

# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

*March 2015*



See *U.S. v. Waste Management of Hawaii et al.*, [below](#), for more details on this case.

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**EDITOR'S NOTES:**

If you have significant updates and/or interesting photographs from a case, please email them to [REDACTED]. If you have information concerning state or local cases, please send it directly to the [Regional Environmental Enforcement Association's webpage](#).

REMINDER: We are now producing a *separate* public version of the Environmental Crimes Section Monthly Bulletin. When submitting details about your case developments please bear in mind that the information you provide could be disclosed to the public. As such, it would be very helpful if you would include a press release whenever possible to help ensure that the facts we are using are publicly available. If a press release was not issued, then please provide only facts that are appropriate to disclose to the public.

- [Yates v. United States](#), No. 13-7451 (S. Ct. Feb. 25, 2015) (*slip op.*).
- [United States v. Martin Kimber](#), 777 F.3d 553 (2d Cir. 2015).

DISTRICT	CASES	CASE TYPE/ STATUTES
Eastern District of California	<a href="#">United States v. Joseph Cuellar et al.</a> <a href="#">United States v. Cruz Soria</a> <a href="#">United States v. Kiedock Kim</a>	<i>Demolition/CAA</i> <i>Marijuana Grower/Drug, Depredation</i> <i>Gold Mine Discharges/CWA, Depredation</i>
District of Connecticut	<a href="#">United States v. Thomas H. Faria</a>	<i>Pharmaceutical Company/CWA</i>
Middle District of Florida	<a href="#">United States v. Carmelo Giano et al.</a>	<i>Vessel/APPS</i>
Southern District of Florida	<a href="#">United States v. James O. McGriff</a>	<i>Sea Turtle Eggs/Lacey Act</i>
District of Hawaii	<a href="#">United States v. Waste Management of Hawaii, Inc., et al.</a>	<i>Medical Waste Discharges/CWA, False Statement, Conspiracy</i>
Central District of Illinois	<a href="#">United States v. Carl Keiser</a>	<i>Chemical Sales/ FIFRA, Mail Fraud, Tax Evasion</i>
Eastern District of Louisiana	<a href="#">United States v. Race Addington</a> <a href="#">United States v. Matthaïos Fafalios</a>	<i>Oil Rig Maintenance/ False Statements</i> <i>Vessel/ APPS, Obstruction, Witness Tampering</i>
District of Maryland	<a href="#">United States v. Michael Hayden et al.</a> <a href="#">United States v. Noly Torato Vidad et al.</a>	<i>Striped Bass Poaching/ Conspiracy, Lacey Act</i> <i>Vessel/APPS, Obstruction</i>

DISTRICT	CASES	CASE TYPE/ STATUTES
District of New Jersey	<a href="#">United States v. Daniel Archibald</a> <a href="#">United States v. Harbor House Seafood Inc., et al.</a>	<i>Whale Killing/MMPA</i> <i>Oyster Harvesting/Conspiracy, Lacey Act, Obstruction</i>
Western District of New York	<a href="#">United States v. Tier NY, LLC</a>	<i>Tank Cleaning/CAA</i>
Southern District of Ohio	<a href="#">United States v. William Bradley et al.</a> <a href="#">United States v. Donald W. Wainwright, Sr., et al.</a>	<i>RINS/ Conspiracy, HMTA</i> <i>Deer Breeding and Hunting/ Lacey Act, Conspiracy</i>
District of South Carolina	<a href="#">United States v. Nancy M. Stein et al.</a>	<i>Abandoned Waste/RCRA, Bank Fraud</i>
Southern District of West Virginia	<a href="#">United States v. John Shelton</a>	<i>Water Testing /CWA</i>

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## Significant Decisions

### **Yates v. United States, No. 13-7451 (S. Ct. Feb. 25, 2015) (*slip op.*)**

On February 25, 2015, the Supreme Court reversed the conviction of John Yates, a commercial fisherman who was convicted of throwing undersized fish overboard, in violation of 18 U.S.C. § 1519, which makes it a felony to knowingly alter, destroy, conceal, or falsify any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of the United States.

Yates operated a commercial fishing vessel in the Gulf of Mexico. During an offshore inspection, a federal agent found that the ship's catch contained undersized red grouper, in violation of federal regulations. The officer instructed Yates, the ship's captain, to separate the fish until the ship returned to port. After the officer departed, Yates told a crew member to throw the undersized fish overboard.

At trial, Yates argued that the term "tangible object" in the statute referred to objects used to store information, such as files or computer hard drives, and not fish. The District Court disagreed, and a jury convicted him. The Eleventh Circuit affirmed the conviction, concluding that section 1519 applied to the destruction or concealment of fish because they are "tangible objects." The Supreme Court reversed, holding that the meaning of the term "any . . . tangible object" in the statute was limited to items that can be used to store information. Thus, the provision cannot be used to prosecute cases involving the destruction of other types of evidence.

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### **United States v. Martin Kimber, 777 F.3d 553 (2d Cir. 2015).**

On January 30, 2015, the Second Circuit Court of Appeals affirmed the conviction and 168-month prison sentence imposed against Martin Kimber for his possession and use of a chemical weapon and consumer product tampering. The Court further upheld the imposition of upward adjustments under the Sentencing Guidelines for Kimber's targeting of Vulnerable Victims, USSG §3A1.1, and his Use of a Special Skill in the commission of his offenses, U.S.S.G. §2B1.3.

The defendant was a pharmacist with 36 years of experience. In 2010 he became angry when he received a large bill for medical services rendered at the Albany Medical Center. After unsuccessful efforts to have the Medical Center reduce his bill, on four occasions over a period of one year he spread mercury throughout the hospital, including in its emergency room triage area, post-operative unit, in bathrooms and elevators in common areas, and in the cafeteria, including placing it on heated food and under heating lamps where it would readily vaporize and could be more easily inhaled. Kimber's stated

purpose was to “caus[e] panic at the hospital and cafeteria and an attendant loss of business when people became fearful of gaining treatment and eating there.”

The Court of Appeals acknowledged that mercury is a neurotoxin that can be absorbed through ingestion, contact with unbroken skin and, if evaporated (which occurs at room temperature), through inhalation. Once in the body, mercury can linger for years. It can cause death, brain and nervous system damage, and other serious bodily injuries, with particularly severe effects on young children and *in utero* fetuses.

Kimber challenged the chemical weapons convictions contending that the recent Supreme Court decision, *Bond v. United States* 134 S. Ct. 2077 (2014), mandated reversal. *Bond* involved an effort by a woman to poison her husband’s lover. Bond spread toxic chemicals on areas touched by the woman, causing a minor burn to the victim’s thumb. The Supreme Court overturned Bond’s conviction, holding that 18 U.S.C. § 229(a)(1), a statute designed to combat terrorism, had been improperly used for a mere local and minor offense. The Second Circuit distinguished *Bond*, holding that Kimber’s conduct constituted “quintessential terrorism” designed to shut down a major level-one trauma center. It held that Kimber’s conduct created a significant risk of serious injury or death to random members of the public who came into contact with or inhaled the mercury. The Second Circuit also held that the district court properly enhanced Kimber’s sentence for targeting vulnerable victims; that is, extremely ill hospital patients who were not able to protect themselves from Kimber’s actions by seeking treatment elsewhere or leaving the immediate area. The Court further upheld an upward enhancement for use of a special skill in committing the crimes as Kimber possessed special knowledge as a pharmacist.

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## Informations/Indictments

**United States v. William Bradley et al., No. 2:15-CR-00044 (S.D. Ohio), ECS Trial Attorney Adam Cullman and AUSA Mike Marous.**

On February 23, 2015, the primary owners and operators of New Energy Fuels of Waller, Texas, and American Made Renewable Fuels of LaBelle, Florida, were charged by information with a conspiracy to fraudulently claim biodiesel tax and energy credits (18 U.S.C. § 371; 49 U.S.C. § 5124).

According to the information, between July 2010 and December 2011, William Bradley, Dean Daniels, Brenda Daniels, and Ricky Smith operated businesses they claimed produced biodiesel fuel. The defendants allegedly purchased a cheap, low-grade feedstock, minimally processed it, and then sold it as a crude fuel known as No. 6 oil. They subsequently ran a similar scheme at a facility in Logan, Ohio, known as Chieftain Biofuels. In total, the defendants received over \$5 million in fraudulent tax credits and over \$14 million worth of fraudulent renewable identification numbers (RINs).

The criminal conduct occurred in both Texas and Ohio. The charges were brought in Ohio by agreement with the various prosecuting offices. In addition to the conspiracy charge, Daniels also is charged with violating the Hazardous Materials Transportation Act for failing to placard a truck carrying hazardous materials.

This case was investigated by the U.S. EPA Criminal Investigation Division, IRS, FBI, and DOT.

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**United States v. Daniel Archibald, No. 2:15-mj-07037 (D.N.J.) AUSA Kathleen O' Leary.**

On February 19, 2015, Daniel Archibald was arrested on charges of violating the Marine Mammal Protection Act (16 U.S.C. § 1372 (a)(1)) for allegedly shooting at pilot whales off the New Jersey coast in August and September 2011.

According to the complaint, Archibald, a tuna fisherman, shot at pilot whales while aboard the fishing vessel "Capt. Bob." On September 24, 2011, an 11-foot, 740-pound pilot whale beached itself in Allenhurst, and died shortly thereafter. A necropsy revealed that a .30 caliber bullet lodged in the whale's jaw had caused an extensive infection resulting in the whale starving to death a month later. Officials were able to determine that the defendant's vessel was in New Jersey fishing waters for much of August of 2011, the approximate time that the whale was shot.

Additionally, Archibald allegedly posted a Facebook photograph of a tuna head on a hook with the caption "thanks a lot pilot whales." A search of Archibald's boat turned up a Mosin-Nagant, a World War II rifle that has not been manufactured in several decades. Forensic analysis revealed that the bullet found in the whale was similar in all general rifling characteristics to test bullets fired from Archibald's rifle. Archibald admitted that he had "sprayed" bullets at pilot whales in an effort to chase them away.

This case was investigated by the National Oceanic and Atmospheric Administration and the U.S. Fish and Wildlife Service.

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

**Contaminated storm water discharging from landfill outfalls into lagoon**

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 stormwater flooded into a landfill cell containing millions of pounds of waste

On February 11, 2015, a 14-count superseding indictment was returned charging Waste Management of Hawaii, Inc. (WMH); Joseph R. Whelan, 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 operated by WMH after heavy rainfall in December 2010 and January 2011.

The landfill's NPDES permit authorized WMH to discharge non-

including raw sewage, sewage sludge, and medical waste. WMH allegedly pumped millions of gallons of the contaminated storm water over a four-day period into coastal waters near the Ko Olina Resort. Lottig is alleged to have told inspectors from the Hawaii Department of Health Clean Water Branch (DOH-CWB) that none of this storm water had come into contact with waste from the cell.

On the evening of January 12, 2011, another heavy rainstorm struck Oahu. Unknown to officials, Whelan and WMH again allegedly caused the discharge of millions of gallons of contaminated storm water into the coastal waters near the resort that evening 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. Following the discharge, a company engineer allegedly falsely told DOH-CWB inspectors that the manhole the company used for the unauthorized discharges had been closed, when in fact he knew that it had been left open to serve as an overflow drain.

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

The superseding indictment retains twelve of the original thirteen counts, removing one of the alleged false statements by the WMH engineer made after the January 13, 2011, storm. The superseding indictment adds two new charges, alleging that the discharges that occurred on December 19-23, 2010, and January 12-13, 2011, also were discharges without a NPDES permit. That is, the superseding indictment now alleges that WMH violated conditions of its NPDES permit for uncontaminated storm water, and also discharged contaminated storm water without a separate NPDES permit required for that type of discharge.

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

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## Plea Agreements

### **United States v. Donald W. Wainwright, Sr., et al., No. 2:14-CR-00044 (S.D. Ohio) AUSA Mike Marous.**

On February 27, 2015, Donald W. Wainwright, Sr., pleaded guilty to fourteen of the fifteen counts charged stemming from the illegal operation of a White-tailed deer breeding and hunting facility. Wainwright pleaded guilty to conspiracy, wire fraud and Lacey Act violations (18 U.S.C. §§ 371, 1343; 16 U.S.C. §§ 1372(a)(2)(A), 1373(d)(1)(B)).

From April 2010 to December 2012, Wainwright conspired with others to sell deer that had not been tested for disease and for which documents certifying their testing had been falsified. Some of these deer were sold for breeding services, further increasing the risk of spreading disease.



**White-tailed deer**



Trophy-sized White-tailed deer can sell for hundreds of thousands of dollars apiece if they come from herds that have been government certified as free from tuberculosis, brucellosis, and chronic wasting disease (these herds are known as "certified herds" and the deer as "certified deer"). The certification status of a deer is critical to its value; farmers are intensely interested in the disease status of White-tailed deer herds because tuberculosis and brucellosis (and possibly chronic wasting disease) can be transmitted to cattle from deer. In turn, humans can contract tuberculosis from cattle via airborne transmission, and can contract both tuberculosis and brucellosis from consuming the meat or milk products of infected cattle. Due to the human health threat, cattle herds testing positive for any of these diseases are immediately quarantined by agricultural officials.

This case was investigated by the Ohio Department of Natural Resources, the U.S. Fish and Wildlife Service, and the Franklin County Prosecutor's Office.

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

On February 11, 2015, Race Addington pleaded guilty to a two-count information charging him with 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. Sentencing is scheduled for May 20, 2015.

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 potential release of oil and gas. Data from this BPS test was incomplete. After seeing the incomplete test results, Addington allegedly directed employees to create a new falsified BPS test, which he presented 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.

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## Sentencings

**United States v. Michael Hayden et al., No. 1:13-CR-00649 (D. Md.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Shennie Patel, AUSA Michael Cunningham, and ECS Paralegal Casey Layman.**

On February 27, 2015, fisherman Michael Hayden was sentenced to 18 months' incarceration followed by six months' home confinement and three years' supervised release for his role in a scheme to illegally harvest striped bass. Hayden will pay a \$40,000 fine and is jointly and severally responsible with William Lednum for \$498,293 in restitution.

Hayden is the final fishermen to be sentenced in this case involving the illegal poaching of hundreds of thousands of pounds of Striped Bass from the Chesapeake Bay, in violation of the Lacey Act (16 U.S.C. §§ 3372(a)(4), 3373(d)(1)(B)). Co-defendants Kent Sadler, Lawrence "Daniel" Murphy, and Lednum engaged in a multi-year scheme in which they falsified paperwork related to their harvests and submitted those falsified documents to the State of Maryland. The State, in turn, unwittingly

provided false information to numerous federal and interstate agencies responsible for setting harvest levels along the Eastern Seaboard.

This case was investigated by the Maryland Department of Natural Resources and the U.S. Fish and Wildlife Service.

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**United States v. Harbor House Seafood Inc., et al., No. 1:11-CR-00520 (D.N.J.), ECS Assistant Chief Wayne Hettenbach, ECS Trial Attorney Patrick Duggan, and AUSA Matt Smith.**



On February 27, 2015, Mark Bryan and his company, Harbor House Seafood, Inc., were sentenced for their involvement in a scheme to illegally harvest oysters. They were the final defendants to be sentenced in this case

**Reeves brothers offloading oysters from one of their harvest vessels**

involving the overharvest and sale of over \$750,000 worth of oysters from the Delaware Bay.

In 2012, the defendants were convicted of Lacey Act, obstruction, and conspiracy violations (18 U.S.C. §§ 371, 1505, 1519; 16 U.S.C. §§ 3372, 3373) related to their overharvest and sale of oysters from the Delaware Bay. The evidence at trial showed that, for more than four years, brothers Todd and Thomas Reeves overharvested oysters from the Bay and created false dealer reports and harvest records to hide their activity from conservation officers. The Reeves also created false state and FDA health records so that regulators would not detect their overharvest. The Reeves then sold their illegal oysters through their company, Shellrock LLC, to Bryan of Harbor House Seafood, a wholesale and retail seafood operator in Delaware. Kenneth Bailey engaged in similar conduct in 2006 and 2007, overharvesting oysters from public oyster beds in the Bay. Bailey then created false dealer reports, harvest reports, and bills of lading to conceal his overharvesting from authorities.

Bryan and Todd Reeves were sentenced to 26 months' incarceration, followed by three years' supervised release. Bryan will pay a \$62,500 fine and Todd Reeves will pay a \$7,000 fine. Thomas Reeves was sentenced to 16 months' incarceration, followed by three years' supervised release. He too will pay a \$7,000 fine. Renee Reeves was sentenced to pay a \$2,500 fine and will serve a five-year term of probation. Shellrock LLC, also known as "Reeves Brothers," was ordered to pay a \$70,000 fine and Harbor House was ordered to pay a \$250,000 fine. Both will complete five-year terms of probation. These five defendants were further held jointly and severally liable for \$140,000 in restitution to be paid to the State of New Jersey for the restoration of oyster beds in Delaware Bay. Todd and Thomas Reeves were additionally ordered to forfeit \$144,000 as substitute assets for the vessels that they used to overharvest the oysters.

Finally, Kenneth Bailey was sentenced to six months' incarceration, followed by six months' home confinement, and three years' supervised release. Bailey also will pay a \$10,000 fine and forfeit \$75,000 in substitute assets for the vessels that he used to overharvest the oysters.

All defendants, except for Renee Reeves and Kenneth Bailey are appealing their sentences.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, and the New Jersey Department of Environmental Protection Division of Fish and Wildlife.

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**United States v. Kiedock Kim, No. 2:10-CR-00255 (E.D. Calif.), AUSA Samuel Wong.**

On February 26, 2015, Kiedock Kim was sentenced to six months in prison, and ordered to pay \$107,160 in restitution to BLM after previously pleading guilty to a negligent Clean Water Act violation and depredation of United States property (18 U.S.C. § 1361; 33 U.S.C. §§ 1311(a), 1319 (c)(1(A))).

Kim was the mill superintendent for the French Gulch Gold Mine in Shasta County. Mining operations generated a mix of wastewater, tailings, and slurry that contained arsenic and lead. Kim and other mine officials claimed that the mine operated in a closed loop system, reusing this wastewater. The mine, however, generated more liquid wastes than it could handle. Operators discharged liquid wastes into abandoned mines, an improvised leach field, a waste rock area, and on a county road surrounding the mine. Many of these discharges were on BLM land and resulted in hazardous levels of arsenic and lead contaminating the BLM property. The mine also used waste rock containing high levels of lead and arsenic to resurface a county road leading to the mine that was on BLM land.

Kim also ordered the construction of a substandard pipe system to move contaminated liquid wastes from the mill to an abandoned mine on BLM property. On June 24, 2006, the pipe system broke and approximately ten tons of mine tailings were discharged over several hours into Scorpion Gulch Creek, which eventually leads into the Whiskeytown National Recreation Area reservoir. The mine tailings travelled about seven miles from the mine to the Whiskeytown reservoir, which empties into the Sacramento River.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from BLM, the National Park Service, and the California Central Valley Regional Water Quality Control Board.

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**United States v. Joseph Cuellar et al., No. 1:10-CR-00285 (E.D. Calif.), AUSA Samuel Wong.**

On February 23, 2015, Joseph Cuellar, Patrick Bowman, and Rudolph Buendia were ordered to pay \$1,801,832 in restitution to 65 victims exposed to airborne asbestos as a result of the defendants' unlawful asbestos abatement at the former Castle Air Force Base in Atwater, California. The court also denied Cuellar's request to serve his previously imposed 27 month sentence of incarceration in a halfway house or home detention, and cited that the court did not want to indulge in an unjustified sentencing disparity between the three similarly situated defendants (Bowman and Buendia are currently serving 27 month and 24 month sentences of incarceration, respectively). The court had earlier urged the government to reconsider Rule 11(c)(1)(C) plea agreements stating that the community would be better off if the defendants were not incarcerated.

Firm Build, Inc., performed unlawful asbestos abatement work between September 2005 and the end of January 2006 as part of a long term renovation project to convert part of the former Castle Air Force Base into an automotive training facility. Bowman was the company president, Cuellar was the administrative manager, and Buendia was the construction project site manager. During the renovation, Firm Build directed its employees and high school students from the Workplace Learning Academy to remove and dispose of asbestos-containing insulation on pipe and other facility components without utilizing proper protective equipment or taking protective measures.

All three previously pleaded guilty to knowingly violating NESHAP asbestos work practice standards by failing to properly dispose of asbestos-containing waste material generated by the demolition and renovation project (42 U.S.C. §§ 7412, 7413(c)(1)). The restitution award will be used to compensate the victims for the costs of eleven periodic medical monitoring examinations over a period of 50 years. The victims included workers exposed to airborne asbestos at the work site and family members of such workers who were secondarily exposed to asbestos when workers brought the asbestos home on their persons and clothing.

Cuellar is appealing his sentence.

This case was investigated by the Merced County District Attorney's Office, San Joaquin Valley Unified Air Pollution Control District, and the U.S. EPA Criminal Investigation Division.

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**United States v. John Shelton, No. 14-CR-00189 (S.D.W.V.), AUSAs Blaire Malkin and Larry Ellis.**

On February 25, 2015, John Shelton was sentenced to 21 months' incarceration, followed by three years' supervised release. Shelton pleaded guilty to conspiring to violate the Clean Water Act (18 U.S.C. § 371) by falsifying water sample tests between 2008 and July 2013.

Shelton is an employee of a certified lab that was authorized by state regulators to test samples taken from dozens of local mining operations. To ensure compliance, Shelton admitted to, among other things, diluting samples using distilled water and substituting samples that were within permitted limits.

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

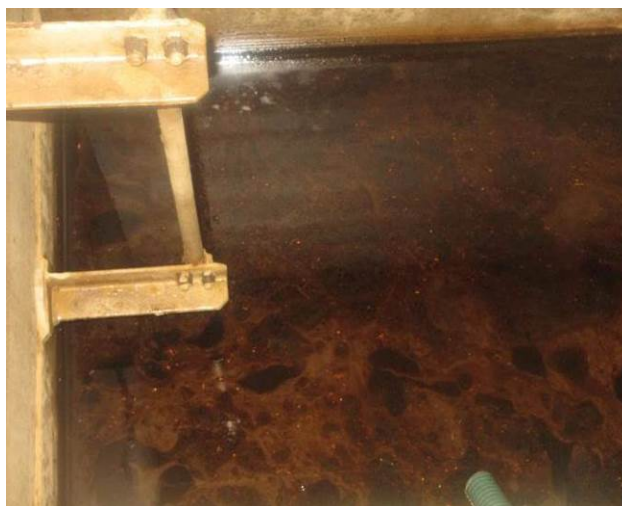
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**United States v. Noly Torato Vidad et al., Nos. 1:14-CR-00505, 1:15-CR-00005 (D. Md.), ECS Senior Trial Attorney David Kehoe, ECS Paralegal Jessica Pannett, former ECS Attorney Stephen DaPonte, and AUSA Michael Cunningham.**

On February 20, 2015, Noly Torato Vidad was sentenced to eight months' incarceration, followed by one year of supervised release. Vidad was the chief engineer on board the *M/V Selene Leader* and previously pleaded guilty to violations of the APPS and obstruction of justice (33 U.S.C. § 1908; 18 U.S.C. § 1505).

Hachiuma Steamship Co, LTD, operated the vessel between August 2013, and January 2014. In January 2014, under the company's supervision, engine room crew members used rubber hoses to transfer oily wastes between oil tanks on the ship, bypassing pollution control equipment, and then discharged the wastes directly overboard. These discharges were not recorded in the vessel's oil record book. When the Coast Guard boarded the vessel in Baltimore on January 31, 2014, Vidad obstructed the Coast Guard's investigation by falsifying the oil record book, destroying documents, lying to the Coast Guard, and instructing subordinate crew members to lie to the Coast Guard.

The company was recently sentenced to pay \$1.8 million in fines and community service, complete a three-year term of probation, and implement an environmental compliance program, after



**Waste oil stored in soot collection tank for overboard dumping**



pleading guilty to an APPS oil record book violation. First engineer Ireneo Tomo Tuale pleaded guilty to an APPS violation (33 U.S.C. § 1908(a)).

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

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**United States v. Carl Kieser, No. 2:12-CR-20072 (C.D. Ill.), AUSA Eugene Miller and SAUSA James Cha.**



**Diuron 80DF**

On February 19, 2015, Carl Kieser was sentenced to 97 months' incarceration, followed by three years' supervised release, after being convicted on charges of mail fraud, tax evasion, and illegal use of a pesticide in violation of FIFRA (7 U.S.C. §§ 136j(a)(2)(G), 136(b)(1); 18 U.S.C. § 1341, 26 U.S.C. § 7201). Kieser also will pay \$75,862 in restitution.

Kieser owned and operated Aquatic Control of Illinois. Between June 2006 and September 2012, Kieser produced and sold a product called "Pond Clear Plus," which he falsely advertised as a product that could control lake weeds and algae "Mother Nature's Way," with "No Chemicals" using a "biological method with live bacteria that dissolves plant nutrients, black muck, and rotten egg odor."

Kieser knew at the time that "Pond Clear Plus" actually contained the chemical pesticide Diuron 80DF, which was prohibited by its EPA-approved labeling from being applied directly to water. Kieser produced "Pond Clear Plus" by mixing Diuron 80DF with other ingredients, including a blue pond dye. Diuron 80DF was a pesticide registered under FIFRA, and federal law prohibited the use of Diuron 80DF in a manner inconsistent with its labeling.

Kieser sold and shipped the Diuron-laced "Pond Clear Plus" to customers in unlabeled jugs, and on occasion applied it to customers' ponds and lakes as part of an algae-control service. Some customers experienced fish kills following the application of Pond Clear Plus to their ponds and lakes. As a result of his false and fraudulent advertising and representations, Kieser obtained more than \$350,000 in proceeds from his sales of "Pond Clear Plus," and failed to pay any federal income tax on his profits from 2008 to 2011.

This case was investigated by the U.S. EPA Criminal Investigation Division, and the IRS, with assistance from the Illinois Department of Natural Resources, the Illinois EPA, and the Illinois Department of Agriculture.

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**United States v. James O. McGriff, No. 1:14-CR-14051 (S.D. Fla.), AUSA Lauren Jorgensen.**

**Sea turtle eggs recovered from defendant's backpack**

On February 13, 2015, James O. McGriff was sentenced to two years' incarceration, followed by three years' supervised release. McGriff previously pleaded guilty to a Lacey Act violation (16 U.S.C. § 3372 (a)(1)) for removing sea turtle eggs from a beach on Hutchinson Island in August 2014. He has a prior conviction from 2002 for a similar offense.

In August 2014, a witness observed and photographed McGriff as he dug into sea turtle nests, removing the eggs. Shortly after, wildlife officials confronted McGriff and placed him under arrest for trespassing into a private community that was clearly marked "No Trespassing." After the witness positively identified McGriff, the officials discovered two additional nests had been disturbed. They also found a backpack nearby that contained 299 sea turtle eggs. Twelve of the eggs were held as evidence, and the remaining 287 sea turtle eggs were returned to nests. After being advised of his rights, McGriff admitted to

poaching two nests.

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

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**United States v. Thomas H. Faria, No. 3:14-CR-00149 (D. Conn.), AUSA Hal Chen and SAUSA Peter Kenyon.**

On February 13, 2015, Thomas H. Faria was sentenced to pay a \$30,000 fine, complete a three-year term of probation, and perform 300 hours of community service. Faria previously pleaded guilty to a felony Clean Water Act violation (33 U.S.C. § 1319(c)(2)(A)).

The defendant was a former chief executive officer and president of Faria Limited, LLC, doing business as Sheffield Pharmaceuticals. Sheffield manufactures a wide range of over-the-counter pharmaceutical creams, ointments, and toothpastes. From approximately 1986 to July 2011, Sheffield discharged industrial wastewater from its New London manufacturing operations to the POTW without a permit. The POTW discharges to the Thames River in southeastern Connecticut. During this 25 year period, Sheffield lacked a pretreatment system at its factory to treat its industrial wastewater prior to discharge to the New London POTW, performed no regular monitoring of its discharges of industrial wastewater, and submitted no monthly monitoring reports to local regulatory officials.

After becoming the company's president and CEO in April 2003, Faria was told by employees that Sheffield was discharging pollutants, including toxic levels of zinc, in its industrial wastewater without a permit. After being informed that the company would need to install a wastewater treatment system in order to obtain a permit, the defendant declined to approve the expense and allowed the facility to continue discharging untreated industrial wastewater. Faria continued this practice despite receiving advice from four environmental consulting firms (hired by the company) advising him that this was illegal.

Only after receiving a notice of violation from local regulators in April 2011 did the company finally install the wastewater treatment system the following July. As part of the plea, Faria resigned his position as CEO and company president.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Connecticut Department of Energy and Environmental Protection.

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**United States v. Carmelo Giano et al., Nos. 8:14-CR-00500, 00501, 00508 (M.D. Fla.), ECS Trial Attorney Ken Nelson, AUSA Matthew Mueller, and ECS Paralegal Jessica Pannett.**

On February 9, 2015, Carmelo Giano, chief engineer for the *M/T Marigola*, was sentenced after previously pleading guilty to an APPS violation (33 U.S.C. § 1908(a)). Giano was sentenced to pay a \$5,000 fine and serve a one-year term of probation.

During a routine inspection of the *Marigola* in April 2014, crew members provided Coast Guard inspectors with cellphone video of a hose being used to discharge oily bilge waste directly overboard. After examining valves and finding oily residue on the hose, the inspectors confirmed



**Bypass hose**

that the hose had been used to bypass pollution prevention equipment and to discharge wastes overboard. None of these discharges had been recorded in the ship's oil record book.

The vessel owner, Carbofin S.P.A., previously pleaded guilty to three APPS violations for maintaining a false ORB that failed to record illegal discharges of oily wastes in 2013 and 2014. Second engineer Alessandro Enrico Messori, who also pleaded guilty to violating APPS, was previously sentenced to pay a \$1,500 fine, a five-year term of probation, and must obtain permission from the government before returning to the U.S. while on probation.

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

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**United States v. Cruz Soria, No. 1:12-CR-00283 (E.D. Calif.), AUSA Karen Escobar.****Illegal rat poison found at marijuana grow site**

legged frog, the Valley elderberry longhorn beetle, and the endangered Southwestern willow flycatcher.

Soria admitted that he was responsible for cultivating 454 marijuana plants in the Reserve. Among the plants, the officers found several highly toxic chemicals, including Fosfuro de Zinc or zinc phosphide, a rat poison that is illegal to use in the United States without a license, and Furadan, an insecticide banned by the EPA for use on crops to be consumed by humans. Co-defendant Mairo Correa-Garcia was previously sentenced to eight months' incarceration.

This case was investigated by the U.S. Forest Service, ICE Homeland Security Investigations, the California Department of Fish and Wildlife, and the Kern County Sheriff's Office.

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**United States v. Matthaïos Fafalios et al., No. 2:14-CR-00128 (E.D. La.), ECS Trial Attorney Ken Nelson, AUSAs Gregory Kennedy and Emily Greenfield, ECS Paralegals Jessica Pannett and Christopher Kopf, and OLS Tech Elga Orzo.**

On February 3, 2015, Chief Engineer Matthaïos Fafalios was sentenced to eight months' community confinement as a condition of a one-year term of probation. Fafalios was convicted by a jury in December 2014 on all three counts charged: APPS, obstruction of justice, and witness tampering (18 U.S.C §§ 1505, 1512(b)(3); 33 U.S.C. § 1908(a).

During the last week of December 2013, Fafalios ordered a *Trident Navigator* crew member to construct an illegal bypass to allow for the illegal overboard discharge of oily bilge waste. Several metric tons of waste were discharged, circumventing the ship's oil water separator and oil content monitor, none of which were recorded in the oil record book.

On January 18, 2014, U.S. Coast Guard personnel boarded the vessel while it



***Trident Navigator* oil water separator**



was anchored in the Mississippi River near New Orleans. A tip from a crewmember led them to discover the bypass. Fafalios was uncooperative and obstructed the Coast Guard investigation by instructing crewmembers to falsely deny knowledge of the bypass. He also deleted from a crew member's cell phone a photograph of the bypass.

Operator Marine Managers Ltd., previously pleaded guilty to APPS and obstruction violations and was sentenced to pay a \$800,000 fine, make a \$100,000 community service payment, complete a three-year term of probation, and implement an environmental compliance plan.

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

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**United States v. Nancy M. Stein et al., Nos. 8:13-CR-00724, 00726, (D.S.C.) AUSA William Lucius.**



**Abandoned hazardous waste with hazardous waste sign**

On January 21, 2015, Nancy M. Stein was sentenced to serve 73 months' incarceration, followed by three years' supervised release, after previously pleading guilty to RCRA and bank fraud violations (18 U.S.C. § 1344; 42 U.S.C. § 6928(d)(2)(A)). Stein also was ordered to pay \$1,720,623 in restitution for clean-up costs. Stein's company, American Screw and Rivet Corporation (ASR), was held jointly and severally responsible for the restitution and will complete a three-year term of probation.

In May 2011, inspectors discovered more than 35,000 gallons of corrosive materials in the company's former finishing plant that had been abandoned amid bankruptcy proceedings. For decades, ASR used multiple banks to obtain loans on nonexistent collateral, including fake invoices and machines that did not exist or that had altered serial numbers. Creditors forced the company into bankruptcy in late 2010, shuttering the main plant. Documents show the company owed more than \$24 million to creditors.

This case was investigated by the U.S. Secret Service, the U.S. EPA Criminal Investigation Division, and the South Carolina Department of Health and Environmental Control.

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**United States v. Tier NY, LLC, No. 1:14-mj-02096 (W.D.N.Y.), AUSA Aaron Mango.**

On January 5, 2015, Tier NY, LLC was sentenced after previously pleading guilty to negligent endangerment under the Clean Air Act (42 U.S.C. § 7413(c)(4)). The company will pay a \$25,000 fine, complete a two-year term of probation, and implement an environmental compliance plan, to include the requirement that it spend an additional \$25,000 in capital improvements.

Tier is in the business of cleaning tanks that carry hazardous materials, including titanium tetrachloride. This chemical, when combined with water, forms hydrochloric acid gas. In June 2013, as a tank that had held titanium tetrachloride was being cleaned, employees added a caustic solution of sodium hydroxide and water into the container causing the release of an unknown quantity of hydrochloric acid gas. The gas travelled to an adjacent business and placed people there in imminent danger of death or serious bodily injury.

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

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