
ENVIRONMENTAL CRIMES SECTION



MONTHLY BULLETIN

November 2010

EDITOR'S NOTE:

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



Defendant Joseph Barringer (shown above) pleads guilty to illegal sale of elephant ivory [REDACTED]

AT A GLANCE:

✓ [United States v. Overseas Shipholding Group, Inc.](#), 2010 WL 4104663 (1st Cir. Oct. 18, 2010).

DISTRICTS	ACTIVE CASES	CASE TYPE/STATUTES
D. Ariz.	United States v. Clinton Dean Pavelich [REDACTED]	<i>Saguaro Cacti Theft/ Lacey Act</i> [REDACTED]
C.D. Calif.	United States v. Jim Nguyen et al.	<i>Asian Arowana imports/ Smuggling</i>
D. Colo.	United States v. Jeffrey M. Bodnar et al.	<i>Bobcat Trapping/ Lacey Act, Conspiracy, Felon in Possession of a Firearm</i>
M.D. Fla.	United States v. Joseph Barringer	<i>Elephant Ivory Sales/ ESA</i>
S.D. Fla.	United States v. Guillermo Molina	<i>Direct Discharge to Sewer/ CWA</i>
[REDACTED]	[REDACTED]	[REDACTED]
E.D. La.	United States v. Michael Murphy et al.	<i>Vessel/ False Statement</i>
M.D. La.	United States v. Gregory K. Dupont et al.	<i>Alligator Hunting/ Lacey Act</i>
N.D.N.Y.	United States v. Certified Environmental Services et al.	<i>Asbestos Air Monitoring/ CAA, Conspiracy, Mail Fraud, False Statement</i>
D.N.M.I.	United States v. Yuqiong Zheng	<i>Pesticide Shipment/ HMTA, Federal Aviation Act</i>
D. Nev.	United States v. Joseph Dematteo	<i>Vehicle Emissions Testing/ CAA</i>
S.D. Ohio	United States v. William Ringler	<i>CAFO/ CWA misdemeanor</i>
[REDACTED]	[REDACTED]	[REDACTED]
W.D. Wash.	United States v. Wolfgang "Tito" Roempke et al.	<i>Asbestos Demolition/ CAA</i>
S.D.W.V.	United States v. Christopher Mills et al.	<i>Electroplating Facility/ RCRA Storage</i>

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Significant Environmental Decisions

First Circuit

United States v. Overseas Shipholding Group, Inc., 2010 WL 4104663 (1st Cir. Oct. 18, 2010).

On October 18, 2010, the First Circuit issued an opinion regarding an appeal by Texas attorney Zack Hawthorn who was appointed by the Court under the Criminal Justice Act to represent a whistleblower in the investigation of Overseas Shipholding Group (OSG). OSG pleaded guilty and was sentenced in 2007 to pay a total of \$37 million in criminal penalties in a six-district prosecution. After the conclusion of the case, Hawthorn represented the same client and another whistleblower at sentencing asking that they be included in an award under the Act to Prevent Pollution from Ships which provides that a court may award up to half the fines collected under that statute to those providing information leading to conviction. In granting an award to 12 whistleblowers in the case, the court adopted the government's suggestion that any attorney seeking more than \$10,000 in legal fees would need to apply to the court. Over the government's objections, contending that Hawthorn had done very little work, Hawthorn sought a 33 percent contingency fee from the two whistleblowers each of whom had been awarded \$437,500.

In an opinion issued December 1, 2009, the district court held that Hawthorn's fees were "unethically excessive" and that he had acted unethically in contacting the second whistleblower who was represented. The district court restricted Hawthorn to a \$25,000 fee for one client. The First Circuit agreed that Hawthorn's 33 percent contingency fee was excessive, but not unethically so. The opinion suggests that excessive amounts such as that sought by Hawthorn would undermine the statute:

The whole purpose of the discretionary award to whistleblowers under this statute is to create incentives for the whistleblower to take risks that may disadvantage the whistleblower in his relationship to his employer. The amount of the fee that will be siphoned off by the lawyer significantly affects the size of that award and the power of

the incentive. The court in administering this statute is obligated to ensure his excessive legal fees will not diminish the statutory incentive.

While upholding the district court in most respects, the First Circuit held that Hawthorn did not violate ethics rules by contacting the represented whistleblower for the purpose of the award since the award was a different matter from representation in the criminal investigation, and remanded the case so that Hawthorn could collect a \$25,000 fee from both of the whistleblowers as had originally been recommended by a Magistrate Judge.

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Trials

United States v. Certified Environmental Services, et al., No. 5:09-CR-00319 (N.D.N.Y.), ECS Trial Attorneys Todd Gleason [REDACTED] and Jessica Alloway [REDACTED] AUSA Craig Benedict [REDACTED], and ECS Paralegal Katherine Loomis [REDACTED]



Dirty respirator hanging from asbestos-laden pipe

On October 12, 2010, after four weeks of trial, the jury returned guilty verdicts against Certified Environmental Services, Inc. (CES), an asbestos air monitoring company and laboratory, along with two managers, Nicole Copeland and Elisa Dunn; and one of its employees, Sandy Allen, for conspiring to aid and abet Clean Air Act (CAA) violations, commit mail fraud, and defraud the United States. The defendants were convicted of substantive CAA violations and mail fraud, while CES and Elisa Dunn also were convicted of making false statements to federal law enforcement.

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 convince building owners that the asbestos had been properly removed. In other instances where asbestos was properly removed, fraudulent air monitoring still occurred.

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

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Informations and Indictments

United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., No. 3:10-CR-00140 and United States v. Clint Martinez et al., No. 3:10-CR-00038 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [REDACTED] and ECS Trial Attorney Shennie Patel [REDACTED]

On October 27, 2010, a grand jury returned two superseding indictments against defendants charged with violations stemming from illegal alligator hunting and guiding activities. The charges against Gregory K. Dupont now include a forfeiture count along with the three Lacey Act violations previously charged. The charges against brothers Clint and Michael Martinez now include two false statements and a forfeiture allegation along with the nine Lacey Act violations previously charged.

All three defendants were involved in the illegal hunting of alligators at various times between 2005 and 2009. Dupont is a licensed alligator hunter and owns Louisiana Hunters, Inc., a guiding and outfitting company in Plaquemine, Louisiana. In 2006 Dupont allegedly took clients to hunt in areas for which he did not have authority to hunt, and in 2005 he allegedly purchased an alligator killed by one of his clients, in violation of Louisiana regulations. Clint Martinez, a licensed alligator hunter and his brother Michael Martinez, a licensed alligator helper were hired by Dupont on some of these hunts. In 2005, 2006 and 2009, the Martinez brothers are alleged to have taken clients to hunt in areas for which they did not have authority to hunt.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property-specific and hunters may only hunt in the areas designated by the tags. Louisiana regulations also prohibit alligator hunters from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

The fees charged for hunts are substantial, starting with a base rate of \$3,500 for three days of hunting. If a client kills a trophy-sized alligator, the outfitter charged trophy fees of up to \$2,000, depending on the size of the alligator. Several of the alligators taken on the dates of the alleged illegal hunts were trophy-sized.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service

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Plea Agreements

United States v. Joseph Barringer, No. 6:10-CR-00272 (M.D. Fla.), ECS Senior Trial Attorney Richard Udell [REDACTED] and AUSA Bruce Ambrose [REDACTED].

On October 28, 2010, Joseph Barringer pleaded guilty to an information charging him with an Endangered Species Act violation for the illegal sale of elephant ivory.

In December 2005, while conducting an Internet search for businesses dealing in ivory, Fish and Wildlife Service agents located a website for Cue Components, a manufacturer of custom pool cue parts. Among the items advertised for sale were components made from elephant ivory including ferrules, joint collars, butt caps and inlay slabs. According to its web page at the time, Cue Components (owned by Barringer) advertised that it sold "pre ban, legal and well documented" ivory and that it was for sale only to individuals in the United



Tusk sectioned with bandsaw

States. The website included the following statement: "Please Note: All pre ban elephant ivory must be sold to U.S. customers only-no exceptions. It is illegal to transport to a foreign country." The website included detailed descriptions and color photographs of a raw elephant tusk being processed into various finished pool cue parts. Neither the defendant nor Cue Components has ever been issued any CITES permits for the export of ivory.

Over the course of this two-year undercover operation (which also included participation by British law enforcement officials) the defendant offered for sale and sold pool cues that were advertised as containing "genuine elephant ivory" via eBay using an alias. In one transaction, the defendant provided a false customs declaration so that an agent, posing as a buyer, could evade British customs payments.

Items seized in December 2007 as a result of search warrants executed at the defendant's home and business included approximately 197 pounds of cut ivory pieces, 24 elephant tusk tips weighing 33.6 pounds, and a bag of ivory ferrules weighing 1.2 pounds. Evidence was not obtained to establish whether the ivory was illegally smuggled into the United States, although the defendant made a practice to obtain statements from sellers indicating that the ivory he purchased was lawful.

This case was investigated by the Fish and Wildlife Service and Immigration and Customs Enforcement with assistance from the London Metropolitan Police.

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United States v. Michael Murphy et al., No. 2:10-CR-00235 (E.D. La.), ECS Senior Trial Attorney Dan Dooher [REDACTED] AUSA Dee Taylor [REDACTED] and ECS Paralegal Jessica Egler [REDACTED]



R/V Gould

On October 20, 2010, Michael Murphy, a former chief engineer employed by Offshore Vessels, LLC (“OSV”), pleaded guilty to a one-count information charging him with submitting a false statement, in violation of 18 U.S.C. § 1001.

Murphy had served aboard the *R/V Laurence M. (L.M.) Gould* (“*R/V Gould*”), a 2,966 gross ton American-flagged ship owned by OSV that served as an ice-breaking research vessel for the National Science Foundation on research voyages to and from Antarctica. On or about September 27, 2005, Murphy knowingly and willfully presented an oil record book containing false entries to Coast Guard personnel

during an inspection.

The company previously pleaded guilty to an APPS violation, admitting that on or about September 8, 2005, crew members knowingly discharged oily wastewater on the high seas directly overboard from the ship’s bilge tank. The company is scheduled to be sentenced on November 4, 2010.

This case was investigated by the Coast Guard Criminal Investigative Service.

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United States v. Clinton Dean Pavelich, No. 2:10-CR-00841 (D. Ariz.), AUSA Jennifer Levinson [REDACTED]

On October 19, 2010, Clinton Dean Pavelich pleaded guilty to a Lacey Act violation for his involvement in the theft of government property. Pavelich was previously charged in a four-count indictment with two Lacey Act violations and two counts of theft of government property for his role in stealing six Saguaro Cacti from public lands managed by the Department of the Interior with the intent to sell the Saguaros. The defendant is scheduled to be sentenced on January 3, 2011.

This case was investigated by the Bureau of Land Management.

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United States v. Jim Nguyen et al., Nos. 2:10-CR-00470 - 476 (C.D. Calif.), AUSAs Christine Ewell [REDACTED] and Joseph Johns [REDACTED]

On October 13, 2010, Sam Lam pleaded guilty to a single smuggling violation for his involvement in the illegal importation of Asian Arowana or “lucky fish” into the United States. Lam is the sixth of seven defendants to plead guilty in this case. Lam, Jim Nguyen, Andree Gunawan, Tom Ku, Everette Villota, Thy Tran, and Tien Le were previously charged with smuggling and Endangered Species Act violations.



Asian Arowana

The case evolved out of a 2005 undercover sting operation in which a Fish and Wildlife agent acted as a middleman working for an exporter in Bogor, Indonesia. Many Southeast Asian cultures believe the Asian arowana, or dragon fish, brings luck and protects their owners from evil spirits. The juvenile fish sell for approximately \$1,000 each while the more colorful adults, which grow to up to two-feet long, can sell for upwards of \$20,000.

This case was investigated by the Fish and Wildlife Service and the California Department of Fish and Game.

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United States v. Joseph Dematteo Nos. 2:10-CR-0004 and 00011 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [REDACTED], Trial Attorney Sue Park [REDACTED] and AUSA Roger Yang [REDACTED]

On October 14, 2010, Joseph Dematteo pleaded guilty to a Clean Air Act violation for falsifying emissions data. To date, six defendants have pleaded guilty in this case stemming from a practice known as “clean scanning” vehicles. The scheme involved using vehicles the testers knew would pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number (“VIN”) for a vehicle that would not pass. The testers did not realize that the computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle’s VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. Dematteo was captured by authorities in June of this year after being posted on the EPA’s fugitive website.

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

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United States v. Wolfgang “Tito” Roempke et al., No. 2:10-CR-00062 (W.D. Wash.), AUSA Jim Oesterle [REDACTED]



Asbestos demolition

On October 13, 2010, Wolfgang "Tito" Roempke pleaded guilty to a Clean Air Act violation for his role in the illegal removal of asbestos during a demolition project. Co-defendants Michel Neureiter and James “Bruce” Thoreen previously pleaded guilty to a CAA conspiracy charge.

Roempke is the owner of a vacant building that was demolished in late August and early September of 2008. The four-count indictment alleged that Roempke and two contractors, Neureiter of A&D Company Northwest, Inc., and Thoreen of JT Environmental, Inc., conspired to conceal the fact that regulated asbestos containing material (“RACM”) was present in the building by submitting falsified documentation to appropriate authorities, thereby preventing them from monitoring the demolition and asbestos disposal.

After Roempke received a survey of the building that confirmed the presence of RACM, he obtained quotes from two asbestos abatement companies for the proper removal of the material. Having been told it would cost approximately \$20,000, he contacted co-defendants Thoreen and Neureiter for the purpose of conducting a new survey. Neureiter told Thoreen to complete the survey in such a way as to not find any RACM in the building. Thoreen proceeded to

take samples from parts of the building where asbestos was unlikely to be found and informed Roempke that it would cost \$8,000 to remove the material. When Thoreen gave the samples to a lab for analysis, he instructed that they use a particular methodology ensuring that the test results would not trigger any asbestos work practice standards. Notification containing this falsified information was then transmitted to the Puget Sound Clean Air Act Agency stating that no asbestos would be removed as part of the demolition project.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Puget Sound Clean Air Agency.

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Sentencings

United States v. William Ringler, No. 2:10-CR-00118 (S. D. Ohio), AUSA Michael Marous

On October 19, 2010, William Ringler was sentenced to serve three months' imprisonment followed by three months' home confinement stemming from an unpermitted discharge that caused a fish kill in June 2007. Ringler also will pay a \$51,750 fine and make an additional \$17,250 community service payment to the Ohio EPA. Of this amount, \$6,123 will be used as restitution to reimburse the agency for its emergency response activities.

The defendant previously pleaded guilty

to a misdemeanor CWA violation stemming from his operation of a pig farm in central Ohio. Steamtown Farm, a concentrated animal feeding operation, houses 2,500 pigs and is located near the West Branch of the Alum Creek, a navigable water. The Alum Creek is further designated as a Warm Water Aquatic Life Habitat.

Located on the farm is a 26,000 gallon tank, which held liquid whey, a food supplement for the pigs. On or about June 19, 2007, in two separate discharges, a total of several thousand gallons of whey spilled onto the ground and into the drainage system at the farm. Ringler was aware that the whey would end up in the Creek, but made no attempt to prevent this from happening. As a result, approximately 36,700 fish and other aquatic animals were killed due to reduced oxygen levels in the water. The facility does not have a permit to discharge into the Creek.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Ohio Environmental Protection Agency Office of Special Investigations, the Ohio Department of Natural Resources Division of Wildlife, and the Ohio Attorney General's Bureau of Criminal Identification and Investigation Environmental Enforcement Unit.

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Fish in distress from discharge of whey

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United States v. Guillermo Molina, No.1:10-CR-20702 (S.D. Fla.), AUSA Jose Bonau [REDACTED]



Defendant preparing to pump waste into sewer

On October 7, 2010, Guillermo Molina was sentenced to pay a \$2,500 fine, complete a three-year term of probation, and perform 750 hours of community service after pleading guilty to a Clean Water Act violation.

Molina was the owner and operator of a septic pumping truck and was in the business of septic and grease trap waste disposal. The defendant was hired to pump out residential and commercial septic systems filled with sludge, sewage, and chemicals, as well as to empty out grease traps from restaurants. He was then responsible for hauling these wastes to the POTW

for treatment and disposal.

On March 18, 2010, in order to avoid paying the POTW discharge fee and to obtain additional jobs, Molina dumped the untreated wastes directly into the sewer system. As part of his sentence he will be barred from any involvement in pumping, trucking, hauling or discharging pollutants during the period of probation.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Miami-Dade Police Department's Environmental Crimes Unit, and the Florida Department of Environmental Protection.

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United States v. Yuqiong Zheng, No. 1:10-CR-00027 (D.N.M.I.), AUSA Beverly McCallum

On September 30, 2010, Yuqiong Zheng was sentenced to serve two years' probation after previously pleading guilty to a violation of the Hazardous Materials Transportation Law. This case stemmed from the defendant's importation of undeclared pesticides from the People's Republic of China.

On October 9, 2008, Zheng attempted to transport the pesticide Buprofezin, a hazardous material, onboard an airplane. She originally was charged with a violation of the Federal Aviation Act along with the HMTL charge.

This case was investigated by the Department of Transportation Office of Inspector General and the Environmental Protection Agency Criminal Investigation Division, with assistance from the Coast Guard Investigative Service, the Federal Aviation Administration, and the Commonwealth of the Northern Mariana Islands Divisions of Environmental Quality and Customs.

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Pesticides disguised in bags of tea

United States v. Christopher Mills et al., Nos. 5:09-CR-00215 - 216 (S.D.W.V.), SAUSA Perry McDaniel and AUSA Eric Goes



Hazardous wastes stored in open pails

On September 29, 2010, Christopher Mills, a co-owner of an electroplating business, was sentenced to serve 18 months' incarceration with credit for time served, followed by a three-year term of supervised release. A fine was not assessed; however, Mills is jointly and severally liable with co-defendant Rodney Mills for \$133,819 in restitution to the U.S. Environmental Protection Agency for cleanup costs.

Hoffman and Mills pleaded guilty to a RCRA storage violation, admitting to storing hazardous wastes, including solvents, heavy metals, and sulfuric and chromic acids, at the facility without a permit

from October 2006 through February 2007. The hazardous waste, which was discovered by state investigators in open containers and vats, had been abandoned after plant operations were moved to a different location. As a result, the EPA has undertaken a Superfund cleanup of the site.

Hoffman has a conviction from 1999 for a Clean Water Act violation for improperly discharging waste from a prior electroplating business into a drain leading to a local municipal wastewater treatment system. He served an 11-month term of incarceration, and he recently was sentenced in the current case to serve a 30-month prison term.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the West Virginia Department of Environmental Protection, with assistance from the Environmental Protection Agency National Enforcement Investigations Center, and the Federal Bureau of Investigation.

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