



Monthly

Bulletin

Environmental Crimes Section

June 2015

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Aerial view of Duke Energy primary ash basin and basin wall where a stormwater pipe break occurred (at bottom right). See [U.S. v. Duke Energy Corporation](#), inside, for more details on the case.

Send your federal case updates to: [redacted]

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“Over two hundred sixteen million Americans rely on surface water as their source of drinking water,” said Assistant Administrator Cynthia Giles for EPA’s Office of Enforcement and Compliance Assurance. “Duke Energy put that precious resource at risk in North Carolina as the result of their negligence”. From Duke Energy sentencing press release, May 14, 2015.

Practice Tip

Coordinating Criminal and Civil Environmental Enforcement

On January 30, 2012, the Attorney General issued a general memorandum reinforcing the importance of coordinating parallel criminal, civil, regulatory, and administrative proceedings in all areas of enforcement and encouraging the evaluation of cases for the appropriateness of civil or criminal enforcement regardless of the genesis of the matter. The memorandum outlined certain recommendations that should be incorporated in parallel proceedings policies for all U.S. Attorneys' Offices (USAOs) and litigating components of the Department of Justice with the caveat that the described recommendations may not be permissible depending on the area of law or appropriate given fact specific issues related to a particular investigation.

Civil litigation on behalf of the United States under the various pollution control laws is the responsibility of the Environmental Enforcement Section (EES) and Environmental Defense Section (EDS) as described in Title 5: ENRD of the U.S. Attorneys' Manual. This is in part due to certain long standing agreements between DOJ and the U.S. EPA regarding civil litigation as well as the unique scientific technical issues and concurrent jurisdictional issues with the states under the these statutes and the implementing regulations. Title 5 describes the procedures that implement the 1977, 1981, and 1987 memoranda of agreements between DOJ and EPA. In general, EES and EDS are responsible for all civil enforcement under the various federal pollution control laws outlined in Title 5 following a referral from either the EPA, U.S. Coast Guard, U.S. Army Corps of Engineers, or other government agency with statutory enforcement responsibility for public health, welfare, and environment. See 5.12.100, 5.12.111, 5.6.100, and 5.6.112. This is in contrast to environmental crimes where the USAOs have responsibility for criminal investigations and prosecutions within their districts and the Environmental Crimes Section (ECS) has responsibility on a nation-wide basis.

If an environmental crimes prosecutor at either the USAO or ECS believes there may be potential civil enforcement remedies that should be considered in lieu of or parallel to a criminal investigation and prosecution, the prosecutor in collaboration with the criminal agent and/or agency attorney should coordinate with the head of the regional civil component(s) within the appropriate agency. The prosecutor may also want to consult with EES or EDS as appropriate. It is very important that, at a minimum, the appropriate agency be contacted as it already may have taken administrative enforcement action, coordinated with the state with jurisdiction under the statute regarding civil enforcement under state law, or coordinated with EES or EDS regarding civil enforcement. Additionally, many federal agencies have their own parallel proceedings policies and already may have taken steps to coordinate parallel civil and criminal investigations internally prior to a criminal referral to the USAO or ECS.

If you have any questions about this practice tip, please email [\[redacted\]](#) or call him at [\[redacted\]](#).

District	Case Name	Case Type/Statutes
Middle District of Alabama	United States v. Daryl Fischer	Hunting/FIFRA
Southern District of Alabama	United States v. Det Stavangerske Dampskibsselskab AS	Vessel/APPS, Conspiracy, Obstruction, Witness Tampering
District of Alaska	United States v. AML Ship Management GMBH	Vessel/CWA, APPS
Eastern District of California	United States v. Edgardo Fournier	Marijuana Grow and Forest Fire/Drug Charges and Setting Timber Afire
District of Hawaii	United States v. Waste Management of Hawaii Inc.	Medical Waste Discharges/ CWA, False Statement, Conspiracy
District of Idaho	United States v. Adrian Q. Brown-Sonder	Feather Sales/BGEPA
Eastern District of Louisiana	United States v. Royley A. Folsie, Jr. United States v. Race Addington United States v. Lawrence Treigle	Bird Sales/MBTA Oil Rig Maintenance/ False Statements Turtle exports/Lacey Act
District of Maine	United States v. Clyde Eldridge	Feed Store/False Statement
District of Maryland	United States v. George Estudante	Scallop Sales/Lacey Act
District of Montana	United States v. Kelly Steen	Gas Condensate Transportation/HMTA
Northern District of New York	United States v. Brian Davis United States v. Mark Desnoyers United States v. CES	Hazardous Waste Storage/RCRA Asbestos Abatement/Conspiracy, CAA Asbestos Abatement/Conspiracy, CAA
Northern District of Ohio	United States v. Hardrock Excavating LLC	Oil and Gas/CWA
North Carolina (ALL DISTRICTS)	United States v. Duke Energy Corporation	Coal Ash Spill/CWA
District of Rhode Island	United States v. Mann Distribution, LLC	Chemical Distributor/CAA
Eastern District of Texas	United States v. Ning Qiu	Rhino Horn and Elephant Ivory Sales/ Conspiracy
Western District of Texas	United States v. Jorge Rocha	Bird Sales/MBTA

Significant Decisions

United States v. Barber, ___ Fed App'x ___, No. 14-30050, 2015 WL 2345324, at *___ (9th Cir. 2015).

James Barber was convicted of knowingly violating the Clean Water Act (33 U.S.C. §§ 1311(a), 1319(c)(2)(A)), for opening the Paradise Water Treatment Plant's discharge valve and releasing several thousand gallons of wastewater into the Nisqually River within Mt. Rainier National Park. Barber appealed his conviction on the grounds that the district court erred when it did not dismiss the indictment based on selective prosecution or entrapment by estoppel, when it refused to give Barber's requested jury instructions on entrapment by estoppel and necessity, and that there was insufficient evidence underlying his conviction.

The Ninth Circuit rejected all of Barber's claims and affirmed his conviction. The court first held that Barber was unable to show evidence of selective prosecution sufficient to rebut the presumption in favor of prosecutorial regularity and that these claims amounted to "unsupported assertions." Second, the court of appeals found no error in the district court's decision to reject Barber's proposed jury instructions on necessity and entrapment by estoppel. Addressing necessity, the court found no evidence to suggest that Barber was faced with a choice of evils or that he reasonably believed that there was no alternative to violating the law. Addressing entrapment by estoppel, the court found that the vague statement of a prior plant official suggesting that releasing the plant's discharge valve could be appropriate as a last resort was not sufficient to support an entrapment defense. Finally, the court concluded that sufficient evidence supported Barber's conviction because Barber conceded that he had intentionally released the wastewater before it was fully treated and that he was aware that the discharge of such wastewater would pollute the Nisqually River.

Her Majesty the Queen in Right v. USDC-NVL, No. 15-71346 (9th Cir. 2015).

On May 12, 2015, the Ninth Circuit denied a Canadian government petition for writ of mandamus challenging the district court's decision to deny that restitution be paid to Canada by defendant Nathan Stoliar, pursuant to the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771.

Stoliar was sentenced in April 2015 after pleading guilty to conspiring to defraud the government and to launder money, two wire fraud counts, and one Clean Air Act false statement count (18 U.S.C §§ 371, 1956(h), 1343; 42 U.S.C. § 7413(c)(2)(A)). Stoliar had participated in fraudulent schemes involving the false generation of renewable fuel credits under United States law, false representations regarding the type of fuel being sold, and the export of biodiesel without retiring or purchasing renewable energy credits adequate to cover the exported amount as required under United States law.

The Canadian Department of Justice sought a portion of the restitution, filing a letter asserting that Canada also had been a victim of Stoliar's crimes. The district court denied restitution, and Canada filed the petition in the court of appeals challenging the denial.

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Significant Decisions

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The Ninth Circuit held that Canada's claim for restitution was based on events that were insufficiently related to Stoliar's activities. Canada had entered into contracts with City Farm, a Canadian company. Stoliar purchased City Farm, at which time City Farm falsely over represented to Canada the amount of biodiesel that it was producing. The Ninth Circuit noted that the scheme revolving around the false generation and use of biodiesel subsidy fraud in Canada was not causally linked to the biodiesel credits fraud in the United States. The Court relied on the record that the schemes were accomplished by different means, had different victims, and took place primarily in different countries.

Indictments/Informations

United States v. Waste Management of Hawaii, Inc., No. 14-CR-00468 (D. Hawaii), AUSA Marshall Silverberg, ECS Senior Trial Attorney Dan Doohar, USAO Paralegal Specialist Ora Morita, ECS Supervisory Paralegal Specialist Lisa Brooks, and ECS Paralegal Specialist Cynthia Longmire.

On May 20, 2015, a 13-count second superseding indictment was returned charging Waste Management of Hawaii, Inc. (WMH); Joseph R. Whelan, a vice president and general manager; and environmental protection manager Justin H. Lottig with conspiracy, Clean Water Act, and false statement violations (18 U.S.C. §§ 371, 1001; 33 U.S.C. §§ 1311(a), 1318(a), 1319 (c)(4), 1319(c)(2)(A)) stemming from the illegal discharge of millions of gallons of medical waste-contaminated storm water into coastal waters. The discharges came from the Waimanalo Gulch Sanitary Landfill after heavy rainfall in December 2010 and January 2011. The landfill was operated by WMH. A 13-count indictment charging the defendants was originally returned in April 2014. A 14-count first superseding indictment was returned in February 2015. This second superseding indictment retains 13 counts, and removes an alleged false statement by WMH engineer made after the January 13, 2011, storm.



Syringes found on the beach

The landfill NPDES permit authorized WMH to discharge non-contaminated storm water (storm water that had not come into contact with landfill waste) through the landfill's storm water management system, to the Pacific Ocean. On December 19, 2010, a heavy rainstorm struck Oahu, and a portion of the landfill (Cell E6) (containing millions of pounds of waste including raw sewage, sewage sludge, and medical waste) was flooded with storm water. As a result, WMH allegedly pumped millions of gallons of contaminated storm water over a four-day period from the landfill into coastal waters near the Ko Olina Resort. Lottig allegedly told inspectors from the Hawaii Department of Health Clean Water Branch (DOH-CWB) that this storm water had not come into contact with waste from Cell E6.

On the evening of January 12, 2011, another heavy rainstorm struck Oahu. Unknown to officials, Whelan and WMH allegedly caused the discharge of millions of gallons of contaminated storm water to the coastal waters near the resort again over several hours that evening and/or into the morning of January 13. The pollutants included large amounts of medical waste, including blood vials, syringes and catheters, raw sewage, and sewage sludge.

In addition, WMH, Lottig, and Whelan are variously charged with conspiracy, with making false statements, and with omitting critical information that should have been provided to authorities regarding the storm water management system.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from the DOH-CWB.

Indictments/Informations

United States v. Det Stavangerske Dampskibsselskab AS (DSD Shipping), No. 1:15-CR-00102 (S.D. Ala.), ECS Trial Attorney Shane Waller and AUSA Mike Anderson.

On May 13, 2015, a seven-count indictment was returned charging Det Stavangerske Dampskibsselskab AS (DSD Shipping) and four engineers with violating APPS, conspiracy, obstruction of justice, and witness tampering (18 U.S.C. §§ 371, 1505, 1512(b), 1515; 33 U.S.C. § 1908(a)). DSD Shipping is a Norwegian-based shipping company that operates the oil tanker *M/T Stavanger Blossom*, a vessel engaged in the international transportation of crude oil. Also charged are Chief Engineer Daniel Paul Dancu of Romania, and Chinese nationals Chief Engineer Bo Gao, Second Engineer Xiaobing Chen, and Fourth Engineer Xin Zhong.

According to the indictment, in 2014, DSD Shipping and its employees conspired to bypass pollution prevention equipment aboard the vessel and to conceal the direct discharge of waste oil and oil-contaminated waste water into the sea. Plastic bags filled with waste oil from a sludge tank also were allegedly discarded overboard.

The indictment further alleges that prior to a Coast Guard inspection, Chen ordered crewmembers to remove the bypass pipe, install a new pipe, and repaint the piping to hide the illegal discharges. Chen and Zhong then ordered crewmembers to lie to the Coast Guard about the plastic bags. DSD Shipping and its employees allegedly maintained an oil record book that failed to record the disposal, transfer, or overboard discharge of oil from the vessel.

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

United States v. Royley A. Folse, Jr., No. 2:15-CR-00128 (E.D. La.), AUSA Spiro G. Latsis.

On May 8, 2015, Royley A. Folse, Jr., was charged in an eight-count indictment with violating the Migratory Bird Treaty Act (16 U.S.C. §§ 703 & 707(b)(1), (b)(2)) for selling and possessing migratory game birds.

According to the indictment, Folse illegally bartered and sold for cash four yellow-crowned night herons and 62 white ibis between June 2010 and December 2011. He is further alleged to have possessed a Barn Owl and a Red-Tailed Hawk in April 2013.

Trial is scheduled to begin on July 27, 2015.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the U.S. Fish and Wildlife Service.

Guilty Pleas

United States v. Adrian Q. Sonder, No. 2:15-CR-00029 (D. Idaho) ECS Senior Trial Attorney Christopher J. Costantini and AUSA Nancy D. Cook

On May 20, 2015, Adrian Q. Sonder pleaded guilty to one count of violating the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668(a), 703, 707(a)). He will forfeit various wildlife parts found at his residence during a search.

Sonder is a member of the Coeur d'Alene Indian Tribe. In July 2013, a search of his home revealed a large number of eagle and hawk feathers as well as a wide array of bird skulls and feet. Based on duplicated parts, the following individual birds were identified: two bald eagles; two golden eagles; two rough-legged hawks; two red-tailed hawks; and two unspecified dark-morph hawks. Sonder had no permits to possess these items. Sentencing is scheduled for August 18, 2015.

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

United States v. Kelly Steen, No. 14-CR-00111 (D. Mont.), AUSA Kris McLean.

On May 15, 2015, Kelly Steen pleaded guilty to violating the Hazardous Materials Transportation Act (49 U.S.C. § 5124) for illegally transporting natural gas condensate from the North Dakota Bakken Shale oil fields.

Steen admitted to hauling a hazardous material known as "drip gas" from a pipeline station for Bakken products in December 2012. The drip gas was hauled from Watford City, N.D., to a Montana recycling center, with a bill of lading that identified it as nonhazardous "slop oil and water." The gas ignited when Steen attempted to pump the truck's contents into the



Fire caused by truck explosion

recycling center, injuring three employees and triggering a blaze that burned for eight days, until the local fire department ascertained what was actually in the truck's tanks.

Steen pleaded guilty to one count of transporting hazardous materials without placards.

Sentencing is scheduled for August 20, 2015. This case was investigated by the U.S. EPA Criminal Investigation Division.

Guilty Pleas

***United States v. Jorge Rocha*, Nos. 14-CR-00828, 00830 (W.D. Tex.), AUSA Bud Paulissen.**

On May 14, 2015, Jorge Rocha pleaded guilty to violating the Migratory Bird Treaty Act (16 U.S.C. § 703) for unlawfully offering to sell and selling migratory birds in 2011 and 2012. Juan Luis Guerra, Francisco Guerrero, and Tomas G. Perez previously pleaded guilty for their roles in selling to undercover agents migratory birds including a Red-tailed Hawk and Great Horned Owls.

Guerrero is scheduled to be sentenced on July 17, 2015; Perez on July 27, 2015; Rocha and Guerra are set for August 14, 2015.

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

***United States v. Brian Davis*, No. 3:15-CR-00122 (N.D.N.Y.), AUSA Michael Perry.**

On May 12, 2015, Brian Davis pleaded guilty to violating RCRA (42 U.S.C. § 6928(d)(2)(A)) for illegally transporting and storing hazardous waste.

In June 2013, Davis, the owner of Large Car LLC, a company that installs and removes old industrial plating equipment for re-use or recycling, agreed to remove a variety of chemicals (including arsenic, chromium, lead, and selenium) from a bankrupt facility in New Hampshire. Despite not having a RCRA permit, Davis transported them to his facility in New York, where he treated, stored, and disposed of them over the course of a year. Davis did not store the hazardous waste with labels, segregate it, or protect it from the elements. He treated and disposed of much of this waste by igniting and evaporating it, mixing it with other materials, and shipping it offsite without manifesting it.

Davis is scheduled to be sentenced on September 25, 2015.

This case was investigated by the U.S. EPA Criminal Investigation Division and the New York State Department of Environmental Conservation.

***United States v. Certified Environmental Services, Inc.*, No. 5:09-CR-00319 (N.D.N.Y.), ECS Trial Attorney Todd Gleason, former AUSA Craig Benedict, and AUSA Grant Jaquith.**

On May 8, 2015, Certified Environmental Services, Inc. (CES) pleaded guilty to a negligently releasing asbestos into the ambient air, thereby placing other persons in imminent danger of death or serious bodily injury. In May 2014, the Second Circuit reversed the trial convictions on multiple grounds and remanded the case for retrial.

CES, an asbestos air monitoring company and laboratory, along with managers Nicole Copeland and Elisa Dunn, and employee Sandy Allen, were previously convicted and sentenced for conspiring to violate the Clean Air Act, to commit mail fraud, and to defraud the United States. They also were convicted by at trial of substantive CAA violations and mail fraud, while CES and Dunn were additionally convicted of making false statements to federal law enforcement officials (18 U.S.C. §§ 371, 1341, 1001; 42 U.S.C. §7413(c)(1)).

The convictions stem from a decade-long scheme in which asbestos was illegally removed and left behind in numerous buildings and homes in Syracuse and other upstate

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Guilty Pleas

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New York locations, while CES gave the abatement contractors false air results to use to convince building owners that the asbestos had been properly removed.

This case was investigated by the U.S. EPA Criminal Investigation Division and the New York State Department of Environmental Conservation.

Sentencings

United States v. Hardrock Excavating LLC, No. 4:13-CR-00113 (N.D. Ohio), SAUSA Brad Beeson.

On May 28, 2015, Hardrock Excavating LLC was sentenced after pleading guilty to a felony Clean Water Act violation (33 U.S.C. § 1319(c)(2)(A)). Hardrock will pay a \$75,000 fine and make a \$25,000 community service payment to be divided between Friends of the Mahoning River and Midwest Environmental Enforcement Association. The company also will complete a two-year term of probation.

Hardrock provides services to the oil and gas industry in Ohio and Pennsylvania, including the storage of brine and oil-based drilling mud. There are approximately 58 mobile storage tanks at the facility and each holds approximately 20,000 gallons.

After receiving an anonymous call in January 2013, inspectors found a hose connected to a storage tank that was discharging wastewater into a stormwater drain at the facility. The stormwater drain flowed into an unnamed tributary of the Mahoning River and ultimately into the river, where an oily sheen was clearly visible. Company owner Benedict Lupo directed employee Michael Guesman on numerous occasions to discharge storage tanks at night over a several-month period. Guesman and Lupo pleaded guilty to violating the CWA and have been sentenced.

This case was investigated by the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources, the U.S. EPA Criminal Investigation Division, the Ohio Bureau of Criminal Investigation, the Youngstown Department of Public Works, and the Youngstown Fire Department.



Oil spill into tributary of Mahoning River

Sentencings

United States v. Edgardo Fournier, aka Edgardo Fournier-Nigaglioni, No. 1:14-CR-00153 (E.D. Calif.), AUSA Karen Escobar.

On May 26, 2015, Edgardo Fournier was sentenced to six years and ten months' incarceration for conspiring to manufacture, distribute, and possess with intent to distribute marijuana, and setting timber afire in the Sequoia National Forest (21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), 846; 18 U.S.C. § 1855). He also was ordered to pay \$6,509,329 in restitution to the U.S. Forest Service.

From April 2014 through July 2014, Fournier helped to cultivate more than 2,000 marijuana plants at an illegal grow site in the Smith Canyon area of the Sequoia National Forest. On July 11 and 12, the defendant lit fires near the grow site within the boundaries of the Kiavah Wilderness Area. The fires converged and became known as the Nicolls Fire. The Nicolls Fire destroyed about 1,680 acres of public land causing over \$6.5 million of damage. The marijuana grow site, which itself caused significant damage to the forest, was not damaged in the fire.

This case was investigated by the U.S. Forest Service, the U.S. Bureau of Land Management, and the Kern County Sheriff's Office.



Forest fire caused by illegal marijuana grow

United States v. AML Ship Management GMBH, Nos. 15-CR-00007, 00018 (D. Alaska), AUSA Yvonne Lamoureux, ECS Deputy Chief Joe Poux, and ECS Trial Attorney Jim Nelson.

On May 26, 2015, ship operator AML Ship Management GMBH was sentenced to pay \$800,000 in fines and community service for discharging almost 5,000 gallons of oily bilge water off the coast of Alaska and presenting false records to the Coast Guard. AML also will implement an environmental compliance plan during a three-year term of probation.

The company operated the *M/V City of Tokyo*, a Liberian-flagged vehicle carrier vessel. On August 22, 2014, the vessel departed South Korea, travelled through waters of the United States off the coast of Alaska, and arrived in Canada on September 2, 2014. After departing Canada, the ship arrived in Portland, Oregon, on September 5, 2014. On August 29, 2014, Chief Engineer Nicolas Sassin had discharged oil into the United States Exclusive Economic Zone off the coast of Alaska. While the *M/V City of Tokyo* was approximately 165 nautical miles south of the Aleutian Islands, Sassin used an illegal pump system to discharge approximately 4,500 gallons of oily bilge water directly overboard. The discharge created a sheen in the water that was witnessed by

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Sentencings

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crewmembers. Sassin dismantled the illegal pump system prior to the vessel's arrival in Portland.

AML will pay \$675,000 in fines and \$125,000 in community service to fund the Alaska SeaLife Center for projects and research, after pleading guilty to violating APPS and the Clean Water Act (33 U.S.C. §§ 1319 (c)(2)(A); 1321(b)(3)), 1908). Sassin was prosecuted and sentenced in Oregon.

This case was investigated by the U.S. Coast Guard Criminal Investigative Service.

United States v. George Estudante, No. 14-CR-000572 (D. Md.), ECS Trial Attorney Joel LaBissonniere.

On May 20, 2015, George Estudante was sentenced to two months' imprisonment, followed by three years' supervised release, with the first six months to include home detention. Estudante also will perform 100 hours of community service.

Estudante was a seafood dealer in New Bedford, Massachusetts. In March 2009, agents with the National Marine Fisheries Service (NMFS) determined that on 15 separate occasions Estudante illegally purchased Atlantic sea scallops in excess of what commercial fishing vessels were authorized to land. To conceal these illegal purchases, he filed false dealer reports with NMFS, reporting only the purchase of legally harvested quantities of scallops. Estudante previously pleaded guilty to violating the Lacey Act (16 U.S.C. §§ 3372 (d), 3373(d)) for submitting false records.

This case was investigated by NOAA's National Marine Fisheries Service.

United States v. Race Addington, No. 2:15-CR-00013 (E.D. La.), AUSA Emily Greenfield.

On May 20, 2015, Race Addington was sentenced to a one-year term of probation and 40 hours of community service. Addington previously pleaded guilty to making false statements (18 U.S.C. § 1001) in relation to blowout preventer testing on an offshore oil and gas platform located in the Gulf of Mexico.

In November 2012, production and well workover operations were being conducted on the platform and the blowout preventer system (BPS) had to be tested. A BPS is designed to ensure well control and prevent the release of oil and gas. Data from this BPS test was incomplete. After seeing the incomplete test results the following day, Addington directed employees to create a falsified BPS test. He subsequently presented the falsified test results to Bureau of Safety and Environmental Enforcement inspectors during a routine inspection of the platform. The following month, DOI investigators probed further into this BPS test. Addington told investigators the false chart he provided BSEE inspectors was a test of the chart recorder and that the inspectors mistakenly retrieved the wrong pressure chart from the files.

This case was investigated by the DOI OIG Energy Investigations Unit, with assistance from the DOI Investigations and Review Unit, BSEE, and the U.S. EPA Criminal Investigation Division.

Sentencings

United States v. Elite Estate Buyers Inc., d/b/a Elite Decorative Arts, No. 9:14-CR-90824 (S.D. Fla.), ECS Trial Attorney Gary Donner, AUSA Tom Watts-FitzGerald, and ECS Supervisory Paralegal Lisa Brooks, with assistance from ECS Senior Litigation Counsel Richard Udell.

On May 20, 2015, Christopher Hayes was sentenced to 36 months' incarceration, followed by two years' supervised release. His auction company, Elite Estate Buyers Inc., d/b/a Elite Decorative Arts, was ordered to pay a \$1.5 million fine to the Lacey Act reward fund. The court also banned the corporation from engaging in wildlife trading during a five-year term of probation.

The defendants previously pleaded guilty to an illegal wildlife trafficking and smuggling conspiracy (18 U.S.C. § 371) in which the auction house sold rhinoceros horns and objects made from rhino horn, elephant ivory, and coral smuggled from the United States to China.

Between January 2011 and March 2013, Elite Decorative Arts and Hayes participated in a far-reaching conspiracy in which the company helped smugglers traffic in endangered and protected species in interstate and foreign commerce, and falsified records and shipping documents related to the wildlife purchases. Elite Decorative Arts aided foreign buyers by directing them to third-party shipping stores that were willing to send the wildlife out of the country with false paperwork. Of the six black rhino horns sold by the defendants, two of them were sold for \$80,500 to Ning Qiu, a Texas resident involved in smuggling the horns to China. Qiu pleaded guilty to being part of a broader conspiracy to smuggle rhinoceros horns and items made from rhinoceros horns to Zhifei Li, the owner of an antique business in China and the ringleader of a criminal enterprise that smuggled 30 rhinoceros horns and numerous objects made from rhinoceros horn and elephant ivory worth more than \$4.5 million from the United States to China. Qiu was recently sentenced to serve 25 months in prison and Li was sentenced to 70 months in 2014.

Elite Decorative Arts and Hayes sold items made from rhinoceros horn, elephant ivory, and coral to an antiques dealer in Canada, who they then directed to a local shipper that agreed to mail the items in Canada without required permits. They also marketed raw rhinoceros horns, which they believed were from a black rhinoceros, to a person in Texas.

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

Sentencings

United States v. Duke Energy Corporation, Nos. 15-CR-00062, 00067, 00068 (E.D.N.C., M.D.N.C., W.D.N.C.), ECS Senior Trial Attorney Lana Pettus, AUSA Banu Rangarajan, AUSA Seth Wood, and SAUSA Jodi Mazer (E.D.N.C.); AUSA Erin Blondel (E.D.N.C.); AUSA Stephen Inman (M.D.N.C.); AUSA Joanna McFadden (M.D.N.C.); and AUSA Steven Kaufman (W.D.N.C.).

On May 14, 2015, three subsidiaries of North Carolina-based Duke Energy Corporation, the largest utility in the United States, pleaded guilty to nine violations of the Clean Water Act (33 §§ U.S.C. 1311, 1319, 1342) at several of its North Carolina facilities and was sentenced to pay a \$68 million fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the violations are directly related to the massive coal ash spill from the Dan River steam station into the Dan River near Eden, North Carolina, in



Basin area after coal ash spill

February 2014. The remaining violations were discovered as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities.

Under the plea agreement, both Duke Energy Carolinas and Duke Energy Progress, must certify that they have reserved sufficient assets to meet legal obligations with respect to their coal ash impoundments in North Carolina, obligations estimated to be approximately \$3.4 billion.

On February 20, 2015, informations were filed in the Eastern, Middle, and Western Districts of North Carolina charging misdemeanor violations of the CWA at the following Duke facilities: the Dan River steam station (Rockingham County), the Cape Fear steam electric plant (Chatham County), the Asheville steam electric generating plant (Buncombe County), the H.F. Lee steam electric plant (Wayne County), and the Riverbend steam station (Gaston County). The violations included unlawfully failing to maintain equipment at the Dan River and Cape Fear facilities and unlawfully discharging coal ash and/or coal ash wastewater from impoundments at the Dan River, Asheville, Lee and Riverbend facilities.

As part of their plea agreements, Duke Energy Business Services LLC, Duke Energy Carolinas LLC, and Duke Energy Progress Inc. will make a \$24 million community service payment to the National Fish and Wildlife Foundation to benefit the riparian environment

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Sentencings

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and ecosystems of North Carolina and Virginia. The companies also will provide \$10 million to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts of its coal ash basins. In addition, they will pay restitution to the federal, state, and local governments



Basin area prior to coal ash spill. Red circle marks area where storm water pipe broke.

that responded to the Dan River spill and be placed on five-year terms of probation.

Duke's subsidiaries operating 18 facilities in five states, including 14 in North Carolina, also will be required to develop and implement nationwide and statewide environmental compliance programs to be monitored by an independent court appointed monitor and be regularly and independently audited. Results of these audits will be made available to the public to ensure compliance with environmental laws and programs.

Approximately 108 million tons of coal ash are currently held in coal ash basins owned and operated by the defendants in North Carolina. Duke Energy Corporation subsidiaries also operate facilities with coal ash basins in South Carolina, with approximately 5.99 million tons of coal ash. Approximately 1.5 million tons of coal ash are being held in Kentucky; approximately 35.6 million tons are being held in Indiana; and 5.9 million tons in Ohio.

The companies also must excavate and close coal ash impoundments at the Asheville, Dan River, Riverbend and Sutton facilities.

Additionally, the holding company, Duke Energy Corporation, has guaranteed the payment of the monetary penalties and the performance of the nationwide and statewide environmental compliance plans.

The case was investigated by the U.S. EPA Criminal Investigation Division and the EPA Office of Inspector General, IRS Criminal Investigations, and the North Carolina State Bureau of Investigation, with assistance from the FBI and the Department of Defense Criminal Investigative Service.

Sentencings

***United States v. Mann Distribution, LLC*, No. 15-CR-00029 (D.R.I.), AUSA Terrence P. Donnelly and RCEC Peter Kenyon.**

On May 11, 2015, Mann Distribution, LLC was sentenced to pay a \$200,000 fine and complete a three-year term of probation after pleading guilty to violating the Clean Air Act (42 U.S.C. § 4213(c)(1)) for failing to implement a Risk Management Plan (RMP).

Mann Distribution was in the business of storing, distributing, and repackaging chemicals, some of which were designated as extremely hazardous. An EPA inspection in June 2009 revealed that 92 drums of hydrofluoric acid were being held on-site (with a concentration of 70%), for a total of 46,000 pounds of hydrofluoric acid. The CAA requires the development and implementation of a RMP when more than 1,000 pounds of regulated substance, such as hydrofluoric acid, is stored at a concentration above 50%.

As part of the sentencing, the company was ordered to issue a public apology and to comply with an administrative consent order.

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

***United States v. Mark Desnoyers*, No. 1:06-CR-00494 (N.D.N.Y.), former ECS Trial Attorney Colin Black, former AUSA Craig Benedict, and AUSA Carl Euranius.**

On May 7, 2015, the court re-sentenced Mark Desnoyers to time served (six months' home detention). The court stated that there is no need to punish Desnoyers further with any additional jail time. The judge also found that the Probation Department had incorrectly scored him as a "manager, leader, organizer," and declined to apply the enhancement. The government objected to both the sentencing guidelines ruling and the non-guidelines sentence.

The court did, however, make Desnoyers jointly and severally liable for the entire \$138,180 in restitution and not just the smaller percentage that Desnoyers previously had been held liable for. The court's ruling on the increased restitution for Desnoyers was based on Desnoyers' ability to pay the larger share (versus his co-defendants' inability to pay). This is the fourth sentencing in this case.

The Second Circuit found in November 2014 that the district court had erred in failing to explain significant discrepancies between its factual findings and the presentence investigation report, which the district court had adopted, on the question of whether Desnoyers should receive a longer sentence for being a leader or organizer of criminal activity. The appellate court also determined that the district court erroneously held the defendant liable for only a prorated portion of the restitution arising from his conspiracy conviction. The Second Circuit rejected the government's request to find the defendant's sentence substantively unreasonable and to reassign the case to another sentencing judge, and instead remanded the case to allow the original sentencing judge to correct his errors and resentence Desnoyers in accordance with the court of appeals' decision.

On September 4, 2013, Desnoyers was resentenced to spend 26 weekends in jail,

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Sentencings

(Continued from page 17)

plus pay restitution. It was the defendant's third sentencing after the Second Circuit reversed and remanded earlier in 2013. Desnoyers had previously been resentenced in October 2011 to serve a five-year term of probation and was held jointly and severally responsible for \$45,398 in restitution to victims of this illegal "rip and run" asbestos abatement scam. The court of appeals had remanded the case to the district court for reinstatement of the verdict, for entry of a judgment of conviction on the conspiracy count, and for resentencing. Desnoyers appealed the second sentence in December 2011.

Desnoyers was convicted by a jury in September 2008 of conspiring to violate the mail fraud statute and the Clean Air Act, substantive CAA violations, mail fraud, and two false statement violations (18 U.S.C. §§ 371, 1001, 1341; 42 U.S.C. §§ 7412(b), 7413 (c) (1)). Desnoyers, owner of Adirondack Environmental Associates, was an air monitor who took samples required to document the purported full and safe removal of asbestos from numerous commercial buildings and private homes. Evidence at trial established that Desnoyers secretly entered into agreements with the owners of asbestos removal companies to falsify his results.

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

United States v. Hon Kit Lau, No. 2:14-CR-00181 (E.D. La.), AUSA David Haller.

On May 6, 2015, Hon Kit Lau was sentenced to a three-year term of probation. Lau previously pleaded guilty to conspiring to violate the Lacey Act (18 U.S.C § 371) for his role in capturing North American Wood turtles (a threatened species) from the wild in Pennsylvania, shipping by mail throughout the United States, and illegally exporting them to Hong Kong.

Co-defendant Lawrence Treigle was sentenced to 15 months' incarceration, followed by two years' supervised release. Treigle was a postal worker whose role in the illegal turtle trade earned him thousands of dollars from Asian buyers. He received more than \$200,000 from the turtle sales, used false mailing labels to disguise his identity, and failed to declare that the packages contained turtles.

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



Turtles wrapped in socks

Sentencings

United States v. Daryl Fischer, No. 2:14-CR-00420 (M.D. Ala.), AUSA Gray Borden.

On April 28, 2015, Daryl Fischer and Russell Taylor were sentenced to pay fines and restitution after pleading guilty to violating FIFRA (7 U.S.C §§ 136j(a)(2)(G),136l(b)(1) (B)) for the improper use of the pesticide Aldicarb, marketed as Temik.

Fischer and Taylor were members of a hunting club. In January 2014, they sprinkled granules of Temik on portions of a deer carcass that was placed around the club property in an effort to kill coyotes. Their actions resulted in the death of several animals, including three fox-hunting dogs, two red-tailed hawks, and a black vulture. The defendants each will pay \$1,000 fines and are jointly and severally responsible for \$13,250 in restitution to be paid to two individuals. Fischer and Taylor also will complete one-year terms of probation, are prohibited from hunting all game animals for one year, and are responsible for publishing a public notice in the *Union Springs Herald* regarding the misuse of toxic pesticides.

This case was investigated by the U.S. EPA Criminal Investigation Division and the U.S. Fish and Wildlife Service.

Sentencings

United States v. Clyde Eldridge, No.14-CR-00117 (D. Maine), AUSA James Moore.

On April 6, 2015, Clyde Eldridge was sentenced to pay a \$5,000 fine and a one-year term of probation, after previously pleading guilty to making a false statement (18 U.S.C. § 1001).

Eldridge owned C&E Feeds, a feed and pet store. In 2010, an investigation commenced into the illegal use of cypermethrin, a pesticide. When questioned by agents, Eldridge denied keeping sales records involving this pesticide. The investigation revealed, however, that Eldridge sold cypermethrin on ten occasions to Cooke Aquaculture, and had made a note of the quantity sold for each transaction.

In April 2013, Cooke Aquaculture pleaded guilty in Canada and was sentenced to pay a \$490,000 fine for illegally using pesticides that killed hundreds of lobsters in waters that were a mile from Maine's border.

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

Environmental Crimes Section Attorneys

Position	Name	Phone
Chief	Deborah Harris	
Deputy Chief	Joseph Poux	
Assistant Chief	Thomas Ballantine	
Assistant Chief	Elinor Colbourn	
Assistant Chief	Kris Dighe	
Assistant Chief	Wayne Hettenbach	
Senior Litigation Counsel	Howard P. Stewart	
Senior Litigation Counsel	Richard Udell	
Senior Counsel	Robert Anderson (Montana)	
Senior Counsel	James A. Morgulec	
Senior Counsel	Rocky Piaggione	
Senior Trial Attorney	Georgiann Cerese	
Senior Trial Attorney	Christopher Costantini	
Senior Trial Attorney	Daniel Dooher	
Senior Trial Attorney	Todd Gleason	
Senior Trial Attorney	David Kehoe	
Senior Trial Attorney	Jeremy Korzenik	
Senior Trial Attorney	Lana Pettus	
Senior Trial Attorney	Jennifer Whitfield	
Trial Attorney	Cassandra Barnum	
Trial Attorney	Jennifer Blackwell	
Trial Attorney	Mary Dee Carraway	
Trial Attorney	Ryan Connors	
Trial Attorney	Adam Cullman	
Trial Attorney	Gary Donner	
Trial Attorney	Patrick Duggan	
Trial Attorney	Ethan Eddy	
Trial Attorney	Thomas Franzinger	
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Trial Attorney	Joel LaBissonniere (NOAA)	
Trial Attorney	Leslie Lehnert	
Trial Attorney	James Nelson	
Trial Attorney	Ken Nelson	
Trial Attorney	Brandy Parker (USCG)	
Trial Attorney	Shennie Patel	
Trial Attorney	Richard Powers	
Trial Attorney	Mark Romley (Colorado)	
Trial Attorney	Brendan Selby	
Trial Attorney	Lauren Steele	
Trial Attorney	Shane Waller	

Announcements

ECS is working with EOUSA on two issues of the U.S. Attorneys' Bulletin devoted to wildlife crimes. The first, published in the [May 2015 Bulletin](#) features articles on current issues related to the Lacey Act; wildlife charges in oil spill cases; forensics in wildlife cases; illegal, unreported, and unregulated (IUU) fishing and seafood fraud; the use of the criminal enforcement to stop the growing threat of invasive species; restitution in wildlife cases and the use of civil and administrative alternatives to criminal enforcement. These articles reflect the contributions of prosecutors in ECS, ENRD's Appellate, Law and Policy, and Wildlife and Marine Resources Sections, Assistant U.S. Attorneys, and agents, scientists and regulators at FWS, NOAA and USDA. The second issue will be published in September 2015.

New press releases have been added to the [ECS Webpage](#). We have also updated the ECS Contacts page.

Please send information regarding State and local cases to the [Regional Environmental Enforcement Association's Webpage](#). Updates on federal cases should be sent to [\[redacted\]](#)