



Monthly

# Bulletin

## Environmental Crimes Section

June 2018

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U.S. Attorney Kurt Alme stated, "I want to thank the prosecution team and the representatives from the Department of Transportation and Environmental Protection Agency that coordinated on this important investigation. Mislabeling and submitting false documents to conceal the presence of explosive material on public highways are serious criminal matters that will be prosecuted to the fullest extent of the law. As this case demonstrates, the failure to properly disclose and label hazardous materials can endanger lives." [From [press release](#) of guilty verdict in *U.S. v. Woody's Trucking*. See [inside](#) for more details on the case].

District/Circuit	Case Name	Case Type/Statutes
Fourth Circuit Court of Appeals	<a href="#"><u>United States v. Oceanic Ilsabe Ltd.</u></a>	Vessel Issues
Central District of California	<a href="#"><u>United States v. Sonny Dong et al.</u></a>	Asian Songbird Smuggling/ Conspiracy, Recidivist
Eastern District of California	<a href="#"><u>United States v. Jose Manuel Sanchez-Zapien et al.</u></a>	Marijuana Grow/Drug, Depredation to Natural Resources
Northern District of California	<a href="#"><u>United States v. Peiwen Zhou</u></a>	Chemical Sales/HMTA, TSCA
Southern District of California	<div>████████████████████</div> <a href="#"><u>United States v. Diamond Environmental Services et al.</u></a>	<div>████████████████████ ████████</div> Sewage Waste Disposal/ Conspiracy, Mail Fraud
District of Colorado	<a href="#"><u>United States v. Hanno Van Rensburg</u></a>	African Elephant Killing/ESA, Lacey Act, Wire Fraud
District of Kansas	<a href="#"><u>United States v. Robert P. McConnell</u></a>	Wild Deer Imports/Lacey Act
Eastern District of Louisiana	<a href="#"><u>United States v. William McGinness et al.</u></a>	Bird Exports/Conspiracy, Lacey Act, Smuggling
District of Maine	<a href="#"><u>United States v. Daniel F. Dyer et al.</u></a> <a href="#"><u>United States v. William Sheldon et al.</u></a>	Moose Killing/Lacey Act Eel Trafficking/Lacey Act
Eastern District of Michigan	<a href="#"><u>United States v. Martin Winterkorn</u></a>	VW Emissions Fraud/CAA, Conspiracy, Wire Fraud

District/Circuit	Case Name	Case Type/Statutes
District of Montana	<a href="#"><u>United States v. Woody's Trucking LLC et al.</u></a>	Oil Processing Facility Explosion/Conspiracy, HMTA, Mail Fraud, Obstruction, Wire Fraud
District of New Mexico	<a href="#"><u>United States v. Craig Thiessen</u></a>	Wolf Killing/ESA
Eastern District of North Carolina	<a href="#"><u>United States v Nitta Kisen Kaisha Ltd. Et al.</u></a>	Vessel/ APPS
Eastern District of Pennsylvania	<a href="#"><u>United States v. David Haisten et al.</u></a>	Misbranded Pesticides and Counterfeit Goods/Conspiracy, FIFRA, Trafficking in Counterfeit Goods
Middle District of Pennsylvania	<a href="#"><u>United States v. Gavin Rexer et al.</u></a>	Vehicle Emissions Testing/ Conspiracy
District of South Carolina	<a href="#"><u>United States v. Caleb E. Hartzog, Jr.</u></a>  <a href="#"><u>United States v. Glen Welch et al.</u></a>	Drinking Water Operator/False Statement  Metal Recovery/Accessory After -The-Fact
District of South Dakota	<a href="#"><u>United States v. Fair Deal Pawn</u></a>	Eagle Parts Trafficking/MBTA
██████████ ██████████ ██████████	████████████████████  ████████████████████	████████████████████  ████████████████████
Western District of Washington	<a href="#"><u>United States v. Randall Fox et al.</u></a>	Vessel/ APPS
Southern District of West Virginia	<a href="#"><u>United States v. Executive Air Terminal Inc., et al.</u></a>	Airplane Servicing/RCRA

## Decisions

### ***United States v. Oceanic Ilsabe Ltd. & Oceanfleet Shipping Ltd., 889 F.3d 178 (4<sup>th</sup> Cir. May 7, 2018).***

On May 7, 2018, the Fourth Circuit issued a published opinion affirming the convictions and sentences of defendants Oceanic Ilsabe Ltd. and Oceanfleet Shipping Ltd. The companies were convicted of nine felonies including conspiracy, obstruction, and violating the Act to Prevent Pollution from Ships. The defendants variously raised the following issues on appeal: (1) there was insufficient evidence to sustain the convictions; (2) the corporations were not vicariously liable for the actions of the engineering department personnel; (3) the quantum of the fines imposed on the corporate defendants was in error; and (4) the special condition of probation banning defendants' vessels from trading in the United States during the period of probation unless the fines were paid in full was improper.

The Court recited an extensive litany of facts that were proven in trial and concluded that there was a "plethora" of evidence to sustain the convictions. The defendants claimed that the jury should not have been entitled to find that the defendants were vicariously liable for the actions of engineering personnel because no reasonable trier of fact could conclude that they were the employees or agents of the defendants. They further claimed there was no evidence that the personnel were acting within the scope of their agency and employment and for the intended benefit, at least in part, for the defendants.

The Fourth Circuit conducted an extensive review of the corporate vicarious liability case law and the jury instructions and concluded that the jury's verdict of corporate criminal liability was completely proper.

The district court ordered the defendants to pay a combined criminal penalty (to include a community service payment to the Gray's Reef National Marine Sanctuary Foundation) of \$2.7 million. The district court ordered that the defendants' vessels were not permitted to trade in the United States, until the criminal penalties were paid in full. The Court concluded that the criminal penalties and vessel ban were properly within its sentencing discretion. Of note, the Fourth Circuit reviewed the 18 U.S.C. § 3553 factors and made specific mention that when determining the corporate defendants' ability to pay, it is appropriate to consider the past profitability of the defendant even if the most recent corporate financial statements indicate a loss.

## Trials

### ***United States v. Woody's Trucking, LLC et al., No. 1:17-CR-00138 (D. Mont.), AUSA Adam Duerk and SAUSA Eric Nelson.***

On May 23, 2018, a jury convicted Woody's Trucking, LLC and company CEO Donald E. Wood, Jr., of violations leading to an explosion at an oil and gas processing facility in Wibaux, Montana. Both were found guilty of violating the Hazardous Materials Transportation Act, wire fraud, mail fraud, conspiracy, and obstruction of justice (18 U.S.C. §§ 371, 1341, 1343; 49 U.S.C. § 5124). Sentencing is scheduled for October 4, 2018.



*Tanker truck on fire*

On December 29, 2012, a company driver loaded natural gas condensate, or "drip gas," from a pipeline station that transports products from the Bakken oil fields in Montana and North Dakota. The drip gas was hauled from Watford City, North Dakota, to Custom Carbon Processing, Inc. (CCP). CCP is a slop-oil processing/recycling company based near Wibaux. The bill of lading accompanying the shipment misidentified the product as "slop oil and water," a non-hazardous substance. As the driver pumped the liquid from the truck into the CCP facility, a fire ignited, seriously injuring three employees. The truck burned for eight days until the local fire department could determine that the truck held drip gas and not slop oil and water, as indicated on the bill of lading. Drip gas is a hazardous material and the truck was not placarded to indicate it held a flammable liquid. Woody's Trucking also was not insured for hauling drip gas.

Witnesses testified that Wood directed the driver to place a falsified bill of lading in the burned-out truck several days after the explosion. The driver testified that this was part of an effort to conceal the fact that he was hauling drip gas. They then provided the falsified bill of lading to the Occupational Safety and Health Administration and Great West Insurance Company (Great West Insurance).

After the explosion, the injured employees sued several entities for negligence, including Woody's Trucking. Woody's submitted the lawsuit to Great West Insurance, which agreed to settle the claims, but always maintained that there was no coverage for hauling drip gas. As a result of the guilty verdict in the criminal matter, Woody's was ordered to pay a \$644,690 forfeiture judgment for the scheme perpetrated against Great West. The insurance company spent hundreds of thousands of dollars in attorney fees and costs defending the claims resulting from the fire, as well as \$250,000 paid to the workers burned from the explosion.

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

## Indictments/Informations

***United States v. William McGinness et al.*, No. 2:18-CR-00118 (E.D. La.), ECS Trial Attorney Mary Dee Carraway, AUSA Greg Kennedy, and ECS Paralegal Diana Greenberg.**

On May 31, 2018, prosecutors filed a five-count indictment charging William McGinness, Paul Tallman, Rene Rizal, Wayne Andrews, and Alex Madriaga with violations stemming from their illegally exporting CITES-protected birds from the United States to Taiwan. The defendants are variously charged with conspiracy, smuggling, Lacey Act, and false labelling violations (18 U.S.C. §§ 371, 554; 16 U.S.C. §§ 3372(d)(2), 3373(d)(3)(A)).

According to the indictment, between January and July 2015, McGinness, a resident of California, and his co-conspirators submitted falsified documents to the U.S. Fish and Wildlife Service in order to illegally export CITES-protected birds from the Port of New Orleans to Taiwan. The birds could not legally be exported from California due to a moratorium Taiwan had placed on the import of all birds from the state. California was listed as a disease-infested zone due to the occurrence of highly pathogenic avian influenza.

The defendants attempted to ship close to 100 protected birds, including parrots, macaws, cockatoos, and corellas. Several of the birds were shipped in falsely labelled crates.

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

***United States v. Gavin Rexer et al.*, No. 4:18-CR-00174 (M. D. Penn.), AUSAs Phillip J. Caraballo and Sean Camoni, and SAUSA Patricia C. Miller.**

On May 25, 2018, prosecutors charged five men for their involvement in a scheme to modify emissions systems with “defeat devices” on trucks to ensure the vehicles passed emissions’ testing. Gavin Rexer, Dennis Paulhamus, Timothy Sweitzer, Joseph Powell, and John Joseph, are charged with conspiracy to violate the Clean Air Act (18 U.S.C. § 371).

According to the information, Rexer, Powell, and Joseph were employees of Rockwater Northeast LLC, a company that serviced the fracking industry. In the course of their employment, the three conspired to modify the emissions systems on approximately 30 Rockwater heavy-duty diesel trucks by using “defeat devices.” Paulhamus and Sweitzer allegedly sold them the devices, which were subsequently mislabeled and concealed in Rockwater’s books as “exhaust systems.” The conspirators also are accused of taking the modified commercial motor vehicles to state-approved inspection stations, including Sweitzer’s Garage, in order to pass inspections.

This case was investigated by the U.S. EPA Criminal Investigation Division and the DOT’s Office of the Inspector General, with assistance from the Pennsylvania State Police.

## **Indictments/Informations**

### ***United States v. Hanno Van Rensburg*, No. 1:18-CR-00238 (D. Colo.), AUSAs Bryan Fields and Suneeta Hazra.**

On May 21, 2018, prosecutors named South African hunter and outfitter Hanno Van Rensburg in a seven-count indictment with crimes stemming from his participation in illegal elephant hunts in Africa.

Van Rensburg was a professional hunter who owned and operated Authentic African Adventures, a South African company through which he marketed and sold hunts to American citizens. He is charged with wire fraud conspiracy, violating the Endangered Species Act and the Lacey Act, and substantive wire fraud charges (18 U.S.C. §§ 1343, 1349; 16 U.S.C. §§ 3372(a)(2)(A), 3372(a)(4), 3373(d)(1)(B), 1538(a)(1)(G), 1540(b)(1)).

According to the indictment, Van Rensburg sought opportunities to hunt African elephants in the vicinity of Gonarezhou National Park in Zimbabwe. He hired a Zimbabwe-based outfitter so that he could lead a hunt inside the Park. During the hunt, the defendant shot several elephants, one of which was killed inside the Park. Van Rensburg allegedly paid between \$5,000 and \$8,000 in bribes to Zimbabwean government officials in return for authorization to shoot the elephants and to export the ivory. Van Rensburg also helped his client, Paul Jackson, export the animal out of Zimbabwe, by falsely claiming that the elephant was killed outside the Park and by submitting a falsified document stating that this client was a South African resident.

Van Rensburg is further charged with attempting to sell an illegal elephant hunt to an undercover agent (UA). He was allegedly willing to pay bribes to obtain tags to export the ivory and to convince local officials to allow them to hunt inside the Park, in violation of the Zimbabwe Parks and Wild Life Act. Van Rensburg allegedly told the UA that “corruption is the rule in Africa. If the client pays the money they will find another tag.” Van Rensburg also advertised his previous illegal hunt as a way to sell his hunting services.

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

## Indictments/Informations

***United States v. Martin Winterkorn***, No. 2:16-CR-20394 (E.D. Mich.), ECS Senior Trial Attorney Jennifer Blackwell, Criminal Division Fraud Section Deputy Chief Benjamin D. Singer and Trial Attorney David M. Fuhr, White Collar Crime Unit Chief John K. Neal of the U.S. Attorney's Office, and ECS Law Clerks Jon DeCarlo and Fred Ingram.

On May 3, 2018, prosecutors unsealed an indictment naming Martin Winterkorn, the former chief executive officer and chairman of the Managing Board of Volkswagen AG (VW), with conspiracy and wire fraud in connection with VW's long-running scheme to cheat U.S. diesel vehicle emissions requirements.

The superseding indictment charges Winterkorn with conspiring with other senior VW executives and employees to defraud the United States, defraud VW's U.S. customers and violate the Clean Air Act by making false representations to regulators and the public about the ability of VW's supposedly "clean diesel" vehicles to comply with U.S. emissions requirements. The remaining three counts charge Winterkorn with wire fraud in connection with the scheme (18 U.S.C. §§ 371, 1343; 42 U.S.C. § 7413(c)(2)(A)).

Winterkorn's indictment represents the most recent charges in an ongoing investigation into unprecedented emissions cheating by VW. In January 2017, VW agreed to plead guilty to criminal charges that it deceived U.S. regulatory agencies, including the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB), by installing so-called defeat devices in diesel vehicles emissions control systems that were designed to cheat emissions tests. The defeat devices consisted of software designed to recognize whether a vehicle was undergoing standard U.S. emissions testing on a dynamometer or being driven on the road under normal driving conditions, in which case harmful nitrogen oxide (NOx) emissions increased significantly.

VW has already been sentenced to pay \$2.8 billion for its criminal violations. It also agreed to the imposition of an independent corporate compliance monitor for the duration of its three-year term of probation.

Winterkorn, who served as VW's CEO and managing board chairman and thus VW's highest ranking executive from January 2007 until September 2015, is the ninth individual to be charged in this matter. Two former engineers, Oliver Schmidt and James Liang, pleaded guilty to participating in the conspiracy alleged in the indictment and are currently serving sentences of 84 months and 40 months in prison, respectively. Five additional defendants, including former VW executives and senior managers, were indicted in January 2017, but have not been apprehended. Similar to Winterkorn, each of them is believed to be a German citizen and to reside in Germany. Finally, one former manager of VW's subsidiary Audi AG, Giovanni Pamio, an Italian citizen, has been charged by complaint and currently remains in Germany pending extradition.

The indictment alleges that Winterkorn was informed of VW's diesel emissions cheating in May 2014 and again in July 2015. The indictment further alleges that Winterkorn, after having been clearly informed of the emissions cheating, agreed with other senior VW executives to continue to perpetrate the fraud and deceive U.S. regulators.

This case was investigated by the Federal Bureau of Investigation and the U.S. EPA Criminal Investigation Division.

Guilty Pleas

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

# Guilty Pleas

June 2018

## Guilty Pleas

***United States v. Daniel F. Dyer et al.*, Nos. 1:17-CR-00058, 1:18-CR-00066 (D. Maine) AUSAS Chris Ruge and James Moore.**

On May 18, 2018, Daniel F. Dyer pleaded guilty to violating the Lacey Act for importing illegally-taken moose antlers and a hide (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)).

On September 28, 2013, Dyer, a Canadian outfitter and guide, arranged for Richard Eaton, a West Virginia resident, to unlawfully harvest a moose in New Brunswick, Canada, using a license issued to a New Brunswick resident. Dyer later transported the animal's hide and antlers to Maine. Dyer delivered the hide to a taxidermist in Pennsylvania and the antlers to Eaton in West Virginia. Eaton pleaded guilty to a similar charge and was sentenced in 2017 to pay a \$2,500 fine.

This case was investigated by the U.S. Fish and Wildlife Service and the Wildlife Enforcement Division of Environment Canada (New Brunswick).

***United States v. Executive Air Terminal, Inc., et al.*, No. (S.D.W.V.), AUSA Erik S. Goes and SAUSA Perry D. McDaniel.**

On May 3, 2018, Executive Air Terminal, Inc. (Executive Air) and company president Brian S. Miller, pleaded guilty to violating the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6928(d)(2) (A)). Sentencing is scheduled for July 19, 2018.

Executive Air provides fueling and other services for private and commercial airplanes at Yeager Airport in Charleston, West Virginia. In addition to refueling, the company drained and collected fluids, such as oil, aviation fuel, deicing and other



*Defendants after killing moose*



*Midnight removal of hazardous waste from airport*

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## Guilty Pleas

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fluids. This process generated hazardous wastes, which were stored in 55 gallon drums on site. The company was not permitted to store more than 1,000 kilograms of waste without a RCRA permit.

By September 2015, the facility had accumulated 37 drums, 27 of them held hazardous wastes (weighing more than 3,500 kilograms.) Instead of hiring a licensed hazardous waste hauler, Miller directed employees to move the drums in the middle of the night to a farm outside Charleston, West Virginia. U.S. EPA CID discovered the drums in November 2015, at which point they were shipped to a proper facility for disposal.

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

# Sentencings

June 2018

## Sentencings

### ***United States v. Peiwen Zhou*, No. 4:17-CR-00091 (N.D. Calif.), AUSA Waqar Hasib.**

On May 23, 2018, Peiwen Zhou was sentenced to pay a \$40,000 fine, complete a five-year term of probation, and perform 200 hours of community service. Half of the 200 hours must relate to hazardous materials education and safety presentations in which Zhou discusses his crimes.

Zhou is the founder, owner, and chief executive officer of AK Scientific. He pleaded guilty to violating the Hazardous Materials Transportation Act (HMTA) and Toxic Substances Control Act (TSCA) for illegally transporting hazardous materials and failing to properly declare imports of toxic substances between 2012 and 2014 (49 U.S.C. § 5124(a); 15 U.S.C. §§ 2614, 2615).



*Chemicals stored in apple boxes at AK Scientific*

AK Scientific was a business that purchased and sold research and specialty chemicals to customers that included universities, research laboratories, and other entities. It purchased chemicals from chemical supply companies in South Korea, Poland, India, and New Zealand.

Zhou admitted he did not adequately train employees on HMTA requirements and, as a result, caused employees to ship hazardous materials on a number of occasions without properly labeling, marking, and identifying the packages. Company employees also neglected to complete and file import certifications required under TSCA.

As a result of the plea, Zhou will step down as company CEO and play no role in its shipping or regulatory functions. The company entered into a deferred prosecution agreement in which it agreed to pay a \$100,000 fine and retain an independent monitor to oversee compliance. Pursuant to the deferred prosecution agreement, the charges will be dismissed if AK Scientific abides by the terms of the agreement for three years, including compliance with safety and labelling requirements.

This case was investigated by the U.S. EPA Criminal Investigation Division, and the U.S. Department of Transportation Office of Inspector General.

### ***United States v. Glen Welch et al.*, No. 8:16-CR-00541 (D.S.C.), AUSA William J. Watkins, Jr.**

On May 23, 2018, Glen Welch and Welch Environmental Group (WGE) were sentenced to complete one-year terms of probation. Welch also will perform 80 hours of community service.

Welch pleaded guilty to being an accessory after-the-fact for assisting WGE in transporting hazardous waste without a manifest (18 U.S.C. § 3). The company pleaded

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## Sentencings

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guilty to violating the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6928(d)(5)).

WGE is in the business of retrieving lead and other metals from spent munitions gathered at firing ranges around the Southeast. In October 2010, the company transported hazardous waste without a manifest.

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

***United States v. Randall Fox et al.*, No. 2:16-CR-00100 (W.D. Wash.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Stephen DaPonte, and ECS Law Clerk Christopher Kopf.**

On May 22, 2018, Randall Fox was sentenced to 30 days' incarceration, followed by two years' supervised release. Fox, a captain of the fishing vessel *Native Sun*, was found guilty by a jury of violating the Act to Prevent Pollution from Ships (APPS) for discharging oily waste directly into the sea (33 U.S.C. § 1908(a)).

The government proved that Randall Fox discharged bilge slops from the *Native Sun* directly overboard into the ocean using unapproved pumps and hoses. One of these discharges was video-recorded by a crewmember, who reported the crime to authorities. Other evidence at trial established that the vessel had repeatedly pumped its bilges in the same manner depicted in the video. Bingham Fox, the defendant's father and the vessel owner, was convicted at trial of related crimes in 2017. Bingham Fox was sentenced to complete a two-year term of probation and perform 240 hours of community service.

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



*Oil slick from overboard discharge*

***United States v. Robert P. McConnell*, No. 17-CR-40077 (D. Kans.), AUSA Gregory Hough.**

On May 21, 2018, Robert P. McConnell was sentenced to pay a \$30,000 fine and complete a five-year term of probation for violating the Lacey Act (16 U.S.C. §§ 3372(a)(1), (a)(2)(A), 3373(d)(1)(2)).

McConnell is the owner of Horseshoe Hill Outfitters. The company advertises "trophy North American big game hunting adventures" in Kansas, New Mexico, Pennsylvania, and Ontario. In November 2013, and September 2014, McConnell imported wild deer that had not been properly tested for Chronic Wasting Disease (CWD) and were not part of an accredited herd. He also imported domesticated deer. CWD is a chronic, fatal disease of

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## Sentencings

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the central nervous system in certain deer, elk, and moose. It is transmitted from direct contact between the animals, or from indirect contact with soil and other surfaces where the disease is present.

This case was investigated by the U.S. Fish and Wildlife Service and the Kansas Department of Wildlife, Parks & Tourism.

### ***United States v. Diamond Environmental Services et al.*, Nos. 3:17-CR-01305, 3:17-CR-01064 (S.D. Calif.), AUSA Melanie Pierson.**

On May 18, 2018, Arie Eric De Jong, III, the owner of Diamond Environmental Services, was sentenced to five months' incarceration, followed by three years' supervised release, for illegally disposing of sewage sludge in cities across southern California. He also will pay a \$15,000 fine. Warren Van Dam, the company's chief operating officer, will complete a five-year term of probation and perform 250 hours of community service. The company will pay a \$2.46 million fine and complete a five-year term of probation. All three defendants were held jointly and severally liable for \$2.25 million in restitution to be divided between five different sanitation agencies. The company also forfeited \$2.2 million in illegal profits.

The company serviced portable toilets and hauled septage. It operated facilities in San Diego, Perris, Fullerton, and Huntington Park, and was headquartered in San Marcos, California. Between 2009 and 2016, employees regularly discharged sewer waste at a number of locations from hundreds of company trucks directly into the publically-owned treatment works (POTW). Van Dam and De Jong directed employees to construct and install specific equipment to facilitate these discharges, concealing the illicit sewer connection from inspectors by placing a portable toilet over the connection during inspections. All three pleaded guilty to a conspiracy charge. Diamond and De Jong also pleaded guilty to a mail fraud violation (18 U.S.C. §§ 371, 1341).

In September 2017, a jury convicted Ronald Fabor, the company's Operations Safety and Compliance Manager, on two counts of perjury relating to his testimony before a grand jury (18 U.S.C. § 1621). The jury found that Fabor falsely testified that the first time he learned that Diamond employees were illegally dumping sewage was when agents executed search warrants. The jury also convicted Fabor of falsely testifying that he had never personally observed company trucks connect hoses to the illegal sewer connections. He was sentenced to pay a \$500 fine, complete a five-year term of probation, and perform 200 hours of community service.

Dischargers such as Diamond are charged a fee of approximately \$75 per 1,000 gallons based on the capacity of each particular truck. By unlawfully discharging portable toilet waste directly into the POTWs, the company defrauded the municipalities of between \$1.3 and \$4.1 million in fees to which they were entitled.

This case was investigated by the Federal Bureau of Investigation and the U.S. EPA Criminal Investigation Division.

## Sentencings

### ***United States v. Sonny Dong et al.*, Nos. 2:16-CR-00823, 00827 (C.D. Calif.), AUSA Dennis Mitchell.**

On May 14, 2018, Sonny Dong was sentenced to 18 months' incarceration, followed by three years' supervised release, and a \$5,500 fine. He previously pleaded guilty to conspiring to smuggle Asian songbirds, specifically, Chinese Hwamei, into the United States (18 U.S.C. § 371).

At some point prior to December 2016, Dong, co-conspirator Quang Truong, and others conspired to import Asian songbirds from Vietnam into Los Angeles. While in Vietnam, Truong received Asian songbirds that had been packed into one or more suitcases in a manner designed to escape detection by United States authorities. Truong made numerous trips that were funded by Dong and others.

In April 2016, Truong was detained at the airport in Vietnam with several birds, including Asian songbirds, strapped to his legs underneath his clothing and in a suitcase. Truong continued to make trips to and from Vietnam up through December of 2016, with the birds concealed in his luggage.

Dong was previously incarcerated for four months in June 2010 for smuggling songbirds from Vietnam. He also paid close to \$4,000 in restitution for the costs of caring for 36 birds that were in his possession. Truong pleaded guilty to a conspiracy, but is not yet scheduled for sentencing.

This case is a result of Operation Jungle Book, a law enforcement initiative led by the U.S. Fish and Wildlife Service targeting wildlife smuggling.

### ***United States v. Nitta Kisen Kaisha Ltd. et al.*, Nos. 7:18-CR-00030, 7:17-CR-00019 (E.D.N.C.), ECS Senior Trial Attorney Ken Nelson, AUSA Banu Rangarajan, SAUSA-USCG Brendan Gavin, and ECS Law Clerk Christopher Kopf.**

On May 10, 2018, Nitta Kisen Kaisha Ltd., (Nitta) the owner and operator of the *M/V Atlantic Oasis*, was sentenced after pleading guilty to violating the Act to Prevent Pollution from Ships (APPS) and obstructing justice (33 U.S.C. 1907, 1908(a); 18 U.S.C. § 1519). Nitta will pay a \$1 million fine, complete a three-year term of probation, and implement an environmental compliance plan.

The company admitted its engineers failed to document the illegal discharge of oily wastes from the vessel's fuel and lubrication oil purifier systems, as well as oily waste discharges from the bilges and holding tanks. During a Coast Guard inspection in May 2017, a crewmember informed the inspectors how wastes were discharged under the direction of Chief Engineer Jinhyun Youn. The crewmember also showed them the hidden discharge hoses. When questioned, Youn initially denied that he had ordered any discharges. He also denied that the vessel kept track of the contents of engine room tanks in a sounding log. At the end of the inspection, Youn confessed to knowing about the discharges and the location of the log. He was sentenced in January 2018 to pay a \$5,500 fine and to complete a one-year term of probation.

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



Overboard dumping

## Sentencings

### ***United States v. David Haisten et al.*, No. 2:16-CR-00461 (E.D. Pa.), AUSA Chris Parisi.**

On May 9, 2018, the court ordered David and Judy Haisten to serve lengthy terms of incarceration after a jury convicted them in October 2017. The two will serve 78 and 60 months' respectively, followed by three years' supervised release. They also will each pay \$50,000 fines.

The two were convicted on multiple charges related to their web-based business of selling unregistered and misbranded pet pesticides, misbranded animal drugs, and counterfeit DVDs. A jury found them guilty of 14 of the 15 counts charged, specifically, conspiracy; violating the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and trafficking in counterfeit goods (7 U.S.C. § 136j(a)(1)(E); 18 U.S.C. §§ 331(a), 332(a)(2), 371; 2320).

Beginning in January 2009, the defendants started "Luv My Pets Supply Store LLC" (LMP) out of their home in Irmo, South Carolina. Through LMP and other websites they advertised and sold substantially discounted animal drugs and pesticides, such as Frontline and K9 Advantix, which were not approved for sale in the U.S. The Haistens eventually expanded their illegal business to include counterfeit DVDs purchased from China.

During the operation of LMP and its related websites, the defendants received numerous warnings that they were violating the law. For example, in March 2011, the South Carolina Board of Pharmacy served a cease and desist order on David Haisten, warning him that LMP's activities violated South Carolina law. At various times between 2011 and 2012, several well-known companies specializing in animal health products, including Merial and Sergeant's Pet Products, also served cease and desist letters on the defendants.

In 2011 and 2012, Customs and Border Protection (CBP) agents seized numerous packages shipped to the Haistens from China. They contained hundreds of counterfeit DVDs for popular movies and television shows. Following each seizure, CBP sent written notice to the defendants indicating the seized items were counterfeit.

After numerous complaints by consumers, eBay and other online providers suspended the defendants' various accounts. To continue their sales, they recruited family and friends to provide identifying information to open new seller accounts. In some instances, the Haistens paid others for their identifying information. At other times, they used the identities of deceased relatives.

During the summer of 2012, agents made three controlled purchases from the defendants' website. Following each purchase, they shipped unregistered and misbranded pesticides from their home in South Carolina to investigators in Philadelphia. On one occasion, the defendants shipped misbranded animal drugs to investigators. After executing a search warrant in February 2013, agents seized numerous counterfeit DVDs, misbranded and unregistered pet pesticides, and misbranded animal drugs from their residence.

This case was investigated by the U.S. EPA Office of Inspector General, the Food and Drug Administration Office of Criminal Investigations, and the Department of Homeland Security.

## Sentencings

***United States v. Jose Manuel Sanchez-Zapien et al.*, No. 1:17-CR-00159 (E.D. Calif.), AUSA Karen Escobar.**

On May 7, 2018, Jose Manuel Sanchez-Zapien was sentenced to ten years' incarceration for conspiring to manufacture marijuana, and manufacturing marijuana in the Sequoia National Forest (21 U.S.C. §§ 846, 841). Sanchez also was ordered to pay \$8,665 in restitution to the U.S. Forest Service for damage to public land and natural resources caused by the cultivation operation.

Between August 2016 and June 2017, Sanchez delivered supplies to growers at a marijuana cultivation site in the Sequoia National Forest. The drop point had been used many times before for growers to access sites in the area. Law enforcement officers found more than 20,000 marijuana plants at the Alder Creek site. Approximately three acres of public land were almost completely stripped of vegetation and the ground was terraced to accommodate the marijuana plants. Significant amounts of ammonium nitrate, other fertilizers, insecticide containers, and trash were scattered throughout the site.

Co-defendant Maximiliano Farias-Martinez is scheduled for trial to begin on November 27, 2018.

This case was investigated by the U.S. Forest Service, with assistance from the U.S. Immigration and Customs Enforcement Homeland Security Investigations, the California Department of Fish and Wildlife, the Social Security Administration Office of the Inspector General, and the Merced Area Gang and Narcotics Enforcement Team.

***United States v. William Sheldon et al.*, Nos. 2:16-CR-00123, 2:17-CR-00032 (D. Maine), ECS Trial Attorneys Cassie Barnum and Shane Waller, and ECS Paralegal Ashley Patterson-Chandler.**

On May 3, 2018, William Sheldon and Timothy Lewis were sentenced to six months' incarceration, followed by three years' supervised release, and are prohibited from purchasing or exporting eels. Sheldon will pay a \$10,000 fine and Lewis will pay \$2,500. Thomas Reno will complete a one-year term of probation, and Sheldon will further forfeit \$33,200 in lieu of a truck he used during the criminal acts.

All previously pleaded guilty to Lacey Act violations for their involvement in the illegal trafficking of juvenile eels, also known as elvers (16 U.S.C. §§ 3372, 3373). The defendants and others bought, sold, and transported elvers, knowing that they had been taken, possessed, transported, and sold in violation of the laws and regulations of numerous states including New Jersey, Massachusetts, Rhode Island, and Connecticut.

This case is a result of "Operation Broken Glass," a multi-jurisdiction U.S. Fish and Wildlife Service investigation into the illegal trafficking of American eels.

## Announcements

News from state, local, and Canadian cases is posted on the Regional Environmental Enforcement Associations [website](#) .

Please send [REDACTED] any pleadings you believe would be useful for posting in the [Brief Bank](#). Older materials are still available on the [Document Bank Archives](#) page.

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

Please notify ECS of any appeals taken in your cases, as per [Section 5-11.118](#) of the U.S. Attorneys' Manual.

A public version of the [Bulletin](#) is available for non-law enforcement readers

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