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# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

*November 2009*

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*EDITOR'S NOTE:*

***CORRECTION:*** The write up for *United States v. Dalnave et al.* that was reported last month erroneously stated that the chief engineer Panagiotis Stamatakis and second engineer Dimitrios Papadakis were each sentenced to serve three months' probation with a special condition of one month's home confinement. They were actually sentenced to serve three months' probation with a special condition of one month's *community* confinement.

**ATA GLANCE**

Districts	Active Cases	Case Type / Statutes
S.D. Ala.	<a href="#"><u>United States v. DHS, Inc., d/b/a Roto Rooter, et al.</u></a>	<i>Waste Grease Disposal/ Conspiracy, CWA, Mail Fraud, False Statement</i>
N.D. Calif.	<a href="#"><u>United States v. Rogelio Lowe</u></a>  <a href="#"><u>United States v. Chuck Sivil</u></a>	<i>Sham Asbestos Training/ False Statement, Mail Fraud</i>  <i>Fuel Terminal/ CAA</i>
D. Colo.	<a href="#"><u>United States v. Jeffrey M. Bodner et al.</u></a>	<i>Bobcat Hunting/ Conspiracy, Lacey Act, Firearms Possession</i>
D. Conn.	<a href="#"><u>United States v. Robert Meyer, et al.</u></a>	<i>Wire Manufacturer/ CWA Misdemeanor</i>
S.D. Fla.	<a href="#"><u>United States v. John Buckheim et al.</u></a>  <a href="#"><u>United States v. Larkin Baggett</u></a>	<i>Spiny Lobster Harvest/ Conspiracy, Lacey Act, Forfeiture</i>  <i>Fugitive/ Weapons Charges</i>
D. Hawaii	<a href="#"><u>United States v. Charles Vidniha</u></a>	<i>Monk Seal Killing/ ESA</i>
E.D. La.	<a href="#"><u>United States v. Polembros Shipping Limited et al.</u></a>	<i>Vessel/ APPS, Ports and Waterways Safety Act, Obstruction, Nonindigenous Aquatic Nuisance Prevention and Control Act</i>
M.D. La.	<a href="#"><u>United States v. Travis Dardenne et al.</u></a>	<i>Alligator Hunt/ ESA</i>
D. Md.	<a href="#"><u>United States v. Joseph Peter Nelson, Jr., et al.</u></a>  <a href="#"><u>United States v. Golden Eye Seafood et al.</u></a>	<i>Striped Bass Labeling/ Lacey Act</i>
E.D. Mich.	<a href="#"><u>United States v. Wayne Duffiney</u></a>	<i>Boat Sinking/ CWA, Submerging Vessel in Navigable Waterway</i>
D. Minn.	<a href="#"><u>United States v. Corn Plus, LLLP</u></a>	<i>Ethanol Manufacturer/ CWA Misdemeanor</i>
D. Neb.	<a href="#"><u>United States v. Lamar Bertucci</u></a>	<i>Eagle Kills/ BGEPA, MBTA</i>
N.D. N.Y.	<a href="#"><u>United States v. Paul Mancuso et al.</u></a>	<i>Asbestos Dumpsite/ Conspiracy, Wire Fraud</i>
W.D.N.Y.	<a href="#"><u>United States v. Keith Gordon-Smith et al.</u></a>	<i>Asbestos Removal/ CAA, False Statement, Obstruction of Justice</i>
W.D.N.C.	<a href="#"><u>United States v. Chiu Hong Lo</u></a>	<i>Ginseng/ Lacey Act</i>

S.D. Ohio	<a href="#"><u>United States v. Daniel Still, Jr.</u></a>	<i>Fuel Spill/ CWA Misdemeanor</i>
D. Ore.	<a href="#"><u>United States v. Danny Parrott</u></a>	<i>Deer Hunting/ Lacey Act</i>
D.R.I.	<a href="#"><u>United States v. Gunther Wenzek</u></a>	<i>Coral Smuggling/ Smuggling</i>
E.D. Tenn.	<a href="#"><u>United States v. Southern Union Company</u></a>	<i>Natural Gas Supplier/ RCRA</i>
S.D. Tex.	<a href="#"><u>United States v. Watkins Street Project, LLC et al</u></a>	<i>Asbestos Abatement/ Conspiracy, CAA, False Statement, Obstruction of Justice</i>
D. Utah	<a href="#"><u>United States v. Styga Compania Naviera S.A.</u></a>	<i>Vessel/ APPS</i>
W.D. Wash.	<a href="#"><u>United States v. Larkin Baggett</u></a>	<i>Chemical Distributor/ RCRA, CWA</i>
	<a href="#"><u>United States v. Philip Smith</u></a>	<i>Wetlands/ CWA</i>

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## *Trials*

**United States v. Paul Mancuso, et al., Nos. 5:08-CR-00548 and 00611 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [REDACTED] and AUSA Craig Benedict [REDACTED].**



**Asbestos debris in open field**

On October 28, 2009, a jury returned guilty verdicts on all counts against brothers Paul and Steven Mancuso. They were convicted of conspiracy and substantive CAA and CERCLA violations for the illegal removal of asbestos from numerous locations throughout central and upstate New York.

Lester Mancuso, father of Paul and Steven, pleaded guilty on October 19<sup>th</sup>, the eve of trial, to conspiracy to defraud the United States, to violate the Clean Air Act, to violate CERCLA, and to commit mail fraud.

Paul Mancuso has a prior record of CAA violations from 2003 and an insurance fraud conviction in 2004, both of which stemmed from asbestos removal and disposal activities. As a result of those prior convictions he was prohibited from

becoming either directly or indirectly involved in any asbestos abatement activities or associating with anyone who violated any law. Evidence from the current case proved that Paul Mancuso set up companies in the names of relatives and associates to hide his continued involvement with asbestos removal. He and his father thereafter engaged in numerous illegal asbestos abatement activities contaminating multiple businesses and homes, and on several occasions Paul Mancuso dumped asbestos on roadsides and in the woods.

Attorney Steven Mancuso aided his family in its illegal asbestos enterprises by preparing false and fraudulent documents to make it appear that their activities were legal and that they were entitled to payment for their work. Paul Mancuso and his family ran their illegal asbestos business from the offices of Steven Mancuso's law firm.

Ronald Mancuso, another brother, previously pleaded guilty to conspiracy to violate CERCLA. Ronald admitted to participating in dumping asbestos in the woods in September and October 2005. Ronald is scheduled to be sentenced on December 2, 2009, and Paul, Steven and Lester are scheduled for February 24, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York State ("NYS") Department of Environmental Conservation. Assistance was provided by the NYS Department of Labor, Asbestos Control Bureau; the NYS Workers' Compensation Board, Office of Fraud Inspector General; and the NYS Insurance Fund, Division of Confidential Investigations.

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**United States v. Danny Parrott, No. 2:09-CR-00045 (S.D. Ohio), AUSA Mike Marous [REDACTED] and SAUSA Heather Robinson [REDACTED]**

On October 16, 2009, Danny Parrott was convicted by a jury of 14 of 15 counts charged stemming from his involvement in an illegal deer hunting operation. The jury convicted Parrott of conspiracy and Lacey Act violations for his role in the sale and transport of Ohio whitetail deer to co-defendant James Schaffer of South Carolina. Schaffer owned a hunting preserve in South Carolina and sought to import Ohio deer to the preserve because they are much bigger than South Carolina deer. Parrott owned the River Ridge Ranch which operated as a wild animal hunting reserve in Ohio and catered to hunters from states such as South Carolina, Florida and Georgia. He purchased numerous deer from several Amish residents who raise deer for a living. The 54 white tail deer were shipped to South Carolina from Ohio without being tested for disease, in violation of the Lacey Act. The interstate sale of deer is restricted to prevent the spread of disease which could infect other wildlife or potentially humans. Schaffer previously pleaded guilty to his role in the conspiracy.

This case was investigated by the Departments of Natural Resources for the States of Florida, Ohio and South Carolina.

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## ***Informations and Indictments***

**United States v. DHS, Inc., d/b/a Roto Rooter, et al., No. 1:09-CR-00242 (S.D. Ala.), ECS Senior Trial Attorney Jeremy Korzenik [REDACTED] and AUSA Michael Anderson ([REDACTED])**

On October 29, 2009, a 43-count indictment was returned charging a waste disposal company, its president and a top manager for offenses involving the illegal disposal of waste into the sewage treatment systems of Mobile and of neighboring municipalities.

DHS Inc., doing business as Roto Rooter; its president, Donald Gregory Smith; and manager William Wilmoth, Sr., were charged with numerous violations of the Clean Water Act, mail fraud and conspiracy for having dumped into local sewers thousands of gallons of waste grease and oil that they had been hired to dispose of safely and legally. The indictment describes a decade-long period wherein the City of Mobile's sewage system experienced overflows including 897 incidents between 1995 and 1998 alone. Most of these overflows were caused by the blockage of sewer lines and treatment works with solidified grease.

In response to lawsuits under the Clean Water Act, the Mobile Area Water and Sewer System (“MAWSS”) entered into a consent decree with EPA in 2002 under which it implemented a grease control program requiring restaurants and other food service establishments to install grease traps to prevent cooking oils from entering the sewer system. Roto Rooter and its employees were subsequently hired to appropriately dispose of this waste grease, but they instead discharged it into the public sewer system, causing the violations and creating the harm that their customers had paid them to prevent.

Roto Rooter employee Michael L. Edington pleaded guilty to conspiracy to violate the CWA, to commit mail fraud and to make false statements for having dumped numerous loads of grease into area sewer systems between 2004 and 2006 and for falsifying grease tracking manifests to make it appear that the waste had been disposed of properly.

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

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**United States v. Keith Gordon-Smith et al., No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Doohar [REDACTED] and AUSA Craig Gestring [REDACTED]**

On October 22, 2009, a second superseding indictment was returned charging David Vega and Francis Rowe with Clean Air Act violations while employed as project managers for Gordon-Smith Contracting, Inc., an asbestos removal company owned by Keith Gordon-Smith. The indictment supersedes an earlier indictment returned in June 2009, against Keith Gordon-Smith, charging him with CAA violations, submitting false statements, and obstruction of justice. The superseding indictment further charges Gordon-Smith's company with the same criminal violations. In addition, the superseding indictment charges Francis Rowe with submitting a false statement in an effort to obtain a court-appointed attorney.

The 18-count indictment alleges that at different times between June 2007 and April 2009, Gordon-Smith, Vega, and Rowe directed employees to remove asbestos from the Genesee Hospital complex without ensuring that the asbestos was kept adequately wet or was properly disposed of. The indictment also alleges that Gordon-Smith caused his company's employees to perform illegal asbestos removal at other sites, including schools, and that Gordon-Smith took several steps to hide the illegal asbestos removal from federal agencies. These included failing to provide prior notification to EPA before the asbestos removal projects were performed at the schools and hospital, giving false statements to an inspector from the Occupational Safety and Health Administration, and providing a false notification to the EPA.

The U.S. Attorney's Office for the Western District of New York has established a page on its Web site at <http://www.usdoj.gov/usao/nyw> to provide information for potential victims who may have been harmed as a result of the alleged crimes. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Conservation.

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**United States v Rogelio Lowe, No.3:09-CR-01013 (N.D. Calif.), AUSA Stacey Geis [REDACTED]**

On October 21, 2009, Rogelio Lowe was charged with two counts of mail fraud and nine false statement violations for making or using a false document stemming from his alleged involvement in the issuance of sham asbestos training certificates.

The indictment states that Lowe engaged in a scheme to defraud in connection with issuing training certificates to asbestos removal workers despite knowing that he had not provided them with the proper training and subsequently billing those companies that hired these workers the full cost of the training course.

Lowe was the owner and operator of E&D Environmental Safety Training, Inc., a safety consulting company that provided occupational training in asbestos work, lead abatement and mold remediation. According to the indictment, starting at an unknown date, but no later than 2008, the defendant provided asbestos removal courses that were approximately a half-hour long (versus the required eight hours), supplied answers to the closed-book examinations, and forged tests for students who did not attend a test day. Lowe then issued training certificates to students and was paid by the companies that subsequently hired them.

The indictment further states that Lowe submitted class rosters to the California Division of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) falsely reflecting that these students had successfully completed the training. Cal/OSHA used and relied on these rosters to add the names of students to its state-wide list of qualified asbestos workers.

This case was investigated by the Federal Bureau of Investigation and the United States Environmental Protection Agency Criminal Investigative Division, with assistance provided by Cal/OSHA.

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**United States v. Chiu Hung Lo (aka Sherry Lo), No. 1:09-mj-63 (W.D.N.C.), ECS Trial Attorney Shennie Patel** [REDACTED]

On October 20, 2009, charges were filed against Chiu Hung Lo for violations of the Lacey Act in connection with purchases from an undercover agent of wild ginseng over a period of three years. Lo is charged with purchasing wild ginseng out of season, purchasing ginseng without a dealer's license, and transporting ginseng in interstate commerce without the required export certificates. Lo will be entering a plea of guilty regarding the unlawful purchases of 136.9 pounds of wild ginseng with a fair market value of \$54,760.

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

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**United States v. Jeffrey M. Bodnar et al., No. 1:09-CR-00441 (D. Colo.), ECS Trial Attorney Colin Black** [REDACTED] **and AUSA Linda McMahan** [REDACTED]

On October 20, 2009, Jeffrey M. Bodnar and Veronica Anderson-Bodnar were charged with conspiracy, wildlife trafficking and firearms violations stemming from the illegal trapping, killing and selling of bobcats and their pelts. The indictment charges both defendants with conspiracy to violate the Lacey Act, two substantive violations of the Lacey Act, and two violations of the Lacey Act false records provision. Bodnar also was charged with seven firearms violations for possession of a firearm by a felon. Anderson-Bodnar was charged with two violations of transferring firearms to a felon.

The indictment alleges that from November 2006 until March 2008, Bodnar and Anderson-Bodnar conspired to knowingly transport and sell bobcat and bobcat pelts in interstate commerce that were unlawfully trapped and killed without a license and using prohibited leghold traps in violation of state law. The two also conspired to knowingly submit false records and accounts of how the bobcats were trapped for tagging by Colorado wildlife officials. According to the indictment, Bodnar trapped and killed bobcats before, during, and after the legal bobcat hunting season at different locations in and

around Park County, Colorado, including U.S. Forest Service property. He did so without a valid license, used prohibited leghold traps, and then killed the trapped animals with a firearm.

The indictment further alleges that Anderson-Bodnar on more than one occasion took the bobcat pelts to the Colorado Division of Wildlife Office to be tagged. She provided information to complete the required records for the pelts and falsely certified that each had been taken legally in Colorado.

In 2006, Anderson-Bodnar responded to a newspaper advertisement placed in a Colorado paper by a fur-buyer based in Montana. The indictment alleges multiple transactions thereafter were made across state lines with the fur-buyer from Montana and Bodnar and Anderson-Bodnar.

This case is being investigated by the United States Fish and Wildlife Service and the Colorado Division of Wildlife.

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**United States v. Philip A. Smith, No. 3:09-CR-05590 (W.D. Wash.), AUSA Jim Oesterle** ( [REDACTED] )

On September 3, 2009, Phillip Smith was charged with four felony Clean Water Act violations. Between August 2005 and February 2008, Smith is alleged to have knowingly dumped fill material into the wetlands that covered property he owned. Approximately 65 percent of the 190 acres Smith owned were covered in wetlands that drain into Lacamas Creek. The creek flows into the Cowlitz River and ultimately empties into the Columbia River. Neither Smith nor anyone associated with the property ever applied for the required permit. Trial is scheduled for May 25, 2010.



**Wetlands**

This case was investigated by the United States Army Corps of Engineers, the Washington State Department of Ecology, and the United States Environmental Protection Agency Criminal Investigation Division.

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## ***Plea Agreements***

**United States v. Chuck Sivil, No. 3:09-CR-00906 (N.D. Calif.), AUSA Stacey Geis** ( [REDACTED] )

On October 16, 2009, Chuck Sivil pleaded guilty to violating the Clean Air Act in connection with his supervision of the operations at Shore Terminals LLC's bulk fuel terminal located in Selby, California.

According to the plea agreement, Shore Terminals distributed ethanol and jet fuel products stored at its tank farm by loading fuel trucks with a device known as a truck loading rack. When trucks are loaded with fuel in this manner, significant amounts of volatile organic compounds are

emitted into the ambient air unless the pollutants are captured with a vapor recovery unit (“VRU”). When combined with sunlight, VOCs create ground ozone, which is a major component of smog.

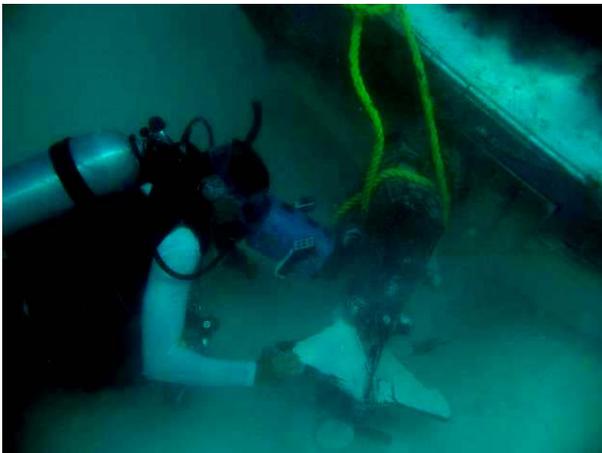
From approximately July 2005 through December 2006, Sivil was the senior manager of operations and compliance at the facility. During this time, Shore Terminals experienced problems with its VRU that caused it to malfunction and shut down. To avoid delays in loading trucks, company employees, under Sivil's supervision, repeatedly used a bypass switch that allowed them to load ethanol using the truck loading rack while the VRU was not operating.

During an inspection in August 2006 by a state air quality inspector, Sivil initially told the inspector that an electrical problem had caused the VRU to cease operating. He later admitted that this was not true and yet continued to direct his employees to use the bypass switch for several more months. Sivil pleaded guilty to a CAA felony count for tampering with a monitoring device. He is scheduled to be sentenced on January 22, 2010.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Bay Area Air Quality Management District.

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**United States v. John Buckheim et al., No. 4:09-CR-10026 (S.D. Fla.), AUSA Tom Watts-FitzGerald** [REDACTED]



**Diver investigating sunken vessel**

On October 16, 2009, John Buckheim and Nick Demauro pleaded guilty to a Lacey Act conspiracy count for illegally harvesting spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary (“FKNMS”) during the summer of 2008 and extending into early 2009. As part of the plea, a 16-foot vessel and a GMC pickup truck along with miscellaneous equipment used in acquiring the lobster will be forfeited.

Artificial habitats are prohibited from being placed on the seabed in the FKNMS. The defendants admitted to sinking a vessel in this protected area for the purpose of creating an artificial lobster habitat. In taped conversations, the defendants further admitted

to possessing the GPS coordinates for well over 300 illegal artificial habitat locations. Spiny lobster may only be harvested during the commercial season, which runs from August 6 through March 31 of the following year. The fair market retail value of illegally harvested lobster by the defendants was greater than \$155,000. Buckheim and Demauro are scheduled for sentencing on December 9, 2009.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, with assistance from the Florida Fish and Wildlife Conservation Commission, and the Miami-Dade Police Department Underwater Recovery Unit.

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**United States v. Daniel Still, Jr., No. 3:09-CR-00042 (W.D. N.C.), AUSA Steve Kaufman ( [REDACTED] )**

On October 13, 2009, Daniel Still, Jr., pleaded guilty without a written plea agreement to a Clean Water Act misdemeanor. The defendant caused the spill of approximately 3,100 gallons of burner fuel from the Belmont Dyers textile mill site into the Catawba River during his demolition of the facility in 2007.

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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Demolition site

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

Close-up view of coral

On October 14, 2009, Gunther Wenzek 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. He is scheduled to be sentenced on January 5, 2010.

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 Wenzek 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. CITES further prohibits importation of this coral to customers in the United States without a permit.

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

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**United States v. Watkins Street Project, LLC, et al., No. 1:09-CR-00144 (E.D. Tenn.), ECS Trial Attorney Todd Gleason [REDACTED] and AUSA Matthew Morris [REDACTED].**

On September 30, 2009, Gary Fillers pleaded guilty to a Clean Air Act conspiracy violation for his involvement with an illegal asbestos abatement project. Fillers is the owner of Watkins Street Project, LLC, (“WSP”) one of two demolition and salvage companies and two other individuals who were charged with violating work practice standards related to the proper stripping, bagging, removal and disposal of asbestos.



**Asbestos peeling from pipe**

The indictment describes a year-long scheme in which the former Standard Coosa Thatcher plant in Chattanooga was illegally demolished while still containing large amounts of asbestos. It further alleges that the asbestos that was removed from the plant prior to demolition was scattered in piles and left exposed to the open air. The indictment also describes the efforts made by owners and supervisors to cover up their illegal activities by falsifying documents and lying to federal authorities.

The eleven-count indictment charges WSP, Mathis Construction Inc., James Mathis, a Mathis Construction owner; and WSP supervisor David Wood, with conspiracy to defraud the United States and to violate the Clean Air Act and substantive CAA violations, making false statements, and obstructing justice.

The eleven-count indictment charges WSP, Mathis Construction Inc., James Mathis, a Mathis Construction owner; and WSP supervisor David Wood, with conspiracy to defraud the United States and to violate the Clean Air Act and substantive CAA violations, making false statements, and obstructing justice.

The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, and the Chattanooga-Hamilton County Air Pollution Control Bureau.

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**United States v. Travis Dardenne et al., Nos. 3:09-CR-00113 and 00114 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [REDACTED] and AUSA Corey Amundson [REDACTED].**

On October 6, 2009, Travis Dardenne and Jeffery Brown each pleaded guilty to a Lacey Act misdemeanor charge for knowingly attempting to acquire an American alligator in violation of the Endangered Species Act.

In September 2006, Dardenne and Brown, licensed alligator hunters, guided an out-of-state alligator sport hunter to an area for which Dardenne and Brown did not have appropriate state authorization to hunt. The sport hunter killed a trophy-sized alligator in the unapproved area. Louisiana strictly regulates the hunting of alligators in the wild, for the purpose of maintaining a healthy alligator population. Trophy-sized alligators are highly sought after by hunters, and guides frequently take hunters to them regardless of state restrictions.

This case was investigated by the Law Enforcement Division of the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service Office of Law Enforcement.

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## *Sentencings*

### **United States v. Corn Plus, LLLP, No. 09-mj-00309 (D. Minn.), AUSA David Genrich** [REDACTED]

On October 27, 2009, Corn Plus, LLLP, was sentenced to pay a \$100,000 fine and complete a three-year term of probation. The company, an ethanol manufacturer with a production facility near Rice Lake, recently pleaded guilty to one negligent Clean Water Act violation.

For approximately two years, Corn Plus discharged wastewater that violated the biological oxygen demand parameter of its NPDES permit. This wastewater flowed into a drain tile system that led to Rice Lake, a water of the United States.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Minnesota Pollution Control Agency.

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### **United States v. Joseph Peter Nelson Jr., et al., No. 8:08-CR-00482 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach** [REDACTED] **ECS Trial Attorney Jeremy Peterson** [REDACTED] **and AUSAs Stacy Belf** [REDACTED] **and Christen Sproule** [REDACTED]

On October 22, 2009, a father and son were sentenced for their involvement in illegally over-harvesting and underreporting striped bass, also known as rockfish, from 2003 through 2006. Joseph Peter Nelson, Jr., a commercial fisherman licensed in Maryland, previously pleaded guilty to one Lacey Act conspiracy and three felony Lacey Act violations. His father, Joseph Peter Nelson, Sr., pleaded guilty to one felony violation of the Lacey Act for assisting in transporting in interstate commerce the illegally taken rockfish. Nelson Jr. was sentenced to serve four months' incarceration followed by four months' home detention. He will pay a \$3,000 fine plus \$7,250 in restitution. The restitution figure was derived from the fact that Nelson Jr. harvested and underreported 14,500 pounds of striped bass worth \$72,500. Nelson Sr. will complete a one-year term of probation.

From 2003 to 2006, Nelson Jr., with the assistance of his father and Golden Eye Seafood, a Maryland-designated check-in station operated by Robert Lumpkin, inflated the number of fish recorded and under reported the weight. By inflating the number of fish caught and under reporting the weight, the records made it appear that Nelson Jr. had not reached the poundage quota for the year. He then requested more tags from the state of Maryland in order to catch more fish above his quota which were never reported by Golden Eye Seafood and were then transported to other states for sale.

In addition, Nelson Jr. admitted to catching rockfish that were below the legal size limit in Maryland, and to using tags that falsely noted the method of catch. The tags indicated that he had caught the fish using a hook and line when in fact they were caught using a net. Nelson Jr. admitted that he used a knife to simulate hook marks on the fish in order to avoid detection. On eight different occasions, Nelson Jr. with the assistance of his father sold more than 2,500 pounds of illegally harvested and tagged fish during each transaction to an undercover agent posing as an out-of-state fish buyer. Nelson Jr. also admitted that he falsely and selectively tagged the rockfish in order to conceal where the fish had been caught in order to illegally maximize his catch.

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. Styga Compania Naviera S.A, No. 4:09-CR-00572 (S.D. Tex.), ECS Trial Attorney Kenneth Nelson** [REDACTED].

On October 21, 2009, Styga Compania Naviera S.A., (“Styga”) the Panamanian operator of the *M/T Georgios M*, a 40,000-ton oil tanker ship, pleaded guilty to, and was sentenced for, three APPS violations for failing to properly maintain an oil record book (“ORB”).

The company will pay a \$1 million fine and \$250,000 for community service to the National Marine Sanctuary Foundation. The community service payment will be designated for use in the Flower Garden and Stetson Banks National Marine Sanctuary, headquartered in Galveston, Texas, to support the protection and preservation of natural and cultural resources located in and adjacent to the sanctuary.

The *Georgios M* often called on ports in Corpus Christi, Texas City, Freeport, and Houston, Texas while engaging in the international oil trade. From December 2006 until February 2009, senior engineering officers and crewmembers acting on behalf of Styga operated a bypass pipe and deliberately discharged sludge and oily waste directly into the ocean. The engineers knowingly failed to note in the ORB the fact that sludge and oily waste had been discharged directly overboard into the ocean, and they also made fictitious entries to conceal the fact that the pollution control equipment had not been used. During a Coast Guard boarding in February 2009 at the port in Texas City, the ORB containing false entries was provided to inspectors.

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

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**United States v. Robert Meyer, et al., No. 3:09-CR-00133 (D. Conn.), AUSA Christopher Schmeisser** [REDACTED] **and SAUSA Anthony Kaplan** [REDACTED]

On October 15, 2009, Robert Meyer, a former vice president of a now defunct manufacturing company, was sentenced to pay a \$1,000 fine and will complete a one-year term of probation. Meyer previously pleaded guilty to two misdemeanor Clean Water Act violations for failing to report waste water discharges that violated the company’s NPDES permit on two occasions in 2007.

Atlantic Wire was engaged in the cleaning and manufacturing of wire, and it used sulfuric and hydrochloric acid and highly alkaline materials as part of the stripping and coating process. The resultant wastewater was to be collected and treated on-site in the facility's wastewater treatment system before being discharged into the Branford River under the terms of its NPDES permit.

Meyer was hired in May 2005 by Atlantic Wire Company as vice president for finance. Shortly after the company hired him, he was asked to assume additional responsibilities for supervising environmental compliance. Court documents state that there were several occasions during which the company's wastewater treatment system did not meet permit limits and these violations were not reported.

The company was prosecuted both federally and on the state level, and it was sentenced in January 2009 to pay the state of Connecticut \$1.5 million to settle charges that it repeatedly discharged toxic wastewater into the Branford River during an approximately three-year period. In one instance the pH was allowed to drop to a level of 1.4 for more than a two-hour period. The company also pleaded guilty in federal court in December 2008 to two felony CWA violations and one false statement violation. Atlantic Wire ultimately paid approximately \$800,000 for the cleanup of the site and for dismantling of the plant. With no other assets remaining, however, the company was liquidated

without paying any fines or penalties, although it did agree that such fines would apply if it had remained in business.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Connecticut Department of Environmental Protection and the Connecticut Attorney General's Office.

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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 [REDACTED] and AUSA Dorothy Taylor [REDACTED]**

On October 15, 2009, Panagiotis Lekkas, the captain of the cargo ship, *M/V Theotokos*, was sentenced to serve six months in prison, followed by four months in a community confinement facility. Lekkas also must pay a \$4,000 fine and was banned from entering the United States. Chief officer Charles Posas was sentenced on October 1<sup>st</sup> to serve a three-year term of probation and also was banned from entering the country. Lekkas previously pleaded guilty to obstruction and APPS violations, plus two counts of violating the Ports and Waterways Safety Act ("PWSA"). Posas pleaded guilty to a false statement count and a violation of the Nonindigenous Aquatic Nuisance Prevention and Control Act.

Investigation revealed problems with the operation and condition of the *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. This case does not present an instance of an invasive species introduction; nevertheless, marine invasive species are a serious problem that can be transmitted in the ballast water of oceangoing vessels.

On September 29, 2009, Polembros Shipping Limited, a Greece-based vessel management company, pleaded guilty to two APPS violations, one false statement, and single violations of the PWSA, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. Chief engineer Georgios Stamou previously pleaded guilty to an APPS and a false statement violation and is scheduled to be sentenced on November 5, 2009. Polembros is set to be sentenced on December 9, 2009.

This case was investigated by the United States Coast Guard.

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**United States v. Larkin Baggett, No. 4:09-CR-10016, 2:07-CR-00609 (S.D. Fla., D. Utah), AUSA Tom Watts-FitzGerald [REDACTED], SAUSA Jody Mazer [REDACTED] AUSA Jared Bennett [REDACTED] and SAUSA Alicia Hoegh [REDACTED]**

On October 14, 2009, Larkin Baggett was sentenced to serve 240 months' imprisonment, for his armed assault on law enforcement officers, for illegally possessing firearms while he was a fugitive from the District of Utah, and for environmental violations charged in Utah.

Baggett will serve 141 months' imprisonment for the assault and a consecutive term of 84 months for the illegal possession of eight firearms while a fugitive, with an additional 15 months incarceration for committing the crimes in Florida while on bond in the Utah case. With respect to the Utah environmental case, Baggett will serve a concurrent 96-month term which represents the statutory maximum sentence under the CWA and the RCRA. He also will pay \$39,000 in restitution to the POTW operator in Utah for harm caused to the system by his company's toxic discharges.

Baggett pleaded guilty to using a deadly weapon, including a semi-automatic assault rifle against three EPA agents and a sergeant with the Monroe County Sheriff's Office. As the agents attempted to arrest the defendant on a fugitive warrant in Marathon, Florida, Baggett aimed his gun at them and was shot and wounded as a result.

Baggett was the owner and operator of Chemical Consultants, which was in the business of mixing, selling, and distributing various chemicals used in the trucking, construction, and concrete industries in Utah. The chemicals were transported to customers in 55-gallon drums, which then were returned to the business to be cleaned and reused. A variety of techniques were used to illegally clean the drums. Employees either dumped the contents onto the floor or onto a paved alleyway behind the plant, leaving the chemicals there to evaporate. They also were instructed to wash out the drums directly into a sanitary sewer grate.

After the local sewer authority blocked the company's access to the POTW by plugging its sewer line, Baggett instructed employees to dump the residual and spilled chemicals and the process wastewater into this plugged sewer grate. When the grate spilled over, Baggett and/or his employees pumped the contents of the sewer grate into uncovered 55 gallon drums to allow the dye to evaporate. Once the chemicals in the drum were colorless, they dumped them onto a gravel area outside.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division; the Bureau of Alcohol, Tobacco, and Firearms; and the Monroe County Sheriff's Office.

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**United States v. Lamar Bertucci, No. 8:09-CR-85 (D. Nebraska) AUSA Sandra Denton****Red-tail hawks**

On October 9, 2009, Lamar Bertucci was sentenced to serve a year and a of day incarceration, followed by one year of supervised release, to include 40 hours' community service. Bertucci pleaded guilty earlier this year to one count of violating the Bald and Golden Eagle Protection Act for shooting, possessing and selling bald and golden eagles in 2006 and 2007. Bertucci initially was charged in a three-count indictment, which included charges under both the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

The defendant was charged with shooting and selling eagles and their parts to other Native Americans, and this included bartering for marijuana. The defendant is an Omaha tribal member and was dealing with other tribal members on both the Omaha and Winnebago Reservations in eastern Nebraska.

Investigation revealed that Bertucci was responsible for shooting as many as thirteen different eagles and other migratory birds, which he baited with deer carcasses into an area near his residence in

Macy, Nebraska, so that he could shoot them. It was determined that Bertucci had been shooting eagles for at least the past twelve years. The investigation was initiated after seven eagle carcasses were recovered along the banks of the Missouri River in March 2007. All of the carcasses had been mutilated by having their feet, wings and tails removed.

This case was investigated by the United States Fish and Wildlife Service, the Omaha Nation Department of Fish and Wildlife, the Omaha Nation Tribal Police Department, and the Federal Bureau of Investigation.

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**United States v. Southern Union Company, No. 1:07-CR-000134 (D.R.I.), ECS Senior Trial Attorney Kevin Cassidy, ECS Trial Attorney Colin Black, AUSA Terrence Donnelly, and SAUSA Diane Chabot**

On October 2, 2009, Southern Union Company was sentenced to pay a \$6 million criminal fine and \$12 million in payments to community initiatives, including the Rhode Island Foundation, the Rhode Island Department of Environmental Management Emergency Response Fund and Hasbro's Children's Hospital. The company also will complete a two-year term of probation.

Southern Union, which owned several natural gas suppliers, was convicted by a jury in October 2008 on one RCRA storage violation for illegally storing mercury at a company-owned site in Pawtucket. It had been charged with two counts of illegal storage of waste mercury and one count of failing to immediately notify local authorities of a release of mercury from its facility.

**Aerial view of Seekonk River**

During the three-week trial, the government presented evidence that Southern Union began a program in 2001 to remove from customers' homes gas regulators that contained mercury. Southern Union employees brought the regulators to the facility in Pawtucket, on the edge of the Seekonk River. Southern Union initially hired an environmental services company to remove the mercury from the regulators, and then shipped the mercury to a facility in Pennsylvania for further processing.

When the removal contract expired, gas company technicians continued to remove the regulators from customers' homes. Southern Union stored the mercury-containing regulators, as well as loose liquid mercury, in various containers including plastic kiddie pools in a vacant building at the facility.

The evidence showed that, in 2002, 2003, and 2004, a local gas company official drafted requests for proposals for removal of the mercury that was collecting at the facility. The company, however, never finalized the proposals or put them out to bid. By July 2004, approximately 165 mercury-containing regulators were stored at the site, as were various other containers, such as glass jars and plastic jugs, containing a total of more than a gallon of mercury.

In September 2004, vandals broke into the storage building and took several containers of liquid mercury. Some of the containers were shattered causing mercury to be spilled around the facility's grounds. They also took some of the mercury to a nearby apartment complex. For about three weeks, puddles of mercury remained on the ground at the site, and more of it lay spilled at the apartment complex. In October 2004, a gas company employee discovered mercury on the ground of the facility and evidence that there had been a break-in.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division; the Rhode Island Department of Environmental Management ("DEM"), Office of Criminal Investigation; the DEM Office of Emergency Response and the DEM Office of Compliance and Inspection.

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### **United States v. Wayne Duffiney, No. 1:07-CR-20501 (E.D. Mich.), AUSA Janet Parker ( [REDACTED] )**



**Bow of sunken boat**

On September 29, 2009, a warrant was issued for Wayne Duffiney's arrest after he failed to appear for sentencing. Duffiney was convicted by a jury in April 2009 on three of the four charges stemming from the intentional sinking of his boat in waters connected to Lake Huron. On October 15, 2009, his wife, Michelle, was arrested on a criminal complaint for allegedly helping her husband avoid the sentencing by among other things, claiming her husband had committed suicide.

Duffiney was convicted of violating the Clean Water Act by discharging pollutants into the

navigable waters of the United States; sinking or causing the sinking of the *Misty Morning* in the navigable channels of Lake Huron; and of failing to mark the sunken vessel with navigation aids after it was sunk in the Lake Huron navigation channel. He was acquitted on the charge of willfully causing and permitting destruction and injury to the boat in the territorial waters of the United States.

In May 2007, Duffiney hauled his 44-foot boat, the *Misty Morning*, through the town of Cheboygan, Michigan, to the Cheboygan River without a trailer and dumped the boat into the navigable river. Duffiney then towed the damaged boat out into Lake Huron under cover of darkness and left it in the navigation channel. The next day, when Coast Guard officials discovered it, the boat was nearly vertical in the lake, with the bow at or near the surface and the stern toward the bottom. Duffiney was forced to tow it back into the Cheboygan River where he left it mostly submerged for a day or so before he pulled it from the water.

This case was investigated by the United States Coast Guard and the Michigan Department of Environmental Quality.

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**United States v. Charles Vidinha, No. 1:09-CR-00311 (D. Hawaii), AUSA Marshall Silverberg [REDACTED] with assistance from ECS Assistant Chief John Webb [REDACTED].**

On September 25, 2009, Charles Vidinha pleaded guilty to a violation of the Endangered Species Act for the killing of a Hawaiian Monk Seal. Vidinha also was sentenced to serve 90 days' incarceration followed by one year of supervised release.

On May 21, 2009, the defendant observed the seal in water off the north shore of the Island of Kauai. He then used a Browning .22 caliber rifle (which he subsequently destroyed) to fire four rounds at the seal, two of which struck and killed it. Vidinha did not have a permit to shoot the seal and was aware that it was a Hawaiian monk seal at the time he fired his rifle at the animal.

This case was investigated by the National Oceanic and Atmospheric Administration, with assistance from the Kaua'i Police Department; the State of Hawaii Department of Land and Natural Resources; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the United States Fish and Wildlife Service.

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**United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [REDACTED], AUSA Stacy Belf [REDACTED], and AUSA Christen Sproule [REDACTED].**

On September 25, 2009, after a two-day contested sentencing hearing, Robert Lumpkins the owner of fish wholesaler Golden Eye Seafood, LLC, ("Golden Eye") was sentenced to serve 18 months' incarceration. Golden Eye will complete a three-year term of probation and both were jointly ordered to pay a \$36,000 fine and \$164,040 in restitution.

The two previously pleaded guilty to Lacey Act violations for their operation of a check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Specifically, Golden Eye pleaded guilty to a Lacey Act conspiracy and two Lacey Act false labeling violations. Lumpkin pleaded guilty to a Lacey Act conspiracy and three Lacey Act false labeling and trafficking violations.

In addition to operating the check-in station, Golden Eye and Lumpkin also purchased from an undercover agent fish that were outside the legal size limit and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than actually were being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

These cases were investigated and developed 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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## **Are you working on Pollution or Wildlife Crimes Cases?**

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