
ENVIRONMENTAL CRIMES SECTION



MONTHLY BULLETIN

January/February 2010

EDITOR'S NOTE:

PLEASE NOTE: This issue contains case information from November and December 2009, through the third week of January 2010.

****ALSO – Two additional environmental FUGITIVES have been captured- SEE page 19 for details****

If you have other significant updates and/or interesting photographs from a case, you may email these, along with your submission, to Elizabeth Janes: [REDACTED]. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: <http://www.regionalassociations.org>

AT A GLANCE



Districts	Active Cases	Case Type / Statutes
S.D. Ala.	<u>United States v. McWane, Inc.</u>	<i>Cast Iron Pipe Manufacturer/ CWA, CWA Misdemeanor</i>
D. Ariz.	<u>United States v. Joseph Tillman et al.</u>	<i>Cacti Theft/ Lacey Act</i>
C.D. Calif.	<u>United States v. Moun Chau et al.</u>	<i>Ivory Smuggling/ Conspiracy, ESA, Smuggling</i>
S.D. Calif.	<u>United States v. Atticus Gee</u>	<i>Landfill Emissions/ Mail Fraud, CAA, False Statement</i>
	<u>United States v. Joseph O'Connor et al.</u>	<i>Vessel/ Conspiracy, CWA, False Statement</i>
S.D. Fla.	<u>United States v. Kroy Corporation, et al.</u>	<i>ODS Smuggling/ CAA</i>
S.D. Ga.	<u>United States v. Daniel Cason</u>	<i>POTW Operator/ CWA</i>
D. Idaho	<u>United States v. Cory King</u>	<i>Injection Wells/ Safe Drinking Water Act, False Statement</i>
W.D. Ky.	<u>United States v. Daniel Lewis</u>	<i>Injection Wells/ Conspiracy, SDWA, False Statement, Defrauding U.S. Government</i>
E.D. La.	<u>United States v. Polembros Shipping Limited et al.</u>	<i>Vessel/ APPS, Ports and Waterways Safety Act, Nonindigenous Aquatic Nuisance Prevention and Control Act, False Statement</i>
D. Md.	<u>United States v. Oceanpro Ltd., et al.</u>	<i>Striped Bass/ Conspiracy, Lacey Act, False Statement</i>
	<u>United States v. Dennis Dent et al.</u>	
D. Mass.	<u>United States v. The Rockmore Company</u>	<i>Sewage Dumping/ Rivers and Harbors Act</i>
D. Minn.	<u>United States v. Seng Her</u>	<i>Wildlife Smuggling/ Smuggling</i>
W.D. Mo.	<u>United States v. HPI Products, et al.</u>	<i>Pesticide Dumping/ FIFRA, RCRA, CWA</i>
	<u>United States v. John Richards</u>	<i>Reptile Sales/ False Statement</i>
D. Nev.	<u>United States v. Gary Smith et al.</u>	<i>Vehicle Emissions/ CAA</i>
D.N.M.	<u>United States v. Alan Van Hout</u>	<i>Wolf Killing/ Endangered Species Act</i>
D.N.J.	<u>United States v. Thomas George</u>	<i>Falsely Labeled Fish/ Misbranding, Entry of Goods by False Statement</i>

Districts	Active Cases	Case Type / Statutes
E.D.N.Y.	United States v. Dov Shellef et al.	<i>ODS Smuggling/ Conspiracy, CAA, Money Laundering, Wire Fraud, Tax</i>
N.D.N.Y.	United States v. Frank Onoff, et al.	<i>Asbestos Abatement/ Conspiracy, CAA, TSCA, Mail Fraud</i>
M.D.N.C.	United States v. House of Raeford Farms et al.	<i>Turkey Processing Plant/ CWA</i>
W.D.N.C.	United States v. Clement Calhoun	<i>Bear Gall Bladders/ Lacey Act</i>
D. Ore.	United States v. Reginald Akeen, et al. United States v. Gunther Wenzek	<i>Eagle Feathers/ Migratory Bird Treaty Act</i> <i>Coral Smuggling/ Smuggling</i>
W.D. Tex.	United States v. Michael Sayklay	<i>Wood Pallet Certification/ False Statement, Plant Protection Act</i>
D.V.I.	United States v. Ivan and Gloria Chu	<i>Coral Shipments/ Conspiracy, Lacey Act, Endangered Species Act, False Statement</i>
N.D.W.V.	United States v. Michael Ellard et al.	<i>Turtle Smuggling/ Lacey Act</i>
W.D. Wisc.	United States v. Gollon Brothers Wholesale Live Bait, Inc., et al.	<i>Fish Imports/ Lacey Act</i>

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Significant Environmental Decisions

District Decisions

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Trials

United States v. Dov Shellef et al., No. 03-CR-00723 (E.D.N.Y.), ECS Trial Attorney James Nelson [REDACTED] DOJ Tax Division Attorney Mark Kotila [REDACTED], and ECS Paralegal Bettina Bammer-Whitaker [REDACTED]

On January 27, 2010, after ten hours of deliberations, the jury returned guilty verdicts on all 86 counts. Shellef and Rubenstein, operating as Dunbar Sales, Inc., and Steven Industries, Inc., were previously convicted by a jury in July 2005 on all 130 counts, which included conspiracy to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud and a variety of tax violations. The defendants failed to pay approximately \$1.9 million in taxes due on domestic sales of trichlorotrifluoroethane, an ozone-depleting chemical commonly referred to as CFC-113. Once widely used as an industrial solvent and as a refrigerant in centrifugal chillers for large buildings, CFC-113 now has a limited domestic market and is used in relatively small quantities for laboratory and analytical purposes. This was the first criminal case involving CFC-113. These convictions, however, were reversed on misjoinder grounds in March 2008.

The defendants represented to manufacturers that they were purchasing CFC-113 for export, causing the manufacturers to sell it to them tax-free. They then sold the product in the domestic market without notifying the manufacturers or paying the excise tax. In addition to conspiracy to defeat the excise tax, Shellef also was convicted of personal income tax evasion, subscribing to false

corporate tax returns, wire fraud and money laundering. Rubenstein previously pleaded guilty to the conspiracy violation but has not yet been sentenced.

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Informations and Indictments

United States v. Moun Chau et al., No. 2:10-CR-00048 (C.D. Calif.), AUSA Bayron Gilchrist



Photo of seized ivory taken by the USFWS

On January 19, 2010, a grand jury indicted a Thai national and a California man in an alleged scheme to smuggle ivory from endangered African elephants into the United States. The 11-count indictment charges Moun Chau of Montclair, California, and Samart Chokchoyma of Bangkok, Thailand, with conspiracy, illegally offering to sell endangered species, illegal importation of wildlife, entry of goods by false statement, and smuggling wildlife.

According to the indictment, Chokchoyma offered ivory for sale on the eBay Internet auction website. Between September 2006 and July 2009, the defendants engaged in six separate transactions involving illegal ivory. In one instance, Chau

purchased four ivory tusk tips. In another shipment, Chokchoyma allegedly claimed on a customs declaration that the ivory shipment was a "Gift" containing "Toys." Investigators seized dozens of ivory specimens from Chau's Claremont business, much of which came from African elephants.

This case was investigated by the United States Fish and Wildlife Service, Office of Law Enforcement, with substantial assistance from the United States Customs and Border Protection and United States Immigration and Customs Enforcement. In addition, the investigation of this case was the first cooperative international law enforcement effort related to wildlife crime between the United States Fish and Wildlife Service and the Royal Thai Police. The Asia-based Freeland Foundation, a non-governmental conservation organization, was instrumental in bringing together law enforcement authorities from both nations.

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United States v. Ivan and Gloria Chu, No.10-CR-0003 (D.V.I.), ECS Trial Attorney Christopher Hale and AUSA Nelson Jones

On January 14, 2010, an 18-count indictment was returned against Taiwanese nationals Ivan Chu and Gloria Chu for conspiracy, false statement, Lacey Act false labeling, Endangered Species Act, and false classification violations, stemming from their involvement in illegal coral shipments.

The indictment names the Chus, who operate a raw coral supply and jewelry parts business in Taipei under the name Peng Chia Enterprise Co., Ltd., as the main suppliers of illegal coral to a group of businesses in the U.S. The indictment alleges that the shipments lacked the appropriate CITES documentation and/or the coral was mislabeled, typically as a type of plastics product.

This case was investigated by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, with assistance from United States Immigration and Customs Enforcement and Border Protection.

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United States v. The Rockmore Company, No. 1:10-CR-10003 (D. Mass.), AUSA Jonathan Mitchell [REDACTED], SAUSAs Russell Bowman [REDACTED] and Cassie Kitchen [REDACTED]

On January 7, 2010, the Rockmore Company was charged in a two-count information with violations of the Rivers and Harbors Act for dumping sewage into North Shore waters from a popular ferry it operates out of Salem, Massachusetts.

From 1990 to 2006, the company has operated a 59-foot long passenger vessel named the *P/V Hannah Glover* based in Salem. The *Hannah Glover* provides dinner cruises and sightseeing tours in the waters along the shores of the Massachusetts towns of Marblehead, Beverly and Manchester-by-the-Sea. On several occasions, the vessel ferried passengers to the Charles River in Boston to view the annual Fourth of July celebration on the Charles River Esplanade. The company also regularly shuttled children from Marblehead to a summer camp on Children's Island just off the coast. The company additionally operated a 116-foot barge called the *P/V Rockmore*, on which the company maintained a restaurant.

The information alleges that for several years crew members routinely utilized the ship's sewage pump to discharge raw sewage directly overboard. As a matter of course, deck hands activated the pump and opened the overboard discharge valve either upon order of the vessel master, or upon observing the overflowing of the vessel's public toilets. The discharge of up to hundreds of gallons at a time took place at various locations along the coast, including Salem Harbor and off beaches in Marblehead and Beverly, as well as in the Charles River near the Esplanade during the Independence Day celebration in 2002. The sewage discharged from the *Hannah Glover* included wastes generated by its passengers, as well as the sewage from the *Rockmore*, as the company's employees routinely pumped the contents of the *Rockmore's* sewage holding tank onto the *Hannah Glover* for disposal.

There also were occasions when the company allowed the sewage holding tank aboard the *Rockmore* to overflow, allowing untreated sewage to spill into Salem Harbor.

This case was investigated by the United States Coast Guard Investigative Service.

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United States v. Gary Smith et al., No.2:10-CR-00010 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [REDACTED] and AUSA Roger Yang.

On January 6, 2010, Gary Smith and nine others each were indicted for making false statements under the Clean Air Act. The charges stem from an investigation of several licensed automobile emissions testers in the Las Vegas area who falsified emissions reports by using cars they knew would pass the test and substituting the passing reports of those vehicles for other dirty vehicles that would not have passed the test. The testers did not realize that the computer generates an electronic VIN from the car actually tested which is easily compared with the vehicle's VIN that was entered in the report. The number of falsified reports varies by defendant from 123 to 750 each between July 2008 and September 2009.

This case was jointly investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

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United States v. Seng Her, No. 09-CR-00365 (D. Minn.), AUSA William Otteson [REDACTED].

On December 8, 2009, Seng Her was charged with a smuggling violation based on allegations that she smuggled elephant parts and dead birds into the United States from southeast Asia.

According to the indictment, Her was stopped by U.S. Customs officials at the Minneapolis-St. Paul International Airport in November 2007 after visiting Laos. Along with the parts of an Asian elephant, an endangered species, the defendant also had in her possession several dead birds including yellow-vented flowerpeckers, tailorbirds, prinias and passerines, without the required documentation.

Her defendant previously was warned in writing by the U.S. Fish and Wildlife Service in 2007 about importing undeclared wildlife into this country. She had been stopped in 2005 at the Twin Cities airport with pieces of elephant hide, birds and other wildlife, including several threatened and endangered species, in her belongings. Trial is scheduled to begin on March 1, 2010.

This case was investigated by the United States Fish and Wildlife Service.

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Silk-Wrapped Birds, Laos

United States v. Oceanpro, Ltd. et al., No. 8:09-CR-00634 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [REDACTED] and Wayne Hettenbach [REDACTED] and AUSA Stacey Belf [REDACTED]

On December 7, 2009, an indictment was returned charging a fish wholesaler and two of its employees with Lacey Act violations stemming from the purchase of illegally harvested striped bass from the Potomac River from 1992 through 2007.

Oceanpro, Ltd. (aka Profish), and two of its fish buyers, Timothy Lydon and Benjamin Clough, were charged in a five-count felony indictment with conspiracy to violate the Lacey Act, three substantive felony Lacey Act counts, and one false statement count. The indictment alleges that from 1992 to May, 2007, Profish purchased from at least five commercial fishermen striped bass that had been illegally harvested in Maryland and Virginia. The indictment also charges commercial fishermen, Gordon Jett for his role in illegally harvesting striped bass and selling them to Profish in 2007.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

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United States v. House of Raeford Farms, Inc., et al., No. 1:09-CR-00395 (M.D.N.C.), ECS Trial Attorney Mary Dee Carraway [REDACTED], ECS Senior Trial Attorney Daniel Doohar [REDACTED] and ECS Paralegal Rachel Cook [REDACTED]

On November 30, 2009, House of Raeford Farms, Inc., (“House of Raeford”) and its plant manager, Gregory Steenblock, were named in a 14-count indictment charging them with Clean Water Act felony violations.

House of Raeford is a turkey slaughtering and processing facility located in Raeford, North Carolina. The facility processes approximately 40,000 turkeys per day and its operations generate approximately 1,000,000 gallons of wastewater each day. The indictment charges that on 15 occasions the company and Steenblock knowingly caused employees to bypass the facility’s pretreatment system and send its untreated wastewater directly to the local POTW in violation of its pretreatment permit. Trial has been scheduled to begin on April 12, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

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United States v. Atticus Gee, No. 09-CR-004121 (S.D. Calif.), AUSA Melanie Pierson [REDACTED]

On November 12, 2009, Atticus Gee was charged in a three-count indictment with mail fraud, making false statements, and tampering with a monitoring method. The indictment alleges that Gee prepared false landfill gas emission reports by copying data he had in his possession without conducting the actual monitoring.

According to the indictment, between October 2004 and May 2007, Gee was employed as a technician by a company under contract with the San Diego County Department of Public Works and was responsible for taking readings of the emissions of landfill gases from several closed landfills within the County of San Diego. When landfills reach their final capacity, they can be capped by covering them with earth and other substances. In order to prevent underground fires, methane

extraction vents are to be installed. The emissions to the air from such methane extraction vents are regulated in San Diego by permits issued by the San Diego County Air Pollution Control District. Those permits place limits on the emissions and require periodic monitoring reports and certifications of compliance to be submitted by the San Diego County Department of Public Works. According to the indictment, on September 23, 2005, an underground fire was discovered at the Palomar Airport Landfill, although no unusual readings had been reported in the monitoring data from the methane extraction wells and migration probes at that location.

Trial is scheduled to begin on February 12, 2010. This case was investigated by United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

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Plea Agreements

United States v. Thomas George, No. 2:10-CR-00029 (D.N.J.), AUSAs Marc Larkins [REDACTED] and Zahid Quarashi [REDACTED] and ECS Senior Trial Attorney Elinor Colbourn [REDACTED]

On January 19, 2010, Thomas George, the sole owner and operator of Sterling Seafood, Inc., pleaded guilty plea to a two-count information, which resolves two separate investigations into illegal importations and sales of falsely labeled frozen fillets of fish.

Investigation by Immigration and Customs Enforcement agents revealed that George's direct importations of falsely labeled fish (predominantly *Pangasius hypophthalmus*, a fish in the catfish family typically produced in Vietnam) resulted in over \$63 million of lost duties on the falsely labeled fish. At the same time, investigators with NOAA and the FDA determined that Sterling Seafood had purchased approximately \$530,000 worth of the falsely labeled *Pangasius* from another importer, Virginia Star Seafood Corporation. Prosecutors in the two cases coordinated on plea negotiations, leading to an information charging entry by means of false statements for the import violations and felony misbranding for the domestic transaction violations. Sentencing is scheduled for April 28, 2010.

This case was investigated by United States Immigration and Customs Enforcement, the National Oceanic and Atmospheric Administration, and the Food and Drug Administration.

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United States v. Dennis Dent et al., No. 8:09-CR-00590 (D. Md.), ECS Senior Trial Attorneys Kevin Cassidy [REDACTED] and Wayne Hettenbach [REDACTED] and AUSA Stacey Belf [REDACTED]

On January 12, 2010, Dennis Dent, a Virginia commercial fisherman, pleaded guilty to a one-count felony information charging him with the illegal harvest and sale of striped bass from the Potomac River. Dent admitted to selling more than 16,000 pounds of untagged, falsely tagged and oversized striped bass to Profish, a seafood wholesaler in Washington, D.C., from 2005 through 2007. On December 7, 2009, a grand jury in Maryland indicted Profish and two of its employees for Lacey Act violations and conspiracy to violate the Lacey Act. The trial is scheduled for June 1, 2010. [*SEE Indictment Section above for more details on Profish.*]

Dent is one of approximately 15 commercial fishermen who previously have pleaded guilty to Lacey Act violations involving striped bass sales and harvesting.

This case was investigated by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

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United States v. Michael Sayklay, No. 3:09-CR-03209 (W.D. Tex.), ECS Senior Counsel Rocky Piaggione [REDACTED] and AUSA Steven Spitzer [REDACTED].

On January 8, 2010, Michael Sayklay, the former vice president and warehouse manager for Economy Cash & Carry, Inc., pleaded guilty to a felony false statement charge related to the falsification of a certificate stamp in violation of the Plant Protection Act. Specifically, Sayklay admitted to falsifying stamps that certified wood pallets were heat-treated to prevent infestation, and were suitable for use in international transportation. In 2006, the defendant was responsible for having the false stamp affixed to his company's wood pallets which were used to carry products back and forth across the U.S./Mexico border.

The Department of Agriculture ("DOA") requires the heat treatment of wood pallets used in international transactions. This requirement is to prevent parasites and plant diseases from entering the United States in wood packaging materials. Pallets that carry products transported within the United States are not required to be heat treated.

Economy Cash & Carry uses wood pallets to transport food products and pharmaceuticals sold in both the United States and Mexico. In his capacity as the warehouse manager, Sayklay was responsible for directing the transfer of products destined for Mexico from untreated pallets to treated pallets. Instead of following this procedure, however, he devised a copy of a certification stamp that was used by a legitimate wood pallet treating company. The defendant subsequently had hundreds of untreated domestic pallets falsely stamped as if they were treated, saving the time to transfer products between pallets, as well as the cost of treatment. Sayklay neglected to note, however, that the falsified stamp he used was smaller than the legitimate stamp.

Consequently, other companies who received the fraudulently stamped pallets from Mexico sent them to the legitimate stamp owner for repair who then notified the government about the falsification. An investigation by DOA resulted in the seizure of fraudulently stamped pallets at the U.S./Mexico border. Sentencing is scheduled for April 15, 2010.

This case was investigated by the United States Department of Agriculture.

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United States v. Reginald Akeen et al., 3:09-CR-00103 (D. Ore.), ECS Trial Attorney Todd Mikolop [REDACTED], AUSAs Stacie Beckerman [REDACTED] and Timothy Ohms [REDACTED].

On December 1, 2009, Reginald Dale Akeen (aka J.J. Lonelodge) pleaded guilty to a felony violation of the Migratory Bird Treaty Act. Akeen admitted to selling \$4,800 worth of products made from protected migratory bird feathers to an undercover agent with the U.S. Fish and Wildlife Service, including a 9-feather "black and white" fan made of juvenile golden eagle feathers, which he sold for \$1,750 in 2007.

Akeen was a target of an undercover operation whereby agents interacted with individuals who were in the business of selling protected migratory bird parts. Three other defendants remain charged

in the Eastern District of Washington with violations of the Bald and Golden Eagle Protection Act, the MBTA, and the Lacey Act. Sentencing is scheduled for February 26, 2010.

This case was investigated by The United States Fish and Wildlife Service, with assistance from other state, federal, and tribal law enforcement agencies.

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United States v. Kroy Corporation et al., No.1:09-CR-20913 (S.D. Fla.), SAUSA Jodi Mazer



Offloading of HCFC-22 from surveillance camera

On November 20, 2009, Kroy Corporation and company president James Garrido, pleaded guilty to a three-count information charging them with Clean Air Act violations for illegally smuggling into the U.S. approximately 418,650 kilograms of hydrochlorofluorocarbon-22 ("HCFC-22"), a restricted ozone-depleting substance.

Kroy was in the business of importing merchandise that included refrigerant. Between March 2007 and April 2009, Kroy and Garrido engaged in the illegal smuggling of large quantities of HCFC-22 into the United States for subsequent resale. The defendants routinely declared imported merchandise as either legal R-134-A refrigerant or as "United States Goods Returned." In truth, except for a small quantity of legal refrigerant strategically placed in front of the containers, the 11 shipments held almost 419,000 kilograms of restricted HCFC-22.

Sentencing has been scheduled for February 11, 2010. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Custom's Enforcement Office of Investigations, the Florida Department of Environmental Protection Criminal Investigation Bureau, and the Miami-Dade Police Department Environmental Investigation Unit.

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United States v. Frank Onoff, et al., No. 09-CR-00319 (N.D.N.Y.), ECS Trial Attorneys Todd Gleason and Jessica Moats, and AUSA Craig Benedict

On November 13, 2009, Frank Onoff, a supervisor for Paragon Environmental Construction, Inc., ("Paragon") pleaded guilty to conspiracy to defraud the United States, to violate the Clean Air Act, to violate the Toxic Substances Control Act, and to commit mail fraud. Five individuals and one corporate defendant remain charged.

Certified Environmental Services, Inc. ("CES"), an asbestos air monitoring company and laboratory, previously was indicted along with the company owner, four present and former employees, and Onoff. The indictment describes a decade-long scheme in which asbestos was illegally removed, scattered, and left behind in numerous buildings and homes in Syracuse and other upstate New York locations, while the air monitoring company and laboratory gave the abatement contractors

false air results to use to prove to building owners that the asbestos had been properly removed. In other instances where asbestos was properly removed, fraudulent air monitoring still occurred.

The 17-count indictment charges CES, owner Barbara Duchene, supervisor Nicole Copeland, former supervisor Elisa Dunn, and air monitors Sandy Allen and Thomas Juliano with conspiracy to defraud the United States, to violate the Clean Air Act, to violate the Toxic Substances Control Act, and to commit mail fraud. The defendants also are charged with substantive Clean Air Act, mail fraud and false statements violations. Paragon previously pleaded guilty to similar charges.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the New York State Department of Environmental Conservation.

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Sentencings

United States v. Gunther Wenzek, No. 3:08-CR-00377 (D. Ore.), ECS Senior Trial Attorney Ron Sutcliffe and AUSA Dwight Holton

On January 14, 2010, Gunter Wenzek was sentenced to pay a \$16,510 fine, make a \$8,890 community service payment to the Oregon Endangered Species Justice Fund (Zoo Administrator), and pay \$9,954 in restitution to the National Oceanic and Atmospheric Administration (“NOAA”) for investigative expenses. Wenzek also will complete a three-year term of probation.

The defendant previously pleaded guilty to a smuggling violation for smuggling protected coral into the United States via the port of Portland, Oregon. Wenzek, a German national, originally was charged in a nine-count indictment with three felony violations of smuggling protected coral into the United States, three felony Lacey Act offenses, and three misdemeanor violations of the Endangered Species Act.

Wenzek owns a company named CoraPet, based in Essen, Germany, and sold various coral products to retailers in the United States. An investigation was launched in 2007 after Wenzek attempted to ship a container to Portland loaded with fragments of endangered coral from reefs off the Philippine coast. After this initial shipment, agents subsequently seized two full containers of endangered coral shipped by the defendant to a customer in Portland. These two shipments weighed in at more than 40 tons of coral.

The seized corals have been identified as belonging to the scientific order *Scleractinia*, genera *Porites*, *Acropora*, and *Pocillopora*, which is common to Philippine reefs. Due to the threat of extinction, stony corals, such as those seized in this case, are protected by international law. Philippine law specifically forbids exports of all coral and CITES further prohibits importation of this coral to customers in the United States without a permit.



Seized coral

This case was investigated by the United States Fish and Wildlife Service, United States Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

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United States v. HPI Products, et al., Nos. 4:09-CR-00024, 189 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [REDACTED], with assistance from AUSA William Meiners [REDACTED].

On January 13, 2010, HPI Products ("HPI") vice president Hans Nielsen was sentenced to pay a \$4,000 fine and will complete a three-year term of probation. Nielsen previously pleaded guilty to two FIFRA violations for the disposal of pesticide wastes into floor drains at the HPI facility. The sentencing of HPI Products, which previously pleaded guilty to a felony CWA violation and a RCRA violation, has been continued.

HPI began producing pesticides and herbicides in 1980. It relocated several times as it expanded its operations in the City of St. Joseph. During the entire time it was in operation until 2007, HPI employees washed chemical wastes, spills and equipment rinses into floor drains, which connected to the city's POTW, without a permit. Two former HPI facilities and three other locations in St. Joseph were used as warehouses to store pesticides and process waste it did not dump into sewers. The pesticides and wastes were left for years in unmaintained buildings without the proper notification to state and federal authorities. Many of the containers were found to contain, among other things, chlordane, selenium and heptachlor, with characteristics of ignitability, toxicity, and/or corrosivity. Several drums had leaked or spilled onto the warehouse floors and the ground underneath the warehouses.

William Garvey, the company president and majority owner, previously pleaded guilty to a felony CWA violation and was sentenced to serve six months' incarceration, followed by six months' home confinement, and was ordered to pay a \$100,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Clement Calhoun, No. 2:09-mj-00019 (W.D.N.C.), ECS Trial Attorney Shennie Patel [REDACTED]

On January 12, 2010, Clement Calhoun was sentenced to serve six months' incarceration followed by one year of supervised release. As a condition of his release, Calhoun will not be permitted to hunt or possess a hunting license.

The defendant previously pleaded guilty to unlawfully trafficking in bear gall bladders, in violation of the Lacey Act. The conviction arose from a three-year undercover anti-poaching investigation, known as "Operation Botanical", into the unlawful collection, purchase, sale, and transportation of bear parts and ginseng within and along the southern Appalachians.

Calhoun, a member of the Cherokee Nation, pleaded guilty to two misdemeanor violations and admitted to illegally selling 51 bear gall bladders off the Cherokee Nation trust lands, beginning in January 2005 and continuing through September 2005.

Under the Cherokee code, it is illegal for tribal members to sell parts of big game animals, such as bear gall bladders, to non-members, to anyone beyond the boundaries of Cherokee Indian trust lands, or to anyone who will remove the parts from trust lands. Bear gall bladders are used as an Asian medicinal.

Calhoun admitted that the retail value of all of the wildlife involved was at least \$6,600. As part of the agreement, he has agreed to publish a statement in a newspaper apologizing for his illegal conduct.

This case was investigated by the United States Fish and Wildlife Service.

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United States v. Gollon Brothers Wholesale Live Bait, Inc., et al., Nos. 3:09-CR-00131-134 (W.D. Wisc.), AUSA Peter Jarosz [REDACTED].



DNR officials examine truck carrying bait

On January 8, 2010, Gollon Brothers Wholesale Live Bait, Inc., (“Gollon Brothers”) was sentenced to pay a \$4,800 fine and will complete a two-year term of probation. Gollon Brothers was the last of four Wisconsin bait companies sentenced for illegally importing fish from other states. Gollon Enterprises, Hayward Bait and Tackle, and Friesses Minnow Farm each were previously placed on two-year terms of probation, and were ordered to pay fines of \$6,000, \$5,000 and \$4,000, respectively.

The companies previously pleaded guilty to a single Lacey Act violation, which was the result of a lengthy investigation that started during an outbreak of a fish-killing virus in 2007. In total, the businesses

imported more than \$2.5 million worth of market-value minnows from Minnesota, Arkansas, North Dakota, and South Dakota without valid permits or health certificates certifying that they were free from disease. Investigators did not obtain specific evidence that these businesses were responsible for importing *viral hemorrhagic septicemia* (also known as VHS) or other diseases into the Wisconsin fish population. It was impossible to know for certain, however, since the white suckers, shiners and fathead minnows they imported were never tested for disease.

In May 2007, Wisconsin Department of Natural Resources and United States Fish and Wildlife Service investigators stopped a truck carrying bait that was entering Wisconsin from Minnesota. The investigators wanted to check compliance with emergency state rules that banned importing live bait into the state. The truck driver did not have an import permit for the load, which included 500 gallons of wild minnows caught in Minnesota that were headed for Gollon Brothers in Stevens Point. The VHS virus was discovered in the Lake Winnebago chain about two weeks before the truck was stopped. The virus causes fish to bleed to death and affects a wide range of species.

This case was investigated by the United States Fish and Wildlife Service, the Wisconsin Department of Natural Resources, the Wisconsin State Patrol, the Wisconsin Department of Trade and

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United States v. Kristopher Graham, No. 6:09-CR-00228 (M.D. Fla.), ECS Trial Attorney Lana Pettus [REDACTED] **and AUSA Bruce Ambrose** [REDACTED].

On January 7, 2010, Kristopher Graham pleaded guilty to and was sentenced for a violation of the Bald and Golden Eagle Protection Act. He specifically pleaded guilty to aiding and abetting the destruction of a bald eagle nest during the course of a construction project in January 2005.

This case is related to the prosecution of Specialized Services and Graham Brothers Construction, two companies that were previously prosecuted for the destruction of this nest. The companies were involved in land clearing and other construction work at a residential housing development site and were employed as contractors for the developer that owned this property. In November 2003, a subcontractor observed a bald eagle nest on the property. In late December 2004 and early January 2005, as work on the project progressed, other members of the construction crew, including the defendant corporations' employees, observed the nest as well as at least two bald eagles. At least one employee talked to Kristopher Graham, the on-site supervisor, about the nest, and Graham told him to stay clear of it.

In January 2005, the defendant companies, after initially refusing to tamper with the nest, eventually allowed the developer's employees to use their heavy equipment to tear down the tree containing the nest. When questioned by investigators, Graham denied having knowledge of the nest.

Kristopher Graham was sentenced to pay a \$10,000 fine and to complete a one-year term of probation. He also will perform 75 hours of community service that is likely to be completed at the Audubon Society Birds of Prey Center in Maitland, Florida.

Graham Brothers and Specialized Services were held jointly and severally liable to pay a \$75,000 fine, and each will complete a one-year term of probation, during which they will be subject to an environmental compliance plan that requires them to develop procedures to prevent the recurrence of this criminal conduct and to provide training about endangered species to their officers and employees.

This case was investigated by the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission.

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United States v. McWane, Inc. et al., No. 2:09-CR-00394 (S.D. Ala.), ECS Senior Litigation Counsel Howard Stewart [REDACTED] ECS Senior Trial Attorney Dan Doohar [REDACTED] and AUSA Robert Posey [REDACTED]

On December 18, 2009, McWane, Inc. ("McWane"), one of the largest cast iron pipe manufacturers in the country, was sentenced after pleading guilty to environmental criminal violations that occurred at the McWane Cast Iron Pipe Company ("MCIPC"), a division of McWane located in Birmingham, Alabama. McWane pleaded guilty to nine felony counts of knowingly violating the Clean Water Act. James Delk, the former general manager and vice president of the plant, pleaded guilty to eight negligent CWA violations, and former plant manager Michael Devine pleaded guilty to five negligent CWA counts.

McWane was sentenced to pay a \$4 million fine and will complete a five-year term of probation. The company also will be ordered to fund the Greenwood Environmental Project and will not be permitted to take a tax deduction on the project. Delk was sentenced to complete 36 months' probation with a special condition of six months' home confinement. His fine was reduced from \$90,000 to \$8,000, and he was given credit for time served. Devine was sentenced to serve 24 months' probation with a special condition of three months' home confinement. His fine was reduced from \$7,000 to \$2,000. The court remarked that the fines were reduced based upon the fact that these defendants had inherited a debilitated facility that had been run for profit.

McWane operates iron foundries that manufacture cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas. McWane, through MCIPC, manufactures ductile cast iron pipe for the water and sewer industry at its facility in Birmingham. The manufacturing process involves melting ferrous scrap metal in a water-cooled cupola furnace. Molten metal is centrifugally cast into pipe in water-cooled machines. The cast iron pipe is then tempered, cleaned, tested, cement

lined, painted, and bundled for shipment. A variety of waste streams are generated during this process including oil, grease and zinc.

From 1999 to 2001, the company and plant managers discharged thousands of gallons of wastewater into Avondale Creek which flows into Village Creek, a tributary of Black Warrior River, in violation of their NPDES permit. The defendants were previously convicted at trial in June 2005 for these same violations; however, the convictions were overturned by the Eleventh Circuit and the case was remanded to the district court for trial. These plea agreements resolve the case against all three defendants. This case is one of several successful prosecutions against McWane for environmental and safety crimes occurring at foundries owned by the company across the country.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the Alabama Department of Environmental Management.

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United States v. Cory King, No. 4:08-CR-0002 (D. Idaho), AUSA George Breitsameter [REDACTED] and SAUSA Dean Ingemanson [REDACTED]

On December 16, 2009, Cory King was sentenced to serve four months' home confinement as a condition of three years' probation. He also will pay a \$5,000 fine. King was previously convicted by a jury on all four counts of violating the Safe Drinking Water Act and one count of making false statements. During the three-day trial, the jury heard evidence that King, the farm manager of the Double C Farms in Burley, Idaho, had willfully injected water from the feedlot into a waste disposal and injection well without having obtained a permit. A couple of buried by-pass lines were discovered that had allowed King to inject surface water without reversing the backflow prevention valves. These buried by-pass lines could not be observed from the surface.

In May 2005, an Idaho State Agriculture inspector found that an earthen berm had collapsed and wastewater from the beef cattle feedlot was overflowing and running into a ditch that emptied into an irrigation pond. The inspector also discovered that two irrigation wells had their backflow prevention valves installed backwards, which allowed water in above-ground irrigation pipes to flow backwards down into the wells and into the subsurface. Later that day, the inspector returned and discovered the valves had been removed and reinstalled properly. Investigation revealed that King had submitted an application in 1987 to operate a deep underground injection well at the facility, but had never been issued a permit.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Idaho State Agriculture Department, with assistance from the Idaho State Department of Water Resources.

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[REDACTED]

[REDACTED]

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United States v. Michael Ellard et al., Nos. 3:09-CR-00016, 57 (N.D.W.V.), AUSA Paul Camilletti

On December 10, 2009, Michael Ellard was sentenced to serve one year of home confinement as a condition of five year's probation, and was ordered to pay \$12,000 in restitution to the National Fish and Wildlife Foundation. Ellard, a Florida reptile dealer, previously pleaded guilty to a Lacey Act violation for smuggling more than 100 turtles out of West Virginia in June 2008.

Ellard, along with two co-defendants were arrested traveling to Florida from West Virginia with 108 wood turtles, four Eastern box turtles and six snapping turtles. Kelly Stoops II was previously sentenced to serve



Seized wood turtles

five months' incarceration followed by one year of supervised release. A fine was not assessed. A third man, Eric Diana, initially failed to appear for sentencing, but has been rescheduled for March 30, 2010.

This case was investigated by the U.S. Fish and Wildlife Service Office of Investigations with assistance from the West Virginia Department of Natural Resources.

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United States vs. Polembros Shipping Limited et al., Nos. 2:08-CR-00185, 186 and 2:09-CR-00252 (E.D. La.), ECS Trial Attorney Christopher Hale and AUSA Dorothy Taylor

On December 9, 2009, Polembros Shipping Limited, a Greece-based vessel management company, was sentenced to pay a \$2.7 million fine and an additional \$100,000 will be paid as community service to the Smithsonian Environmental Research Center, a sub-unit of the Smithsonian Institute. The community service payment will be used to research and mitigate the effects of marine invasive species suspected to be transported in ballast waters of ocean-going vessels.

The company previously pleaded guilty to two APPS violations, one false statement, and one violation each of the Ports and Waterways Safety Act and the Nonindigenous Aquatic Nuisance Prevention and Control Act.

Investigation revealed serious problems with the operation and condition of the cargo ship *M/V Theotokos*, specifically the discovery of a breach in the outer skin of the vessel and fuel oil leaks into the forepeak ballast tank. Crew members suspected a leak, which was reported to company personnel, but was not recorded in writing or reported to Coast Guard inspectors until the crew was confronted during an inspection. After it was discovered that fuel oil had been leaking into the forepeak ballast tank, the crew proceeded to pump the oily liquid directly overboard through the ballast pump. None of these discharges were recorded in the oil record book. As the vessel approached New Orleans, it was clear that oil continued to leak into the forepeak tank. The chief engineer ordered two fitters to fabricate and install an obstruction device onto the forepeak tank's sounding tube so that when inspectors boarded to take a sounding, the results would obscure the presence of any oil in the tank.

During the Coast Guard boarding inspectors were able to see that the forepeak tank contained approximately one meter of oil in the tank. During a delay in the inspection, crew members removed the obstruction device before inspectors had a chance to enter the tank and see it. Inspectors also were provided with a false ballast log, which had omitted the presence of oil in the tank, as well as the effect the crack was having on the volume of liquid contained in the tank.

Maintenance of accurate ballast water records is required under Ballast Water Management for Control of Nonindigenous Species regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act. There was no evidence in this case of an invasive species introduction; however, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

Polembros also will complete a three-year term of probation with a condition that all 20 vessels owned or managed by the company will be barred from entering U.S. ports and territorial waters for three years. Additionally, the court awarded a total of \$540,000 to nine whistleblowers who were former *Theotokos* crew members. Three senior crew members, captain Panagiotis Lekkas, chief officer Charles Posas, and chief engineer Georgios Stamou, already have been sentenced in this matter. This case was investigated by the United States Coast Guard.

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**United States v. Alan Van Hout, No. 1:09-po-02365 (D.N.M.), AUSA Andrea Hattan [REDACTED]
[REDACTED] with assistance from ECS Assistant Chief John Webb [REDACTED].**

On December 2, 2009, Alan Van Hout was sentenced to serve a one-year term of probation. A fine was not assessed. Van Hout previously pleaded guilty to a misdemeanor charge of unlawfully possessing a Mexican gray wolf, which is protected under the Endangered Species Act. The wolf that Van Hout killed had been released into the wild as part of a reintroduction program.

In August 2008, the defendant shot and killed the wolf and tried to hide the carcass from wildlife agents who were involved in the reintroduction program. Van Hout was not charged with shooting the animal because he claimed he did not know it was a Mexican gray wolf at the time he shot it. He will forfeit the shotgun he used in the killing.

This case was investigated by the United States Fish and Wildlife Service.

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**United States v. Daniel Cason, No. 1:08-CR-00099 (S.D. Ga.), AUSAs David Stewart [REDACTED]
[REDACTED] and Charlie Bourne [REDACTED]**

On December 2, 2009, Daniel Cason was sentenced to serve a year and a day of incarceration followed by one year of supervised release. He also will pay a \$3,000 fine plus complete 100 hours of community service.

Cason, the public works director for the City of Harlem, Georgia, previously pleaded guilty to three CWA false statement violations. He originally was charged with 11 counts of violating the Clean Water Act and with making false statements in records and reports.

Cason is responsible for operating the city's POTW. He admitted to submitting discharge monitoring reports between 2003 and 2005 that contained false readings for levels of fecal coliform and biochemical oxygen demand from the POTW.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation.

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United States v. Joseph O'Connor et al., No. 3:07-CR-02186 (S.D. Calif.), AUSA Melanie Pierson**SMITH****O'CONNOR**

On December 1, 2009, Robert F. Smith was sentenced to time served and three years' supervised release. Smith and co-defendant Joseph O'Connor recently were apprehended as environmental fugitives who had fled the country in 2006.

Smith worked for O'Connor, who is the president and owner of Britannia Shipping International ("Brittannia"), a ship brokering business based in Malta. During 2005-2006, the *F/V Maru*, a 150-foot fishing vessel owned by O'Connor that was docked in San Diego, underwent renovation work that produced concrete waste, scrap metal, and grinding waste. Investigators received information that O'Connor and Smith were dumping the waste overboard at night.

A six-count indictment was returned in August 2007 charging the company, O'Connor, and Smith with conspiracy, unlawful discharge of pollutants, unlawful discharge of plastics, and three false statement violations. Both defendants fled the jurisdiction before they were indicted and they were posted on the EPA Fugitives website when it went up last year.

O'Connor was returned to U.S. authorities after being arrested in July 2009 in Malta, based upon a red flag Interpol had attached to his name. Smith surrendered to authorities in Malta and pleaded guilty to a conspiracy count upon his return to the United States in August 2009. O'Connor pleaded guilty in October 2009 to a false statement violation, and Britannia pleaded guilty to a felony CWA count.

Both O'Connor and the company were sentenced to serve a one-year term of probation and the company will pay a \$70,000 fine. O'Connor and Smith spent approximately three months in custody in Malta, and Smith spent an additional two months in jail in the U.S. The *Maru* was seized by the Coast Guard and forfeited under a drug case brought in the Southern District of California.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

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**Scrap metal from *F/V Maru* renovation****United States v. John Richards, No. 6:08-CR-03098 (W.D. Mo.), ECS Senior Trial Attorney Georgiann Cerese**

On November 30, 2009, John Richards was sentenced to pay a \$5,000 fine and will complete a five-year term of probation. Richards previously pleaded guilty to a two-count information charging him with two false statement violations.

Using the name of Loggerhead Acres Turtle Farm, the defendant was in the business of buying and selling reptiles via the Internet and throughout Missouri. Between 2003 and 2004, Richards exported endangered species of turtles, including Blandings turtles and the western chicken turtle

species, to Japan. He admitted to providing documentation with two different shipments falsely indicating that there had been no charge for the turtles despite Richards' having received payment for them.

This case was investigated by the United States Fish and Wildlife Service and the Missouri Department of Conservation.

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United States v. Daniel Lewis, No. 4:09-CR-0002 (W.D. Ky.), AUSAs Randy Ream [REDACTED] and Joshua Judd [REDACTED]

On November 18, 2009, Daniel Lewis was sentenced to pay a \$5,000 fine and must complete a three-year term of probation. Lewis was convicted by a jury of conspiracy to violate the Safe Drinking Water Act, to make false statements, and to defraud an agency of the United States government.

As the operator of Roseclare Oil Kentucky, Lewis was responsible for the operation of 39 injection wells. These wells actively inject brine water at depths of 1,500 to 2,000 feet underground to assist in the production of oil. Every five years the wells are required to be tested in the presence of EPA inspectors for their mechanical integrity. On 11 of the wells, a device had been installed that falsely indicated that they had passed this test when in fact they had not. Lewis further submitted certification to the EPA that the wells had passed the mechanical integrity testing.

Testimony at trial revealed that Roseclare officials rigged the wells by installing an empty piece of pipe in the ground next to the well, which was connected to the wellhead. Inspectors therefore measured pressure in an empty pipe rather than the well. As the wells developed leaks, Lewis and others installed this equipment on the wells causing them to never need repairs. Brine, which contains benzene and other pollutants, can pollute ground water if the well casings become cracked or broken. As a result of the investigation, Roseclare already has spent more than \$109,000 to repair the wells.

This case was investigated by the United States Environmental Criminal Investigation Division.

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United States v. Joseph Tillman et al., No. 4:09-CR-01738 (D. Ariz.), AUSA Reese Bostwick [REDACTED]

On November 5, 2009, a second Tucson man was sentenced for the theft of saguaro cacti from Saguaro National Park. Gregory James McKee was sentenced to serve six months of home confinement and 100 hours of community service. Co-defendant Joseph Tillman was previously sentenced in late October to serve eight months' incarceration.

Both McKee and Tillman pleaded guilty to Lacey Act violations for removing two saguaro cacti from within the boundaries of Saguaro National Park on January 12, 2007. Earlier that day National Park Service rangers discovered that several saguaros had been dug up and cached for later transport along a roadway adjacent to the park's Tucson Mountain District.

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Other Litigation Events

United States v. Pacific-Gulf Marine, No. 06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [REDACTED] and AUSA Michael Cunningham [REDACTED]

On January 4, 2010, the Probation Department filed a Notice of Violation ("NOV") against Pacific-Gulf Marine ("PGM"), citing three probation violations. The NOV follows a report submitted by the court-appointed monitor detailing the new allegations.

PGM was sentenced in January 2007 to pay a \$1 million criminal fine plus a \$500,000 community service payment. The company pleaded guilty to four APPS violations for the illegal discharges of oily waste from four of its U.S. registered vessels, all of which bypassed the Oily Water Separator ("OWS"). The sentence included a three-year period of probation subject to the terms of an environmental compliance plan that includes audits performed by an outside and independent entity and a review by a court-appointed monitor. The audits include a one-hour test of the OWS without dilution of the bilge waste to assure that the equipment is in good working order.

The NOV cites three instances in 2007 and 2008 when fresh water was used in order to pass the audits on two ships. In one instance, it is alleged that the entries made in the ship's oil record book showing the dilution were not added until after the audit, thereby concealing the misconduct. In another instance, the monitor has alleged that PGM assured that the tests were performed without dilution when that was not true.

This case was investigated by the United States Coast Guard.

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United States v. The New York City Department of Environmental Protection, No. 01-CR-00186 (S.D.N.Y.), AUSA Anne Ryan [REDACTED]

After eight years and four months, the New York City Department of Environmental Protection's ("DEP") term of probation ended on December 31, 2009. This case began in the fall of 1998 with the commencement of a far-reaching, three-year criminal investigation. In 2001, the investigation resulted in a guilty plea by DEP (the New York City agency responsible for the city's water supply and wastewater treatment systems) to a felony Clean Water Act violation and a misdemeanor TSCA violation. The agency was placed on probation under the supervision of a court-appointed monitor and ordered to develop and implement an effective environmental and worker health and safety compliance program relating to its water supply operations. A subsequent two and a half year criminal investigation resulted in a probation revocation and re-sentencing based on DEP's commission of an additional Clean Water Act felony while on probation. DEP was ordered to expand its compliance program to include the entire agency.

The record of the case documents that DEP violated environmental and worker health and safety laws and regulations for decades. The extended term of probation, however, resulted in an agency-wide environmental and worker health and safety compliance program, including a compliance office, a training program for its employees, and periodic audits of all of its facilities. DEP has corrected more than 45,000 deficiencies identified during facility audits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the New York City Department of Investigation. [Back to Top](#)

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