co-defendant Schaffer to wire transfer $66,250 from South Carolina to a bank in Ohio to pay Parrot for the deer that were being shipped to South Carolina. Schaffer previously pleaded guilty to a Lacey Act conspiracy and two Lacey Act violations.

Trial is scheduled for June 22, 2009. This case was investigated by the Department of Natural Resources for the States of Florida, Ohio and South Carolina.

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United States v. Daniel Still, Jr., No. 3:09-CR-00042 (W.D. N.C.), AUSA Steve Kaufman (

On February 27, 2009, Daniel Still, Jr., was charged in a one-count information with a misdemeanor Clean Water Act violation for allegedly causing the spill of more than 1,000 gallons of fuel into the Catawba River in February 2007.

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

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Pleas

United States v. Texas Oil and Gathering et al., No. 4:07-CR-00466 (S.D. Tex.), ECS Senior Counsel Rocky Piaggione ECS Trial Attorney Leslie Lehnhert (and SAUSA William Miller.

Texas Oil and Gathering facility

On April 16, 2009, Texas Oil and Gathering, Inc. ("TOG"), the company owner, John Kessel, and Edgar Pettijohn, the operations manager, pleaded guilty to violations related to the disposal of refinery wastes at an underground injection well. Specifically, the two corporate officers pleaded guilty to conspiracy and to violating the Safe Drinking Water Act for disposing of oil-contaminated waste water from its refinery process at an underground injection well permitted to accept wastes only from oil and gas production wastes. The company pleaded guilty to conspiracy and to a RCRA violation for illegally disposing of hazardous waste.

Texas Oil and Gathering was a registered hazardous waste transporter and a used oil handler, but was not permitted to treat, store and/or dispose of hazardous waste. As a result of its refinery operations, TOG generated wastewater which was trucked to a class II injection well for disposal. A class II injection well is only authorized to dispose of oil production waste and it is illegal to dispose of industrial process waste or hazardous waste in such a well.

From January 2000 through January 2003, tens of thousands of gallons of waste, often including ignitable waste, were hauled to the injection well. Many of these loads were not accompanied by hazardous waste manifests, and the defendants instructed the truck drivers to falsify bills of lading to conceal the waste shipments. The government's investigation began in January 2003, when the injection well exploded and killed three workers. Although the explosion was not caused by the defendants, a closer look at the plastics manufacturing facilities and other chemical manufacturing plants who sold them their waste streams led to this prosecution.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Texas Environmental Crimes Task Force.

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United States v. Rene Soliz, No. 2:09-CR-00282 (S.D. Tex.), ECS Senior Trial Attorney Claire Whitney [redacted]

On April 14, 2009, Rene Soliz pleaded guilty to a violation of the Lacey Act for attempting to receive 15 Tanzanian Leopard Tortoises that were transported into the United States in violation of CITES. In March 2006, Soliz, a U.S. Border Patrol agent, contacted an individual in Dar-Es Salaam, Tanzania, who was selling leopard tortoises. Soliz asked to buy eight of the tortoises and indicated an interest in buying more at a later date as part of a long-term business relationship. On April 7, 2006, a U.S. Customs inspector at John F. Kennedy International Airport intercepted the package containing the tortoises being sent to Soliz. The package was labeled as containing 50 live scorpions. When a U.S. Fish and Wildlife inspector opened the package, he found 14 live and one dead leopard tortoise.

Tanzanian Leopard tortoises

Leopard tortoises are listed in Appendix II of CITES. The CITES Appendices list species afforded different levels or types of protection from over-exploitation. Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. International trade in specimens of Appendix II species may be authorized by the granting of an export permit from the exporting country. No export permit accompanied the tortoises bought by Soliz.

Sentencing is scheduled for June 23, 2009. This case was investigated by the United States Fish and Wildlife Service Office of Law Enforcement.

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United States v. Jerry Decatur, Sr., et al., 8:09-CR-00163 (D. Md.), ECS Senior Trial Attorney Wayne D. Hettenbach [redacted], ECS Trial Attorneys Madison Sewell [redacted] and Jeremy Peterson [redacted].

On April 10, 2009, Jerry Decatur, Sr., pleaded guilty to a Lacey Act violation for illegally taking and over-harvesting striped bass. Kenneth Dent pleaded guilty to a trafficking illegally taken striped bass in violation of the Lacey Act.

On approximately 13 occasions between 2004 through 2007, Decatur illegally harvested more than 10,000 pounds of striped bass from the Potomac River. The commercial fisherman fished out of season, kept over-sized fish, or used nets that violated applicable regulations. He then sold the catch to two fish wholesalers in Washington, D.C. Additionally, he failed to affix tags to the majority of the striped bass that he caught thereby exceeding his limit by thousands of pounds. In 2003 through 2007, Decatur harvested more than 65,000 pounds over his limit. The fair market retail value of this rockfish was in excess of $329,000.

On multiple occasions, Dent sold hundreds of pounds of rockfish that were illegally harvested or tagged to an undercover special agent with the Virginia Marine Police, who told Dent that the fish were being transported to Pennsylvania. On one occasion, Dent illegally harvested 400 pounds of fish from Virginia tributaries of the Potomac River and sold it to the undercover agent for $990. He knowingly tagged much of the fish with incorrect tags to exceed his limit of Virginia-caught fish. The majority of these fish were also not within the legal size limit. On a second occasion, Dent sold the

undercover agent for $1,000 430 pounds of rockfish that were larger than the legal size limit. On a third occasion, he sold the agent 480 pounds of fish for $1,375. All of these fish were more than the legal size limit, with the fair market retail value of the transactions in excess of $5,000. Dent also illegally sold the undercover agent 100 striped bass tags despite a prohibition against private sales.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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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 April 6, 2009, Consultores De Navegacion, ("Consultores") a Spanish company that operates the *M/T Nautilus*, an ocean-going chemical tanker ship, pleaded guilty to conspiracy, falsification of records, false statements, obstruction, and an APPS violation related to the overboard discharge of oil-contaminated bilge waste on the high seas. The company has agreed to pay a $2.5 million fine, complete a three-year term of probation, and implement a comprehensive environmental compliance plan. Charges against Cyprus-based Iceport Shipping Co., the owner of the ship, have been dismissed.

Between 2007 and 2008, ship operator Consultores, 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 discharge 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 that the oil record book failed to accurately reflect the overboard discharge of oily waste water.

Oria, who was the chief engineer on the *M/T Nautilus* between January and March 2008, recently pleaded guilty March 9, 2009, to an APPS ORB violation. Vadym Tumakov, who was the *Nautilus* chief engineer in August 2007, pleaded guilty to using falsified records that concealed improper discharges of oil-contaminated bilge waste from the ship.

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United States v. American Rivers Transportation Company, et al., No. 4:09-CR-00253 (E.D. Mo.), AUSA Michael Reap [redacted] and SAUSA Anne Rauch [redacted]

Grate from pump station

On April 3, 2009, American River Transportation Company ("ARTCO"), the operator of a river terminal in the St. Louis area, pleaded guilty to discharging oil into the Mississippi River in violation of the Clean Water Act. The company was sentenced to pay a $3 million fine. In addition, two ARTCO employees, Justin Baker and Steve Keilwitz, each pleaded guilty to a CWA felony false statement violation. Baker, who has since retired, was the terminal manager at the time of the violations, and Keilwitz was the maintenance superintendent.

ARTCO owns and operates several terminals in the St. Louis area and also operates line boat vessels, hopper barges, harbor and fleeting services, and a fueling terminal. At one of its facilities,

ARTCO cleans barges of residue, including grain, fertilizer, oil, and oil-based products.

In June 2007, a release of oil was discovered in the river near an ARTCO facility. Baker reported the oil to the National Response Center and to other emergency responders, but he and Keilwitz denied knowing the source of the oil. Baker and Keilwitz knew that the ARTCO facility was the source of the oil, due in part to past events at the facility.

Between April 2004 and June 2007, ARTCO had discharged wastewater with oil and grease above permit limits into the St. Louis POTW and thereby into the Mississippi River. The company also directly discharged other pollutants into the Mississippi River during this period. Baker and Keilwitz remain scheduled for sentencing on June 19, 2009.

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

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United States v. Daniel Cason, No. 1:08-CR-00099 (S.D. Ga.), AUSAs David Stewart [redacted] and Charlie Bourne [redacted]

On March 31, 2009, Daniel Cason, the public works director for the City of Harlem, Georgia, pleaded guilty to three CWA false statement violations. Cason originally was charged with 11 counts of violating the Clean Water Act and with making false statements in records and reports.

Cason is responsible for operating the city's POTW. He admitted to submitting discharge monitoring reports between 2003 and 2005 that contained false readings for levels of fecal coliform and biochemical oxygen demand from the POTW.

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

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United States v. Jeong Gyu Lee, No. 8:09-CR-00053 (M.D. Fla.), ECS Trial Attorney Leslie Lehnhert [redacted] and AUSA Cherie Krigsman [redacted]

On March 10, 2009, Jeong Gyu Lee, a Korean national who served as the chief officer aboard the *M/V Ocean Jade*, pleaded guilty to an APPS violation and to an 18 U.S.C. § 1001 false statement violation for not recording an overboard discharge in the oil record book and for making false statements to Coast Guard personnel.

From approximately November 30, 2007, to October 9, 2008, as the chief officer, Lee was in charge of all deck operations and supervised subordinate crew members. On the morning of September 27, 2008, while the *Ocean Jade* was underway, Lee instructed crew members to use a flexible hose to dump oily waste from the vessel's crane houses directly overboard without processing it through the proper equipment. This disposal was not noted in the ORB. When the ship reached the port of Tampa on October 8th, Lee instructed the crew not to tell the Coast Guard about the discharge. Lee and three crew members subsequently made false statements to the inspectors.

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

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United States v. John Joseph Cota et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSAs Stacey Geis [redacted] and Jonathan Schmidt ([redacted].

On March 6, 2009, John Joseph Cota, a California ship pilot, pleaded guilty to negligently causing the discharge of approximately 50,000 gallons of heavy fuel oil into San Francisco Bay in violation of the Oil Pollution Act. Cota, who piloted the *M/V Cosco Busan* when it hit the San Francisco Bay Bridge in November 2007, also pleaded guilty to a violation of the Migratory Bird Treaty Act for causing the death of protected migratory birds.

Damage to Bay Bridge

In the plea agreement, Cota admitted that he failed to pilot a collision-free course and failed to adequately review the proposed course with the crew on official navigational charts. Further, he admitted that he failed to use the ship's radar as he approached the Bay Bridge, failed to use positional fixes, and failed to verify the ship's position using official aids of navigation throughout the voyage. These failures led to the ship's striking the bridge and discharging the oil. As a result, approximately 2,000 birds died, including brown pelicans, marbled murrelets, and western grebes. The brown pelican is a federally designated endangered species and the marbled murrelet is a federally designated threatened species and an endangered species under California law.

Co-defendant Fleet Management Limited, a Hong Kong ship management company, remains scheduled for trial to begin on September 14, 2009, for acting negligently and being a proximate cause of the oil discharge from the *Cosco Busan* and for the killing of the migratory birds. Fleet further is charged with obstructing justice and with making false statements by falsifying ship records after the incident.

As part of the plea agreement with Cota, the government dismissed additional charges of false statements made to the Coast Guard in 2006 and 2007 concerning his medications and medical conditions. Coast Guard regulations require that pilots have an annual physical examination that results in the completion of a medical evaluation form. The form must be completed by a licensed physician or physician's assistant, signed by the pilot, and then submitted to the Coast Guard. Cota admitted in the factual statement to have knowingly and willfully made false statements on the forms when he certified that all the information he provided was complete and true to the best of his knowledge. In fact, Cota knew that the information he provided was neither complete nor true, including information regarding his current medications, the dosage, possible side effects and medical conditions for which the medications were taken.

This case was investigated by the United States Coast Guard Investigative Service, the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, the United States Fish and Wildlife Service and the California Department of Fish and Game, Office of Spill Prevention and Response.

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

On March 5, 2009, Jesse Barresse pleaded guilty to an indictment charging one violation of the Bald and Golden Eagle Protection Act. Barresse admitted to knowingly shooting a bald eagle in Ruskin, Florida, on January 13, 2008. This case was investigated by the United States Fish and Wildlife Service.

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United States v. MagnaGro International, Inc. , et al., No. 5:08-CR-40045 (D. Kans.), AUSA Christine Kenney and SAUSA Ray Bosch

Hose discharging to sewer

On February 24, 2009, MagnaGro International, Inc., a fertilizer manufacturer, and company owner Raymond Sawyer, pleaded guilty to a CWA felony violation for illegally discharging manufacturing waste into the city's sewer system.

According to court documents, Sawyer and the company admitted to discharging a large amount of industrial waste in March 2001 from fertilizer production into the city's POTW. The Kansas Department of Health and Environment and the city of Lawrence ordered Sawyer and the company to stop the discharges at that time. Later, in September 2007, EPA agents found that the company was discharging waste into the POTW via a hose inserted into a toilet. Subsequent investigation determined that Sawyer and the company had been discharging waste through the hose for 10 years and that the hose was used to pump material into the toilet from a waste pit surrounding a mixing vat.

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

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Sentencings

United States Michael Panyard et al., Nos. 2:07-CR-20037 and 20030 (E.D. Mich.), ECS Senior Counsel James Morgulec AUSA Mark Chutkow and RCEC David Mucha

On April 22, 2009, Michael Panyard, a former president, general manager, and sales manager for Comprehensive Environmental Solutions Inc. ("CESI"), was sentenced to serve 15 months' incarceration. Panyard, along with two co-defendants, was convicted by a jury last October of violations stemming from the illegal discharge of millions of gallons of untreated liquid wastes from the CESI facility. Specifically, Panyard was convicted on all nine counts in the indictment, including conspiracy, Clean Water Act, and false statement counts. Former CEO Bryan Mallindine was convicted of a CWA misdemeanor for negligently bypassing the facility's required pretreatment

system, and Charles Long, a former plant and operations manager, was convicted on both counts for which he was charged, which were conspiracy and a felony CWA violation.

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge it to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the facility's storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. In order to create storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer. Employees also made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

Former plant manager Donald Kaniowski previously pleaded guilty to a CWA violation and was sentenced to complete a three-year term of probation. Kaniowski provided substantial assistance to the government and testified at trial. CESI previously pleaded guilty to CWA and false statement violations and will be sentenced in May. Mallindine previously was sentenced to serve a three-year term of probation, to include 90 days' home confinement, and Long was recently sentenced to serve 24 months' incarceration.

This 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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United States v. Thomas Hallock, 8:09-CR-00049 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [redacted] and AUSA Stacy Belf [redacted]

On April 22, 2009, Thomas Hallock, a Virginia fisherman, was sentenced to serve one year and one day of incarceration. He further was ordered to pay a $4,000 fine plus $40,000 in restitution for his part in the largest striped bass poaching case in the history of the Chesapeake Bay. Hallock provided substantial assistance early in the five-year investigation, supplying information about the seafood dealers and other watermen.

Seized rockfish

Hallock pleaded guilty in 2009 to falsely recording the amount of striped bass that he harvested from 2003 to 2007 with the assistance of a Maryland-designated fish check-in station. Within each year, he failed to record some of the striped bass that were caught or recorded a lower weight of striped bass than actually were caught. Hallock and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but nonetheless had run out of tags. As a result, the state would issue additional tags that could be used by the defendants allowing them to catch striped bass above their maximum poundage quota amount. Hallock admitted to overfishing 68,442 pounds of rockfish that had a fair market retail value of $342,210.

Overfishing by poachers like Hallock has harmed the striped bass population, undercut the market for other watermen, and skewed the quota system used by the 12 Eastern Seaboard states to prevent overharvesting. Overfishing caused the species to crash, forcing regulators to impose a five-year moratorium that ended in 1990.

This investigation was conducted by an interstate task force formed by the U.S. Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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United States v. Atlantic States Cast Iron Pipe Company et al., No. 3:03-CR-00852 (D. N. J.), ECS First Assistant Chief Andrew Goldsmith (ECS Assistant Chief Deborah Harris First AUSA Ralph Marra (and AUSA James Kitchen (

Paint wastes illegally burned in cupola

During the week of April 20, 2009, John Prisque, Scott Faubert, Craig Davidson, and Jeffrey Maury each were sentenced to serve lengthy terms of incarceration. Plant manager Prisque was sentenced to serve 70 months; Maury, a former maintenance supervisor was sentenced to serve 30 months; former human resources manager Faubert was sentenced to serve 41 months; and superintendant Davidson was sentenced to serve six months of incarceration. The company was sentenced to pay an $8 million fine, complete a four-year term of probation, and will be subject to oversight by a court-appointed monitor. The court further required as a condition of probation that specific top managers at the Phillipsburg, New Jersey, plant and at McWane headquarters in Birmingham, Alabama, including the chairman and president, will read the entire transcripts from the sentencings of the four managers who were convicted along with the company.

The defendants all were found guilty by a jury three years ago last month of conspiracy to violate the CWA and CAA; to make false statements and to obstruct EPA and OSHA; and to defeat the lawful purpose of OSHA and EPA. These five defendants also were variously found guilty of substantive CWA, CAA, CERCLA, false statement, and obstruction violations charged in a 34-count superseding indictment.

Atlantic States, a division of McWane, Inc., manufactures iron pipes, which involves melting scrap metal in a cupola (a multi-story furnace), that reaches temperatures approaching 3,000 degrees Fahrenheit. Evidence at trial proved a corporate philosophy and management practice that led to an extraordinary history of environmental violations, workplace injuries and fatalities, and ultimately obstruction of justice. In addition to the fatality involving a forklift, a worker lost three fingers in a cement mixer, and another worker lost an eye when a saw blade broke.

Evidence further showed that the defendants routinely violated the facility's CWA permits by discharging petroleum-contaminated water and paint into storm drains that led to the Delaware River; repeatedly violated the facility's CAA permits by, among other things, burning tires and excessive amounts of hazardous paint waste in the cupola; systematically altered accident scenes; and routinely

lied to federal, state, and local officials who were investigating environmental and worker safety violations.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, United States Department of Labor Occupational Safety and Health Administration; the New Jersey Department of Environmental Protection, the New Jersey Department of Law and Public Safety, Division of Criminal Justice, and the Phillipsburg Police Department. Back to Top

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

Abandoned drums

On April 17, 2009, Robert Whiteman was sentenced to serve one year and a day of incarceration, followed by three years' supervised release 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. Whiteman was remanded into custody and further ordered to pay $128,217 in restitution for cleanup costs. He previously pleaded guilty to a single RCRA storage violation.

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. The new owner of the property was left with responsibility for the cleanup.

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.
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United States v. Brent Anderson et al., No. 3:08-CR-00158 and 159 (E.D. Tenn.), former ECS Trial Attorney David Joyce [redacted] and AUSA Matthew Morris [redacted]

On April 15, 2009, Brent Anderson, the operations manager for 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, Anderson admitted to falsifying baghouse pressure logs and scrubber logs at the Heraeus facility located in Wartburg, Tennessee. He was sentenced to serve a one-year term of probation and must complete 50 hours of community service.

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 approximately October 2004 and February 2005, neither baghouse nor scrubber system logs were

maintained at this facility. In late February 2005, Anderson, 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. He subsequently submitted these falsified logs with the plant's 2005 annual report to the Tennessee Department of Environment and Conservation.

Heraeus previously pleaded guilty to and was sentenced for a CAA false statement violation. The company was ordered 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.

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.

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United States v. California Shellfish Company Inc., et al., No. 3:08-CR-00060 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Dwight Holton [redacted]

On April 13, 2009, California Shellfish Company Inc., doing business as Point Adams Packing Co. ("PAPCO"), was sentenced to pay $75,000 for a felony Clean Water Act violation for unpermitted discharges of wastewater into the Columbia River. As part of the fine, $26,250 will be paid into the National Fish and Wildlife Fund, which helps to support various environmental projects in the state through the Oregon Governor's Fund for the Environment. The former manager of the facility, Thomas Libby, previously was sentenced for a misdemeanor CWA violation. Modesto Tallow Co., doing business as California Spray Dry ("CSD"), which operated PAPCO's plant, also has pleaded guilty and been sentenced for a felony CWA violation.

Hole in pipe near outfall

PAPCO had a NPDES permit to discharge *fish* processing wastewater from its facility. In June 2003, PAPCO leased a portion of its facility to CSD. CSD intended to process *chicken* carcasses at the PAPCO facility for the production of various by-products, including flavoring for pet foods. Neither company obtained a modification to the permit to allow the discharge of chicken processing wastewater into the Columbia River. As a result, there were unpermitted discharges beginning in December of 2003 until approximately June of 2004. Several neighbors of the facility complained about odors from the discharges, and further investigation revealed the existence of a hole in a pipe upstream from the outfall helping to verify the origins of the chicken waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Oregon State Police.

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United States v. T.P. Seafood and Meat Company, Inc. et al., No. 2:07-CR-00449 (C.D. Calif.), ECS Senior Trial Attorney Elinor Colbourn [redacted] ECS Trial Attorney Mary Dee Caraway [redacted], and AUSA Joe Johns [redacted]

On April 3, 2009, T.P. Seafood and Meat Company, Inc., and company president Henry Yip, each were sentenced for their role in purchasing and re-selling frozen *Pangasius hypophthalmus* fillets, a type of catfish that was mislabeled to avoid paying the required anti-dumping duty. Yip previously

pleaded guilty to receipt of misbranded food in interstate commerce and was sentenced to pay a $40,000 fine to be paid into the Magnuson-Stevenson NOAA Fisheries Enforcement Fund ("Fund"). He also will complete a one-year term of probation. The company pleaded guilty to trafficking in illegally imported merchandise and was sentenced to pay $150,000 into the Fund and also will complete a one-year term of probation.

In May 2007, 18 companies and individuals were variously charged in this conspiracy to violate the Lacey Act, the Food, Drug, and Cosmetics Act, and customs laws, specifically for knowingly entering goods by payment of duty less than owed, entry of goods by means of false statements, and trafficking in illegally imported merchandise. Several defendants were further charged with substantive violations of the Lacey Act, entry of goods by means of false statements, importation contrary to law, and trafficking in illegally imported merchandise.

The defendants' illegally imported from Vietnam millions of pounds of Vietnamese catfish by identifying and labeling the fish as other species in an effort to avoid a 64% anti-dumping duty that was imposed on Vietnamese catfish in January of 2003. The tariff was imposed after a petition was filed by the catfish farmers of America, alleging that this fish was being imported from Vietnam at less than fair market value.

On March 16, 2009, David Wong was sentenced to serve 12 months' incarceration followed by one year of supervised release. He further was ordered to pay a $25,000 fine. Wong pleaded guilty last year to violating the Lacey Act for purchasing and re-selling the catfish, marketed by the trade names of "swai" or "tra," but referred to in some seafood markets as "basa." The fish that Wong purchased was labeled as "sole" and imported without the duty payment.

Between November 2005 and May 2006, in a series of six transactions, Wong purchased on behalf of his employer, more than $197,000 worth of frozen fish fillets from Virginia Star Seafood Corporation ("Virginia Star"). In each of these transactions, the fish ordered and received was labeled as "sole." Wong knew, however, that the fish he purchased was in fact *Pangasius hypophthalmus,* and was properly subject to both an import and anti-dumping duty.

To date 12 individuals and companies (including Peter Xuong Lam and Arthur Yavelberg who were convicted by a jury last year) have been prosecuted in this matter.

This case was investigated by Immigration and Customs Enforcement, the National Marine Fisheries Service, and the Food and Drug Administration.

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United States v. Paul Arnold, No. 4:08-CR-00238 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [redacted] and AUSA Michael Fica [redacted]

On April 2, 2009, Paul Arnold was sentenced to pay a $2,500 fine, serve two years' probation, complete 50 hours' community service, and pay $2,500 in restitution to the Idaho State Fish and Game Department. Arnold pleaded guilty for two violations of the Lacey Act. Arnold additionally lost his hunting privileges for two years and forfeited two elk mounts and a bow. The court also ordered him to write a letter to *Eastman's Bowhunting Journal* explaining the circumstances of his conviction.

The case arose out of a United States Fish and Wildlife Service investigation of several hunts Arnold undertook in 2002 and 2003. In September 2002, Arnold participated in a hunt while based at a lodge outside of Soda Springs, Idaho. Arnold shot a trophy class elk with a distinct commercially available bow. At the time Arnold shot the elk the bow had an illegal electronic sight mounted on it. The legal tension requirement on the bow also exceeded the 65 percent limit allowed under Idaho Fish and Game regulations at the time. Arnold transported the elk from Idaho to the Commonwealth of Virginia where he resides. An article by Arnold with accompanying photographs appeared in *Eastman's Bow Hunting Journal* and alerted investigators to the illegal sight on the bow.

In September 2003, Arnold again participated in a hunt while based at the same lodge. Despite not possessing a valid Idaho elk tag, Arnold shot an elk with a bow from a tree stand around dusk, but was unable to track it because of darkness. The next day, he tracked the elk and found the animal dead. After dressing the animal and bringing it to the lodge, Arnold drove to Soda Springs and purchased an elk tag. A search by FWS agents prevented Arnold from transporting the elk to Virginia.

A search warrant was obtained for the defendant's home in Virginia for the purpose of seizing the elk illegally shot by Arnold in Idaho in 2002 and transported to Virginia, where it was made into a mount. Upon questioning by agents Arnold tried to mislead agents by stating he no longer had the mount, when, in fact he did.

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

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United States v. General Maritime Management (Portugal), L.D.A., et al., No. 2:08-CR-00393 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart [redacted] SAUSA Ken Nelson [redacted] and ECS Paralegal Jean Bouet [redacted]

On March 13, 2009, General Maritime Management (Portugal) LDA ("General Maritime"), was sentenced to pay a $1 million fine and will complete a five-year term of probation. An environmental compliance plan was ordered to be implemented and audited by a court appointed monitor.

General Maritime, chief engineer Antonio Rodrigues, and first engineer Jose Cavadas were convicted by a jury last year of an APPS oil record book violation and a false statement violation for presenting a false ORB to Coast Guard officials during a port inspection.

This case came to the attention of inspectors after a crewmember/fitter onboard the *M/T GenMar Defiance* advised the Coast Guard that he had been told by the ship's chief and first engineers to connect a bypass hose to an overboard discharge valve, thereby tricking the oil content meter into allowing oily bilge waste to bypass the ship's oily water separator. Other crewmen later confirmed the fitter's story. They secretly photographed the illegal bypass and gave the pictures to the Coast Guard. The fitter stated that he observed Cavadas open the overboard discharge valve and pump the bilge into the ocean for approximately three or four hours. He was warned by Cavadas not to talk about this and Rodrigues further threatened to fire the fitter once the ship had reached port. During the Corpus Christi port inspection in November 2007, the ORB presented to officials omitted the illegal overboard discharges.

Both engineers were recently sentenced to complete five-year terms' of probation and must each pay a $500 fine. Rodrigues also will serve three months' incarceration in a halfway house and Cavadas will spend six months in a halfway house. The court awarded $250,000 of the million dollar fine to be divided proportionally among five whistleblowers.

This case was investigated by the United States Coast Guard, and the Environmental Crimes Task Force, which includes the United States Environmental Protection Agency, the Texas Commission on Environmental Quality Investigations Division, and the Texas Parks and Wildlife Department.

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United States v. Daniel Smith, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley ([redacted]

On March 11, 2009, Daniel Smith, the public works director for Mocksville, North Carolina, was sentenced to serve one year and day incarceration and was ordered to pay $56,625 in restitution to the Town of Mocksville.

Smith pleaded guilty last November to violating the Safe Drinking Water Act and the Clean Water Act. As the town's public works director, Smith oversaw the town's public drinking water system and was required to submit information about the water's turbidity to the North Carolina Department of Environment and Natural Resources ("DENR"). Smith admitted to knowingly directing employees to send false data that understated drinking water turbidity. Nicholas Slogick, the official in charge of the town's POTW, previously pleaded guilty to knowingly submitting false data about the drinking water to the DENR.

Smith violated the CWA by using town employees to pour massive amounts of degreaser and caustic into the POTW. Smith, who received a kick-back for having the town purchase these chemicals, caused them to be dumped in order to justify purchasing additional quantities. He further conspired to misapply town property after Macksville received more than $10,000 in federal grant

money. Smith created a company, Danny Smith Enterprises that provided maintenance and repair services to other towns and private citizens, employing town equipment and employees (including state inmates) to operate the company for his personal gain.

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

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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 March 9, 2009, Christopher Rowland was sentenced to serve 37 months' incarceration, followed by three years' supervised release, and was ordered to pay a $5,000 fine.

Rowland pleaded guilty last December 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.

The investigation began as a response to a concerned citizen's tip that evolved into a two-year undercover operation, which still is 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, including pups, 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.

This case was investigated by the United States Fish and Wildlife Service with assistance from the Alaska Wildlife Troopers, the 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.

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