



Monthly

Bulletin

Environmental Crimes Section

April 2016

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In Memory of Herb Johnson:

On April 12, 2016, ECS Retired Senior Counsel Herb Johnson passed away. Herb, a cornerstone of the Environmental Crimes program, was a mentor and teacher who tirelessly and cheerfully devoted himself to environmental protection. Herb leaves an indelible mark in the hearts and minds of those who were privileged to work with him.

“When misused, highly toxic pesticides can have catastrophic consequences, and that’s why those who are certified to apply them must do so responsibly and lawfully,” said Assistant Attorney General John C. Cruden for the Justice Department’s Environment and Natural Resources Division. “The facts in this case show the Terminix companies knowingly failed to properly manage their pest control operations in the U.S. Virgin Islands, allowing pesticides containing methyl bromide to be applied illegally and exposing a family of four to profoundly debilitating injuries.” [From press release for information filed in [U.S. v. Terminix](#).]

District/Circuit	Case Name	Case Type/Statutes
Third Circuit Court of Appeals	United States v. Robert Keszey	Reptile Trafficking/Lacey Act
Fifth Circuit Court of Appeals	United States v. Matthaios Fafalios	Vessel/APPS
District of Alaska	United States v. James Slade	Mining Operation/CWA
Eastern District of California	United States v. Francisco Javier Gomez-Rodriguez	Marijuana Grow /Drug Charges, Depredation of Public Land
Northern District of California	United States v. James Tong	Developer/ESA, Securities Fraud
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District of Delaware	United States v. Joseph L. Capano	Developer/CWA, Wetlands
Northern District of Florida	United States v. Briese Schifffahrts GmbH & Co. KG	Vessel/APPS, Witness Tampering
Southern District of Florida	United States v. Sunland Pest Control Services, Inc.	Fumigant Application/FIFRA, False Statement
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Central District of Illinois	United States v. Eric Andrews	UST Fraud/Conspiracy, Mail Fraud
Eastern District of Louisiana	United States v. Walter Oil & Gas Corporation	Oil and Gas Platform/OCSLA
District of Massachusetts	United States v. Berkshire Power Plant Company	Power Company/CAA Tampering, Conspiracy, False Statements, Federal Power Act
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Northern District of Mississippi	United States v. William Manclark	Aircraft Painting Facility/RCRA
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Southern District of New York	United States v. Joseph Chait	Elephant Ivory, Rhino Horn, Coral Sales/Lacey Act, Conspiracy

District/Circuit	Case Name	Case Type/Statutes
Western District of New York	United States v. Anastasios Kolokouris United States v. Acquest Transit, LLC	Asbestos Removal/CAA Wetlands/Criminal Contempt
Eastern District of Pennsylvania	United States v. William Barnes United States v. James J. McCullagh	Renewable Fuels Fraud/ Conspiracy, RINS Worker Death/OSHA, False Statement
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Southern District of Texas	United States v. Phillip Joseph Rivkin	Renewable Fuels Fraud/Mail Fraud, RINS
District of the Virgin Islands	United States v. Terminix International Company LP	Fumigant Application/FIFRA
Western District of Washington	United States v. Angelakos (Hellas) S.A.	Vessel/APPS, False Statement, Falsification of Records

Decisions

***United States v. Robert Keszey*, ___ Fed. Appx. ___, 2016 WL 827932 (3d Cir. Mar. 3, 2016).**

On March 3, 2016, the Third Circuit Court of Appeals issued an unpublished opinion affirming defendants' convictions for conspiring to violate the Lacey Act.

Robert Keszey and Robroy MacInnes co-owned the Glades Herp Farm in Bushnell, Florida. Keszey had been featured in the Discovery Channel show "Swamp Brothers." Undercover investigations by state and federal wildlife officials revealed that the defendants were trading in Eastern timber rattlesnakes illegally taken from the wild in New York, as well as Eastern indigo snakes, which are listed as threatened under the Endangered Species Act. MacInnes and Keszey were convicted and sentenced, respectively, to 18 months and 12 months and one day in prison.

The Third Circuit upheld their convictions, rejecting each of their evidentiary challenges. First, the Court found that the district court did not err in excluding a recorded conversation between the government's cooperating witness and a state investigator because the witness "said little, if anything, of value" so "the probative value of the conversation was substantially outweighed by the danger of unfair prejudice." Second, the Court found that the district court did not unfairly limit the scope of the defendants' cross examination and that "any limitation imposed fell within the broad scope of discretion afforded to district courts when narrowing the scope of cross-examination to avoid cumulative, repetitive, or otherwise marginally relevant evidence." Third, the Court held that cross-examination on certain topics was properly prohibited because the government did not raise those issues in its direct examination. Fourth, the Third Circuit upheld the district court's decision to exclude both expert and lay testimony from defense witness Terry Wilkins, stating that "[t]he record clearly reveals that Wilkins was not qualified to testify on Defendants' proposed topics." Lastly, because the Court found no error at trial, it declined to address the argument that the cumulative effect of the district court's evidentiary rulings violated the defendants' rights under the Confrontation Clause.

Decisions

***United States v. Matthaios Fafalios*, No. 15-30146, 2016 U.S. App. LEXIS 4658 (5th Cir. Mar. 14, 2016).**

On March 14, 2016, the Fifth Circuit vacated Fafalios' conviction for violating the Act to Prevent Pollution from Ships (APPS) by failing to maintain an oil record book (ORB) and remanded the case to the Eastern District of Louisiana for an entry of a judgment of acquittal on that count. Fafalios' convictions for Obstruction of Justice and Witness Tampering were not appealed by the defendant.

After being convicted by a jury on all three counts charged in the indictment, Fafalios, who was the chief engineer on the vessel, renewed his Rule 29 motion concerning the charge for failing to maintain an ORB in violation of 33 U.S.C. §1908(a). His motion was denied. On appeal, Fafalio argued that the government had failed to offer evidence that he was the "master" of the vessel and that, under the plain language of the regulation, only the "master or other person having charge of [the] ship" is responsible for the ORB.

The Court agreed with Fafalios's argument. The Court held that only the "master or other person having charge of the ship" is responsible for maintenance of the ORB under the plain language of one section of the APPS regulations (33 CFR §151.25(j)). The government argued that the defendant had an obligation to record the dumping and sign the entry in the ORB as the person "responsible for the operation" under another section of the APPS regulations (33 CFR §151.25(h)), because he was the person who had ordered the dumping of the oily bilge water into the ocean,

The Court disagreed with the government's argument. The Court stated that the government was conflating a failure to "record" a dumping with a failure to "maintain" the ORB going forward. While the Court recognized that the appellant ignored his responsibility to record his action, this action occurred while he was still in international waters, and found that nothing in the regulations indicates that a failure to sign a record entry is a continuing offense.

The Court found that the defendant could have been convicted under an aiding and abetting theory citing *Jho*, 534 F.3d 398. However, the trial judge had refused the government's request to give an aiding and abetting jury instruction, based on the fact that the government had not explicitly charged 18 U.S.C. §2, and so that argument was unavailable on appeal.

Indictments/Informations

United States v. Terminix International Company LP, No. 16-CR-00010 (D.V.I.), ECS Senior Litigation Counsel Howard Stewart, AUSA Kim L. Chisholm, RCEC Patricia Hick, and ECS Paralegal Ashley Patterson-Chandler.

On March 29, 2016, an information and plea agreement were filed against pest control corporation Terminix International Company LP (TERMINIX LP) and its U.S. Virgin Islands operation, Terminix International USVI LLC (TERMINIX, USVI). The companies have been charged with multiple FIFRA violations (7 U.S.C. § 136j (a)(2)(G)) for illegally applying fumigants containing methyl bromide in multiple residential locations in the U.S. Virgin Islands, including a condominium resort in St. John where a family of four fell seriously ill in 2015 after the unit below them was fumigated.

TERMINIX LP and TERMINIX, USVI have agreed to pay a total of \$10 million in criminal fines, community service, and restitution payments. Except for completing one government contract at the Port of Baltimore, TERMINIX LP has stopped using pesticides containing methyl bromide in the United States and the U.S. Territories. Under the agreement, TERMINIX, USVI will pay \$5 million in fines and \$1 million in restitution to the EPA for response and clean-up costs at the St. John resort. TERMINIX LP will pay a fine of \$3 million and fund a \$1 million community service project in the Virgin Islands to the National Fish and Wildlife Foundation for the purpose of engaging a third party to provide training to pesticide applicators in the Virgin Islands.

The EPA banned the indoor use of methyl bromide products in 1984. The few remaining uses are severely restricted due to their acute toxicity, and must be applied only by a certified applicator. After the government began its investigation, TERMINIX LP voluntarily ceased its use of methyl bromide in the U.S. and in U.S. territories, except for the one remaining project in Baltimore.

In October 2014 and March 2015, the defendants knowingly applied restricted-use fumigants at the Sirenusa resort in St. John for the purpose of exterminating household pests. The companies also applied the chemical in 12 residential units in St. Croix and one additional unit in St. Thomas between September 2012 and February 2015. TERMINIX, USVI provided pest control services in the Virgin Islands including fumigation treatments for Powder Post Beetles, a common problem in the islands. These fumigation treatments were referred to as “tape and seal” jobs, meaning that the affected area was to be sealed off from the rest of the structure with plastic sheeting and tape prior to the introduction of the fumigant. Customers were generally told that they could not enter the building for two to three days after a treatment.

On March 18, 2015, two TERMINIX, USVI employees performed a fumigation pesticide treatment on a lower rental unit at Sirenusa in St. John. The upper unit was



Methyl Bromide Canister

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Indictments/Informations

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occupied by the Delaware family. Methyl bromide from the lower unit migrated to the upper unit, causing serious injury to and hospitalization of the entire family.

As a special condition of a three-year term of probation, the defendants will make good faith efforts to resolve past and future medical expenses for the family through separate civil proceedings. If they do not do so before the end of the probationary period, they will be subject to an order of restitution and the government may petition the district court to reopen the sentencing proceedings to seek recovery of medical and other expenses.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from the Virgin Islands government and the Agency for Toxic Substances and Disease Registry.

United States v. Angelakos (Hellas) S.A., No. 2:16-CR-00062 (W.D. Wash.), AUSAs Seth Wilkinson and Matthew Diggs, and USCG SAUSA Stephen Bor.

On March 10, 2016, two shipping companies and two engineers were indicted for crimes related to the illegal discharge of oily wastewater from the cargo ship *M/V Gallia Graeca*. The ship's operator, Angelakos (Hellas) S.A., its owner, Gallia Graeca Shipping, Ltd., and engineers Konstantinos Chrysovergis and Tryfon Angelou, are charged with APPS, false statements, and falsification of records violations (33 U.S.C. § 1908(a); 18 U.S.C. §§ 1001(a)(1), 1519).

According to the indictment, the *Gallia Graeca* travelled from China to Seattle in October 2015. During the voyage, the oil water separator (OWS) was inoperable. Over several days in October 2015, the defendants discharged overboard more than 5,000 gallons of contaminated waste water. They allegedly concealed these discharges from the Coast Guard by making false statements to inspectors, and by making false statements and/or omissions in the ship's oil record book. When Coast Guard inspectors asked the engineers to operate the OWS, they did so in such a way to make it appear that the equipment was working properly.

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



M/V Gallia Graeca traveling through the Panama Canal.

Guilty Pleas

United States v. Berkshire Power Plant Company, Nos. 3:16-CR-30021, 15-CR-30001-30002 (D. Mass.) AUSA Sarah Bloom, SAUSA Daniel Licata, and RCEC Dianne Chabot.

On March 30, 2016, Berkshire Power Company (BPC), the owner of Berkshire Power Plant, and Power Plant Management Services (PPMS), agreed to plead guilty to conspiracy and Clean Air Act violations for tampering with emissions equipment. They also agreed to plead guilty to making false statements under the CAA for submitting false information to both environmental and energy regulators (18 U.S.C. § 371; 42 U.S.C. §§ 7413(c)(2)(A), (c)(2)(c)). In addition, PPMS agreed to plead guilty to a violation of the Federal Power Act (FPA), the first ever criminal charges under this statute, for making false statements to the regional power grid administrator, ISO-New England, regarding the plant's availability to produce power (16 U.S.C. §§ 824(v), 825(o)). The companies have also agreed to pay state and federal civil penalties.

Between January 2009 and March 2011, BPC engaged PPMS to manage the plant, including overseeing day-to-day operations and maintenance and to act as the owner's representative for the facility. A PPMS employee served as the plant's general manager and as BPC's on-site representative. BPC also retained EthosEnergy Power Plant Services, LLC (formerly Wood Group Power Plant Services, LLC) to provide day-to-day plant operation and maintenance.

PPMS and BPC directed the Wood Group employees at the plant to tamper with the air pollution monitoring equipment to conceal the fact that the facility was emitting air pollutants in excess of permitted levels. This tampering was accomplished by intentionally skewing the plant's Continuous Emissions Monitoring System (CEMS) so it would show lower emissions levels than were actually being produced. BPC and PPMS then used this inaccurate data when filing emissions reports with the U.S. EPA and the Massachusetts Department of Environmental Protection.

At sentencing, BPC and PPMS agree to pay a total of \$4.25 million related to the criminal charges. BPC will pay \$2.75 million in criminal fines for the CAA violations and make a \$750,000 community service payment to the American Lung Association to fund a program for the replacement of polluting wood burning stoves in western Massachusetts. PPMS will pay \$500,000 in criminal fines for the CAA and FPA violations, and make a \$250,000 community service payment to the American Lung Association's wood stove change-out program.

In addition, BPC and PPMS have agreed to pay \$3,042,563 plus interest to the Federal Energy Regulatory Commission in civil penalties and disgorgement for their misrepresentations to ISO-New England regarding the plant's availability to produce power. EthosEnergy agreed to resolve allegations that it violated the Commonwealth's Public Health Law dealing with air pollution stemming from its employees' involvement with the tampering at the Plant. Under the terms of the state consent judgment, EthosEnergy will pay a \$1.1 million civil penalty, and make a \$200,000 payment to fund the installation of electric vehicle charging stations in the Commonwealth.

Frederick Baker and Scott Paterson, a former Wood Group manager and instrument control technician at the Plant, were charged in February 2015 with conspiracy and CAA

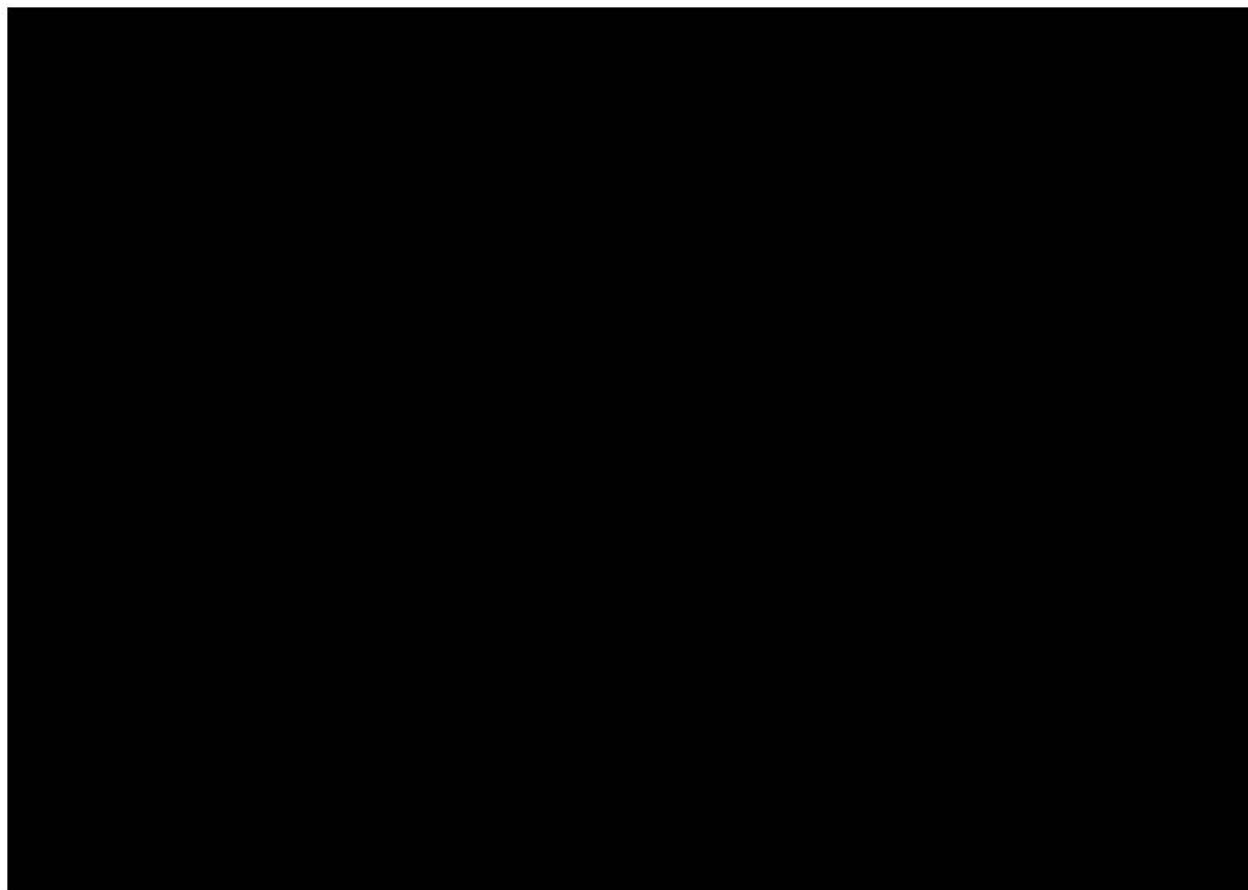
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Guilty Pleas

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tampering charges. At the direction of the PPMS on-site general manager, Baker allegedly directed Wood Group employees at the plant, including Paterson, to tamper with the CEMS. Due to the Wood Group cooperating extensively and leading the effort to alert authorities to the tampering violations, the case against EthosEnergy is being resolved with a civil settlement.

The criminal case was investigated by the U.S. EPA Criminal Investigation Division, the Massachusetts Environmental Crimes Strike Force, and the Massachusetts Environmental Police. The state civil case is being handled by AAG Frederick Augenster, with assistance from the Massachusetts Department of Environmental Protection.



Guilty Pleas

United States v. Joseph L. Capano, No. 1:14-CR-00053 (D. Del.), AUSA Jennifer Welsh.

On March 28, 2016, Joseph L. Capano pleaded guilty to one count of bank fraud and to knowingly violating the Clean Water Act (18 U.S.C. § 1344; 33 U.S.C. §§ 1319(c)(2)(A), 1311(a)).

In October 2007, Capano was involved in a project known as the Riverbend Development project. The project was funded in part by a \$1.5 million commercial line of credit from Cecil Bank. In October 2007, Capano signed an agreement for a line of credit on behalf of his company, Riverbend Community, LLC, stating that it was to be used to fund construction and other costs associated with the development project.



Road (top left) constructed through wetlands

Between October 2007 through August 2008, Capano signed and submitted funding requests to the bank that contained false statements concerning the purpose for the requests, many of which were for personal use. For example, in December 2007, he requested \$300,000, approximately \$63,000 of which he used to pay for jewelry. Capano admitted that he converted at least \$146,910 in loan proceeds to his personal use.

Capano also knowingly discharged pollutants into wetlands without a permit during the project. He directed employees and contractors to perform unpermitted earthmoving, construction, and excavation activities in wetlands areas. Specifically, Capano directed them to expand the entrance road to the development into jurisdictional wetlands. Capano also had them place a water main pipe through this area, even after the Army Corps of Engineers had issued a Cease and Desist order.

This case was investigated by the FBI Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), and the U.S. EPA Criminal Investigation Division.

Guilty Pleas

United States v. Francisco Javier Gomez-Rodriguez, No. 1:15-CR-00226 (E.D. Calif.), AUSA Karen Escobar.

On March 14, 2016, Mexican national Francisco Javier Gomez-Rodriguez pleaded guilty to conspiring to manufacture, distribute and possess with intent to distribute marijuana grown in the Sierra National Forest. Gomez-Rodriguez had also been charged with depredation to public land and natural resources (21 U.S.C. §§ 841, 846; 18 U.S.C. § 1361).

Between March and August, 2015, Humberto Ceballos-Rangel was found at a campsite within the marijuana cultivation site, where agents identified close to 6,000 marijuana plants and a loaded firearm. A short time later, Gomez-Rodriguez, Alejandro Ramirez-Rojo, and Anthony Isaac Santibanez approached the grow site in a vehicle previously identified as a load vehicle used for the delivery of supplies. A .22 caliber rifle also was found in the vehicle, along with .40 caliber rounds of ammunition. The cultivation operation caused significant harm to the forest. Native vegetation was cut to accommodate the marijuana plants, foot trails, and cooking and sleeping areas. Water also was diverted from a nearby creek for irrigation and a large quantity of trash was found in pits and throughout the site.

Ceballos-Rangel previously pleaded guilty to drug charges. Both Gomez-Rodriguez and Ceballos-Rangel have agreed to make restitution to the U.S. Forest Service for the damage they inflicted. Gomez-Rodriguez is scheduled for sentencing on June 13, 2016. Ceballos-Rangel is scheduled for sentencing on April 18, 2016. Santibanez and Ramirez-Rojo are scheduled for trial to begin on August 9, 2016.

This case was investigated by the U.S. Forest Service, Homeland Security Investigations, the California Department of Justice's Campaign against Marijuana Planting, the California Department of Fish and Wildlife, and the Madera County Narcotic's Enforcement Team.

United States v. Sunland Pest Control Services, Inc., No. 2:16-CR-14001 (S.D. Fla.), AUSA Tom-Watts FitzGerald and RCEC Jodi Mazer.



House prepared for fumigation

On March 10, 2016, Sunland Pest Control Services, Inc., Grenale Williams, and Canarie Deon Curry pleaded guilty to charges in connection with the illegal application of a pesticide that resulted in injuries to a child.

Sunland, Williams, and Curry pleaded guilty to a FIFRA violation for the illegal application of sulfuryl fluoride (7 U.S.C. § 136(b)(1)(B)). Sunland also pleaded guilty to making false statements in connection with the investigation (18 U.S.C. § 1001).

In June 2015, a family contracted with Terminix for a home fumigation for termites under an existing warranty. Terminix, without warning or approval, subcontracted the job to Sunland. The fumigation occurred over a weekend and the residents returned to their home in August 2015 with a notice indicating that it was safe to enter. During the evening several family members became ill, and medical attention was sought for a nine-year-old boy. It was

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Guilty Pleas

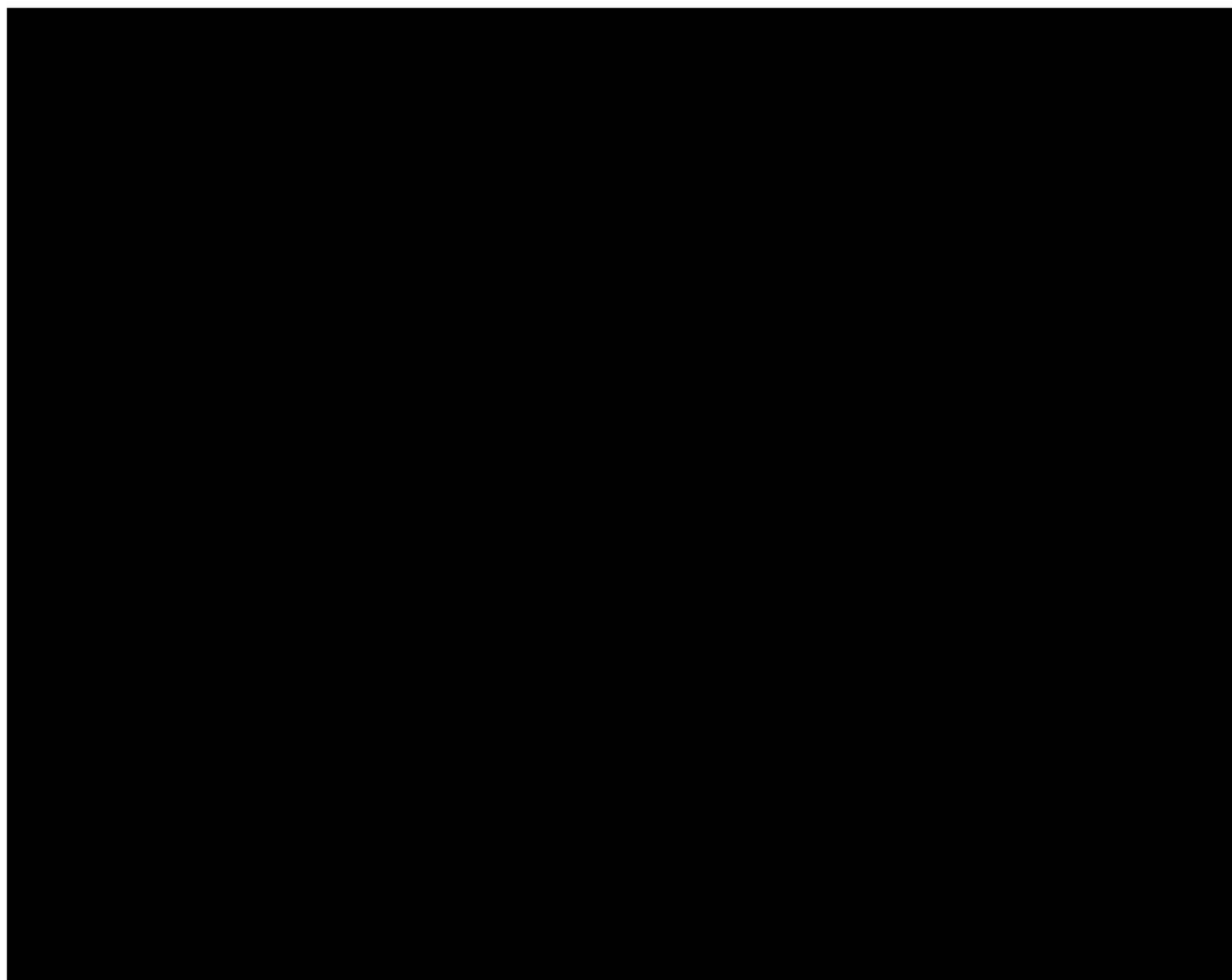
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determined that the family's symptoms were consistent with pesticide poisoning.

A subsequent investigation revealed that the defendants failed, among other things to: provide the Fact Sheet for the pesticide being used; have the required number of properly trained personnel on site following the application of the pesticide; properly aerate the fumigated space; and conduct clearance testing with an approved and calibrated Low Fumigant Level Detection Device. In addition, a clearance tag was left at the premises indicating it was safe to enter when, in fact, the requisite procedures had not been completed. The family was falsely assured by Terminix and Sunland that the aeration and clearance requirements had been met.

Sentencing is scheduled for May 11, 2016.

This case was investigated by the U.S. EPA Criminal Investigation Division, the Florida Department of Agriculture and Consumer Services Bureau of Inspection and Incident Response, and the Florida Office of Agricultural Law Enforcement.



Guilty Pleas

United States v. William Barnes, No. 15-CR-00235 (E.D. Pa.), AUSA Nancy Potts, with assistance from ECS Assistant Chief Tom Ballantine.

On March 8, 2016, William Barnes pleaded guilty to two charges of conspiring to provide false statements related to the approval of reports falsified on behalf of the owners of two biofuel companies charged in a \$50 million clean energy scam (18 U.S.C. § 371).

Company officials at Smarter Fuel and Environmental Energy Recycling hired Barnes in 2010 to complete engineering reviews of their plants to document their capacities as they applied for the EPA's renewable fuel credit program. To become eligible for the credit program, biofuel producers were required to submit to the EPA an independent engineering review based on a site visit to verify how the production plant would operate and how much fuel it was capable of producing each year.

According to the plea, Barnes took information he received from company officials, including a ghost-written report by another consultant the companies had hired, and used it in the engineering reports without verifying that it was correct. Barnes signed the reports and applied his registered professional engineer stamp before company officials submitted them to the EPA.

The owners of the companies, Dave Dunham, Jr., and Ralph Tommaso, were charged in December 2015 in a 101-count indictment alleging they overstated the amount of clean diesel and heating oil their companies produced between 2010 and 2012. According to the indictment, the alleged fraud extended from Pennsylvania, to Washington, and into Canada.

According to the indictment, Dunham was the owner and president of Smarter Fuel, which he started in 2004 to collect used cooking oil from local restaurants. Tommaso was owner of Environmental Energy Recycling, which was a similar business. In 2010, Dunham and Tommaso agreed to work together and merged to form a new company. Dunham and Tommaso allegedly claimed subsidies and other payments for more than twice as much fuel as they actually produced by including partially processed waste oil that was sold to other refiners, wastewater produced in the processing of used cooking oil, and ghost transactions that existed only on paper.

Dunham also is charged with altering the dates on sales invoices to delay paying taxes on the transactions in 2009 and 2010. He also allegedly obstructed an IRS audit of Smarter Fuel.

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

Guilty Pleas

***United States v. Joseph Chait*, No. 1:16-CR-00193 (S.D.N.Y.), ECS Senior Litigation Counsel Richard Udell, AUSA Elizabeth Hanft, and ECS Paralegal Christopher Kopf, with assistance from AUSAs Jennifer Gachiri and Kathleen O'Leary.**

On March 8, 2016, Joseph "Joey" Chait, Senior Auction Manager of the I.M. Chait Auction Gallery in Beverly Hills, California, pleaded guilty to a two-count information charging a conspiracy to smuggle wildlife and to violate the Lacey Act, and a substantive felony violation of the Lacey Act (16 U.S.C. §§ 3372(d), 3373(d)(3)(A); 18 U.S.C. § 371).

In March 2011, undercover FWS special agents consigned a carved figure of the goddess Guanyin made from rhinoceros horn. Another undercover agent then bought the carving at auction for \$230,000. Chait agreed to sell the item even though he knew it was not an antique. He also offered to fabricate paperwork to aid the buyer in smuggling the rhino horn carving out of the United States. Chait provided a fake invoice stating that the item was made of plastic and cost only \$108. The charges also outline other instances in which Chait helped to smuggle items made from rhinoceros horn, elephant ivory, and coral out of the country.

Sentencing is scheduled for June 22, 2016. This case was prosecuted by the U.S. Fish and Wildlife Service as part of Operation Crash.

***United States v. Anastasios Kolokouris*, No. 6:12-CR-06015 (W.D.N.Y.), AUSA Craig Gestring.**

On March 2, 2016, warehouse owner Anastasios Kolokouris, pleaded guilty to violating the Clean Air Act asbestos work practice standards (42 U.S.C. §§ 7412, 7413).

Acting on a complaint in December 2011, a state inspector visited the defendant's warehouse and observed people working in a large dumpster next to a loading dock, with significant quantities of what appeared to be asbestos-containing material in and around the dumpster. Further investigation resulted in the seizure of more than 90 bags of dry, friable asbestos from inside the warehouse. Kolokouris hired several civilian workers (including a 16 year old child) without any asbestos training or experience to clean out the dumpster and load it into bags. The dumpster was near a school bus stop and several homes.

During the investigation, workers were interviewed and indicated that they knew Kolokouris from working for him at other odd jobs. They reported that the defendant told them that he would pay cash to remove asbestos from the dumpster, because the container company would not remove the dumpster while it was full of asbestos.

Sentencing is scheduled for June 1, 2016.

This case was investigated by the U.S. EPA Criminal Investigation Division, the N.Y. State Department of Environmental Conservation Police Bureau of Environmental Crimes Investigation, the N.Y. State Department of Labor Asbestos Control Bureau, and the City of Rochester Police Department.



Workers clearing asbestos from dumpster

Sentencings

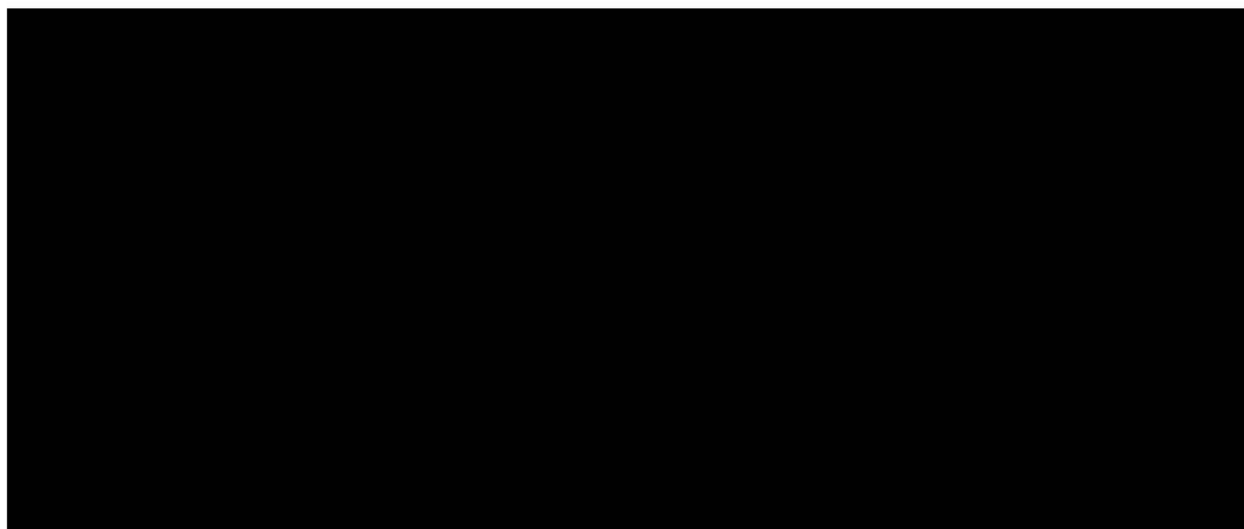
United States v. James Slade, No. 14-CR-00103 (D. Alaska), ECS Senior Trial Attorney Chris Costantini, FAUSA Kevin Feldis, SAUSA Karla Perrin, and ECS Paralegals Casey Rybak and Christopher Kopf, with assistance from ECS Trial Attorney Cassandra Barnum.

On March 31, 2016, James Slade was sentenced to 12 months' incarceration, followed by one year of supervised release, after previously pleading guilty to a felony Clean Water Act violation (33 U.S.C. § 1319(c)(2)(a)), as well as being convicted of misdemeanor CWA violations at trial (33 U.S.C. § 1319(c)(1)(A)).

Slade, a former Chief Operating Officer of XS Platinum, Inc. (XSP), was charged with five felony CWA violations, conspiracy and a false statement charge. He was convicted of two misdemeanor lesser-included CWA counts and acquitted of one CWA charge and the false statement. The jury deadlocked on two CWA felonies and the conspiracy count. After the government informed Slade's counsel that it intended to seek a retrial on the deadlocked counts, ensuing negotiations resulted in a plea to a CWA felony.

The XSP mine was situated along the Salmon River, which is important for the spawning of all five species of Pacific salmon (chinook, chum, coho, pink, and sockeye). After flowing through Bureau of Land Management land, the Salmon River crosses the Togiak National Wildlife Refuge before entering the Pacific Ocean. During 2010 and 2011, the defendants systematically discharged large amounts of heavily polluted mine wastewater into the river. Turbid water was observed for miles below the mine, extending all the way to the ocean. In addition, defendants made false statements that there were no discharges and that the wastewater was being recycled. General Manager Robert Pate and plant operator James Staeheli previously pleaded guilty to CWA violations.

This case was investigated by the U.S. Department of Interior BLM Office of Law Enforcement and Security and the U.S. EPA Criminal Investigation Division.



Sentencings

United States v. Eric Andrews, Nos. 3:13-CR-30080, 30081 (C.D. Ill.), AUSAs Patrick D. Hansen and John E. Childress.

On March 30, 2016, Eric and Joel Andrews were sentenced, after pleading guilty to a conspiracy violation (18 U.S.C. § 371), for their role in an underground storage tank cleanup fraud scheme. Eric Andrews will serve 30 months' imprisonment, followed by a three-year term of supervised release, with the first year in home confinement. Joel Andrews was sentenced to 36 months' imprisonment, followed by a three-year term of supervised release, with the first year in home confinement. A final order of restitution, which is to be joint and several, will be determined at a later date.

Joel Andrews founded Environmental Management of Illinois, Inc. (EMI) in 1997 and served as president. Eric Andrews joined in 1999 as vice-president. In April 2001, professional engineer Michael Keebler joined this environmental consulting firm and he became the owner in 2006. EMI worked with property owners to clean up property contaminated by petroleum leaks, spills, or overfills from leaking underground storage tanks. The firm then sought reimbursement of its remediation costs from the Leaking Underground Storage Tank program fund administered by the IEPA.

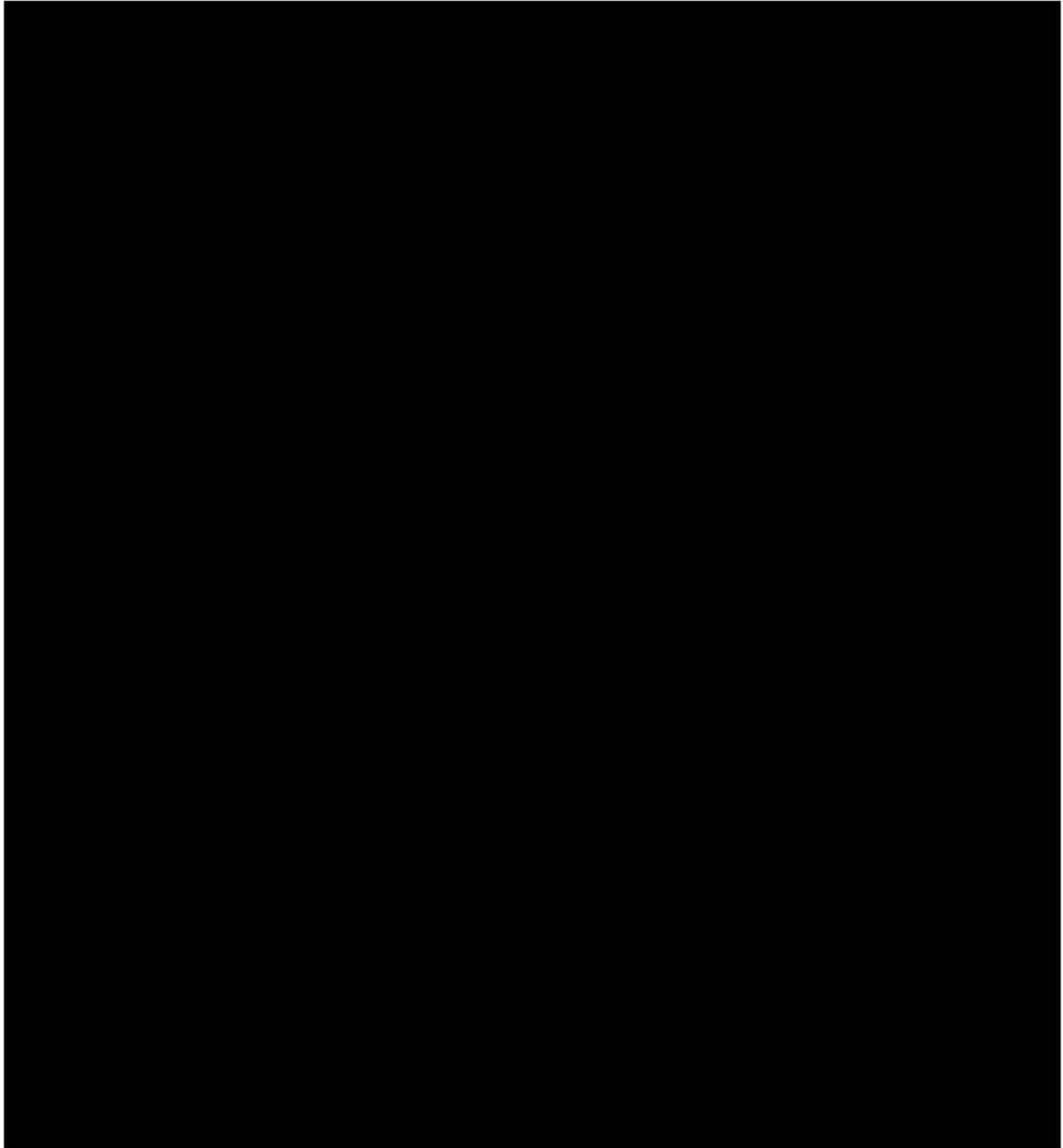
Between 2001 and 2013, the defendants conspired to defraud the program by artificially inflating expenses they incurred in remediating property. They did this by, among other things, submitting falsified invoices to the IEPA for reimbursement, and by paying vendors a reduced rate and then telling IEPA that they had paid full price.

Duane T. Keebler and Joseph R. Keebler were previously sentenced to pay \$30,000 fines and to complete two-year terms' of probation with a special condition of three months' home confinement. They also were held jointly and severally liable for \$179,438 in restitution to the Illinois EPA (IEPA). The defendants and their brother, Michael R. Keebler, previously pleaded guilty to conspiracy to commit mail fraud for defrauding the IEPA in connection with underground storage tank cleanup projects (18 U.S.C. § 371). Michael Keebler was sentenced to five years in prison, followed by three years' supervised release. He was held jointly and severally responsible for \$13,363,665 in restitution to the Illinois EPA, along with the Andrews brothers. All three pleaded guilty to conspiracy to commit mail fraud.

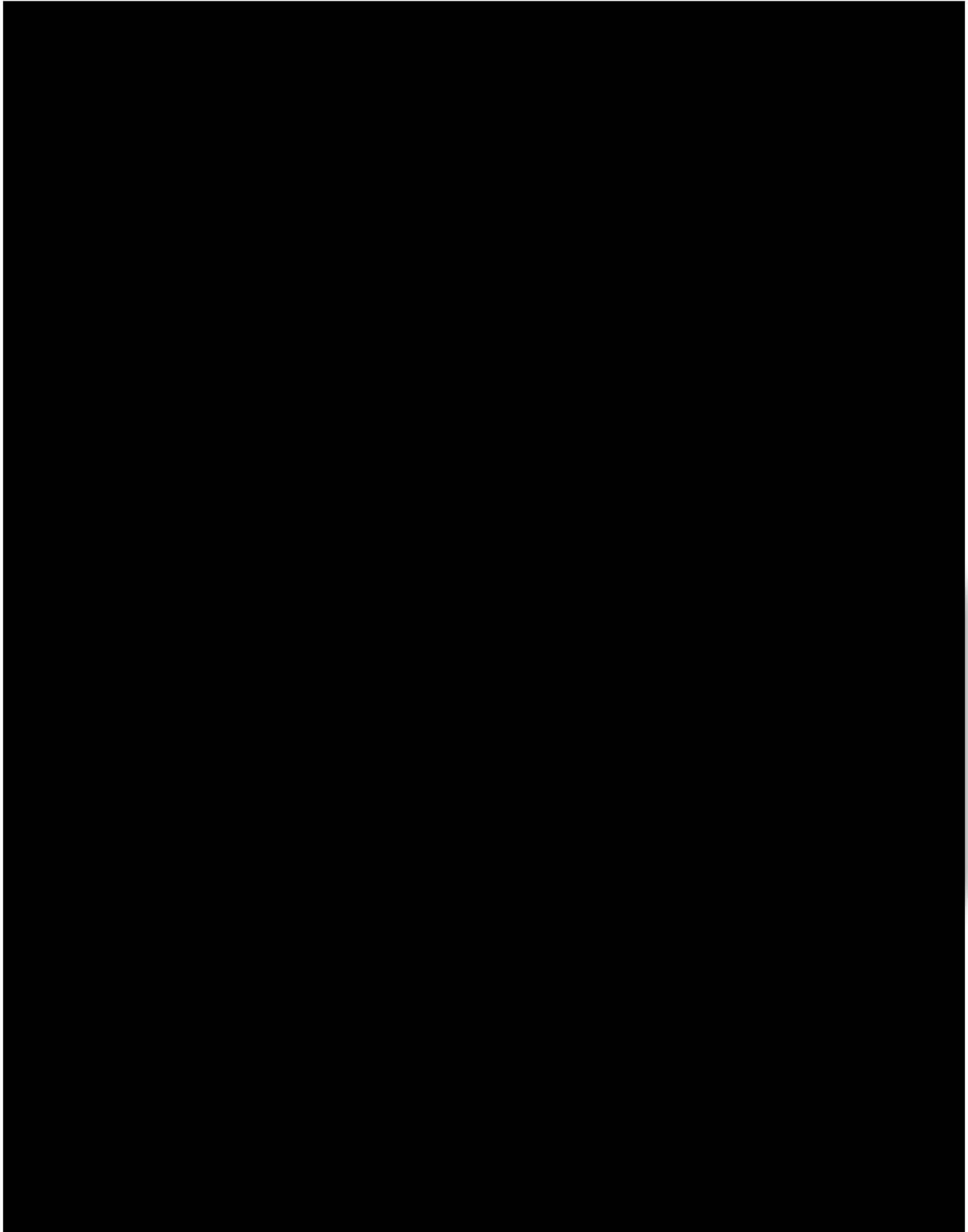
A final defendant, Jeremy L. VanScyoc, was previously sentenced to one day of incarceration, followed by two years' supervised release. VanScyoc also was ordered to pay \$262,032 in restitution. He pleaded guilty to conspiracy to commit mail fraud, admitting that he prepared inflated subcontractor invoices.

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

Sentencings



Sentencings



Sentencings

United States v. James Tong, No. 15-CR-00512 (N.D. Calif.), AUSA Maureen Bessette.

On March 11, 2016, James Tong and his development company, Wildlife Management, LLC, were sentenced after previously pleading guilty to violations stemming from an illegal residential development site. The sentence is a global resolution of state and federal criminal charges against the defendants that will include payments totaling \$1 million in restitution to entities that protect the environment and a conservation easement on several acres of land in Contra Costa County. Tong pleaded guilty to violating the Endangered Species Act and the company pleaded guilty to a securities fraud charge (16 U.S.C. §§ 1538(a)(1)(G), 1540(b)(1); 18 U.S.C. § 513(a)).



Slope erosion causing sediment to flow into pond

Wildlife Management, LLC (based in Dublin, California) financed and developed residential and commercial real estate projects in the East Bay. Real estate developers are required to mitigate for the loss of threatened or endangered species or its habitats when a project impacts them. Between June and December 2012, a person acting on behalf of Wildlife Management submitted to the City of Dublin a forged \$3.2 million mitigation receipt from the Ohlone Preserve Conservation Bank with the intent to deceive the City into believing Wildlife Management had purchased mitigation credits. After submitting the forged document, the site was graded, causing sediment to flow off-site into a pond that was habitat for the California Tiger Salamander, an endangered species.

Tong admitted that he directed the grading activities at Dublin Ranch North without the City's required mitigation measure and without authorization from wildlife officials. Tong also pleaded nolo contendere to a criminal forgery charge pending against him in state court.

To resolve both the federal and state criminal cases, Tong will pay \$350,000 to the Alameda County Fish and Game Commission, \$175,000 to the Contra Costa County Fish

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Sentencings

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and Wildlife Propagation Fund, and \$300,000 to the California Department Fish and Wildlife (CDWF). The funds paid to the CDWF will be split equally between the Pollution Account and the Preservation Fund. Tong also will complete a one-year term of probation, to include four months' home detention. He will provide a conservation easement on a 107-acre parcel of land in Contra Costa known as the Brown Ranch. The conservation easement provides habitat for endangered species and will prohibit any future owners from developing the property. The easement has an estimated value of \$3 million. Tong also will deposit more than \$300,000 into an account to manage the Brown Ranch conservation easement in perpetuity.

Wildlife Management will make a \$175,000 payment to the National Fish & Wildlife Foundation, and will complete a one-year term of probation.

This case was investigated by the California Department of Fish and Game and the U.S. Fish and Wildlife Service.

United States v. Walter Oil & Gas Corporation, No. 2:15-CR-00245 (E.D. La.), AUSA Jon Maestri.

On March 10, 2016, Walter Oil & Gas Corporation was sentenced to pay a \$320,000 fine, complete a two-year term of probation (to include implementing an environmental compliance plan) and make an \$80,000 community service payment. The company previously pleaded guilty to a felony violation of the Outer Continental Shelf Lands Act (33 U.S.C. § 1321(b)(5)(C)) for failing to immediately notify the proper agency of a hazardous waste spill in connection with its oil and gas operations.

In March 2014, employees were cleaning out an underwater oil pipeline using a remote operated vehicle (ROV). The contents of the pipeline were supposed to be collected and brought to the surface for disposal. During the ROV's ascent, the holding container leaked approximately 60 plus gallons of oil. Supervisors were made aware of the discharge, but failed to report it.

The community service payment will be divided as follows: \$40,000 to the Louisiana Department of Environmental Quality, \$30,000 to the Louisiana State Police Emergency Services Unit, and \$10,000 to the Southern Environmental Enforcement Network.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Louisiana Department of Environmental Quality.

United States v. Acquest Transit, LLC, No. 1:13-CR-00199 (W.D.N.Y.), AUSA Aaron Mango.

On March 9, 2016, Acquest Transit, LLC was sentenced to pay a \$25,000 fine and will complete a two-year term of probation. The company previously pleaded guilty to a criminal contempt charge (18 U.S.C. § 401(3)).

Acquest was established to purchase an approximately 97-acre piece of property. William L. Huntress served as the sole member and manager of Acquest. Acquest purchased the site in January 2006 for \$425,000. In 2009, a civil complaint was filed stating that the site contained federally-protected wetlands. The civil action further alleged that the company was filling the wetlands. In July 2009, the court issued a preliminary

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Sentencings

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injunction ordering the defendant not to place additional fill or perform any additional earthmoving work at the site. In May 2010, a farmer acting on behalf of Acquest violated the order by performing mechanized activities on the site (including discing) with agricultural equipment. Charges were dismissed against Huntress.

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

United States v. Philip Joseph Rivkin, No. 4:14-CR-00250 (S.D. Tex.), ECS Trial Attorney Leslie Lehnert and Paralegal Casey Rybak.

On March 7, 2016, Philip Joseph Rivkin, aka Felipe Poitan Arriaga, was sentenced to 121 months' incarceration, followed by three years' supervised release. Rivkin also will pay more than \$87 million in restitution in addition to forfeiting \$51 million for generating and selling fraudulent biodiesel credits in the federal renewable fuel program.

Rivkin previously pleaded guilty to a mail fraud count and a Clean Air Act false statement violation (18 U.S.C. § 1341; 42 U.S.C. § 7413(c)(2)(A)), after being charged in a 68-count indictment with wire fraud, mail fraud, Clean Air Act false statements, and money laundering violations.

In February 2009, Rivkin operated and controlled several companies in the fuel and biodiesel industries, including Green Diesel LLC, Fuel Streamers Inc., and Petro Constructors LLC, all based in Houston. As part of his scheme to defraud, Rivkin claimed to have produced millions of gallons of biodiesel at Green Diesel's Houston facility and then generated and sold renewable identification numbers (RINs) based upon this claim. In reality, no biodiesel was ever produced at the Green Diesel facility. The scheme enabled Rivkin to generate and sell in excess of 59 million fraudulent RINs resulting in at least \$51 million in sales. In addition, Rivkin created a false quarterly report and submitted that false statement to EPA to maintain the apparent legitimacy of his claims of biodiesel production, importation, and RIN generation.

This case was investigated by the U.S. EPA Criminal Investigation Division, the U.S. Secret Service, IRS Criminal Investigation, Homeland Security Investigations, with assistance from the Guatemalan Special Investigations Unit.

Sentencings

United States v. William Manclark, No. 4:15-CR-00065 (N.D. Miss.), AUSA Robert Mims.

On March 7, 2016, William Manclark was sentenced to five months' incarceration and five months' home confinement, followed by one year of supervised release. Manclark also will pay a \$250,000 fine.

The defendant previously pleaded guilty to aiding and abetting a RCRA violation (42 U.S.C. § 6928(d)(3)) for his involvement in the falsification of daily and weekly hazardous waste inspection reports generated at Leading Edge Aviation Services, Inc. (LEAS), a commercial aircraft painting facility.

LEAS operated this painting facility at the Greenville, Mississippi, Mid-Delta Regional Airport until mid-2013. Investigators determined that, in 2010, large volumes of hazardous waste generated from the paint-stripping process had been improperly stored in an open pit without a permit over an approximately seven-month period.

The company was previously sentenced to pay a \$700,000 fine and to make a \$25,000 community service payment. LEAS was further ordered to pay a \$275,000 civil penalty to the Mississippi Department of Environmental Quality (MDEQ), complete a one-year term of probation, implement an environmental compliance program, and clean up the facility.

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

United States v. Ronald Barney, No. 8:15-CR-00124 (N.D.N.Y., C.D. Calif.), AUSAs Sean O'Dowd and Robert Keenan.

On March 3, 2016, Ronald Barney was sentenced after pleading guilty to TSCA violations (15 U.S.C. §§ 2615, 2682(a)(1), 2689) stemming from his performing lead-based paint testing inspections and risk assessments without EPA certification. Barney will pay a \$2,500 fine and complete a two-year term of probation.

In November 2010, he performed an inspection and risk assessment for lead-based paint on a residence in the Town of Westville, New York, without being properly certified by the EPA. Barney then billed Westville \$2,500 for these services.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Housing and Urban Development Office of Inspector General.



Hazardous Waste Label

Sentencings

***United States v. Nancy Black*, No. 5:12-CR-00002 (N.D. Calif.), ECS Trial Attorney Christopher Hale and AUSA Jonas Lerman.**

On March 1, 2016, Nancy Black was sentenced after a probation revocation hearing to pay a \$2,000 fine. The previous three-year term of probation was extended by a year, and additional conditions were imposed.

Black, a marine biologist, was sentenced in January 2014 after previously pleading guilty to a violation of the Marine Mammal Protection Act (16 U.S.C. § 1375(b)) for illegally feeding orca whales. She was sentenced to pay a \$12,500 fine and to complete a three-year term of probation, with the following special conditions: no collecting, possessing, or feeding marine mammals; no selling underwater footage or any items with images taken while doing NOAA research; no intentional violations of the Marine Sanctuary Whale-watching Guidelines; and must obey all applicable permits.



Defendant using blubber to bait whales

In April 2004, Black was conducting research on whales in the Monterey Bay National Marine Sanctuary. She possessed a valid research permit, but it did not authorize her to feed the whales blubber from gray whales that had been killed by orcas. Black also admitted to providing an altered video and of making false statements to a sanctuary officer related to a whale watching expedition involving possible illegal contact with a humpback whale in the bay.

One of the special conditions of probation requires that she remain at least 50 yards away from sea otters. The government received several complaints that Black was following marine mammals too closely in violation of the terms of her probation. The most recent instance included a video of her in close proximity to sea otters, including babies, while photographing them from an inflatable boat. Mother otters may abandon their pups if they are harassed.

During the revocation hearing, the court advised Black that she would be facing incarceration if she violates the current terms of her probation.

This case was investigated by the National Oceanic and Atmospheric Administration.

In Memoriam

Environmental Crimes Section

Retired Senior Counsel Herb Johnson

On April 12, 2016, Herb Johnson passed away. In 2013, Herb was the first recipient of the Raymond W. Mushal Award for Outstanding Contribution to Federal Criminal Law Enforcement. Herb retired from the Department of Justice in 2002, but continued his life's work as a DOJ contractor to the Environmental Crimes Section.

Herb earned a B.S. in Mechanical Engineering (Nuclear Power) from M.I.T., and a J.D. from Harvard Law School. After a brief time in private practice, Herb began a 40-year public service career starting with the City of New York, and then serving as an Assistant United States Attorney in the Eastern District of New York. From there, he moved to the State of New York to do environmental work, and later spent several years working in EPA's fledgling criminal program, subsequently moving to the National Association of Attorneys General, where he focused on environmental criminal enforcement. Herb joined ECS in 1991. After several years in DC, Herb moved to California, where he finished his full time career as a Special Assistant United States Attorney in San Francisco.

Almost every prosecutor who pursues a federal water pollution case uses words that Herb helped craft. Anyone who consults the Environmental Crimes Manual benefits from something that Herb contributed. Those make use of the Environmental Crimes Bulletin or the case summaries that are periodically circulated profit from Herb's work. And then there are those for whom Herb dropped everything to dredge up some arcane scrap of case law to help us get past a knotty issue.

However, the most tangible and visible monument to Herb's labors is "Herblaw," an extraordinary compendium of case law on our specialty that is now institutionalized as a Volume of the Environmental Crimes Manual. Herb created this resource on his own initiative simply because he saw the need.

Herb Johnson was a public servant in the purest sense, a person who gave all of us a reason to have pride in that title. He worked for the public good, and made enormous contributions to this specialty, working steadily, tirelessly, selflessly to build a legal foundation for this program. In a profession notorious for its egos, Herb shunned the plaudits merited by his achievements. He truly was one of a kind.

Announcements

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]

If you are in need of sentencing data for your wildlife or pollution cases, please contact [REDACTED] with your search requests.

[Updates](#) to the ECS website include: The Endangered Species Act Chapter of the Manual (Volume 2, Chapter 12), ECS contacts, AUSA and EPA contacts, and new press releases. Also, we now post a [public version](#) of the Bulletins.