



Monthly

Bulletin

Environmental Crimes Section

July 2017

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“This is a bloody and brutal crime where dogs are trained and forced to tear each other apart for the amusement of sick and depraved individuals. It is important to inform the public that it is a violation of federal law to even attend a dog fight,” said US Attorney Rosa Emilia Rodríguez-Vélez. *“The protection of animals is a priority of the U.S. Attorney’s Office for the District of Puerto Rico. Today’s guilty plea demonstrates that individuals who attempt to profit from animal abuse crimes will be investigated, prosecuted and punished accordingly.”* [From press release of plea taken in [U.S. v. Ehbrin Castro-Correa](#). See [inside](#) for more details on this case.]

District/Circuit	Case Name	Case Type/Statutes
Middle District of Alabama	United States v. Roberson Excavation et al.	Water Testing/Conspiracy, Wire Fraud
District of Arizona	WildEarth Guardians v. USDOJ	McKittrick Policy/ESA
Eastern District of California	United States v. Jose Manuel Sanchez-Zapien United States v. Russel Lee Riggs et al. United States v. Juan Carlos Lopez et al. United States v. Juan Penaloza-Ramirez et al.	Marijuana Cultivation/ Depredation, Drugs, Firearms
Southern District of California	United States v. Diamond Environmental Services LP et al.	Sewage Disposal/Conspiracy, Mail Fraud, Perjury
District of Colorado	United States v. Branden Richter et al.	E-Waste Recycler/Obstruction, RCRA, Smuggling, Wire Fraud
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Middle District of Florida	United States v. Scott Johnson et al.	RINS/Money Laundering Conspiracy, Wire Fraud
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██████████	██████████	██████████
District of Maine	United States v. Joseph A. Martin	Seal Shooting/MMPA
██████████	██████████	██████████
District of Massachusetts	United States v. Scott Paterson et al.	Power Company/CAA, Conspiracy, Federal Power Act

District/Circuit	Case Name	Case Type/Statutes
Western District of Missouri	<u>United States v. David Obermeyer</u>	Wetlands/CWA
District of New Jersey	<u>United States v. Robert Arellano et al.</u> <u>United States v. Mario Atkinson</u>	Dog Fighting/ Animal Fighting Venture, Conspiracy
Northern District of New York	<u>United States v. Darren Kattan et al.</u>	Emissions Testing/Conspiracy
Southern District of New York	<u>United States v. Hector M. Cruz</u>	Rooster Fights/ Animal Fighting Venture
Western District of New York	<u>United States v. William Wentling</u>	Eagle Killing/BGEPA
Wester District of North Carolina	<u>United States v. Crowell Farms, Inc. et al.</u>	CAFO/CWA
Northern District of Ohio	<u>United States v. Russel P. Stewart</u>	Demolition/CAA
District of Puerto Rico	<u>United States v. Ehbrin Castro-Correa</u>	Dog Fighting/ Animal Fighting Venture
District of South Dakota	<u>United States v. Brant Nelson et al.</u>	Pelican and Cormorant Killings/ MBTA
Eastern District of Texas	<u>United States v. John Purviance</u> <u>United States v. Egyptian Tanker Company et al.</u>	Wildlife Killing/FIFRA, MBTA Vessel/APPS, Obstruction
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Western District of Virginia	<u>United States v. Shirley Ray Slone et al.</u>	Rooster Fights/ Animal Fighting Venture, Conspiracy, Drugs, Gambling
Eastern District of Washington	<u>United States v. Scott Johnson et al.</u>	RINS/Money Laundering Conspiracy, Wire Fraud

Decisions

***WildEarth Guardians v. United States Department of Justice*, _ WL _, (D. Ariz. June 21, 2017).**

On July 21, 2017, the district court in Arizona reversed the Justice Department's 18-year "McKittrick policy" for prosecution of Endangered Species Act cases when applied in the Ninth Circuit. Plaintiffs challenged the McKittrick policy under Administrative Procedures Act §§ 702, 706(2)(A) and Section 7 under the ESA. The court found that the policy was "arbitrary and capricious" in violation of the APA, and the plaintiffs were granted summary judgment on that issue. However, the court dismissed the plaintiffs' claim that applying the McKittrick policy to the Mexican gray wolf violates Section 7's consultation requirement.

The policy was developed in response to *United States v. McKittrick*, 142 F.3d 1170 (9th Cir. 1998), in which the Ninth Circuit stated that taking an animal in violation of the ESA is a general intent crime, requiring only that "the defendant knowingly engaged in the taking of an animal" and proof that "the animal taken was a threatened species of wildlife" The McKittrick policy, though, adopted the opposite approach, and made the taking of an endangered, threatened, or even a nonessential experimental population a specific intent crime. The policy stated that "the standard of proof required [the government] to prove beyond a reasonable doubt that a defendant knew the biological species of the animal [in addition to knowing the action]."

By evaluating the McKittrick policy, the district court explored the boundaries of the Department's prosecutorial discretion with respect to the ESA. While the court recognized the generally unreviewable nature of prosecutorial discretion, it stated that this broad power ". . . does not include the power to disregard statutory obligations that apply to the Executive branch." Using the "narrow door left open doctrine" in *Heckler v. Chaney*, plaintiffs sought "a conventionally judicial determination of whether [a] certain fixed policy [not *particular* enforcement decision]. . . lies outside the constitutional and statutory limits of 'prosecutorial discretion.'" If the court found that the policy "was based solely on the agency's belief that it lacked jurisdiction to take action or if the agency consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities," and "is an enforcement decision *rather than* a decision to not act," then it is reviewable. (emphasis added). The court found that the policy was an enforcement decision that contradicted the statute. Thus, the government "complete[ly] abdicat[ed]" the statutorily-imposed duty to enforce the "broad criminal liability" under the ESA.

Further, the court rejected the government's argument that the ESA was not a public welfare offense, because the government had essentially adopted Justice Scalia's dissent in *Babbitt v. Sweet Home Chapt. Of Communities for a Great Oregon*, 515 U.S. 687 (1995). But, Justice Scalia's argument was both dictum and a dissent. This, coupled with legislative history, supported the court's conclusion that "Congress intended the ESA to be a public welfare statute and this context rebuts the presumptive *mens rea* for every fact constituting the offense . . . the Government does not need to prove beyond a reasonable doubt that a defendant knows every fact that makes his conduct illegal"

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Decisions

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The court dismissed the plaintiffs' second claim more quickly. Plaintiffs claimed that implementation of the McKittrick policy violates Section 7(a)(2) of the ESA, which requires the Department to "consult[] with FWS regarding the significant adverse impact the policy has on the DOJ's efforts to conserve and protect" endangered and threatened species. The court determined this claim was outside of Section 7's scope, as plaintiffs had limited its initial McKittrick challenge to the Mexican gray wolf. The court was unwilling to broaden its analysis to include, essentially, all species. Since the Mexican gray wolf is a nonessential experimental population of an endangered species (the gray wolf), Section 10j requires it to be treated as a species proposed to be listed. Section 7 does not apply to species proposed to be listed. Accordingly, "[u]nder Section 7, there was no duty for DOJ to consult with FWS to insure that the McKittrick policy was not likely to jeopardize the continued existence of the Mexican wolf." But, the court specifically clarified that "it does not mean to suggest that the DOJ was not required to consult with FWS regarding the impact of the McKittrick policy on endangered and threatened species."

Trials

United States v. Roberson Excavation et al., No. 1:16-CR-00571 (M.D. Ala.), AUSA Jonathan Ross.

On June 8, 2017, Roberson Excavation pleaded guilty to a wire fraud violation (18 U.S.C. § 1343) after trial had been underway for three days. Charges were dismissed against company owner Billy Ray Robinson, Sr.

In 2014, the Dale County Water Authority hired Roberson Excavation (and Roberson as its owner) to replace a neighborhood's water lines. By February of 2015, the company was three months' behind schedule and paying daily penalties of \$500 for each day that the project was not finished. At that time, Roberson allegedly instructed his site supervisor, Darin Lewis, to falsify the testing required before the lines went into operation. Among the tests falsified were those used to determine whether harmful bacteria were present in the water. Lewis previously pleaded guilty to conspiracy to commit wire fraud (18 U.S.C. § 371). Sentencing for Lewis and the company is scheduled for September 11, 2017.

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

United States v. Ehbrin Castro-Correa, No. 3:16-CR-00153 (D.P.R.), AUSA Scott H. Anderson.

On June 12, 2017, after a jury had been empaneled, Ehbrin Castro-Correa, a.k.a. "Chino," pleaded guilty to participating in an animal fighting venture (7 U.S.C. § 2156(b); 18 U.S.C. § 49(a)). Castro-Correa was facing trial on two counts of knowingly and unlawfully possessing and training an animal for purposes of having the animal participate in an animal fighting venture and one count of attempting to transport an animal for the purpose of having the animal participate in an animal fighting venture, specifically from Puerto Rico to the Dominican Republic.

On January 24, 2016, the defendant used his cellphone to film his dog and another dog engaged in a dog fight in Juncos, Puerto Rico. The video was discovered during a search of his cellphone at the Pan American dock when he attempted to transport six canines to the Dominican Republic for the purpose of dog fighting. The Dominican Republic is a notorious worldwide haven for dog fights. This discovery led to the execution of a search warrant at his residence, resulting in the seizure of an additional 25 dogs, dog fighting training materials and instruments, and pharmaceuticals commonly used to condition dogs for dog fighting and treat their wounds.

Sentencing is scheduled for October 16, 2017.

This case was investigated by Immigration and Customs Enforcement Homeland Security Investigations.



Dog rescued from defendant's property

Indictments

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

On June 22, 2017, Jose Manuel Sanchez-Zapien was charged in a two-count indictment with conspiring to manufacture marijuana and damaging public lands and natural resources (21 U.S.C. §§ 846, 841; 18 U.S.C. § 1361).

According to the indictment, Sanchez was found in April and June of this year at a drop point delivering supplies to growers at a marijuana cultivation site in the Slick Rock Creek drainage in the Sequoia National Forest. The drop point has been used numerous times before for growers to access sites in the area.

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

***United States v. Robert Arellano et al.*, No. 3:17-CR-00051 (D.N.J.), ECS Trial Attorney Ethan Eddy, AUSA Kathleen O’Leary, and ECS Paralegal Cindy Longmire.**

On June 14, 2017, a 23-count superseding indictment was filed against Robert Arellano, Robert Elliott, Justin Love, and Dajwan Ware, who are four of the original nine defendants in the *U.S. v. Gaines, et al.* dog fighting matter. The new indictments alleges felony conspiracy to violate the animal fighting provisions of the federal Animal Welfare Act, and various substantive felony dog fighting counts (18 U.S.C. § 371; 7 U.S.C. § 2156(b)). In particular, the superseding indictment outlines a two-year conspiracy between the defendants and other co-conspirators to engage in interstate trafficking of dogs for the purpose of fighting. Evidence in the case shows that one of these dogs sustained injuries during a dog fight the day after being sold and shipped across the country for that purpose. The indictment also charges two of the defendants with unlawful possession of dogs intended to be used for fighting.

This case is part of Operation Grand Champion, an ongoing multi-jurisdictional dog fighting investigation being conducted by the U.S. Department of Agriculture Office of the Inspector General, Immigration Customs Enforcement Homeland Security Investigations, and the FBI.

Guilty Pleas

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Guilty Pleas

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United States v. Mario Atkinson, No. 2:17-CR-00222 (D.N.J.), ECS Trial Attorney Ethan Eddy, AUSA Kathleen O’Leary, and ECS Paralegal Cindy Longmire.

On June 15, 2017, Mario Atkinson pleaded guilty to one felony count of sponsoring and exhibiting a dog in a dog fight, and one felony count of unlawful possession of a dog intended to be used for the purpose of dog fighting (7 U.S.C. §§ 2156(a)(1), (b)).

On April 3, 2016, Atkinson fought his dog “Jungle” in a fight against a resident of Virginia for a \$1,000 wager. He later confessed to agents that Jungle died in Atkinson’s car following the fight, and stated that he had thrown Jungle’s body into a dumpster at a highway rest stop. On June 1, 2016, agents seized 18 pit bull-type dogs from Atkinson. The dogs had scarring and injuries consistent with fighting and were found near dog fighting equipment.

This case is part of Operation Grand Champion, an ongoing multi-jurisdictional dog fighting investigation.

United States v. Russell Lee Riggs et al., No. 15-CR-00264 (E.D. Calif.), AUSA Karen Escobar.

On June 12, 2017, Russell Lee Riggs pleaded guilty to conspiring to manufacture, distribute and possess with intent to distribute marijuana grown in the Sequoia National Forest (21 U.S.C. §§ 841, 846). Co-defendant Juan Penalzoza-Ramirez, aka Juan Penalzoza-Herrera, aka Juan Penalzoza, pleaded guilty to a similar charge and was [sentenced](#) on June 19th to more than seven years’ incarceration.

The defendants were charged for their involvement in a large-scale marijuana cultivation operation in the Sequoia National Forest, supplying material, equipment, and personnel to sustain more than 3,000 plants. The operation caused extensive damage to the land and natural resources. Fay Creek sustains a variety of ecosystems and resources, including riparian habitat supporting trout, plus willow, alder, and cottonwood trees. The creek also serves as the primary drinking water source for much of the wildlife in the area. Springs were dammed and diverted to irrigate the marijuana plants and large amounts of

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Guilty Pleas

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trash were scattered throughout, including in a flowing stream.

This case was investigated by the U.S. Forest Service; the U.S. Drug Enforcement Administration; the Bureau of Land Management; the U.S. Immigration and Customs Enforcement Homeland Security Investigations; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Southern Tri-County High Intensity Drug Trafficking Area Task Force; the California Department of Justice's Campaign against Marijuana Planting, and the Kern County Sheriff's Office.

***United States v. Hector M. Cruz*, No. 1:17-CR-00300 (S.D.N.Y.), AUSAs Michael C. McGinnis and Alison G. Moe.**

On June 8, 2017, Hector M. Cruz pleaded guilty to possessing, selling, and transporting roosters for purposes of participation in animal fights around the United States (7 U.S.C. § 2156(b)).

Between December 2012 and January 2017, Cruz, a New York City public school teacher, maintained a rooster farm in the Bronx, where he bred, raised, and trained roosters for cock fighting. He sold and shipped his roosters to individuals across the country, knowing that the birds were to be used in fights. Cruz communicated with customers through social media and received payments of as much as \$600 for the birds. Sentencing is scheduled for October 10, 2017.

This case was investigated by the U.S.D.A. Office of Inspector General, and the New York Police Department Animal Cruelty Investigation Squad.

***United States v. David Obermeyer*, No. 4:15-CR-00277 (W.D. Mo.), AUSA Brent Venneman, with assistance from ECS Trial Attorney Mary Dee Carraway.**

On June 6, 2017, developer David Obermeyer pleaded guilty to a negligent Clean Water Act charge for filling wetlands near Shoal Creek and the Missouri River without a permit (33 U.S.C. §§ 1311(a), 1319(c)(1)(A)).

Between 2011 and 2014, Obermeyer caused the filling of approximately 6.6 acres of wetlands despite receiving a cease and desist order from the U.S. Army Corp of Engineers in 2013. Obermeyer allowed and paid construction companies to dump loads of construction debris containing asphalt, solid waste, concrete, debris, dredged spoil, rock, and sand into the wetland area.

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

Guilty Pleas

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

On June 1, 2017, Diamond Environmental Services LP and company owner Arie Eric De Jong III, pleaded guilty to charges stemming from the company's unlawful disposal of wastewater collected from thousands of portable toilets throughout Southern California. Company CEO Warren Van Dam previously pleaded guilty to a conspiracy violation (18 U.S.C. § 371). De Jong pleaded guilty to a conspiracy charge and Diamond pleaded guilty to mail fraud (18 U.S.C. §§ 371, 1341).



Surveillance photo of equipment used to discharge waste from trucks into the sewer (see white plastic sewer pipe)

Diamond was engaged in the business of servicing portable toilets and hauling septage. It operated facilities in San Diego, Perris, Fullerton, and Huntington Park, and was headquartered in San Marcos, California.

Between 2009 and 2016, company employees regularly discharged sewer waste from hundreds of company trucks directly into the POTW at a number of locations. Van Dam and De Jong further directed employees to construct and install specific equipment to allow for these discharges, concealing the illicit sewer connection from inspectors by placing a portable toilet over the connection during inspections.

Van Dam also falsely understated the volume of wastewater that would be discharged per day at the Diamond facilities in San Diego and Perris to the San Diego Metropolitan Industrial Waste Control Program and the Eastern Municipal Water District.

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.

In a related case, Ronald Fabor, company safety and compliance manager, is charged with perjury (18 U.S.C. § 1621) in connection with his testimony before the grand jury during the Diamond investigation. Fabor allegedly lied when stating that he first learned of the illegal dumping during the execution of a search warrant at the facility in August of 2016, and also that he had never observed the trucks connected to hoses discharging their contents to the sewers at the facilities. Fabor is scheduled for trial to begin on August 7, 2017.

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

Sentencings

***United States v. William Wentling*, No. 6:16-mj-00532 (W.D.N.Y.), AUSA Craig Gestring.**

On June 29, 2017, William Wentling was sentenced after pleading guilty to violating the Bald and Golden Eagle Protection Act (16 U.S.C. § 668(a)). Wentling was sentenced to pay a \$3,500 fine and will complete a two-year term of probation.

In March 2015, the New York State Department of Conservation (NYS-DEC) received a report of a dead bald eagle in a field. The defendant operated a sheep farm, adjacent to where the carcass was discovered. Subsequent investigation determined that in May 2014, Wentling mailed a container of Furadan, a restricted-use pesticide known to be highly toxic to wildlife, from his home in Pennsylvania to his farm. In March of 2015, the defendant directed his employees to pour Furadan over sheep carcasses on his farm for the purpose of controlling predators, specifically, birds of prey. As a result, two bald eagles, two red-tailed hawks, and a rough-legged hawk died after ingesting Furadan-laced sheep. One of the birds was an adult female bald eagle that was incubating eggs in a nearby nest at the time of its death.



Red-tailed hawk next to poisoned sheep carcass

In the early 1900's, New York was home to more than 70 nesting pairs of bald eagles, and was a wintering ground for several hundred more. However, by 1960, New York had only one known active bald eagle nest remaining. Beginning in 1976, and continuing until 1988, the NYS-DEC Bald Eagle Program collected 198 nesting bald eagles from other parts of the United States, brought them to New York, and hand-raised them to independence. Today, there are more than 300 nesting pairs of bald eagles in the state.

This case was investigated by the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation.

***United States v. Juan Carlos Lopez et al.*, No. 1:16-CR-00145 (E.D. Calif.), AUSA Karen Escobar.**

On June 26, 2017, Juan Carlos Lopez was sentenced to five years' incarceration, and Mexican national Javier Garcia-Castaneda was sentenced to three years and one month in prison. Lopez was ordered to pay \$5,930 in restitution, and Garcia was ordered to pay \$5,233 in restitution to the U.S. Forest Service for the damage to public land and natural resources caused by their marijuana cultivation activities.

Lopez and Garcia conspired with Rafael Torres-Armenta and Carlos Piedra-Murillo to cultivate marijuana in the Domeland Wilderness. The Domeland Wilderness is a federally designated wilderness area known for its many granite domes and unique geologic

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Sentencings

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formations. Law enforcement officers seized more than 8,000 plants, 17 pounds of processed marijuana, two rifles, and hundreds of rounds of ammunition.

Piedra was previously sentenced to two years and one month in prison. Torres is scheduled to be sentenced on August 14, 2017. All pleaded guilty to conspiracy to cultivate marijuana (21 U.S.C. §§ 841, 846).

The cultivation operation caused extensive environmental damage. It covered approximately ten acres and was within an area burned by a fire in 2000. Some of the new vegetation and trees that sprouted after the fire had been cut to make room for the marijuana plants. Water was diverted from a tributary stream of Trout Creek, a major tributary to the Kern River. Fertilizer and pesticides, including illegal carbofuran and zinc phosphide were found at the site, as well as large piles of trash. Moving large amounts of soil caused extensive damage to a large prehistoric Túbatulabal archaeological site. Holes were dug and artifacts were found scattered on the surface among the plants.

This case was investigate by the U.S. Forest Service, The Bureau of Land Management, Homeland Security Investigations, and the California Department of Fish and Wildlife.

United States v. Joseph A. Martin, No. 1:17-CR-00092 (D. Maine), AUSA Andrew McCormack.

On June 26, 2017, Joseph A. Martin pleaded guilty and was sentenced to three days' imprisonment and will pay a \$1,000 fine for violating the Marine Mammal Protection Act (16 U.S.C. § 1372(a)(2)(A)).

On October 10, 2016, Martin was acting as captain of a fishing vessel. Multiple protected seals began to approach his vessel while he was off the coast of Acadia National Park. Martin retrieved a rifle and began to shoot at the seals in the water. After the shooting, one seal could be seen floating in the water and had apparently been shot.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement.

Sentencings

***United States v. John Purviance*, No. 5:17-CR-0003 (E.D. Tex.), AUSA Jim Noble.**

On June 20, 2017, John Purviance was sentenced to pay a \$2,375 fine, complete a two-year term of probation, perform 50 hours' community service, and pay \$4,198 restitution to the North American Wetland Conservation Fund. Purviance previously pleaded guilty to a two-count information charging him with violating the Migratory Bird Treaty Act and FIFRA (16 U.S.C. 703, 707(b); 7 U.S.C. 136j(a)(2)(G) and 136l(b)(2)).

In April 2016, Purviance mixed the pesticide aldicarb, which is sold under the brand name Temik, with feed corn and syrup. It is highly toxic to birds and wildlife and is labelled as such. He placed the mixture at 15 separate sites on and adjacent to the Folsle Ranch intending to kill feral hogs. In addition to hogs, Purviance also killed many other animals, including raccoons, possums, six red winged blackbirds, five northern cardinals, and one black vulture.

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



Poisoned raccoons

***United States v. Egyptian Tanker Company et al.*, No. 1:17-CR-00075 (E.D. Tex.), ECS Senior Trial Attorney David Kehoe, ECS Trial Attorney John Cashman, and AUSA Joseph Batte.**

On June 20, 2017, two shipping companies pleaded guilty and were sentenced for violating APPS and obstructing justice for covering up the illegal overboard dumping of oil-contaminated bilge water and garbage from one of their ships (33 U.S.C. § 1908(a); 18 U.S.C. 1505). Egyptian Tanker Company and Thome Ship Management were sentenced to pay a \$1.5 million fine, joint and several, and make a \$400,000 community service to the National Fish and Wildlife Fund. They each will complete four-year terms of probation and implement environmental compliance plans.

Egyptian Tanker and Thome Ship Management are the owner and operator of the *M/T ETC MENA*. During a port inspection in April 2016, a crew-member informed the Coast Guard that the ship had illegally dumped bilge waste overboard into the ocean. The crew-member provided a written statement, photographs, and video of the conduct. During the inspection of the ship, inspectors found a pump covered in oil submerged in the ship's bilge primary tank that looked similar to the pump that the crew member said was used to pump the bilge waste overboard. In March 2016, crew-members bypassed the ship's oil water separator and illegally discharged bilge water overboard, without noting the discharges in the oil record book. They also were instructed to throw plastic garbage bags

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Sentencings

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filled with metal and incinerator ash into the sea in March 2016, and did not record these incidents in the garbage record book. The companies further obstructed justice by presenting these false documents to the Coast Guard during the inspection in Port Arthur, Texas.

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

United States v. Juan Penalzoza-Ramirez et al., No. 15-CR-00264 (E.D. Calif.), AUSA Karen Escobar.

On June 19, 2017, Mexican national Juan Penalzoza-Ramirez was sentenced to seven years and three months' incarceration for conspiring to manufacture, distribute and possess with intent to distribute marijuana that was grown at three separate marijuana cultivation sites in the Sequoia National Forest (18 U.S.C. §§ 841, 846).

Penalzoza was ordered to forfeit \$7,000 in cash, 16 firearms, and more than 2,000 rounds of ammunition seized during the investigation. He also will pay \$10,198 in restitution to the U.S. Forest Service for the damage to public land and natural resources caused by his cultivation activities.

Penalzoza employed growers, deliverymen, and others to cultivate marijuana in Tulare and Kern Counties in the Sequoia National Forest. The grow sites were located at Fay Creek and Brush Creek, tributaries of the Kern River, and the Needles, a series of massive granite rock formations near the North Fork of the Kern River. Every winter, Penalzoza traveled to Mexico to recruit people to grow marijuana on public lands in the United States. At the Fay Creek grow site, law enforcement officers seized 3,151 marijuana plants. Springs were dammed and diverted to irrigate the marijuana plants and large amounts of trash were scattered throughout, including in a flowing stream.

The Brush Creek grow site contained 2,719 marijuana plants. To make room for the plants, the growers removed new vegetation and trees that sprouted after a 2002 fire. Large piles of trash had been stuffed between boulders and buried along a stream, with pesticides and fertilizers spread throughout the site.

The Needles grow site contained 2,608 marijuana plants. In addition to the presence of toxic chemicals and waste, officers found that the water source for the marijuana plants was a spring that drains into the Kern River.

Co-defendant Russell Lee Riggs [pleaded guilty](#) to similar charges and is scheduled for sentencing on September 11, 2017.

This case was investigated by the U.S. Forest Service, the U.S. Drug Enforcement Administration; the Bureau of Land Management; ICE Homeland Security Investigations, the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Southern Tri-County High Intensity Drug Trafficking Area task force; the California Department of Justice's Campaign Against Marijuana Planting; and the Kern County Sheriff's Office.

Sentencings

United States v. Brandon Richter et al., No. 1:11-CR-00376 (D. Colo.), AUSAs Suneeta Hazra and Valeria Spencer.

On June 16, 2017, Brandon Richter was re-sentenced to 22 months' incarceration, followed by three years' supervised release. He also was ordered to pay \$70,144 in restitution to six victims, proportional to their loss. Of the restitution, \$1,652 is joint and several with co-defendant Tor Olson.

Olson was resentenced in February 2017, to six months' incarceration, followed by three years' supervised release, and will pay a \$2,500 fine plus \$2,065 in restitution to the City of Boulder. After a jury trial in 2012 and sentencing in 2013, in July 2015 the 10th Circuit reversed all convictions against the individual defendants except for an obstruction count against Richter. Olson and Richter subsequently pleaded guilty to wire fraud convictions (18 U.S.C. § 1343).

In December 2012, Executive Recycling (ER), its president Richter, and former vice president Olson, were convicted of mail and wire fraud, smuggling, obstruction of justice, and a RCRA violation (18 U.S.C. §§ 554, 1341, 1343, 1519; 42 U.S.C. § 6928(d)(4)). From February 2005 through January 2009, ER operated as a recycling company in Denver, Colorado, that specialized in environmentally-friendly recycling of e-waste. The company assured customers that it would properly and completely dispose of e-waste in the United States. The e-waste collected included Cathode Ray Tubes (CRTs), which are the glass video display component of electronic devices. CRTs are potentially hazardous waste because they contain lead.

The investigation of ER began after a *60 Minutes* story aired in November 2008 that followed a shipping container loaded with used computer monitors from the company's Colorado facility through a port in Tacoma, Washington, to its final destination in Hong Kong in April 2008. Hong Kong customs officers rejected the shipment because used CRTs are considered a hazardous waste under Chinese law. The container was returned to the United States, where it was searched by agents who recovered close to 300 CRTs, and 20 boxes of broken computer monitor parts. All monitors tested exhibited the hazardous waste characteristic of toxicity for the presence of lead.

Richter and the company were originally held jointly and severally liable for \$70,134 in restitution. The company also was ordered to pay a \$4.5 million fine. Richter had been sentenced to 30 months' incarceration and a \$7,500 fine. Olson had been sentenced to 14 months' incarceration and a \$5,000 fine, in addition to \$17,536 in restitution. A forfeiture order in the amount of \$142,241 also was filed.

This case was investigated by the U.S. EPA Criminal Investigation Division and U.S. Immigration and Customs Enforcement.



Port in Hong Kong

Sentencings

***United States v. Darren Kattan et al.*, Nos. 5:16-CR-00327, 3:16-CR-00393 (N.D.N.Y.), ECS Senior Trial Attorney Todd Gleason, AUSA Michael Perry, and ECS Paralegal Diane Greenberg.**

On June 13, 2017, Darren Kattan and Charles E. Bayer were sentenced for conspiring to commit mail fraud and to violate the Clean Air Act by developing and selling simulator devices programmed to bypass motor vehicle emissions inspections tests (18 U.S.C. § 371). Both will complete a three-year term of probation, to include four months' home detention. Kattan was ordered to pay a \$10,000 fine and Bayer will pay a \$5,000 fine.

Between 2010 and 2013, Kattan designed, built, and sold motor vehicle simulator devices that allowed vehicles to bypass emissions inspections tests. Kattan and other co-conspirators (including Bayer), created and distributed at least 170 simulator devices throughout the country. Kattan was arrested by EPA agents in an undercover sting operation in Louisiana after Kattan turned over the source codes for his devices in exchange for a \$10,000 payment.

Between 2011 and 2013, Bayer purchased Kattan's remaining inventory of simulator devices and software and continued to manufacture and sell them knowing that they were used to illegally bypass motor vehicle inspections.

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

***United States v. Russell P. Stewart*, No. 5:16-CR-00394 (N.D. Ohio), AUSA Brad Beeson.**

On June 13, 2017, Russell P. Stewart was sentenced to 21 months' incarceration, followed by three years' supervised release. Stewart also will pay \$876,228 in restitution to the U.S. Environmental Protection Agency. Stewart previously pleaded guilty to two felony violations of the Clean Air Act (42 U.S.C. § 7413(c)(1)) for the improper demolition and disposal of building structures containing asbestos at the former Stark Ceramics facility in East Canton, Ohio.

Between in 2012 and 2013, Stewart, d/b/a Chemstruction, used heavy machinery to knock down building panels that he knew contained asbestos, allowing dry asbestos to spread throughout the site. The facility is now a CERCLA clean-up site.



Demolition Debris

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During the investigation, investigators became aware that Stewart was potentially involved in other illegal activity associated with the storage of hazardous waste. In a separate state-level case, Stewart pleaded guilty and was sentenced to three years' incarceration in December 2016. He was further ordered to pay a \$5,000 fine for illegal operation of a hazardous waste facility and illegal storage of hazardous waste. State investigators found hundreds of drums and containers containing suspected hazardous waste adjacent to and inside a barn at the rear of a residential property. Stewart admitted that he illegally transported the containers of hazardous waste, which were traced back to approximately five different generators in Northeast Ohio. The court also ordered \$7,518 in restitution to be paid to Ohio EPA as reimbursement for the emergency removal of hydrocyanic acid found illegally stored.

This case was investigated by the Ohio Attorney General's Office Bureau of Criminal Investigation, the Ohio EPA, and the U.S. EPA Criminal Investigation Division.

United States v. Shirley Ray Slone et al., No. 1:16-CR-00035 (W.D. Va.), AUSA Randy Ramseyer and SAUSA Virginia Assistant Attorney General Michelle Welch.

On June 8, 2017, club owners Shirley Ray Slone and Vernon Kelly Slone, were sentenced to one-year terms' of probation and forfeited \$100,000. Their 8,000 square-foot facility known as the Big Blue Sportsman's Club in McDowell, Kentucky, which had hosted cock fights for more than 20 years, was demolished following the Slones' guilty pleas in March 2017. They pleaded guilty to conspiracy to cause others to attend an animal fighting venture, specifically, cock fights (18 U.S.C. § 371).



Arena prior to demolition

The 5,000-member club, which featured arena-style seating, multiple fighting pits, and a restaurant, was the site of a law enforcement raid in 2014. To date, nine individuals have been convicted for their roles in the cock fighting conspiracy run out of the Big Blue facility. Russell D. Peaks, who raised fighting birds in Virginia and brought them to Kentucky to fight, was sentenced to 24 months' incarceration for allowing a minor to attend a cockfight, distribution of hydrocodone, and conspiracy to facilitate cock fighting (18 U.S.C. §§ 371, 49; 21 U.S.C. § 841). Jimmy Crate Willis was sentenced to pay a \$250 fine and complete a one-year term of probation after pleading guilty to a conspiracy charge.

In 2014, Walter Stumbo was sentenced to 18 months' incarceration for his role in the conspiracy; Joshua Stumbo and Sonya Stumbo were each sentenced to ten months'

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incarceration; Jonathan Robinson was sentenced to 12 months and one-day incarceration; and Wesley Robinson was sentenced to six months' incarceration, followed by six months' home detention (18 U.S.C. §§ 371, 49; 7 U.S.C. § 2156; 21 U.S.C. § 841).

This case was investigated by the U.S. Department of Agriculture Office of Inspector General, the Virginia Alcohol Beverage Control Bureau of Law Enforcement, and the Spotsylvania County Sheriff's Office. Assistance was provided by the following agencies: Virginia Animal Fighting Task Force; Virginia State Police Tactical Team; Southwest Virginia Regional Task Force; Botetourt County Commonwealth's Attorney's Office; Wise County, Virginia, Sheriff's Office and Commonwealth's Attorney's Office; Virginia State Veterinarian's Office; U.S. Homeland Security Investigations; Kentucky State Police; the and the American Society for the Prevention of Cruelty to Animals.

United States v. Scott Paterson et al., Nos. 3:16-CR-30021, 15-CR-30001-30002 (D. Mass.), AUSA Sarah Bloom, SAUSA Daniel Licata, and RCEC Dianne Chabot.

On June 8, 2017, Scott Paterson was sentenced to complete a one-year term of probation, after pleading guilty to conspiracy and Clean Air Act tampering violations (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(C)). Paterson worked as an instrument and control technician for Power Plant Management Services (PPMS), LLC. Berkshire Power Company, LLC (BPC) and PPMS were sentenced in May 2017. BPC will pay a \$2,750,000 fine and make a \$750,000 community service payment. PPMS was ordered to pay a \$500,000 fine and make a \$250,000 community service payment. BPC, the owner of Berkshire Power Plant, and PPMS previously pleaded guilty to conspiracy and CAA violations for tampering with emissions equipment. They also admitted 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 pleaded guilty to a violation of the Federal Power Act, 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)).

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.

The community service payments will go toward the American Lung Association to

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fund a program for the replacement of polluting wood burning stoves in western Massachusetts. 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.

At the direction of the PPMS on-site general manager, Frederick Baker directed Wood Group employees, including Paterson, to tamper with the CEMS. Due to the Wood Group's extensive cooperation, the case against EthosEnergy is being resolved with a civil settlement. Baker was sentenced to pay a \$5,000 fine and will complete a 30-month term of probation. Baker, an operations and maintenance manager at BPC, pleaded guilty to conspiracy and CAA tampering violations (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(C)).

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

United States v. Crowell Farms, Inc., et al., No. 1:16-CR-00113 (W.D.N.C.), AUSA Steven Kaufman.

On June 1, 2017, Michael Crowell was sentenced to six months' home detention as a special condition of three years' probation. Crowell also will pay a \$10,000 fine. Crowell Farms was ordered to pay an additional \$40,000 in fines, offset by any fines paid to the State of North Carolina, and to serve a three-year term of probation, during which it will implement an environmental compliance program.

The defendants previously pleaded guilty to felony Clean Water Act violations (33 U.S.C. §§ 1311(a), 1319(c)(2)(A)) stemming from illegal wastewater discharges from this beef cattle operation during November and December 2015.

The farm maintains more than 150 cows and manages many acres of agricultural fields. It was permitted to store liquid waste in lagoons that was later applied to designated agricultural fields through irrigation equipment for permitted disposal. Investigation revealed that Crowell had installed several bypasses at the waste lagoons that were discharging liquid waste into an unnamed tributary of Hominy Creek. Crowell admitted that he had trouble managing the ponds levels due to rain events, and installed the bypasses.



Wastewater discharge into creek

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Inspectors also noted that the hatches that had been used to cover the bypasses were covered with vegetation and wood stumps in a manner that appeared designed to conceal them. Crowell Farms did not have a NPDES permit to discharge to a water of the U.S., and is only permitted for land application disposal. It was further noted that the operation did not own the proper land application equipment.

This case was investigated by the U.S. EPA Criminal Investigation Division and the North Carolina State Bureau of Investigations Diversion and Environmental Crimes Unit.

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United States v. Scott Johnson et al., Nos. 15-CR-00141, 15-CR-06044, 06047 – 06048 (M.D. Fla., E.D. Wash.), ECS Trial Attorney Adam Cullman; AUSAs Sara Sweeney, Megan Kistler, and Scott T. Jones; RCECs Karla Perrin and Jennifer Lewis; and ECS Contract Law Clerk Amanda Backer.

On June 1, 2017, Scott Johnson was sentenced to 97 months' incarceration, followed by three years' supervised release. He was held jointly and severally responsible for \$15,693,341 in restitution. Johnson is one of six defendants involved in a multi-state scheme to defraud biodiesel buyers and U.S. taxpayers by fraudulently selling biodiesel credits and claiming alternative fuel tax credits.

Johnson was the CEO and founder of Gen-X Energy Groups and Donald Holmes was the vice president and COO. Defendants Nancy Bush-Estes, her husband Richard Estes, Thomas Davanzo, and Robert Fedyna worked with Gen-X Energy Groups and its subsidiary, Southern Resources and Commodities (SRC), to carry out crimes in 2013 and early 2014. Davanzo and Fedyna set up several shell companies throughout the country, including two in Florida. They worked with the Washington-based Gen-X companies to repeatedly cycle batches of renewable biofuels through the shell companies. With each cycle of the old

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product, Gen-X falsely claimed it had generated new biofuel, thereby generating fraudulent RINs and improperly receiving new alternative fuel tax credits from the IRS. Afterwards, the shell companies used false paperwork to represent the “fuel” as “feedstock.”

From March 2013 to March 2014, the co-conspirators generated at least 60 million fraudulent RINs that were based on fuel that was either never produced or was merely re-processed at the Gen-X or SRC facilities. They received at least \$42 million from the sale of these fraudulent RINs to third parties. In addition, Gen-X received approximately \$4,360,700 in false tax credits for this fuel.

Johnson and Holmes each pleaded guilty to conspiracy to commit wire fraud and conspiracy to defraud the government by making fraudulent claims for tax credits (18 U.S.C. §§ 286, 1349). Holmes is scheduled to be sentenced on October 19, 2017. Davanzo and Fedyna were sentenced in November 2016 to 121 months and 135 months in prison, respectively, and were ordered to pay approximately \$4.4 million, jointly and severally, to the IRS. They also will forfeit \$46 million in ill-gotten gains from the conspiracy. Davanzo and Fedyna previously pleaded guilty to conspiracy to commit wire fraud and to a money laundering conspiracy charge. Robert Estes was sentenced in January 2017 to 105 months’ incarceration, followed by three years’ supervised release. He also was held jointly and severally liable for \$4,360,724 in restitution to be paid to the IRS. Bush-Estes was sentenced in February 2017 to 73 months’ incarceration, followed by three years’ supervised release. She also is jointly and severally responsible for the restitution.

This case was investigated by the U.S. Secret Service, the U.S. EPA Criminal Investigation Division, and IRS Criminal Investigations

United States v. Brant Nelson et al., No. 1:17-CR-10011 (D.S.D.), AUSA Jeff Clapper.

On May 31, 2017, Brant Nelson and Kirk Nelson were each sentenced to complete three-year terms’ of probation, pay \$500 fines, and were held jointly and severally responsible for \$10,850 in restitution, after pleading guilty to violating the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707(a)). They also are banned from hunting during the term of probation.

During the spring of 2016, the Nelsons shot and killed over 200 pelicans and double-crested cormorants. Both species are protected migratory birds and cannot be lawfully hunted or killed under any circumstances.

This case was investigated by the South Dakota Game, Fish, and Parks Department and the U.S. Fish and Wildlife Service.



Dead pelican

Announcements

As a reminder, ECS now tracks **worker safety and animal welfare crimes**, in addition to our pollution and wildlife docket [see [Section 5-11.101](#) of the U.S. Attorneys' Manual.] Please send us pleadings and other relevant information about your worker safety and animal welfare cases so that we can maintain a database for these cases and provide an accurate and complete description of case issues and strategies, developments in case law, and useful pleading examples.

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.

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

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

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Assistant Chief	Thomas Ballantine	████████
Assistant Chief	Wayne Hettenbach	████████
Assistant Chief	Lana Pettus	████████
Assistant Chief	Jennifer Whitfield	████████
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Senior Counsel for Wildlife	Elinor Colbourn	████████
Senior Counsel	Kris Dighe	████████
Senior Trial Attorney	Jennifer Blackwell	████████
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Senior Trial Attorney	Todd Gleason	████████
Senior Trial Attorney	David Kehoe	████████
Senior Trial Attorney	Jeremy Korzenik	████████
Senior Trial Attorney	Ken Nelson	████████
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Trial Attorney	Ryan Connors	████████
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