



Monthly

Bulletin

Environmental Crimes Section

December 2018

Inside this Issue:

Indictments	4-6
Guilty Pleas	7-13
Sentencings	14-24
Announcements	25
ECS Contacts	26

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“The international ports of Houston and Port Arthur are no one’s dumping ground,” said Assistant Attorney General Jeffrey Clark. “Vessel operators coming to the United States must not foul American waterways. Those who knowingly discharge their waste and lie to the Coast Guard to dodge their legal responsibilities under federal law are on notice that our investigators and prosecutors stand ready to hold them accountable.” [From [Press Release](#) for guilty plea taken in *U.S. V. Avin International Ltd., et al.* See [inside](#) for more information.]

District/Circuit	Case Name	Case Type/Statutes
District of Alaska	<u>United States v. Jon Nichols et al.</u>	Sea Lion Killing/MMPA, Obstruction
District of Arizona	<u>United States v. Jason W. Kunkel et al.</u>	Mexican Wolf Killing/ESA
Eastern District of California	<u>United States v. Maximiliano Farias-Martinez et al.</u>	Marijuana Grow/Conspiracy, Drugs, Depredation to Natural Resources
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Northern District of Florida	<u>United States v. Lee John Maher et al.</u>	Biodiesel Fuel Fraud/Concealing Federal Funds, Conspiracy, Mail Fraud
Northern District of Georgia	<u>United States v. Hyundai Construction Equipment Americas, Inc.</u>	Emissions Standards/CAA, Conspiracy
Central District of Illinois	<u>United States v. Christopher Brackett</u>	Deer Hunting/Conspiracy, Lacey Act
District of Kansas	<u>United States v. Lawrence E. Payne</u>	Asian Leopard Cat Imports/ESA
Eastern District of Kentucky	<u>United States v. Kenneth Gravitt</u>	Ewaste/Conspiracy, RCRA
Eastern District of Louisiana	<u>United States v. Keith D. Boudreaux</u>	Turtle Shipments/Lacey Act
Western District of Louisiana	████████████████████ <u>United States v. David Allan Smith et al.</u>	████████████████████ Munitions Dumping/Conspiracy, False Statement, RCRA
District of Maine	<u>United States v. MST Mineralien Schiffahrt Spedition und Transport GmbH</u>	Vessel/APPS, Obstruction
████████████████████ ██████████	████████████████████	████████████████████

District/Circuit	Case Name	Case Type/Statutes
Eastern District of Missouri	<u>United States v. Bobby D. Lowrey et al.</u>	Pesticide Application/FIFRA, Obstruction
District of Montana	<u>United States v. Zachary D. Flanagan et al.</u> <u>United States v. Woody's Trucking, LLC et al.</u>	Wastewater Discharges/CWA, False Statement Oil Processing Facility Explosion/Conspiracy, HMTA, Mail Fraud, Obstruction, Wire Fraud
Eastern District of New Jersey	<u>United States v. Robert Arellano</u> <u>United States v. Andrew Guglielmo et al.</u>	Dog Fighting/Animal Fighting Venture Pesticide Product Sales/Conspiracy
Northern District of New York	<u>United States v. APC Paper Group of New York, Inc., et al.</u>	Paper Mill/CWA
Western District of Oklahoma	<u>United States v. Joseph Maldonado-Passage</u>	Tiger Killing/ESA, Lacey Act, Murder-For-Hire
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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. Michael Primeaux</u>	Eagle Part Sales/BGEPA, Conspiracy
Eastern District of Texas	<u>United States v. Avin International, Ltd. et al.</u> <u>United States v. Jorge Fernando Mercado</u>	Vessel/CWA, Obstruction, OPA Owl Sale/MBTA
██████████	████████████████████	████████████████████
Western District of Washington	<u>United States v. Craig Lorch et al.</u>	Ewaste/Conspiracy

December 2018

Indictments/Informations

United States v. Bobby D. Lowrey et al., No. 1:18-CR-00165 (E.D. Mo.), AUSA Dianna Collins.

On November 13, 2018, prosecutors charged Bobby D. Lowrey and Lowrey & Lowrey d/b/a Lowrey Farms in a 53-count indictment with false statements, obstruction of justice, and violating the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136j; 18 U.S.C. §§ 1001, 1519). The charges stem from the defendants' misapplication of the pesticide dicamba and their efforts to conceal their actions from local authorities.

Bobby Lowrey owned and operated Lowrey Farms. In 2016, under Lowrey's management, the farm engaged in the cultivation of cotton and soybean crops on approximately 6,700 acres over numerous fields and plots. These crops were genetically modified to be resistant to the pesticide dicamba, a weed killer. STRUT, a dicamba-based pesticide product, was not approved for post-planting application to cotton crops and was limited as to its soybean application.

On multiple occasions in 2016, under Lowrey's direction, dicamba-based pesticides were applied at Lowrey Farms post-planting to cotton and to non-mature soybean crops prior to the approved preharvest application interval. Multiple farmers nearby reported damage to their crops consistent with drift from the use of dicamba-based pesticides applied on Lowrey Farms. In response to numerous complaints, Missouri Department of Agriculture requested to meet with Bobby Lowrey and asked Lowrey Farms to provide current spray application records for cotton and soybean crops.

During the investigation, Lowrey allegedly made numerous false statements and provided fraudulent documentation certifying that dicamba-based products had only been applied during burndown applications.

This case was investigated by the U.S. EPA Criminal Investigation Division, the Missouri Department of Natural Resources, and the Missouri Department of Agriculture.

United States v. Joseph Maldonado-Passage, No. 5:18-CR-00227 (W.D. Okla.), AUSAs Amanda Green and Charles Brown, with assistance from ECS Trial Attorney Shennie Patel.

On November 7, 2018, a grand jury returned a 21-count superseding indictment charging Joseph Maldonado-Passage with two previously charged murder-for-hire counts and additional Endangered Species Act and Lacey Act counts for allegedly killing tigers and selling tiger cubs (18 U.S.C. § 1958(a); 16 U.S.C. §§ 1538(a)(1)(B), (a)(1)(F), 3372(d)(2), 3373(d)(3)(A)).

Maldonado was previously indicted and arrested for a murder-to-hire plot of the owner of a tiger rescue charity in Florida. Maldonado, aka Joe Exotic, was the owner of a private tiger zoo based in Wynnewood, Oklahoma. His victim, who is still alive, won a \$1 million trademark infringement lawsuit against him after he used her logos and images to solicit donations. The indictment alleges that Maldonado engaged in illegal commercial conduct by selling tigers to people out of the state, but then claiming the sales on the USDA acquisition/disposition forms as "donations." Evidence further indicates that

(Continued on page 6)

Indictments/ Informations

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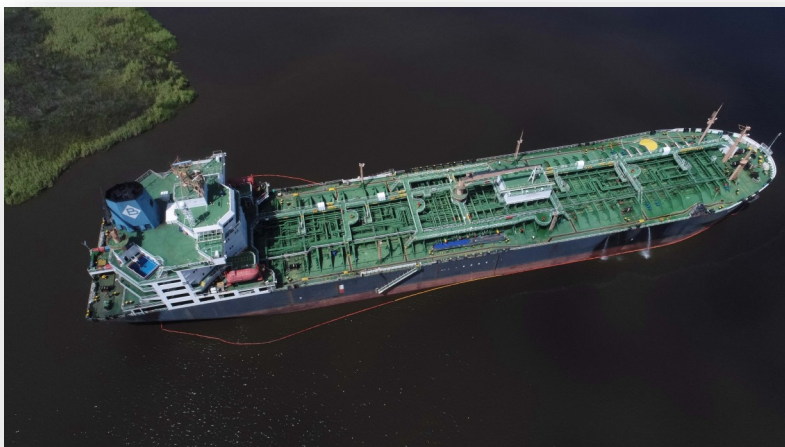
Maldonado killed numerous healthy tigers in his zoo to make space for other businesses to house their own exotic animals.

This case was investigated by the U.S. Fish and Wildlife Service, the Federal Bureau of Investigation, and the Oklahoma Department of Wildlife Conservation, with assistance from the U.S. Marshals Service.

Guilty Pleas

United States v. Avin International, Ltd., et al., No. 1:18-CR-00118 (E.D. Tex.), ECS Trial Attorney Lauren Steele, AUSA Joseph Batte, and ECS Law Clerk Christopher Kopf.

On November 26, 2018, Avin International, Ltd. (Avin) and Nicos I.V. Special Maritime Enterprises (Nicos) pleaded guilty to violating the Oil Pollution Act, obstruction, and Clean Water Act (CWA) violations. Master Rafail-Thomas Tsoumakos, and Chief Officer Alexios Thomopoulos, also pleaded guilty to making false statements to the Coast Guard during the investigation (33 U.S.C. §§ 1319(c)(1)(A), 1321(b)(5); 18 U.S.C. § 1505).



M/T Nicos I.V.

Nicos was the owner of the *M/T Nicos I.V.*, and Avin was the ship's operator. Prior to July 6, 2017, the vessel's ballast system became contaminated with oil, which was discharged twice from the vessel into the Port of Houston during deballasting operations. The deck crew informed both Tsoumakos and Thomopoulos of these discharges, and Tsoumakos failed to report them as required under the CWA. Neither discharge was recorded in the vessel's oil record book.

After leaving the Port of Houston, en route to Port Arthur, Texas, Tsoumakos and Thomopoulos instructed the deck crew to open the ballast tanks, where they saw oil in several of the tanks. After arriving in Port Arthur, additional oil began bubbling up next to the vessel, which Tsoumakos reported to the U.S. Coast Guard. During the ensuing investigation, both Tsoumakos and Thomopoulos lied to the Coast Guard, stating, among other things, that they had not been aware of the oil in the ballast system until after the discharge in Port Arthur, and that they believed the oil got into the ballast tanks when the vessel took on ballast water in Port Arthur.

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

Guilty Pleas

United States v. Jorge Fernando Mercado, No. 6:18-CR-00048 (E.D. Tex.), AUSA Jim Noble.

On November 26, 2018, Jorge Fernando Mercado pleaded guilty to violating the Migratory Bird Treaty Act for possessing and selling an Eastern Screech Owl (16 U.S.C §§ 703, 707(b)). This case is a result of Operation Canton Screech Owl, an investigation focusing on the illegal sales of protected migratory birds and bird products; specifically, live raptors. The investigation began after law enforcement received a tip regarding the sale of a protected live screech owl on Craigslist.

In October 2017, after identifying the individual responsible for the Internet ad, investigators executed a search warrant. This person also subsequently identified Mercado as the one who had sold him the owl outside a local flea market for \$200. The Eastern Screech Owl is a federally-protected species and Mercado was not authorized to possess the bird. The owl was recovered and rehabilitated by U.S. Fish and Wildlife personnel, and has since been released back into the wild.

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



Eastern Screech Owl

Guilty Pleas

United States v. Craig Lorch et al., No. 2:18-CR-00277 (W.D. Wash.), AUSAs Seth Wilkinson and Andrew Friedman.

On November 16, 2018, the owners and Chief Executive Officers of Total Reclaim, the Northwest's largest recycler of electronic waste, pleaded guilty to conspiracy to commit wire fraud (18 U.S.C. § 371). Craig Lorch and Jeff Zirkle admitted that they collected millions of dollars from public agencies and other organizations claiming that the company would properly recycle used electronics products domestically. In fact, the defendants secretly shipped millions of pounds of mercury-



One of three locations BAN visited where the LCD tracker from Total Reclaim ended up and was presumably processed. Many CCFL tubes were broken and tossed into this pile. Copyright BAN. March 2016.

containing flat screen monitors to Hong Kong, where the monitors were dismantled in a manner that risked serious health consequences to workers and damage to the environment. Sentencing is scheduled for February 1, 2019.

Total Reclaim promoted itself as a responsible electronics recycler. Its website stated that “our commitment to environmental responsibility is at the core of everything Total Reclaim does.” Total Reclaim signed a public pledge in which it promised not to “allow the export of hazardous E-waste we handle to be exported” to developing countries, without safety precautions, where workers are known to disassemble electronics that contain dangerous materials such as mercury. Total Reclaim signed agreements with customers, including the City of Seattle, in which the customers agreed to pay Total Reclaim to recycle electronics in accordance with these standards. Total Reclaim was also the biggest participant in the “E-Cycle Washington” program. This program allows consumers to drop off used electronics at places stations such as Goodwill Industries, and pays companies to properly recycle them.

In 2008, Total Reclaim began secretly exporting flat screen monitors to Hong Kong to avoid the cost of safely recycling the monitors in the United States. Lorch and Zirkle caused approximately 8.3 million pounds of monitors to be shipped to Hong Kong between 2008 and 2015. To prevent customers and auditors from learning of the practice, they falsified documents, made false statements to customers, and stored the monitors at an undisclosed facility while they awaited shipping.

A non-governmental organization known as the Basel Action Network (BAN) discovered the fraud in 2014 after placing electronic trackers on flat screen monitors and depositing them for recycling. The trackers showed that Total Reclaim collected the monitors and exported them to Hong Kong. When BAN representatives followed the

(Continued on page 10)

tracking devices to Hong Kong, they discovered that laborers dismantled the monitors by smashing them without any precautions to protect the workers or the environment. After BAN notified Lorch and Zirkle of its findings, they tried to conceal their fraud by altering hundreds of shipping records.

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Guilty Pleas

***United States v. Robert Arellano*, Nos. 1:17-CR-01229, 18-CR-00683 (D.N.M., D.N.J.), ECS Trial Attorney Ethan Eddy, AUSAs Paul Mysliwiec and Letitia Simms, and ECS Law Clerk John Jones.**

On November 15, 2018, Robert Arellano pleaded guilty to an animal fighting venture violation (7 U.S.C. § 2156). This case was transferred from the District of New Mexico after Arellano was convicted on similar charges in New Jersey in October 2018. Sentencing is scheduled for February 20, 2019.

Between May 2012 and June 2016, Arellano participated in 13 different dog fights in the district of New Mexico. He and co-defendants Robert A. Elliott, Sr., Justin Love, and Dajwan Ware, were convicted in New Jersey on similar charges. Evidence at trial established that Arellano sold and shipped two fighting dogs to Love and co-conspirator Anthony “Monte” Gaines by air cargo in December 2014. One of those dogs was subsequently fought in a “roll” or test fight the following day, and sustained a serious injury. Gaines also transported a fighting dog named “Bubbles” to Ware in order to hide her from law enforcement after local authorities in New Jersey located Gaines’s dog fighting yard. For his part, Elliott, Sr., housed a fighting dog named “Fancy” on behalf of Gaines and co-conspirator Frank Nichols, and possessed twelve fighting dogs of his own. Five other defendants previously pleaded guilty to dog fighting and firearms charges and were sentenced to a total of 153 months in prison.

This case is part of Operation Grand Champion, a multi-jurisdictional dog fighting investigation. It was investigated by the U.S. Department of Agriculture Office of Inspector General, Homeland Security Investigations, and the Federal Bureau of Investigation.

***United States v. Andrew Guglielmo et al.*, No. 3:18-CR-00677 (D.N.J.), ECS Senior Trial Attorney Jeremy Korzenik and ECS Trial Attorney Adam Cullman.**

On November 13, 2018, three individuals pleaded guilty to charges related to the sale of a paint containing an illegal pesticide. Flexabar President Richard Guglielmo, Jr., company CEO Andrew Guglielmo, and Technical Director Hamdi Latif, each pleaded guilty to conspiracy to defraud the United States by violating federal pesticide control laws (18 U.S.C. § 371).

Over close to 20 years, the defendants engaged in a scheme to produce and sell paints containing the



Dog rescued from defendants’ property

FLEXABAR CRAB POT DIP

Protective Coating for Galvanized & Vinyl Coated Wire

WATERBASE Flexgard Pot Dip

- * ECONOMICAL
- * EASY TO USE
- * LOWEST PRICE



(Continued on page 12)

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

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A photograph showing a dense, lush green thicket of vegetation. The scene is filled with various types of plants, including tall, thin trees and lower, leafy shrubs. Sunlight filters through the canopy, creating bright highlights and deep shadows. The overall impression is of a wild, overgrown natural area.

Illegal marijuana cultivation site

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.

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Sentencings

***United States v. Lawrence E. Payne*, No. 2:18-CR-20068 (D. Kans.), AUSA Chris Oakley.**

On November 29, 2018, a court sentenced Lawrence E. Payne to pay a \$5,000 fine for violating the Endangered Species Act for unlawfully importing endangered Asian leopard cats (16 U.S.C. §§ 1538(a)(1)(A), 1540(b)(1)).

The investigation began in November 2015, when Payne applied to the U.S. Department of Agriculture for a breeding license for Asian leopard cats. Payne's comments during the application process prompted inspectors to take a closer look. Agents found three Asian leopard cats at Payne's residence after executing a search warrant in April 2016. Payne admitted he had illegally imported the animals.

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



Asian leopard cat

***United States v. APC Paper Group of New York, Inc., et al.*, No. 8:18-CR-00312 (N.D.N.Y.), AUSA Michael Perry.**

On November 29, 2018, a court sentenced paper mill operator APC Paper Group of New York, Inc., (the operator of a paper mill in Norfolk, New York) to pay a \$125,000 fine after pleading guilty to a misdemeanor violation of the Clean Water Act (33 U.S.C. § 1319 (c)(1)(A)). As part of sentencing, the company also will implement an environmental compliance plan.

Between January 2013 and September 2015, the mill repeatedly violated its biochemical oxygen demand (BOD) daily maximum and monthly average permitted levels in its wastewater discharges into the Raquette River. Technical director and former employee, Michael Ward, previously pleaded guilty to a negligent CWA charge for his role in the illegal discharges. Ward was responsible for monitoring, calculating, and reporting compliance with the mill's discharge permit. He failed to report the illegal discharges to his superiors and prepared false and fraudulent monthly reports that were submitted to the Department of Environmental Conservation. APC further admitted that, by failing to adequately supervise Ward and verify his work, the company's negligence led to the illegal discharges of wastewater containing excessive amounts of BOD.

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

Sentencings

***United States v. Michael Primeaux*, No. 5:17-CR-50035 (D.S.D.), AUSAs Meghan Dilges and Eric Kelderman.**

On November 28, 2018, a court sentenced Michael Primeaux to eight months' incarceration, followed by two years' supervised release. Primeaux also will pay \$5,000 in restitution to the National Fish and Wildlife Foundation. Primeaux previously pleaded guilty to violating the Bald and Golden Eagle Protection Act and conspiring to commit wildlife trafficking (18 U.S.C. §§ 371, 3237; 16 U.S.C. § 668(a)).

This case is a result of Project Dakota Flyer. This U.S. Fish and Wildlife Service operation exposed the existence of a significant black market where violators sold for profit eagle feathers and other bird parts.

***United States v. David Allan Smith et al.*, No. 5:16-CR-00214 (W.D. La.), AUSAs Earl Campbell and J. Aaron Crawford.**

On November 28, 2018, a court sentenced five officials with Explo Systems, Inc., for their roles in a conspiracy that led to the illegal dumping of more than 15.6 million pounds of munitions at Camp Minden and an explosion. Co-owner David Alan Smith was sentenced to 55 months' incarceration, followed by three years' supervised release, and to pay \$34,798,961 in restitution. Vice President of Operations William Terry Wright was sentenced to 60 months, followed by three years' supervised release, and to pay \$149,033 in restitution. Director of Support Technology Charles Ferris Callihan was sentenced to 24 months, followed by one year of supervised release, and to pay \$207,599 in restitution. M6 Demil Program Manager Kenneth Wayne Lampkin was sentenced to 45 months, followed by three years' supervised release, and to pay \$149,033 in restitution. Traffic and Inventory Control Manager Lionel Wayne Koons was sentenced to 41 months, followed by three years' supervised release, and to pay \$92,921 in restitution.

Explo Systems Inc., was a private company whose primary business operations involved the demilitarization of military munitions and the subsequent resale of recovered explosive materials for mining operations. The U.S. Army awarded Explo an \$8.6 million contract to demilitarize approximately 1.35 million propelling charges containing M6 propellant, a solid, granular, explosive material, to lawfully store the charges, and to handle the final disposition of the explosives. Explo represented that it intended to sell and reuse the M6 propellant to third parties. Upon the sale of the M6 propellant, the contract also required Explo to document the sale and submit official certificates to the Army.

Between January 2010 and November 2012, the defendants conspired to defraud the United States by submitting false certificates to the U.S. Army, transporting hazardous wastes to unpermitted facilities, and improperly storing the explosives causing the government to pay money to the conspirators to which they were not entitled. From June 2011 through October 2012, Explo officials submitted false certificates to the Army showing sales of demilitarized M6 propellant to third parties, when in fact the sales did not occur. Explo officials, including Wright, also did not inform or notify the third-parties that

(Continued on page 16)

This case was investigated by the U.S. EPA Criminal Investigation Division, the U.S. Army Criminal Investigation, the Department of Defense Criminal Investigative Service, the Federal Bureau of Investigation, and the Louisiana State Police-Emergency Service Unit.

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Sentencings

***United States v. Keith D. Boudreaux*, No. 2:18-CR-00155 (E.D. La.), AUSA Spiro Latsis.**

On November 27, 2018, a court sentenced Keith D. Boudreaux to pay a \$15,000 fine, complete a two-year term of probation, and perform 200 hours of community service, after pleading guilty to violating the Lacey Act (16 U.S.C. §§ 3372(d)(2), 3373(d)(3)(A)).

Boudreaux was the owner of Tangi Turtle Farm (Tangi), a turtle aquaculture business, that routinely shipped live turtles in interstate and foreign commerce.

In order to streamline the exportation of captive bred turtles, the U.S. Fish and Wildlife Service created the "Master File" permitting program for CITES (Convention on International Trade in Endangered Species). This allowed turtle farms to annually obtain multiple partially-completed CITES export documents at one time, thus eliminating the need to individually apply for documentation for each single export. Tangi has held a master file permit since 2011. In August 2013, Boudreaux shipped 1,500 Midwest False Map turtles to a buyer in the Netherlands with falsified export documents. Boudreaux claimed the turtles had been bred and hatched from parental stock maintained at his facility which was not true.

This case was investigated by the U.S. Fish and Wildlife Service and the U.S. Department of Homeland Security.

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

On November 20, 2018, a court sentenced Ehbrin Castro-Correa to 21 months' incarceration, followed by three years' supervised release, and 200 hours' of community service. Correa was convicted by a jury of possessing and training an animal for purposes of having it participate in an animal fighting venture (7 U.S.C. § 2156(b); 18 U.S.C. § 49(a)).

In June 2017, with jury selection about to begin, Correa pleaded guilty to the charges. At sentencing, however, he refused to take responsibility for his crime. The court vacated the guilty plea and set the case for trial, during which a jury convicted him in July 2018.

In January 2016, the defendant took a cellphone video of his dog and another dog engaged in a brutal fight in Juncos. Homeland Security agents discovered the video when his phone was searched at the Pan American dock as he attempted to transport six canines to the Dominican Republic for fights. The Dominican Republic is a notorious



Dog rescued from defendant's property

(Continued on page 18)

Sentencings

(Continued from page 17)

worldwide haven for dog fights. This discovery led to agents executing a search warrant at his residence, seizing 25 dogs, along with training materials, equipment, and drugs used to treat their wounds.

This case was investigated by Homeland Security Investigations.

United States v. Lee John Maher et al., No. 4:16-CR-00030 (N.D. Fla.), AUSA Michael T. Simpson.

On November 19, 2018, a court sentenced Lee John Maher to 30 months' incarceration, (with credit for time served), followed by three years' supervised release. Maher was convicted by a jury in December 2017 of conspiracy to commit mail fraud and with retaining and concealing federal funds, knowing that they were wrongly taken (18 U.S.C. §§ 371, 641, 1349).

Maher and co-defendant Larry Kenneth Long were officers of Clean Fuel Lakeland, which operated a biodiesel facility in 2009 and 2010 out of Lakeland, Florida. When federal money became available for energy initiatives under the American Recovery and Reinvestment Act of 2009, the men applied for a \$2.48 million grant from the U.S. Department of Energy through the Florida Governor's Energy Office. They obtained funds under the grant by falsely claiming that Clean Fuel had spent \$2.48 million to buy and install a generator to run the biodiesel plant. As proof, they submitted eight bogus bank checks to the Governor's Energy Office, reflecting generator payments that had never been made. Based upon their false submissions, in December 2010, Clean Fuel received \$2,232,000 in grant funds. The funds were immediately disbursed from Clean Fuel's bank account through Maher's other bank accounts, with Long receiving \$22,320. The defendants did not use any of the funds to purchase a generator. They perpetuated their scheme until November 2012 by submitting false progress reports. The grant funds were ultimately recovered through federal asset seizure and forfeiture actions.

Long was sentenced in December 2017 to 12 months' incarceration, followed by two years' supervised release, after previously pleading guilty to a mail fraud conspiracy (18 U.S.C. §§ 371, 1341, 1349).

This case was investigated by the U.S. Secret Service, the Florida Department of Agriculture and Consumer Services Office of Inspector General, and the U.S. Department of Energy Office of Inspector General.

Sentencings

***United States v. Jason W. Kunkel et al.*, No. 3:18-CR-08315 (D. Ariz.), AUSA Camille Bibles.**

On November 16, 2018, a court sentenced Jason W. Kunkel after he pleaded guilty to violating the Endangered Species Act (ESA) for the unlawful take of a Mexican wolf (16 U.S.C. §§ 1538, 1540). Kunkel will pay \$7,500 in restitution to the U.S. Fish and Wildlife Service, and was sentenced complete a five-year term of unsupervised probation. He also forfeited a Remington Model 770 bolt action rifle with scope.

In December 2017, during a bull elk hunt Kunkel shot and killed a wild-born, female Mexican wolf in the Apache-Sitgreaves National Forest. He admitted knowing that the animal was a Mexican gray wolf when he killed it. Co-defendant, Donald J. Davis, also is charged with violating the ESA for helping Kunkel shoot the wolf. Davis allegedly told Kunkel where the wolf was located, and took pictures of animal after it was shot.

This case was investigated by the U.S. Fish and Wildlife Service, with assistance from the Arizona Game and Fish Department.

***United States v. Zachary D. Flanagan et al.*, Nos. 2:18-CR-00013, 00014 (D. Mont.), AUSA Bryan Whitaker and RCEC Eric Nelson.**

On November 15 and 16, 2018, a court sentenced two former corporate officers of USA Brass Company, Inc., for discharging lead-contaminated wastewater into the City of Bozeman's Publicly Owned Treatment Works (POTW) in 2013. Chief executive officer Zachary D. Flanagan, and chief production officer Nolan M. Schimpf will each pay \$50,000 fines and complete five-year terms' of probation.

USA Brass is a company that cleaned and polished used ammunition casings for resale and reuse. In November 2013, Flanagan sent an email claiming that the wastewater had been analyzed and approved for discharge to the POTW, which was false. Flanagan pleaded guilty to making a false statement to POTW personnel regarding the wastewater discharges (18 U.S.C. § 1001(a)(2))

Schimpf pleaded guilty to violating the Clean Water Act for discharging the wastewater into the POTW in violation of a permit, from September through December 2013 (33 U.S.C. §§ 1317(d), 1319(c)(1)(A)).

The investigation of this company by the EPA followed a 2013 OSHA inspection into workers' exposure to lead at the facility resulting in OSHA citations for worker safety violations. USA Brass has since closed the Bozeman business.

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

Sentencings

United States v. Hyundai Construction Equipment Americas, Inc., No. 1:18-CR-00379 (N.D. Ga.), ECS Senior Counsel Kris Dighe and AUSA Christopher Huber.

On November 14, 2018, Hyundai Construction Equipment Americas, Inc., (Hyundai), pleaded guilty and was sentenced to pay a \$1.95 million fine for conspiring to defraud the United States government and to violate the Clean Air Act (CAA) (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(A)). The charges relate to construction equipment Hyundai imported for sale into the United States from the Republic of Korea with engines that did not comply with air emissions standards under the CAA.

Hyundai imports construction and other equipment into the United States, which it sells to its dealer network. During a phase-in period for new air emissions standards, Hyundai opted to participate in a transition program that allowed it to import limited numbers of engines not in compliance with the new standards. As part of the program, Hyundai had to report the number of imported noncompliant engines to the U.S. Environmental Protection Agency (EPA). Hyundai's imports of noncompliant engines substantially exceeded its allowance. A consultant retained by Hyundai to provide advice about complying with the requirements warned the company that it was out of compliance and that it risked a substantial penalty. The consultant advised Hyundai to stop importing and to notify the EPA. Nonetheless, Hyundai continued to import the noncompliant engines, and its employees conspired to lie to the EPA and to impede EPA's ability to enforce emissions standards. Ultimately, Hyundai submitted a report that intentionally understated the number of noncompliant engines it had imported from Korea.

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

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Sentencings

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***United States v. Kenneth Gravitt*, No. 5:17-CR-00121 (E.D. Ky.) AUSAs Ken Taylor and Erin Roth.**

On November 9, 2018, a court sentenced Kenneth Gravitt to 36 months' incarceration, followed by three years' supervised release. Restitution will be determined at a later date.

Gravitt pleaded guilty to conspiracy to violate the Resource Conservation and Recovery Act and illegal storage of a hazardous waste (18 U.S.C. § 371, 42 U.S.C. §§ 6928 (d)(1), (d)(2)(a), (d)(5)).

Gravitt owned and operated Global Environmental Services (GES) with facilities in Georgetown, Cynthiana, and Winchester, Kentucky. In 2013, GES began recycling Cathode Ray Tubes (CRTs), which contain significant amounts of lead. Between April 2013 and October 2015, GES accepted too many loads for recycling that it was unable to properly process. As a result, CRTs were taken to a landfill that was not permitted to handle hazardous waste. Additionally, thousands of CRTs and glass were dumped into a large hole that had been dug behind the Georgetown facility, as well as being stored in large, uncovered piles that were exposed to the elements.

This case was investigated by U.S. EPA Office of Inspector General and the Kentucky Department of Environmental Protection.



TVs and CRTs bagged in GES Winchester warehouse

Sentencings

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

On November 9, 2018, a court sentenced Donald E. Wood, Jr., and his trucking company, Woody's Trucking LLC, on multiple charges stemming from a 2012 explosion at an oil and gas processing facility. Wood was sentenced to 12 months' and one day in prison, followed by three years' supervised release. The company will complete a four-year term of probation. Both are jointly responsible for \$644,690 in restitution to be paid to the Great West Insurance Company.

On December 29, 2012, a Woody's Trucking 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 falsely identified 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.

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.

In May 2018, a jury convicted the defendants 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. §§ 5110, 5119, 5124).

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

Sentencings

***United States v. Jon Nichols et al.*, No. 3:18-CR-00050 (D. Alaska), AUSA Aunnie Steward, with assistance from ECS Senior Counsel for Wildlife Elinor Colbourn and AUSA Kathleen O'Leary.**

On November 6, 2018, a court sentenced two men for harassing and killing Steller sea lions with shotguns, and obstructing the government's investigation. Jon Nichols, captain of the *F/V Iron Hide*, will complete a five-year term of probation (to include three months' home confinement), pay a \$20,000 fine, and perform 400 hours of community service. Nichols also will publish a public apology in a national magazine covering commercial fishing. Deckhand Theodore Turgeon will complete a four-year term of probation (including one month of home confinement), pay a \$5,000 fine, and perform 40 hours of community service. Nichols also will forfeit his 12 gauge semi-automatic Benelli shotgun.

During the first few weeks of the May 2015 salmon gillnet season, a fish and game employee flying over the Copper River fishing district notified NOAA after spotting 15 dead Steller sea lions near the mouth of the river. From mid-May to early June 2015, Nichols and his crew (including Turgeon) shot at the animals using shotguns kept aboard the vessel. Nichols directed the vessel toward the animals so that Turgeon could get a better shot.

NOAA received numerous tips identifying Nichols as one of the shooters. Nichols bragged that when he saw sea lions he would "grab his shotgun and shoot the bastards." It was not publicly known at the time that the sea lions had been shot with a shotgun.

From June 2015, through October 2016, Nichols interfered with and obstructed NOAA's investigation. After learning of the investigation in early June, Nichols directed his crew to remove his shotgun from the vessel. In October 2015, Nichols told Turgeon and another crew member to lie to federal agents about the gun and their activities on the vessel.

In November 2015, a NOAA agent interviewed Turgeon in preparation for Turgeon's grand jury testimony. During his interview, he lied to the agent stating that there were no guns on the *Iron Hide* except during a short period of time when a bear hunting rifle was onboard. In December 2015, after the other crew member told Nichols he had received a grand jury subpoena, Nichols reassured him that the government did not know about the shotguns onboard, and to not mention them. In October 2016, the crew member and Nichols had several discussions about the investigation, including the fact that they had both received target letters. Nichols continued to encourage him to lie stating that, even if convicted, they were first time offenders and would not face lengthy jail sentences.

Nichols and Turgeon pleaded guilty to violating the Marine Mammal Protection Act (MMPA). Nichols also pleaded guilty to obstruction of an MMPA investigation (16 U.S.C. §§ 1372(a)(2)(A), 1373, 1375(b)).

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

Sentencings

United States v. MST Mineralien Schiffahrt Spedition und Transport GmbH, No. 2:17-CR-00117 (D. Maine), ECS Senior Litigation Counsel Richard Udell, ECS Trial Attorney John Cashman, and ECS Law Clerk Christopher Kopf.

On November 2, 2018, a court sentenced MST Mineralien Schiffahrt Spedition und Transport GmbH (MST) after it pleaded guilty to violating the Act to Prevent Pollution from Ships and obstruction of justice (33 U.S.C. § 1908(a); 18 U.S.C. § 1519). MST will pay a \$3.2 million fine and complete a four-year term of probation, during which vessels operated by the company will be required to implement an environmental compliance plan, including inspections by an independent auditor.



M/V Marguerita

MST had previously agreed to plead guilty to a single count of obstruction of justice in a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). That plea was rejected by the district court because the absence of an APPS count as a count of conviction meant that the court did not have the discretion to award a crewmember a “whistleblower award” for information provided to the government, which the court wished to do. While the court was considering the plea agreement, counsel for several crewmember witnesses, filed a motion claiming that his clients should be considered victims under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, and/or allowed to object to the plea agreement on the basis that it did not include an APPS count which would allow for a potential whistleblower award.

The court denied the witnesses’ motion, and they petitioned for mandamus to the U.S. Court of Appeals for the First Circuit, as provided for under the CVRA, advancing the same claims and arguing that the district court’s ruling was in error. On October 16, 2018, the First Circuit issued a judgment rejecting the petition. It “agree[d] with the district court’s conclusion that these petitioners are not ‘crime victims’ as that term is defined in [the CVRA].” The Court of Appeals also held that “[t]here is no statutory authority in 33 U.S.C. § 1908(a) or elsewhere that provides [the witnesses] with a right to be so heard” on “any future plea agreement and their ability to recover a monetary award pursuant to 33 U.S.C. § 1908(a).”

MST is on probation in the District of Minnesota for a previous vessel pollution matter. The current case involves the *M/V Marguerita*, which was discharging oily bilge waste from the vessel through the grey water system. The ship failed to document these discharges in its oil record book, and made multiple port calls in Portland, Maine, with the fictitious ORB.

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

Announcements

*** When submitting a press release for posting with the Executive Office of U.S. Attorneys <https://www.justice.gov/usao/pressreleases>, please be sure it is tagged for the “Environment/Wildlife” topic. This will help ensure that your case is not overlooked for reporting in the Bulletin. ***

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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