
ENVIRONMENTAL CRIMES SECTION



MONTHLY BULLETIN

October 2009

EDITOR'S NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

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>.

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Significant Environmental Decisions

Third Circuit

United States v. Starnes, ___ F.3d ___, 2009 WL 3030368 (3rd Cir. Sept. 24, 2009).

On September 24, 2009, the Third Circuit Court of Appeals affirmed the convictions and sentences of both Cleve-Allan George and Dylan Starnes. Both were sentenced to serve 33 months' incarceration followed by three years of supervised release, following a jury trial in June 2005. Both were convicted on all 16 counts, including Clean Air Act and false statement violations, related to a demolition project in a low-income housing neighborhood.

George and Starnes were hired by the Virgin Islands Housing Authority ("VIHA") to remediate asbestos in an old building scheduled for demolition. They filed a work plan with the VIHA which indicated that they would follow all applicable regulations, including EPA and OSHA regulations. The defendants violated the asbestos work practice regulations by, among other things, failing to properly wet the asbestos during removal. The defendants also filed false air monitoring documents with the VIHA and falsely labeled the asbestos as non-friable when it was sent to Florida for disposal.

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Trials

United States v. Gerald Snapp, No. 2:09-CR-00122 (C.D. Calif.), AUSA Dennis Mitchell



Elephant skull

On September 18, 2009, after deliberating for 90 minutes, a jury convicted Gerald Snapp of an Endangered Species Act violation for attempting to sell to an undercover agent the skull of an Asian elephant on Craigslist.

According to documents filed in the case, the defendant obtained the skull of a captive Asian elephant, which had lived at the Los Angeles Zoo prior to being euthanized. In December 2008, Snapp posted an advertisement on Craigslist offering to sell the skull for \$9,000. After being made aware of the posting, the United States Fish and Wildlife launched an undercover investigation, with an agent engaging in a series of emails, meetings and recorded phone calls with the defendant. In one such call, Snapp described the CITES regulations to the agent. The government is pursuing a forfeiture action to obtain the skull.

Sentencing is scheduled for December 1, 2009. This case was investigated by the United States Fish and Wildlife Service.

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Informations and Indictments

United States v. Gollon Brothers Wholesale Live Bait, Inc., et al., No. 3:09-CR-0013-134 (W.D. Wisc.), AUSA Peter Jarosz

On September 17, 2009, informations were filed against four Wisconsin bait farmers for illegally importing fish from other states. The defendants each have agreed to plead guilty to a single Lacey Act violation, the result of a lengthy investigation that started during an outbreak of a fish-killing virus in 2007. The four businesses charged are Gollon Brothers Wholesale Live Bait, Gollon Enterprises, Hayward Bait and Tackle, and Friesses Minnow Farm.

In total, the businesses are charged with importing 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 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.

An affidavit for an unsealed search warrant stated that Wisconsin Department of Natural Resources and U.S. Fish and Wildlife Service investigators stopped a truck carrying bait that was entering Wisconsin from Minnesota in May 2007. 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. VHS 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.

Plea hearings are scheduled for October 20 and 29, 2009.

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United States vs. Polembros Shipping Limited, No. 2:09-CR-00252 (E.D. La.), ECS Trial Attorney Christopher Hale [REDACTED] and AUSA Dorothy Taylor [REDACTED]

On September 2, 2009, a five-count information was filed charging Polembros Shipping Limited, a Greece-based oceanic vessel management company, with two APPS violations and violations of the Ports and Waterways Safety Act, the Non-Indigenous Aquatic Nuisance Prevention and Control Act, and an 18 U.S.C. § 1001 false statement count. Three crew members previously pleaded guilty to a variety of charges for their involvement in the discharge of oily wastes while on the high seas.

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.



M/V Theotokos

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 ORB. 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.

This case was investigated by the United States Coast Guard.

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Pleas

United States v. Barton Wilkinson, No. 3:09-CR-00203 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe ([REDACTED]) and AUSA Nancy Cook ([REDACTED])



Dredging activity

On September 15, 2009, Barton Wilkinson pleaded guilty to an Endangered Species Act violation for his involvement in damaging habit critical to the survival of Snake River Steelhead trout.

The defendant owns property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises chinook salmon, to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

Wilkinson was approached by neighbors regarding channelization of Clear Creek next to the defendant's Clear Creek property in an effort to prevent flooding during spring runoff. A contractor performed stream reconfiguration work with a bulldozer for the neighbors and the defendant acquiesced to that work on or about August 26, 2007. The contractor dredged rock and soil material from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark affecting an area of approximately .25 acres.

Wilkinson did not have a permit from the Army Corps of Engineers to perform this work in Clear Creek, which produced large amounts of siltation downstream from the site work, causing significant damage to an endangered species habitat.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

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United States v. Jonathan Deck, No. 5:09-CR-00469 (N.D.N.Y.), ECS Trial Attorney Todd Gleason ([REDACTED]) and AUSA Craig Benedict ([REDACTED])

On September 8, 2009, Jonathan Deck pleaded guilty to conspiracy to commit wire fraud for his involvement in a massive, asbestos-contaminated dumpsite that has been designated a Superfund site. This unpermitted dumpsite was located on an open farmer's field, adjacent to the Mohawk River. Approximately 60 million pounds of asbestos-contaminated material was dumped on the field between July and October, 2006.



Pulverized demolition debris

Deck worked as a solid waste management "broker" for more than a decade, facilitating the coordination between solid waste facilities and trucking companies. He was the sole owner and operator of J.A.D., Inc., a company that arranged for independently-owned, tractor-trailer trucks to transport materials to solid waste management facilities. Deck admitted to obtaining a fraudulent New York Department of Environmental Conservation permit that was faxed to prospective solid waste transfer facilities and trucking companies in order to obtain their business. As a result, tons of pulverized demolition debris contaminated with asbestos and other hazardous substances were hauled from New Jersey and New York City to the Frankfort farm field.

Deck is scheduled to be sentenced on January 8, 2010. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the New York State Department of Environmental Conservation, Bureau of Environmental Crimes Investigations, and the New Jersey State Police.

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

On August 26, 2009, Alan Van Hout 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.

On August 6, 2008, the defendant shot and killed the wolf and tried to hide the carcass from wildlife agents who were involved in the reintroduction program. The government stated that 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 used in the killing.

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

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United States v. Bruce Bivins, No. 9:09-CR-80060 (S.D. Fla.), AUSA Lauren Jorgensen

On August 25, 2009, Bruce Bivins pleaded guilty to an information charging a Lacey Act violation for unlawfully possessing and transporting sea turtle eggs.

In May 2009, Bivins was stopped by a Town of Palm Beach police after he was seen carrying a bag near the edge of the Intercoastal Waterway. After the police officer identified himself and asked Bivins to stop, Bivins took off running. The officer watched as Bivins ran toward the Intercoastal and saw him toss the bag he was carrying. The defendant then came back toward the officer and surrendered. The bag, which was recovered



Loggerhead sea turtle eggs

and searched shortly thereafter contained 119 Loggerhead sea turtle eggs. Officers observed that about half of the eggs were covered in sand, and the other half were not, indicating that they may have been collected from a female sea turtle while she was laying the eggs and before they touched the ground.

Sentencing is scheduled for November 9, 2009. This case was investigated by the United States Fish and Wildlife Service and the Town of Palm Beach Police Department.

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

On August 19, 2009, Corn Plus, LLLP pleaded guilty to one negligent Clean Water Act violation. The company is an ethanol manufacturer, with a production facility near Rice Lake, a water of the United States.

For approximately two years, the company discharged wastewater that violated the biological oxygen demand parameter of its permit. This wastewater flowed into a drain tile system that led to Rice Lake. Sentencing is scheduled for October 27, 2009.

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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Sentencings

United States v. Christopher Neil Gauntt, No. 6:09-CR-00047 (E.D. Okla.), ECS Senior Trial Attorney Dan Doohar [REDACTED]

On September 25, 2009, Christopher Neil Gauntt was sentenced to serve six months' home confinement as a condition of a five-year term of probation. He also will pay a \$5,000 fine. Gauntt, the former supervisor of the Fort Gibson Water Treatment Plant ("FGWTP") in Fort Gibson, Oklahoma, pleaded guilty to a false statement violation for falsifying a monthly operating report ("MOR") that certified the safety of drinking water from the facility.

On June 12, 2008, the defendant submitted a MOR containing false data for drinking water that is provided to residents of the Fort Gibson area. Under the Safe Water Drinking Act, the FGWTP must certify that it is providing water that is safe for human consumption. Gauntt admitted that he falsely recorded the turbidity and chlorine levels in the MOR that was submitted to the Oklahoma Department of Environmental Quality in June 2008. In August 2008, Fort Gibson alerted residents to the turbidity violations. Prior to the plea, the FGWTP indicated that it had not received information that anyone experienced ill effects from the drinking water during that time period.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

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United States v. Herbert Corn, No. 3:09-CR-00061 (N.D. Ind.), ECS Trial Attorney Gary Donner [REDACTED] AUSA Toi Houston [REDACTED] and SAUSA Dave Mucha [REDACTED]

On September 15, 2009, Herbert Corn was sentenced to serve a one-year term of incarceration, followed by three months' home detention as a condition of a one-year term of supervised release.

Corn, the former Superintendent for the City of Rochester Wastewater Treatment Plant in Rochester, Indiana, previously pleaded guilty to an information charging five felony Clean Water Act violations. He admitted to making false statements in discharge monitoring reports submitted to the Indiana Department of Environmental Management ("IDEM"). From approximately September 2004 and continuing through approximately May 2007, the defendant submitted at least five reports containing false data for treated water that is discharged from the Rochester Plant into Mill Creek, a tributary of the Tippecanoe River. These reports falsely indicated that the levels of E. coli, ammonia NH3-N, and CBOD-5 were all in compliance with the permit limits.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the IDEM Office of Criminal Investigation, which are members of the Northern District of Indiana Environmental Crimes Task Force.

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United States v. Anthony Bazile, No. 08-CR-124 (D. Mont.), ECS Senior Trial Attorney Robert Anderson [REDACTED]

On September 9, 2009, Anthony Bazile was sentenced to serve six months' home detention as a condition of a three-year term of probation. He also will pay a \$5,000 fine. Bazile, an outfitter residing in Louisiana, recruited unlicensed clients to participate in big game hunts in Montana between 1998 and 2003. He previously pleaded guilty to a Lacey Act conspiracy and a substantive Lacey Act felony

trafficking violation. The court departed downward, over the government's objection, to a probationary sentence based upon the defendant's age (61) and medical conditions. Co-defendants Leo Bergtoll, his wife Anna Lou, and their son Darrel, recently were sentenced to pay \$15,000 fines and will complete varying terms of probation. The three previously pleaded guilty to Lacey Act violations stemming from allowing unlicensed big game hunters onto their property.

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

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United States v. Dalnave Navigation Inc., et al., No. 2:09-CR-00130 (D.N.J.), ECS Trial Attorney Gary Donner [REDACTED] AUSA Kathleen O'Leary [REDACTED], and SAUSA Christopher Mooradian.

On September 3, 2009, Liberian ship management company Dalnave Navigation Inc., ("Dalnave") was sentenced after previously pleading guilty to one APPS violation for failing to maintain an accurate oil record book and to one 18 U.S.C. § 1001 false statement violation. Dalnave will pay a \$1 million fine plus a \$350,000 community service payment to the National Fish and Wildlife Foundation to be used for the protection and restoration of marine and aquatic resources in the District of New Jersey or its off-shore coastal region. Panagiotis Stamatakis, the chief engineer for the *M/V Myron N*, an oceangoing bulk carrier vessel, and the ship's second engineer Dimitrios Papadakis, both Greek citizens, were sentenced on September 1st to serve three months' probation with a special condition of one month's home confinement. They both pleaded guilty to using falsified records that concealed improper discharges of untreated bilge waste.

The government's investigation began in September 2008, when Coast Guard inspectors examined the ship following its arrival into New York and subsequently into the Port of Newark, New Jersey. The inspections uncovered evidence that crewmembers had improperly handled and disposed of the ship's oil-contaminated bilge waste and falsified entries in the ship's oil record book ("ORB").

Stamatakis served as the vessel's chief engineer between November 2007 and September 2008 and was responsible for all engine room operations. Papadakis served as a third engineer between November 2007 and August 2008 and as second engineer from August 2008 to September 2008. Between November 2007 and September 2008, under the supervision of Stamatakis, Papadakis ordered engine room crew members to discharge oil-contaminated bilge wastes from the ship's bilge holding tank directly into the ocean. When the ORB was presented to inspectors in Newark, both defendants had failed to record these overboard discharges.

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

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United States v. John Evans, No. 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [REDACTED] and AUSA Stacy Belf [REDACTED]

On September 1, 2009, commercial fisherman John Evans was sentenced to serve three months' incarceration followed by six months' home confinement. He further was ordered to pay a \$2,000 fine and \$2,230 in restitution after previously pleading guilty to a felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, Evans, with the assistance of a Maryland-designated fish check-in station employee, falsely recorded the amount of striped bass that he harvested. Within each year, he failed to record some of the striped bass that was caught or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also

would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendant allowing him to catch striped bass above his maximum poundage quota amount. The fair market retail value of this fish was \$23,400.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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United States v. Hans Neilsen, et al., No. 4:09-CR-00024 (W.D. Mo.), ECS Senior Counsel Rocky Piaggione [REDACTED] with assistance from AUSA William Meiners [REDACTED].

On August 31, 2009, Hans Neilsen, a vice president with HPI Products Inc., (“HPI”), pleaded guilty to two FIFRA violations for the disposal of pesticide wastes into floor drains at the facility. HPI, a producer of pesticides and herbicides, previously pleaded guilty to a felony CWA violation and a RCRA violation stemming from dumping wastes and spilled product into floor drains and illegally storing these wastes. William Garvey, the company president and majority owner, pleaded guilty to a felony CWA violation and was sentenced on September 1st to serve six months’ incarceration followed by six months’ home confinement. He was further ordered to pay a \$100,000 fine.

HPI began producing pesticides 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.

In addition 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 ground underneath the warehouses.

The sentencing for HPI has been continued. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Richard Sturgeon, No. 2:08-CR-04032 (W.D. Mo.), AUSA Lawrence Miller ([REDACTED]) and SAUSA Anne Rauche ([REDACTED]).

On August 28, 2009, Richard Sturgeon, a former public works director for the City of Lake Ozark, Missouri, was sentenced to pay a \$5,000 fine and will serve a three-year term of probation after pleading guilty to failing to report the discharge of raw sewage into the Lake of the Ozarks.

As the public works director, Sturgeon was responsible for overseeing the city’s waste water treatment facility and reporting sewage bypasses. Lake Ozark co-owns and operates the Lake of the Ozarks Regional Waste Water Treatment Facility with the City of Osage Beach.

The City of Lake Ozark has a history of overflows and/or bypass events from the waste water treatment facilities’ lift stations into the Lake of the Ozarks. Citizen request forms maintained by the city document numerous incidents of lift station sewage bypasses that were never reported to the

Missouri Department of Natural Resources ("MDNR"). The city routinely has failed to notify MDNR when the bypasses occurred.

On September 11, 2007, MDNR staff observed a bypass at a lift station resulting in the discharge of 10,000 to 15,000 gallons of raw sewage into the lake. DNR officials informed the city about the bypass, and the city took action to stop the flow. The city, however, did not conduct a cleanup and did not provide written notification of the bypass.

Analysis of lake water conducted two days after the event showed elevated levels of ammonia, nitrogen, and fecal coliform that exceeded the criteria deemed safe for recreation.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

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United States v. Cedric Salabye, No. 3:08-CR-00672 (D. Ariz.), ECS Senior Trial Attorney Georgiann Cerese (██████████) and ECS Trial Attorney Todd Mikolop (██████████).

On August 28, 2009, Cedric Salabye was sentenced to serve six months' home confinement as a condition of a five-year term of probation. He also will complete 150 hours of community service. Salabye pleaded guilty earlier this year to one count of violating the Bald and Golden Eagle Protection Act for selling parts from a bald eagle in August 2006. Salabye initially was charged in a four-count indictment, which included a forfeiture count for the items he sold.

The defendant was charged with selling individual eagle feathers, as well as fans containing feathers, without a permit. The fans sold for as much as \$700. As part of the plea, Salabye also agreed to forfeit all feathers which he sold, some of which actually were abandoned after sale.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures and the feathers of the birds are central to religious and spiritual Native American customs. Enrolled members of federally recognized Native American tribes are legally entitled to obtain permits to possess eagle parts for religious purposes, but the sale of bald and golden eagles or their feathers and parts are prohibited under any circumstance. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally, by accident or other means, to supply enrolled members of federally recognized tribes with eagle parts for religious use.

This case was investigated by the United States Fish and Wildlife Service and the Navajo Nation Department of Fish and Wildlife.

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Are you working on Pollution or Wildlife Crimes Cases?

*Please submit case developments with photographs to be included
in the *Environmental Crimes Monthly Bulletin* by email to:*

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