



Monthly

# Bulletin

## Environmental Crimes Section

May 2016

### Inside this Issue:

<a href="#">Decisions</a>	3
<a href="#">Trials</a>	4
<a href="#">Indictments</a>	5-6
<a href="#">Guilty Pleas</a>	7-8
<a href="#">Sentencings</a>	9 - 18
<a href="#">Contacts</a>	19
<a href="#">Announcements</a>	20

Send your federal case updates to:



*Defendant sentenced to 57 months' incarceration for trafficking thousands of baby turtles to China. See [U.S. v. Xu](#), inside, for more details.*

*I commend all the agencies that played a role in this successful investigation and prosecution," said U.S. Fish and Wildlife Service Deputy Chief Edward Grace. "Orangutans are one of the rarest great ape species on Earth, and the desire to possess a skull from one as tourist art or trophy in someone's collection will not be tolerated. The Service will continue to fully investigate and bring to justice those individuals who continue to perpetrate criminal acts involving orangutans and other protected wildlife species." [From [press release](#) for sentencing in [U.S. v. Yeng](#).]*

District/Circuit	Case Name	Case Type/Statutes
Southern District of Alabama	<a href="#">United States v. Paul Dancu</a>	Vessel/Conspiracy
District of Alaska	<a href="#">United States v. James Staeheli</a>	Mine Operation/CWA
Central District of California	<a href="#">United States v. Lynn Leung</a>	Fish Oil Sales/Lacey Act Trafficking, Entry of Goods Falsely Classified, Misbranding of Food with Intent to Defraud
Eastern District of California	<a href="#">United States v. Macedonio Madrigal-Herrera</a> <a href="#">United States v. Humberto Ceballos-Rangel</a>	Marijuana Grow /Drug Charges, Depredation of Public Land
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Northern District of Illinois	<a href="#">United States v. Phillip M. Kraus</a>	Drinking Water Operator/False Statements
Western District of Kentucky	<a href="#">United States v. Kosmos Cement Company d/ b/a Cemex, Inc.</a>	Worker Death/MSHA
Eastern District of Louisiana	<a href="#">United States v. Energy Resource Technology GOM, LLC</a>  <a href="#">United States v. Donald Vidrine</a>	Oil and Gas Platform/OCSLA, CWA  Deepwater Horizon/ CWA
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District of Maryland	<a href="#">United States v. Aquarosa Shipping</a>	Vessel/Whistleblower
Eastern District of Michigan	<a href="#">United States v. Kai Xu</a>	Turtle Imports/Smuggling
District of Montana	<a href="#">United States v. Joseph D. Robertson</a>	Wetlands/CWA, Depredation to Government Property
Eastern District of North Carolina	<a href="#">United States v. Oceanic Illsabe Ltd.</a>	Vessel/Conspiracy, False Statement, Obstruction, Witness Tampering, APPS
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District of Oregon	<a href="#">United States v. Eoin Ling Churn Yeng</a>	Wildlife Shipments/Smuggling, Conspiracy
Western District of Washington	<a href="#">United States v. Bingham Fox</a>	Vessel/APPS, Conspiracy, CWA
Southern District of West Virginia	<a href="#">United States v. Don Blankenship</a>	Mining Deaths/Conspiracy, MSHA



## Decisions

***United States v. Aquarosa Shipping A/S*, No. 11-CR-00652 (D. Md.), ECS Senior Litigation Counsel Richard Udell and AUSA Michael Cunningham.**

On April 25, 2016, the district court issued an order regarding a contested whistleblower award under the Act to Prevent Pollution from Ships (APPS) which allows up to one-half of a criminal fine to be awarded to persons who provide information leading to conviction. Convictions were obtained in three separate cases against the owner, operator and Chief Engineer of the *M/V Aquarosa* related to the discharge of waste oil and plastic, and false records concealing the pollution. The primary issues pending before the court were: (1) whether and how much to grant the whistleblower; and (2) whether the whistleblower's attorney should receive a contingency fee.

The court found that a substantial award of \$550,000 was appropriate to provide a sufficient incentive for seamen to inform the United States of MARPOL violations. The ship operator had opposed any whistleblower award. Although the award could have been higher, the court held that \$550,000 was appropriate given the whistleblower's assistance in the prosecution and ample to provide incentive to other prospective whistleblowers. The court also agreed with the government's position that the whistleblower's counsel should not be able to enforce a contingency fee agreement where the whistleblower and prior court appointed counsel had done the work leading to conviction. The court held that the contingency fee agreement did not apply to the situation and that even if it did, it would be unethically excessive. The court relied on the First Circuit's holding in *U.S. v. Overseas Shipholding Group* (where the government similarly opposed an attorney's effort to collect a contingency fee from whistleblowers), that a contingency fee would undermine the purpose of the statute by siphoning off the amount a whistleblower would receive. The court referred to a Magistrate Judge decision on whether the whistleblower's counsel should receive any further fees beyond \$10,000 to which the government had not objected.



## Trials

**United States v. Joseph D. Robertson, No. 6:15-CR-00007 (D. Mt.), AUSA Bryan Whittaker and SAUSA Eric Nelson.**

On April 7, 2016, following a four-day trial, a jury found Joseph D. Robertson guilty on two felony Clean Water Act counts and one count of depredation to government property (33 U.S.C. § 1319(c)(2)(A); 18 U.S.C. § 1361). Sentencing is scheduled for July 20, 2016.

Robertson constructed illegal ponds on two parcels of land, one of which was located in the Beaverhead-Deerlodge National Forest, and the other on adjacent private property. The ponds resulted in the discharge of dredged and fill material into a tributary stream and adjacent wetlands, causing widespread damage to both properties.



*Backhoe digging up wetlands*

In October of 2013, a United States Forest Service (USFS) agent visited the forest property to determine whether Robertson had complied with conditions of probation imposed for previous violations of USFS regulations. At trial, the agent testified that during the site visit, she observed multiple ponds dug into an existing stream on both forest service and adjacent private property.

During a subsequent site visit in November of 2013, Robertson admitted that he had performed the work on the forest property using an excavator. Officials observed in May 2014 that he had expanded the site to approximately 1.2 acres in size, extending beyond the forest property to a private property that he did not own. The work consisted of nine ponds of varying sizes, including some that were close to 5,000 square feet and were placed directly in the stream and wetlands area. Unconsolidated dredged material from the ponds had been used to create berms and was placed in and around the area. Robertson admitted that he was responsible for this additional construction despite being told repeatedly that he had no legal right to do so.

This case was investigated by the U.S. Forest Service; the U.S. EPA Criminal Investigation Division; the U.S. Army Corps of Engineers; and the Jefferson County Sheriff's Office; with assistance from Montana Fish, Wildlife, and Parks; and the Jefferson Valley Conservation District.



## Indictments/Informations

***United States v. Oceanic Illsabe Ltd.*, No. 15-CR-00108 (E.D.N.C.), ECS Senior Trial Attorney Ken Nelson, Trial Attorney Brendan Selby, AUSA Banu Rangarajan, and ECS Paralegal Christopher Kopf.**

On April 14, 2016, a nine-count superseding indictment was returned charging Oceanic Illsabe, Ltd., Oceanfleet Shipping, Ltd., Chief Engineer Rustico Yabut Ignacio, and Second Engineer Cassius Flores Samson with conspiracy, APPS, false statement, obstruction and witness tampering violations stemming from the illegal discharge of oily wastes directly into the sea (18 U.S.C. §§ 371, 1001, 1505, 1512(b)(3); 33 U.S.C. § 1908 (a)).

Oceanfleet Shipping Limited is a Greek shipping company that operates the cargo carrier *M/V Ocean Hope*. According to the indictment, in 2015 the defendants bypassed pollution prevention equipment with an unauthorized hose connection, or “magic pipe,” to discharge oil sludge directly overboard. They also ordered crewmembers on numerous occasions to pump oily mixtures from the vessel’s bilges into the sea using the ship’s general service pump rather than processing these mixtures through the proper equipment.

To hide the illegal discharges, the defendants allegedly maintained a fictitious oil record book that failed to record the disposal, transfer, or overboard discharge of oil from the vessel. The ORB also contained false entries that pollution prevention equipment had been used when it had not.

The indictment further alleges the defendants ordered subordinate crewmembers to lie to the Coast Guard during an inspection in Wilmington, North Carolina. The crewmembers were instructed to deny knowledge of the pipe used to discharge sludge and to tell the inspectors that the oily water separator had been used when they knew this to be untrue.

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

## Indictments/Informations

***United States v. Bingham Fox***, No. 2:16-CR-00100 (W.D. Wash.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Brandy Parker, and ECS Paralegal Christopher Kopf.

On April 7, 2016, the owner and captain of the commercial vessel *F/V Native Sun* were indicted for conspiracy, as well as violations of the Clean Water Act and APPS (18 U.S.C. § 371; 33 U.S.C. §§ 1908(a), 1319(c)(2) (A)).

According to the indictment, starting in 2011 and continuing into 2013, Bingham Fox and Randall Fox discharged and caused other crewmembers to illegally discharge oil and other pollutants into coastal waters near Blaine, Washington, and the open ocean where the ship operated.

As the vessel's owner, Bingham Fox was responsible for its dockside maintenance. Fox allegedly ordered crew members to discharge oil and other bilge wastes overboard into the harbor and adjoining shorelines of Blaine. Bingham Fox's son, Randall Fox, served both as a crewmember and later a captain aboard the *Native Sun* and ordered crewmembers to discharge oil and bilge wastes overboard while the vessel was underway on fishing trips. The vessel had neither a CWA permit to discharge wastes nor an oily water separator, as required by APPS.

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



*F/V Native Sun*



## Guilty Pleas

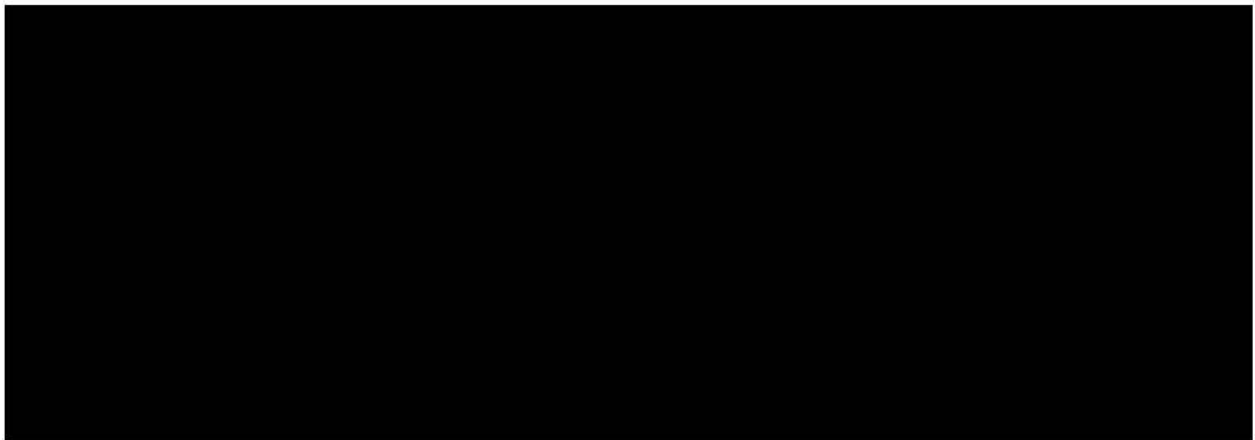
***United States v. Macedonio Madrigal-Herrera***, No. 1:15-CR-00216 (E.D. Calif.), AUSA Karen Escobar.

On April 18, 2016, Mexican national Macedonio Madrigal-Herrera pleaded guilty to conspiring to manufacture, distribute and possess marijuana in connection with a large-scale cultivation operation on public land. Madrigal also had been charged with depredation to government lands and natural resources (21 U.S.C. §§ 841, 846; 18 U.S.C. § 1361). Co-defendant Mexican national Ezequiel Armas-Ortiz was sentenced in December 2015 to 24 months' incarceration. Armas also was ordered to pay \$4,200 in restitution to the U.S. Forest Service. Madrigal is scheduled to be sentenced on July 18, 2016.

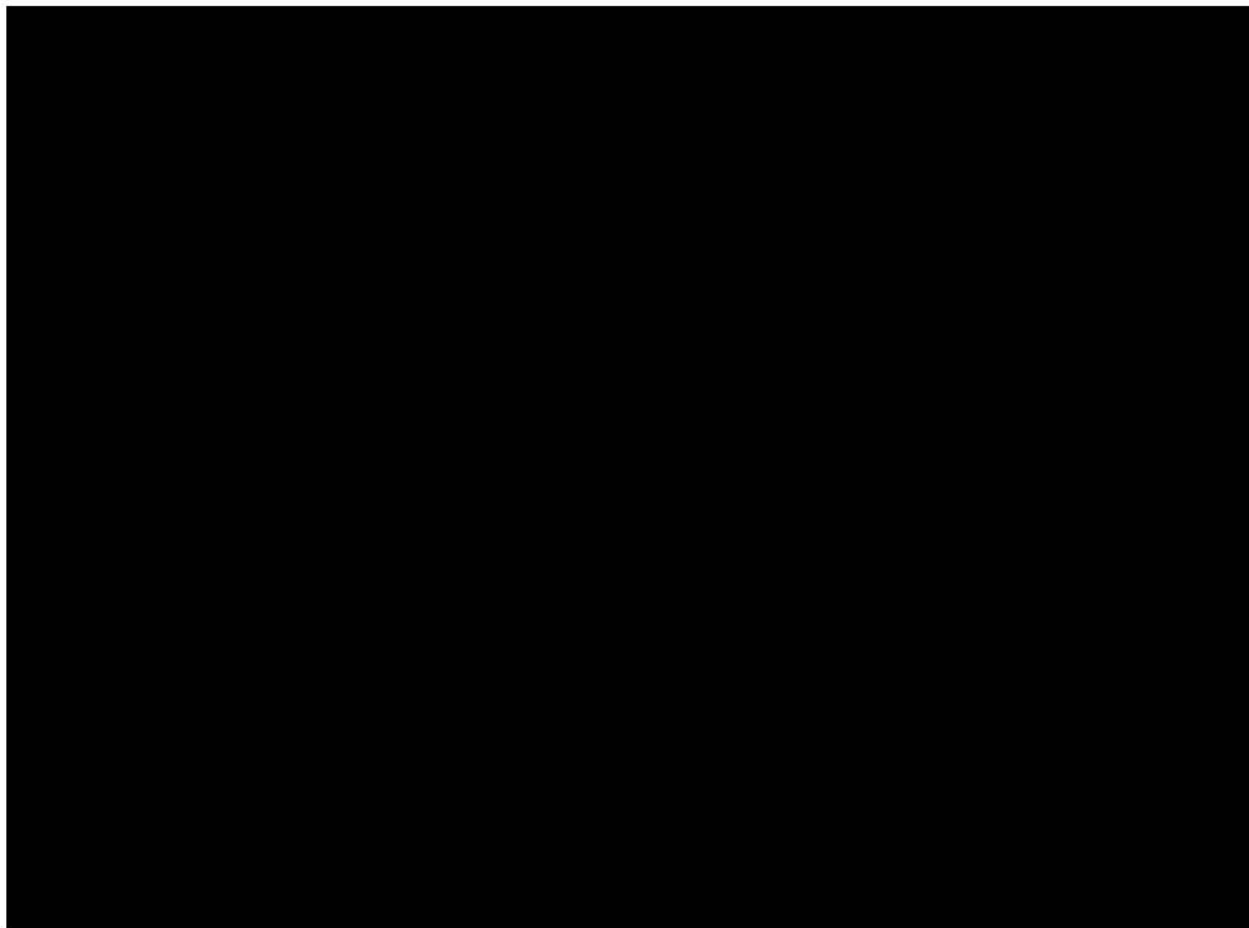


*Garbage left at grow site*

Madrigal and Armas were responsible for watering close to 3,000 marijuana plants in the Brush Creek drainage in the Sequoia National Forest. The cultivation activities caused extensive damage to the public land and natural resources. Zinc phosphide, a toxic pesticide from Mexico, was found at the site, along with fertilizer and trash. Trees and plants, newly generated following a 2002 fire, were cut down to make room for the marijuana. Water was diverted from a nearby stream that supports trout. This case was investigated by the U.S. Forest Service, ICE Homeland Security Investigations, the California National Guard, the California Department of Fish and Wildlife, and the Tulare County Sheriff's Office.



## Guilty Pleas





## Sentencings

***United States v. Eoin Ling Churn Yeng*, No. 3:16-CR-00090 (D. Ore.), AUSA Ryan Bounds.**

On April 27, 2016, two Malaysian nationals pleaded guilty to conspiring to smuggle wildlife (18 U.S.C. §§ 371, 545) after they used mail parcels to smuggle five orangutan skulls and nine other protected species of wildlife, including bear claws and macaque skulls, into the District of Oregon. The court also sentenced Eoin Ling Churn Yeng and Galvin Yeo Siang Ann to six months' incarceration, followed by one year of supervised release and fines totaling \$25,000. They also will perform 240 hours of community service.



*Langur skull*

The investigation into Yeng and Ann began in 2013, when a routine search of an international package revealed a helmeted hornbill mandible that was being shipped to a residence in Oregon. Helmeted hornbills are listed as endangered under the Endangered Species Act and protected by CITES.

U.S. Fish and Wildlife agents initiated an undercover operation named "Operation Pongo" (inspired by the orangutan's genus *Pongo*). The investigation revealed that the defendants were co-owners of an online business that regularly smuggled endangered wildlife into the United States from 2004 to 2015, selling a variety of wildlife items to multiple individuals and businesses around the country. Among the items the agents purchased were three orangutan skulls, four helmeted hornbill skulls, one CITES-protected rhino hornbill head, and one CITES-protected langur skull.

Operation Pongo was conducted by the U.S. Fish and Wildlife Service, with assistance from the Department of Justice Office of International Affairs, the U.S. State Department, the FBI Legal attaché in Kuala Lumpur, the National Oceanic and Atmospheric Administration, the U.S. DOI Bureau of Land Management, and the Multnomah County Sheriff's Office.



# Sentencings

## *United States v. Lynn Leung, No. 2:13-CR-00723 (C.D. Calif.) AUSA Joe Johns.*

On April 26, 2016, two corporate defendants and their owners and operators were sentenced after previously pleading guilty to charges related to wildlife trafficking, false invoicing to evade customs duties, misbranding food with the intent to defraud, and money laundering.

Lynn Leung, the former president and co-



*Label from bottle of seal oil*

owner of the UBF Group, Inc., doing business as the Nu-Health Products Company, will complete a five-year term of probation, to include one year of home detention. Leung also will pay a \$20,000 fine. She was further banned from working as a manager, officer or director of any business entity (including her own family companies) during the period of probation.

Leung's husband, Daniel Fu (the former vice-president of UBF), also will complete a five-year term of probation to include six months' home detention. He, too, will pay a \$20,000 fine and is similarly banned from working during the term of probation. Leung and Fu jointly owned and operated a number of local dietary supplement import and distribution companies doing business as the Nu-Health Products Company, including UBF and ASN Group, Inc.

UBF pleaded guilty to a felony Lacey Act violation and Entry of Goods Falsely Classified (16 U.S.C. §§ 3372(d)(A), 3373(d)(3)(A); 18 U.S.C. § 541) related to the importation of Harp seal oil falsely labeled as "fish oil" and a false invoicing scheme to evade customs duties between October 2008 and March 2010. Harp Seals are protected by the Marine Mammal Protection Act, which forbids importation of any seals or seal parts, except for scientific or educational purposes. By falsely classifying the value of its imported products on customs documents, UBF avoided payment of at least \$119,000 in import duties on its Chinese merchandise. UBF was sentenced to pay a \$230,000 fine and \$119,000 in restitution to U. S. Customs and Border Protection for import duties it avoided as a result of the scheme. The company also will forfeit \$941,000 in proceeds.

ASN pleaded guilty to a misdemeanor violation related to the misbranding of food in foreign commerce. Leung and Fu pleaded guilty to felony violations related to the misbranding of food in foreign commerce with the intent to defraud (21 U.S.C. §§ 331(a), 333(a)(2), and 343(a)(1)). The "food" at issue consisted of millions of capsules of honey bee royal jelly – dietary supplements that were falsely and misleadingly described in import

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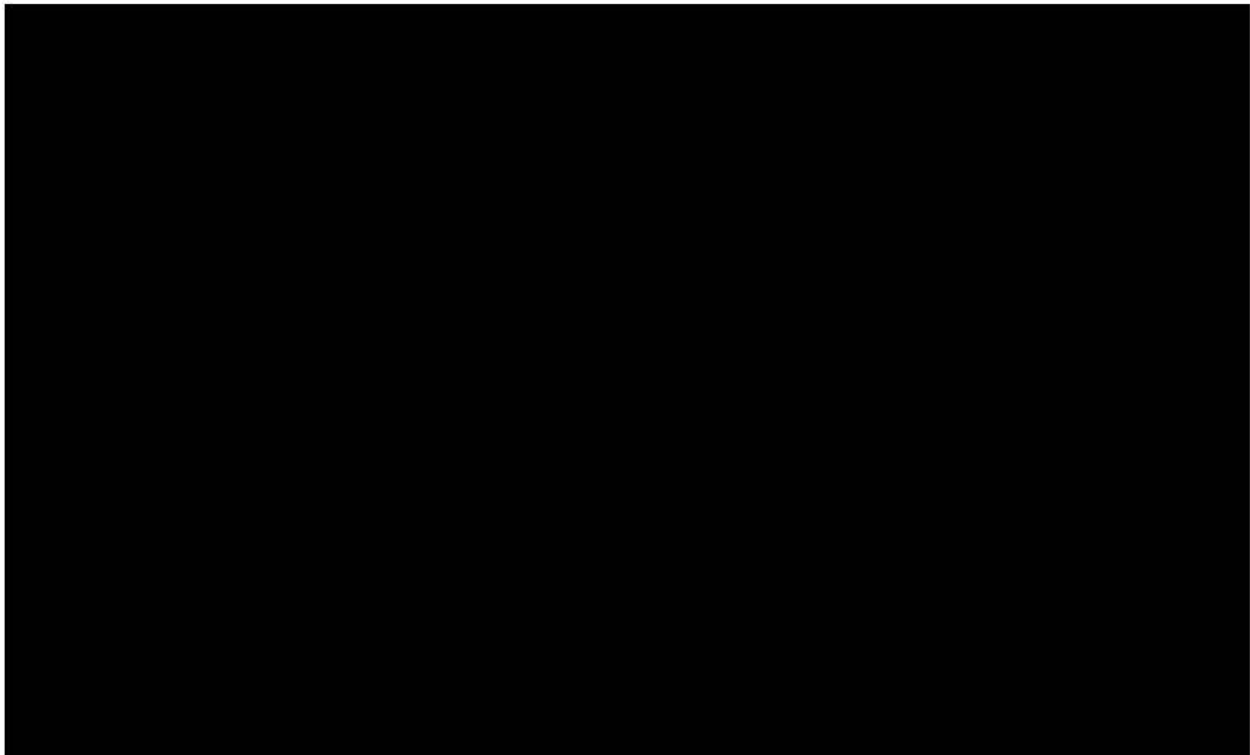
## Sentencings

*(Continued from page 10)*

records as “aloe vera.” ASN was sentenced to pay a \$30,000 fine and was ordered to implement a compliance program designed to insure compliance with all relevant United States Food, Drug, and Cosmetic Act requirements and regulations. The mislabeled dietary supplements were purchased from UBF’s supplier in China, the Sirio Pharma Company, Ltd. Both Leung and Fu admitted that the royal jelly was falsely described in import and export documents because Sirio Pharma lacked regulatory certificates required for export of the honey bee products from China.

Sirio previously pleaded guilty to a Lacey Act trafficking charge (16 U.S.C. §§ 3372 (a)(4)(B), 3373(d)(2)) and was ordered to pay \$500,000 in fines and penalties. Sirio admitted that employees of Nu-Health asked it to falsely label certain products, including Harp Seal oil and honey bee products, and invoice its shipments of various dietary products in a manner that helped Nu-Health to disguise the true description and cost of the products.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement, the U.S. Food and Drug Administration Office of Criminal Investigations, and the U.S. Immigration and Customs Enforcement Homeland Security Investigation.



## Sentencings

***United States v. Kosmos Cement Company d/b/a Cemex, Inc., No. 3:16-mj-00162 (W.D. Ky.), AUSA Randy Ream and SAUSA Joseph Pinto.***

On April 20, 2016, Kosmos Cement Company d/b/a Cemex, Inc., was sentenced after pleading guilty to a willful failure to comply with a mandatory health or safety standard, in violation of the Mine Safety and Health Act (30 U.S.C § 820(d)), resulting in the death of an employee. Cemex is a Mexican corporation with U.S. headquarters in Houston, Texas. It operates cement plants throughout the United States, Mexico, and Puerto Rico, including Kosmos Cement Company, located in Louisville.



*Exterior of Old Finish Mill at Kosmos Plant that opens into elevator*

On February 21, 2014, a contract employee working at the Kosmosdale, Kentucky, facility fell to his death down an elevator shaft. Cemex had known that the Old Finish Mill Elevator was defective and in need of repairs for more than two years. The elevator service company had made repeated offers to Cemex to renovate it prior to the incident. The employee fell four floors onto the top of the elevator, after the outer door had opened before the elevator had reached the landing. He bled to death before being discovered three hours later.

Cemex was ordered to pay a \$400,000 fine with \$200,000 due immediately and the balance due at the end of a three-year term of probation if the company does not complete the following elevator repairs: upgrading all elevators to meet safety codes; installing interlocking switches to prevent a door from opening when the elevator is not at a landing; implementing a written maintenance control program to achieve safe and reliable operation of the elevators; and permitting on-site elevator inspections by the Kentucky Department of Housing And Construction. The court will dismiss the remaining \$200,000 of the fine if all repairs are made.

An undisclosed civil settlement was made with the family of the victim as a result of a lawsuit filed in Houston.

This case was investigated by the U.S. Department of Labor, Mine Safety & Health Administration (MSHA).



## Sentencings

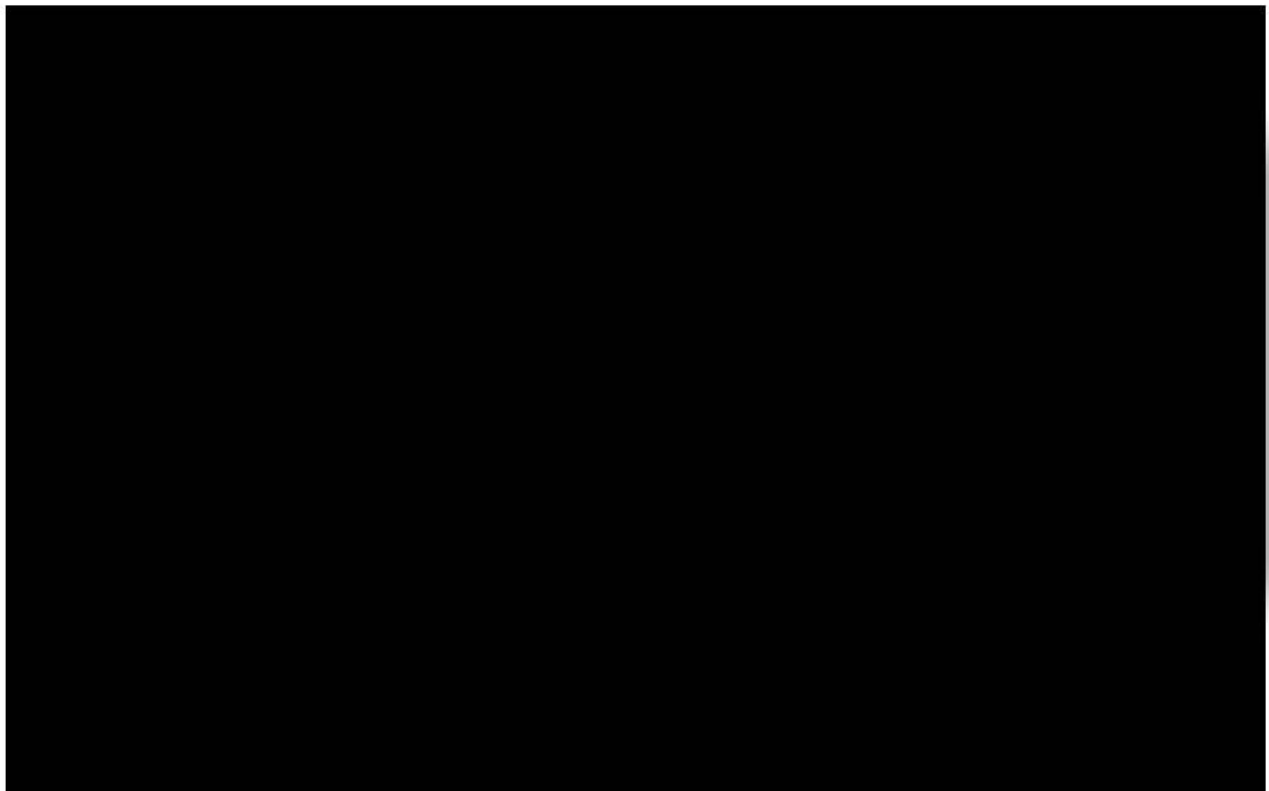
***United States v. Humberto Ceballos-Rangel*, No. 1:15-CR-00226 (E.D. Calif.), AUSA Karen Escobar.**

On April 18, 2016, Humberto Ceballos-Rangel was sentenced to 36 months' incarceration, after pleading guilty to drug charges for his role in an extensive marijuana cultivation site. Ceballos had also been charged with depredation to public lands and natural resources (21 U.S.C. §§ 841, 846; 18 U.S.C. § 1361). Ceballos-Rangel also was ordered to pay \$8,750 in restitution to the U.S. Forest Service for clean-up costs.

Between March and August of 2015, Ceballos lived at a campsite within the grow area, where close to 6,000 marijuana plants were identified. Co-defendants Francisco Javier Gomez-Rodriguez, Alejandro Ramirez-Rojo, and Anthony Isaac Santibanez also were charged. 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. Gomez-Rodriguez pleaded guilty to drug charges and is scheduled to be sentenced on June 13, 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.



## Sentencings

### ***United States v. Ronald D. Carnagey*, No. 3:15-CR-00070 (D. Ore.), AUSA Michelle Kerin.**

On April 12, 2016, Ronald Carnagey was sentenced to 30 days' incarceration after pleading guilty to violating the Rivers and Harbors Act (33 U.S.C. §§ 407, 411).

Over a two-day period in September 2012, Carnagey pumped an undetermined amount of oily water from his vessel into the Columbia River, using a portable pump and hose.

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

### ***United States v. Kai Xu*, No. 5:14-CR-20804 (E.D. Mich.), AUSA Sarah Woodward.**

On April 12, 2016, Canadian national Kai Xu was sentenced to 57 months' incarceration, and \$17,000 in restitution. Xu previously pleaded guilty to six counts of smuggling turtles (18 U.S.C. § 554), some of which were endangered, from the United States in violation of CITES. He will be deported to Canada upon completion of his sentence.

Xu was a full time reptile smuggler who recruited a crew of associates to facilitate his illegal activities. He had more than 20 aliases that he used for contacting turtle breeders and purchasing turtles. On numerous occasions in 2014, Xu entered the United States from Canada and traveled to Fed Ex and UPS facilities in the metro-Detroit area, where he retrieved packages that contained a variety of different species of live turtles. Xu then illegally smuggled the turtles out of the country using a number of methods. In some instances, he repackaged the animals and shipped them directly to China, concealing them in snow boots. On one occasion, Xu taped the live turtles to his legs and groin (a total of 51 live turtles) and returned to Canada. On the day of Xu's arrest, he had packed more than 1,000 turtles into suitcases he sent with a runner he had hired to fly directly from Detroit to Shanghai. The turtles (which had been put into boots and cereal boxes inside the luggage) were recovered by U.S. Fish and Wildlife Service agents. The restitution will be used to care for the turtles.

This case was investigated by the U.S. Fish and Wildlife Service and Environment and Climate Change Canada, with assistance from U.S. Customs and Border Protection and Homeland Security Investigations.



*Turtle recovered from luggage*



## Sentencings

***United States v. Philip M. Kraus*, No. 15-CR-00342 (N.D. Ill.), AUSA Timothy Chapman and SAUSA Crissy Pellegrin.**

On April 11, 2016, Philip M. Kraus was sentenced to three months' imprisonment, followed by one year of supervised release, and will pay a \$5,000 fine.

Kraus, a former certified water operator for the Village of Dolton, Illinois, engaged in a multi-year scheme to falsify drinking water sample data collected between January 2008 and August 2013. Kraus was convicted by a jury in January 2016 on all six false statement counts (18 U.S.C. § 1001).

Dolton was obligated to collect 25-30 samples of its drinking water monthly to test for the presence of total coliform bacteria. The samples were required to be taken from designated sites around Dolton. Kraus routinely collected samples from only one or a few locations, and falsified the collection forms to make it appear as if the sampling had been properly conducted. The false sampling data was sent to the Illinois Environmental Protection Agency.

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

***United States v. Paul Dancu*, No. 1:15-CR-00102 (S.D. Ala.), ECS Trial Attorney Shane Waller, AUSA Mike Anderson, and ECS Paralegals Cynthia Longmire and Diana Greenberg.**

On April 11, 2016, Chief Engineer Paul Dancu was sentenced to five days' incarceration, followed by immediate deportation. Dancu previously pleaded guilty to a conspiracy charge (18 U.S.C. § 371) for his involvement in illegal discharges of oily wastes from the *M/T Stavanger Blossom*.

In January 2010, Norwegian-based shipping company Det Stavangerske Dampskibsselskab AS (DSD) was aware that the oily-water separator aboard the vessel was inoperable. Rather than repair or replace the OWS, the company used various methods to bypass the device and discharge oily wastes overboard. During the last months of the vessel's operation, prior to its arrival in the Port of Mobile, the ship illegally discharged approximately 20,000 gallons of oil-contaminated waste water. Company employees also intentionally discharged fuel oil sludge directly into the ocean after placing it in plastic garbage bags. They attempted to hide these discharges from the Coast Guard by making false entries in the vessel's oil record book and garbage record book. After arriving in Mobile, Second Engineer Xiaobing Chen and Fourth Engineer Xin Zhong lied to the Coast Guard about the sludge discharges and ordered lower ranking crewmembers to do the same.

DSD, Chief Engineer Bo Gao, Chen, and Zhong were sentenced, after a jury variously convicted them in November 2015 of conspiracy, APPS, obstruction, and witness tampering charges (18 U.S.C. §§ 371, 1505, 1512(b), 1515; 33 U.S.C. § 1908(a)). DSD will pay a \$2 million fine, make a \$500,000 community service payment to the Dauphin Island Sea Lab Foundation, complete a three-year term of probation, and implement an environmental compliance plan. Gao and Chen were sentenced to six months' incarceration, and Zhong was sentenced to two months. All three are subject to deportation at the completion of their sentences.

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



## Sentencings

**United States v. James Staeheli**, 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 April 8, 2016, XS Platinum General Manager Robert Pate and plant operator James Staeheli were sentenced after previously pleading guilty to Clean Water Act violations (33 U.S.C. §§ 1311(a), 1319(c)(2)(A),(c)(4), 1342 (a)). Both will complete three-year terms of probation and perform 120 hours of community service. Pate will pay a \$60,000 fine and Staeheli will pay a \$5,000 fine. Former Chief Operating Officer James Slade was sentenced to 12 months' incarceration, followed by one year of supervised release, after



Photo 633: Salmon River (see arrow) enters old dredge pond approximately 1.1 miles downstream from wash plant.

previously pleading guilty to a felony Clean Water Act violation, as well as being convicted of misdemeanor CWA violations at trial (33 U.S.C. §§ 1319(c)(2)(a),(c)(1)(A)).

The XS Platinum 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 BLM 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, the defendants made false statements that there were no discharges and that the wastewater was being recycled.

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

**United States v. Energy Resource Technology GOM, LLC**, No. 2:15-CR-00281 (E.D. La.), AUSA Emily Greenfield.

On April 6, 2016, Energy Resource Technology GOM, LLC (ERT) was sentenced after pleading guilty to two felony counts of violating the Outer Continental Shelf Lands Act and two felony counts of violating the Clean Water Act (33 U.S.C. § 1319(c)(4),(c)(2)(A); 43 U.S.C. § 1513(c)(1)) related to conduct on its offshore oil production facility in the Gulf of Mexico. The company will pay a \$4 million fine, complete a three-year term of probation, and will implement an environmental compliance program. ERT also will make a \$200,000 community service payment to be divided equally between the Southern Environmental Enforcement Network and the National Marine Sanctuary.

(Continued on page 17)



## Sentencings

*(Continued from page 16)*

In November 2012, ERT failed to comply with the regulations for hot work on its offshore production platform. Specifically, ERT performed welding and associated activities on the platform that was within ten feet of a well bay, without enclosing the area. ERT also failed to comply with the regulations for blowout preventer testing.

The company violated the CWA by tampering with the NPDES-required method for collecting monthly wastewater discharge samples to be tested for oil and grease. In March 2014, ERT began to suspect that contract operators were manipulating the samples at some of its platforms by running them through coffee filters to ensure results that were in compliance with the company's permit. As a result, ERT undertook an internal investigation and discovered that the data that had been produced on the discharge monitoring reports was not matching up with samples subsequently taken in accordance with permit requirements.

The most recent violation occurred on June 9, 2015. Two contract operators allowed well bore fluid mixed with hydrocarbons to be discharged from an oil production platform into the Gulf.

This case was investigated by the Department of Interior Office of Inspector General, the Bureau of Safety and Environmental Enforcement, and the U.S. EPA Criminal Investigation Division.

**United States v. Don Blankenship, No. 5:14-CR-00244 (S.D.W.V.), USA Booth Goodwin, and AUSAs Steven R. Ruby, Gregory McVey, and Gabriele Wohl.**

On April 6, 2016, Don Blankenship was sentenced to 12 months' incarceration, followed by one year of supervised release. He also will pay a \$350,000 fine. Blankenship was found guilty by a jury in December 2015 of conspiracy to willfully violate Mine Safety and Health Standards (30 U.S.C. § 820(d), 18 U.S.C. § 371). The conviction of the former Massey Energy CEO stems from an explosion at the Upper Big Branch Mine (UBB) in April 2010 that killed 29 coal miners.

Miners testified about the unsafe working conditions at UBB, the excessive Mine Safety and Health Administration violations, and organized efforts to obstruct and interfere with MSHA inspectors. Blankenship knew about the rampant violations, and was warned by employees that conditions were ripe for a serious accident that could result in fatalities. The evidence also showed that Blankenship received daily updates on safety violations and helped to perpetuate them.

In addition to Blankenship's conviction, Alpha Natural Resources (which acquired Massey in June 2011) entered into a civil settlement and was ordered to pay \$200 million. The agreement also established a foundation dedicated to mine safety and health research, with close to \$50 million set aside to fund the foundation. Massey Energy mine Superintendent Gary May was sentenced to 21 months' incarceration, followed by three years' supervised release, and was ordered to pay a \$20,000 fine. Former Massey executive David Hughart was sentenced to 42 months' incarceration, followed by three years' supervised release. He also will perform 150 hours of community service.

This case was investigated by the FBI and the Department of Labor Office of Inspector General.



## Sentencings

***United States v. Donald Vidrine*, No. 2:12-CR-00265 (E.D. La.), AUSA Jennifer Saulino.**

On April 6, 2016, BP Supervisor Donald Vidrine was sentenced to complete a ten-month term of probation, after previously pleading guilty to a misdemeanor Clean Water Act violation (33 U.S.C. § 1319(c)(1)(A)). A jury acquitted Supervisor Robert Kaluza of a misdemeanor CWA violation in February 2016. Kaluza was the final defendant to be prosecuted for the 2010 *Deepwater Horizon* oil spill disaster. In June 2015, a jury acquitted Vice President David Rainey of making false statements, after the court dismissed an obstruction count. Engineer Kurt Mix was convicted in 2013 of obstruction of justice (18 U.S.C. § 1512(c)(1)), but the court granted a new trial. The government declined to retry, and Mix pleaded guilty to a misdemeanor count of intentionally causing damage to a computer without authorization (18 U.S.C. § 1030).

Halliburton Energy Services and former manager Anthony Badalamenti pleaded guilty to destruction of evidence (18 U.S.C. § 1030(a)(5)(A)). BP Exploration and Production Inc. pleaded guilty to 11 counts of seaman's manslaughter for negligently causing the deaths of the men killed in the disaster, one CWA misdemeanor, a MBTA violation, and an obstruction count (18 U.S.C. §§ 1115, 1505; 33 U.S.C. §§ 1319 (c)(1)(A), 1321 (b)(3); 16 U.S.C. §§ 703, 707(a)).

BP was sentenced to pay a total monetary penalty of \$4 billion, more than \$2 billion of which was designated for environmental restoration projects along the Gulf Coast.

This case was investigated by the Deepwater Horizon Task Force, which included the FBI, the U.S. EPA Criminal Investigation Division, the EPA OIG, the Department of Interior Office of Inspector General, National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Fish and Wildlife Service, and the Louisiana Department of Environmental Quality.



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## Announcements

Please send information regarding State and local cases to the [Regional Environmental Enforcement Associations' Webpage](#). Updates on federal cases should be sent to [ECS Bulletin](#).

If you are in need of sentencing data for your wildlife or pollution cases, please contact [ECS Bulletin](#) with your search requests.

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