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# ENVIRONMENTAL CRIMES



## MONTHLY BULLETIN

*December 2008*

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*EDITOR'S NOTE:*

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have any significant and/or interesting photographs from the case, you may email these, along with your submission, to Elizabeth Janes: [REDACTED]). Material also may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website: <http://www.regionallassociations.org>.

You may navigate quickly through this document using electronic links for *Active Cases*, *Additional Quick Links* and *Back to Top*. (Some of you may need to hold down the ctrl key while clicking on the link.)

## ***ATA GLANCE***

▲ [United States v. Hagerman](#), 2008 WL 5120116, (7<sup>th</sup> Cir. Dec. 5, 2008) (slip op.)

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▲ [United States v. San Diego Gas & Electric Co.](#), \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 4326773 (S.D. Cal. Dec. 7, 2007).

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Districts	Active Cases	Case Type / Statutes
S.D. Calif.	<a href="#">United States v. Ivan Garcia Oliver</a>	<i>Paint Dumping / RCRA Disposal, CWA Misdemeanor</i>
N.D. Calif.	<a href="#">United States v. Benefit Cosmetics</a>	<i>Beauty Products/ HMTA</i>
M.D. Fla.	<a href="#">United States v. Hiong Guan Navegacion Japan Co. Ltd.</a>	<i>Vessel/ Conspiracy, APPS</i>
S.D. Fla.	<a href="#">United States v. Max Moghaddam et al.</a>	<i>Caviar Export/ Lacey Act, Endangered Species Act</i>
D. Mass.	<a href="#">United States v. Albania Deleon et al.</a>	<i>Asbestos Certificates/ Conspiracy, False Statement, Mail Fraud, False Payroll Tax Returns</i>
D. Md.	<a href="#">United States v. Scott Reiter et al.</a>	<i>Asbestos Abatement/ Conspiracy to Defraud the Small Business Admin., Money Laundering Conspiracy</i>
E.D. Mich.	<a href="#">United States v. HSKM, Inc.</a>	<i>Nickle-Chrome Alloy Manufacturer/ TSCA</i>
E.D. Mo.	<a href="#">United States v. Paul Fredericks</a>	<i>Metal Plater/ RCRA Storage, CWA</i>
	<a href="#">United States v. James Raulerson</a>	<i>Biodiesel Plant CWA</i>
W.D. Mo.	<a href="#">United States v. Greenleaf, L.L.C.</a>	<i>Pesticide Sales/ FIFRA</i>
D.N.J.	<a href="#">United States v. Igor Krajacic et al.</a>	<i>Vessel/ APPS</i>
N.D.N.Y.	<a href="#">United States v. Paragon Environmental Construction, Inc.</a>	<i>Asbestos Abatement/ Clean Air Act Conspiracy</i>
E.D.N.C.	<a href="#">United States v. Daniel Smith et al.</a>	<i>Public Works Director/ SDWA, CWA</i>
W.D.N.C.	<a href="#">United States v. George W. Hughes, III</a>	<i>POTW Supervisor/ CWA misdemeanor</i>
M. D. Pa.	<a href="#">United States v. Hershey Creamer Company</a>	<i>Ice Cream Manufacturer/ CAA Failure to Implement Risk Management Plan</i>
E.D. Tex.	<a href="#">United States v. Dile Kent McNair</a>	<i>Metal Plater/ RCRA Storage</i>
S.D. Tex.	<a href="#">United States v. General Maritime Management (Portugal), L.D.A. et al</a>	<i>Vessel/ APPS, False Statement</i>
	<a href="#">United States v. Jay Atwater</a>	<i>Furniture Restorer/ RCRA, CWA, SDWA</i>
D. Utah		
	<a href="#">United States v. Johnson Matthey, Inc. et al.</a>	<i>Gold and Silver Refinery/ CWA Pretreatment</i>
W.D. Wash.	<a href="#">United States v. Kevin Steele</a>	<i>Seafood Broker/ Lacey Act</i>

***Additional Quick Links***

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***Significant Environmental Decisions******Seventh Circuit*****United States v. Hagerman, 2008 WL 5120116 (7<sup>th</sup> Cir. Dec. 5, 2008) (slip op.)**

On December 5, 2008, the Seventh Circuit affirmed the criminal conviction and sentence of Derrick Hagerman and Wabash Environmental Technologies, LLC (“Wabash”). Hagerman and Wabash were convicted of ten felonies for making false statements under the Clean Water Act in a scheme to disguise ongoing discharge violations from regulators at its centralized waste treatment facility directly into the Wabash River. The district court sentenced Hagerman to serve 60 months’ incarceration and ordered Hagerman and Wabash to pay \$237,680.74 in restitution to the EPA Superfund. In its sentencing order the district court recognized that “managers of those businesses need to understand that if they make the choice that the [defendant] made – to lie and cover up the violations on this scale – they face more than fines and civil penalties as a cost of doing business. They face prison.” *U.S. v Hagerman*, 525 F. Supp 2d 1058, 1067 (S.D. Ind., 2007). On appeal, the Seventh Circuit held in relevant part that electronic spreadsheets introduced at trial corroborating Hagerman’s false statements were not prohibited 404(b) evidence even if they included data supporting uncharged false statements, nor did this evidence constructively amend the indictment by expanding the number of crimes charged. Also, the Court found that the jury instruction given at trial, which interpreted the certification language found on state and federal reports consistent with the permit and regulations, was a proper interpretation of the law. Finally, the Court held that the sentence was lawful and appropriate as the district court took into consideration all of the relevant factors under 18 U.S.C. § 3553(a), including the federal sentencing guidelines.

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*Second Circuit*

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*District Courts*

**United States v. San Diego Gas & Electric Co.**, \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 4326773 (S.D. Cal. Dec. 7, 2007).

Defendant public utility and three employee defendants were indicted on five counts of violation of the Clean Air Act with respect to the removal of more than nine miles of gas pipeline that was wrapped in asbestos-containing material. Three counts of the indictment charged the individual

defendants with various violations of NESHAP work practice standards for asbestos (failure to give prior written notice of the removal of “regulated asbestos containing material” or “RACM”, failure to wet RACM, and failure to contain RACM in leak tight containers). One count charged the company and one of the employees with making a false statement under 18 U.S.C. §1001. A fifth count (conspiracy) was dismissed at trial after the government rested.

A jury found the company guilty on all remaining counts, found two of the employee defendants guilty on the third of the work practice counts, acquitted all defendants on the other work practice counts in which they were charged, and deadlocked as to the employee defendant who was charged in the false statement count. Following the verdict, all convicted defendants filed motions for acquittal and (in the alternative) for a new trial.

Held: The court *inter alia* granted the defendants’ motion for a new trial on the NESHAP work practice counts. Under the NESHAP regulations, in order to qualify as RACM, a material must contain more than 1% asbestos and be “friable” (or highly likely to become friable during demolition operations.) Certain test procedures are specified in the NESHAP regulations for determining whether a material contains more than 1% asbestos.

Prior to trial, the court (rejecting a USEPA interpretation of the NESHAP regulations contained in two “clarification notices”) ruled that, where a material is multi-layered, each layer had to be analyzed and the results then combined to determine an “average” (based upon volume) asbestos content for the whole sample. The court further ruled that, while the NESHAP regulations did not require that a sample be intact, it had to be “whole” and must contain all layers of the material.

In ruling upon the defendants’ post-trial motions, the court found that the NESHAP regulations require testing of not only a “whole” sample, but also a “representative” sample. The court further noted that due process required that such samples must be representative of the pipe wrap that existed along the entire length of the pipe from which it was removed, not just of the portion of wrap that was found after the removal operation. It rejected the government’s argument that a “whole” sample meant simply a whole sample of the material that was found and collected. The court also rejected the government’s claim that “representative” sampling applied only to friable asbestos material, not to all of the asbestos containing material, present. It then found that the samples collected from debris from the stripping activities found at the site had been heterogeneous, rather than homogeneous, in nature, and thus had not been representative of the original wrap material on the pipe.

The court concluded that test results for all 12 of the government’s samples taken from the debris at the site should not have been admitted into evidence. Furthermore, of the six remaining samples taken directly from wrap material while it was still on the pipe, the court determined that two might not have been representative and four might have been tested using an impermissible method. Although one of the samples clearly had been both representative and tested in a proper manner, the court found that admitting all six samples at trial (subject to defense cross-examination as to relevance and weight) had been “confusing, misleading and prejudicial”. Moreover, it found that admission of the non-representative debris samples (relevant as to the issue of friability) had compounded the confusion and prejudice. The court set aside the convictions on the NESHAP counts and granted a new trial.

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*Other Significant Decisions*

*Ninth Circuit*

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*Seventh Circuit*

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## ***Trials***

### **United States v. Max Moghaddam et al., No. 1:08-CR-20365 (S.D. Fla.), AUSA Tom Watts-FitzGerald**



**Falsely labeled paddlefish (on left)**

On December 4, 2008, Max Moghaddam and Bemka Corporation, d/b/a Bemka Corporation House of Caviar and Fine Foods, were convicted by a jury on charges of conspiring to violate the Lacey Act, a Lacey Act false labeling violation, and an Endangered Species Act violation for the illegal export of internationally protected fish roe (eggs) between July 2005 through April 2007.

The American paddlefish is native to the Mississippi River drainage system and is harvested for both its meat and roe. The paddlefish is a close relative of the sturgeons from which most commonly known caviars come and paddlefish roe has qualities similar to sturgeon caviars. Over a 21-month period, the defendants exported numerous shipments labeled as containing bowfin roe, which is often used as a caviar substitute, when in fact they contained paddlefish roe.

Once common throughout the Midwest, over-fishing and habitat changes have caused major population declines and the American Paddlefish is now listed as an Endangered Species. With diminishing world sturgeon populations and increased international protection for declining stocks, American paddlefish has become a substitute for sturgeon caviar and, as such, has become quite valuable.

The defendants are scheduled to be sentenced on February 12, 2009. This case was investigated by the United States Fish and Wildlife Service.

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### **United States v. General Maritime Management (Portugal), L.D.A. et al., No. 2:08-CR-00393 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart** **and ECS Paralegal Jean Bouet**

On November 26, 2008, General Maritime Management (Portugal), L.D.A., the operator of the *M/T GenMar Defiance*, chief engineer Antonio Rodrigues, and first engineer Jose Cavadas each were convicted by a jury of the two violations charged, specifically, an APPS oil record book violation and a false statement violation for presenting a false ORB to Coast Guard officials during a port inspection.

This case came to the attention of inspectors



**Locked overboard discharge valve**

after a crewmember/fitter advised the Coast Guard that he had been told by the ship's chief and first engineers to connect a bypass hose to an overboard discharge valve, thereby tricking the oil content meter into allowing oily bilge waste to bypass the ship's oily water separator. Other crewmen later confirmed the fitter's story as well as secretly photographing the illegal bypass and passing the pictures to the Coast Guard. The fitter stated that he observed Cavadas open the overboard discharge valve and pump the bilge into the ocean for approximately three or four hours. He was warned by Cavadas not to talk about this and Rodrigues further threatened to fire the fitter once the ship had reached port.

During the Corpus Christi port inspection in November 2007, the ORB presented to officials omitted the illegal overboard discharges. The defendants are scheduled to be sentenced on February 10, 2009.

This case was investigated by the United States Coast Guard, and the Environmental Crimes Task Force, which includes the United States Environmental Protection Agency, the Texas Commission on Environmental Quality Investigations Division, and the Texas Parks and Wildlife Department.

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**United States v. Albania Deleon et al., No. 1:07-CR-10277 (D. Mass.), AUSA Jonathan Mitchell  
and SAUSA Peter Kenyon**

On November 20, 2008, Albania Deleon, owner of the Environmental Compliance Training School ("ECTS"), was convicted by a jury on charges that she sold asbestos-removal training certificates to hundreds of undocumented workers who had not taken the mandatory training course and then sent them out to perform asbestos removal work, for which she paid them without withholding taxes. Deleon was convicted on 22 counts, including conspiracy to make false statements, to encourage undocumented workers to reside in the United States, and to hire them; five false statement violations; 16 counts of procuring false payroll tax returns; and five counts of mail fraud.

ECTS was the largest certified asbestos training school in Massachusetts. Between 2001 and 2006, Deleon routinely issued asbestos certificates to people who did not attend required training courses or pass required tests. Many of those who received fraudulent certificates were illegal immigrants who then worked for a temporary service company, Methuen Staffing, also owned by Deleon, at demolition and construction sites overseeing asbestos removal. She sent these employees to job sites throughout Massachusetts, as well as to other states, including New Hampshire, Maine, and Connecticut.

The tax violations stem from the defendant's concealing the size of her payroll from IRS to avoid paying taxes. She did this, among other ways, by maintaining two payrolls where she deducted the correct amount of tax for some of her employees, but paid the majority of them using a second payroll wherein income taxes were not withheld nor were payroll taxes paid to the IRS. Finally, the mail fraud convictions stem from Deleon's mailing workers compensation insurance documentation to insurance representatives that concealed the existence of those workers who received paychecks without taxes withheld, thereby reducing the amount of workers compensation insurance that she was required to pay. Deleon is scheduled to be sentenced on February 17, 2009.

Co-defendant Jose Francisco Garcia-Garcia previously pleaded guilty to a false statement violation for issuing the false certifications. He is not yet scheduled for sentencing.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration and Customs Enforcement, the Internal Revenue Service Criminal Investigation Office, the Social Security Administration Office of Inspector General, the United States Department of State, the Massachusetts Insurance Fraud Bureau, and the Massachusetts Division of Occupational Safety.

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## *Pleas*

### **United States v. Paul Fredericks, No. 4:08-CR-00565 (E.D. Mo.), AUSA Michael Reap [REDACTED] [REDACTED] and SAUSA Anne Rauch [REDACTED]**

On December 2, 2008, Paul Fredericks, the owner of Usona Metal Finishing Company (“Usona”), a metal-plating business, pleaded guilty to one RCRA violation. He initially was charged with two RCRA violations and one CWA violation stemming from the illegal storage and discharge of hazardous waste.

Usona operates three plants in the St. Louis area, including an anodizing plant in Cuba, Missouri, and a wet-paint plant and a powder-coating plant, both located in St. Louis. After the powder-coating plant ceased operations in April 2007, Fredericks arranged for the transportation of 100 drums of hazardous waste from that facility to the anodizing plant in Cuba. The hazardous wastes were illegally stored at the plant from April 2007 to April 2008, at which point Fredericks directed employees to dump the wastes into the plant's sanitary sewer. Sentencing is scheduled for February 26, 2009.

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. Kevin Steele, No. 2:08-CR-00376 (W.D. Wash.), AUSA Jim Oesterle [REDACTED] [REDACTED]**

On November 21, 2008, Kevin Steele, the operator of Mallard Cove Resources, a seafood brokerage business, pleaded guilty to a felony Lacey Act violation for the false labeling of a fish product and to a Lacey Act misdemeanor for introducing misbranded food into interstate commerce.

Steele had been informed by a federal seafood program inspector that fish known as turbot or Greenland halibut could not be labeled or marketed as halibut. Despite that knowledge, between July 2003 and mid-2006, the defendant purchased more than 136,000 pounds of a fish commonly known as Greenland halibut or Greenland turbot from a fish wholesaler in Rhode Island. The fish was labeled as turbot and as a product from China. Steele then had the fish shipped to a cold storage facility where he directed that it be repackaged and relabeled as “Halibut Portions” or “Halibut Pieces,” and that it was a “Product of USA.”

The defendant sold more than 131,000 pounds of falsely labeled fish to retail stores and restaurants primarily in Utah and Texas.

The plea agreement requires that Steele publish quarter-page advertisements in widely-circulated seafood industry magazines in which he describes his criminal conduct and apologizes for his actions. He will be further required to make a community service payment to the National Fish and Wildlife Foundation equal to the amount he profited by selling the cheaper fish at a higher price. This amount will be determined at sentencing which is scheduled for February 13, 2009. The money will be used to fund projects for species and habitat conservation, protection, restoration and management projects to benefit fish resources and the habitats on which they depend.

This case was investigated by the National Oceanic Atmospheric Administration.

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**United States v. Hiong Guan Navegacion Japan Co. Ltd., No. 8:08-CR-00494 (M.D. Fla.), ECS Trial Attorney Leslie Lehnert [REDACTED] and AUSA Cherie Krigsman [REDACTED]**

On November 20, 2008, Hiong Guan Navegacion Japan Co. Ltd. (“Hiong Guan”), the operator of the *M/V Balsa 62*, a commercial cargo ship, pleaded guilty to conspiracy and to falsifying and failing to properly maintain the ship’s oil record book.

According to court documents, from June 2007 through February 2008, chief engineer Francisco Bagatela used a bypass pipe to discharge untreated oily bilge waste overboard approximately twice a month. He further directed other crew members to use the bypass, as well.

On February 25, 2008, Robert Racho replaced Bagatela as the chief engineer and continued to use the bypass pipe. Both Bagatela and Racho deliberately concealed these unlawful discharges from the Coast Guard by not recording them in the ORB. During Port calls in Tampa on October 31, 2007, and May 31, 2008, the ORB that contained the false entries and omissions regarding the bypasses was presented to inspectors. Based in part on information from crew members aboard the ship, the Coast Guard subsequently located evidence on the ship corroborating allegations that the ship had been unlawfully discharging oily waste. The two engineers, both Philippine citizens, pleaded guilty in October 2008 to falsifying and failing to properly maintain the ORB.

According to the plea agreement, Hiong Guan has agreed to pay a \$1.75 million fine and implement a detailed environmental compliance plan, which requires monitoring of its fleet-wide operations over the course of three years.

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

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**United States v. Greenleaf, L.L.C., No. 3:08-CR-05033 (W.D. Mo.), AUSA Robyn McKee [REDACTED]**

On November 19, 2008, Greenleaf, L.L.C., a pesticide and rodenticide sales company, pleaded guilty to one FIFRA violation for the illegal sale and distribution of pesticides.

Between January 2007 and January 2008, Greenleaf received damaged and unwanted pesticides from a Wal-Mart distribution center in Arkansas which was where all Wal-Mart stores across the country shipped these materials. Greenleaf admitted that it distributed and sold a large number of the pesticides and rodenticide products after removing or altering the labeling on the package. The defendant distributed more than two million pounds of these chemicals.

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. Daniel Smith, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley [REDACTED]**

On November 5, 2008, Daniel Smith, the public works director for Mocksville, North Carolina, pleaded guilty to violating the Safe Drinking Water Act and the Clean Water Act.

As the town’s public works director, Smith oversaw the town’s public drinking water system and was required to submit information about the water’s turbidity to the North Carolina Department of Environment and Natural Resources (“DENR”). Smith admitted to knowingly directing employees to send false data that understated drinking water turbidity. Nicholas Slogick, the official in charge of

the town's POTW, pleaded guilty to knowingly submitting false data about the drinking water to the DENR.

Smith also violated the Clean Water Act by using town employees to pour massive amounts of degreaser and caustic into the POTW. Smith, who received a kick-back for having the town purchase these chemicals, dumped them in order to justify purchasing additional quantities.

Smith also conspired to misapply town property after Macksville received more than \$10,000 in federal grant money. Smith created a company, Danny Smith Enterprises, that provided maintenance and repair services to other towns and private citizens, employing town equipment and employees (including state inmates) to operate the company for his personal gain. Both defendants are scheduled for sentencing on February 2, 2009.

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

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**United States v. Jay Atwater et al., No. 1:08-CR-00114 (D. Utah), AUSA Jared Bennett**



**Hole in shop floor leading outside**

On November 3, 2008, a furniture restoration business and its owner entered guilty pleas stemming from the dumping of hazardous solvents into a public sewer system. Jay Atwater pleaded guilty to a RCRA disposal violation and Heritage Restoration pleaded guilty to a CWA charge.

During the furniture restoration process, Atwater and others acting under his control used a solution containing between 70 and 76 percent methylene chloride to strip the paint. The rinse water generated during this process allegedly was dumped into sub-surface soil on numerous occasions between approximately 2000 and April 2007 in violation of RCRA. After April 2007, Atwater modified the process for disposing of the rinsewater by discharging it down a sink that led into a POTW, in violation of the CWA, resulting in toxic fumes and vapors with the potential to cause acute worker health or safety problems. Sentencing is scheduled for February 17, 2009.

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

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**United States v. George W. Hughes III, No. 3:08-CR-00212 (W.D.N.C.), AUSA Steven Kaufman**

On November 3, 2008, George Hughes pleaded guilty to a misdemeanor CWA violation. Hughes was the supervisor of Kirby Case, the operator of the POTW for the Town of Dallas, who previously pleaded guilty to two CWA violations.

Case admitted to discharging pollutants from the POTW into the Dallas Branch of the Catawba River Basin in violation of the POTW's permit. He also admitted to filing discharge monitoring reports with the North Carolina Department of Environment and Natural Resources between November 2006 and December 2007 that included falsified sample levels for chlorine, ammonia, fecal

coliform, and other materials. Hughes pleaded guilty to failing to supervise Case as he diluted samples with tap water that were taken from the POTW.

On April 14, 2008, the Town of Dallas, North Carolina, was fined more than \$140,000 by the state for the improper operation and maintenance of the POTW resulting in discharges of poorly treated or untreated wastewater that blanketed a half-mile of the receiving stream with sludge four to eight inches deep.

The fine, the state's largest for water pollution, was imposed by the North Carolina Division of Water Quality, which found during an inspection in November 2007 that the town's wastewater treatment plant was severely noncompliant, with half of its treatment capacity out of service and the remaining half overloaded with sewage solids. Solids also were present in the chlorine contact chamber. Since the chlorine chamber was not in use, the effluent from the plant was not disinfected. Although solids were being discharged with effluent, the town submitted samples that made it appear that the plant was adhering to the state's permit limits for the discharge.

During the inspection, the Dallas branch (a tributary of Long Creek) was observed to have a several-inch thick layer of partially-treated sewage about half a mile downstream from the plant's discharge point. State inspectors also found evidence of two unreported spills – one of untreated sewage, the other of partially treated wastewater – that reached the Dallas branch, as well. The Town has been fined by the state 27 times since March 2003 for amounts totaling nearly \$43,000.

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

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**United States v. Igor Krajacic et al., No. 1:08-CR-00824 (D.N.J.), ECS Trial Attorney Gary Donner [REDACTED] and AUSA Ron Chillemi [REDACTED]**

On November 3, 2008, Igor Krajacic, a chief engineer for the *M/V Snow Flower*, pleaded guilty to one APPS violation for failing to maintain an accurate ORB. Krajacic further admitted to discharging oily waste overboard as well as to ordering crew members to do the same. Holy House Shipping AB ("Holy House"), the operator of the *Snow Flower*, pleaded guilty in October 2008 to one APPS violation and to one 18 U.S.C. §1001 false statement violation.

Court documents state that crewmembers on the ship alerted the Coast Guard that they had been ordered by the chief engineer to discharge oily sludge overboard while bypassing the oily water separator. The discharges occurred during a voyage from Los Angeles, California, to Chile. In February 2008, during a port call in New Jersey, inspectors were presented with an ORB containing false entries indicating that oil sludge had been burned at times when the incinerator was not in use. Inspectors further discovered a bypass pipe and were told by crew members that a valve malfunction had caused one of the ballast tanks to be contaminated with heavy fuel oil, which then was pumped overboard.

As part of the plea, Holy House has agreed to pay a \$1 million fine plus a \$400,000 community service payment to the National Fish and Wildlife Fund. The company has further agreed to complete a three-year term of probation and to implement an environmental compliance plan. Krajacic is scheduled to be sentenced on January 16, 2009, and the company is scheduled for sentencing on February 6, 2009.



**Oil in pipe**

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

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## *Sentencings*

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**United States v. HSKM, Inc., No. 1:08-CR-20365 (E.D. Mich.), AUSA Janet Parker [REDACTED] and SAUSA Dave Mucha [REDACTED].**

On December 2, 2008, a corporation formerly known as Hoskins Manufacturing Company (“Hoskins”), and now known as HSKM, Inc., was sentenced to pay \$1.7 million in restitution to partially offset Superfund emergency response costs. The corporation also was ordered to complete a one-year term of probation and must publish an apology in various periodicals, reminding other manufacturers of the obligation to comply with laws designed to protect the environment and, at a minimum, to inform authorities of the existence of a potentially hazardous condition which may be left behind after a business shuts down.

Hoskins was in the business of producing specialty nickel-chrome alloys and once operated several facilities in Michigan. These facilities were abandoned in 2001 when the company went out of



**Abandoned drums of hazardous waste**

business. The company specifically pleaded guilty to a TSCA violation for abandoning a PCB-containing transformer at one of those facilities.

Hoskins became the focus of a joint criminal investigation by EPA and MDEQ after Superfund emergency response teams responded to the three abandoned manufacturing sites in Michigan in 2003 and 2004. One of these sites was adjacent to an elementary school.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Michigan Department of Environmental Quality.

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**United States v. Johnson Matthey, Inc., et al., No. 2:06-CR-00169 (D. Utah), ECS Senior Trial Attorney Ron Sutcliffe ( [REDACTED] ) and AUSAs Richard Lambert ( [REDACTED] ) Jarred Bennett ( [REDACTED] ) and Aunnie Steward ( [REDACTED] )**

On December 2, 2008, Johnson Matthey Inc., (“JMI”) the owner and operator of a gold and silver refining facility, was sentenced to pay \$3 million for violating the Clean Water Act. Of this amount, \$750,000 will fund various environmental projects including wildlife habitat acquisition and restoration projects in the vicinity of the Great Salt Lake and its tributaries, and research related to setting selenium standards and limits for the Great Salt Lake and its tributaries.

JMI previously pleaded guilty to failing to properly report wastewater discharges at the facility. Former plant manager Paul Greaves and former general manager John McKelvie both pleaded guilty to making false statements and previously were sentenced.

The Salt Lake City facility opened in 1982 and refines both gold and silver from a semi-refined product called dore. As part of the refining process, pollutants such as selenium, among other materials, accumulated in the wastewater. JMI’s wastewater was treated at several stages in order to remove selenium before it was discharged to a sewer leading to Central Valley Water Reclamation Facility (“Central Valley”), where it was subsequently treated and discharged to the Jordan River.

From approximately 1996 through 2002, JMI had difficulty consistently limiting selenium discharges to meet its permit limit. An internal audit conducted in 1999 revealed that the facility had exceeded its permit limit for selenium and that employees had screened samples before submitting them to an outside laboratory for analysis. The auditor warned the general manager that this violated the terms of JMI’s industrial discharge permit, which required that representative samples be provided.

In January 2000, to avoid disclosing true concentrations of the selenium-contaminated wastewater discharged from the facility, employees again screened the samples they reported in their discharge monitoring reports provided to Central Valley by analyzing in-house the selenium concentrations and then submitted samples with low selenium concentrations to an outside laboratory for eventual reporting to Central Valley.

Greaves and McKelvie each were sentenced to complete a one-year term of probation as well as to perform 20 hours’ community service. Greaves was ordered to pay a \$500 fine and McKelvie a \$1,000 fine.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, with assistance from the Utah Attorney General’s Office.

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**United States v. James Raulerson, No. 1:08-CR-0019 (E.D. Mo.), SAUSA Ann Rauch ( [REDACTED] ) and AUSA Michael Reap ( [REDACTED] )**

On November 24, 2008, James Raulerson, the owner of a farm in southeastern Missouri, was sentenced to pay a \$10,000 fine and will complete a two-year term of probation. Raulerson previously

pleaded guilty to violating the Clean Water Act in connection with the dumping of waste products from a biodiesel plant into a canal.

Investigation began after the Missouri Department of Conservation received an anonymous call in October 2007 that a tanker truck had been observed dumping its contents into a canal known as Belle Fountain Ditch. Investigators discovered an undetermined amount of decomposing glycerine in the canal and were able to trace it back to Raulerson, who admitted that he dumped glycerine, methanol, and oil into the canal. Approximately 30,000 fish were killed as a result of the spill.

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

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**United States v. Benefit Cosmetics, No. 08-CR-00602 (N.D. Calif.), AUSA Stacey Geis** [REDACTED]

On November 14, 2008, Benefit Cosmetics pleaded guilty to one count of violating the Hazardous Materials Transportation Act. The company was sentenced to pay a \$350,000 fine and ordered to issue a public apology in a trade journal.

Benefit Cosmetics is a wholesaler and retailer of beauty products. As part of its business, it ships large amounts of product interstate, both by ground and by air. Several of its products contain materials designated as hazardous for air travel, because they are capable of posing a risk to health, safety and property when transported aboard planes. On or about March 23, 2006, a company employee recklessly caused a hazardous material, in this case, isopropyl alcohol, a flammable liquid, to be illegally transported in air commerce.

This case was investigated by the United States Department of Transportation Office of Inspector General, and Federal Aviation Administration Security and Hazardous Materials Branch.

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[REDACTED]

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**United States v. Ivan Garcia Oliver, et al., Nos. 3:07-CR-03192 and 03343, (S.D. Calif.), AUSA Melanie Pierson**

On November 10, 2008, Ivan Garcia Oliver was sentenced to serve 15 months' incarceration for a RCRA disposal violation. Oliver, an employee of Wagner Construction JV, admitted to operating a forklift in a manner that caused him to dump a 55-gallon drum of Plasti-Kote (a spray paint product containing toluene) on the ground and into the Slaughterhouse Canyon Creek at night.

Guillermo Garcia, Oliver's supervisor and uncle, pleaded guilty to being an accessory after the fact for placing dirt over the location of the spill, and for providing false information to authorities regarding the disposal. Garcia previously was sentenced to serve four months' home detention and was ordered to pay a \$1,000 fine.

Wagner Construction was sentenced to pay a \$20,000 fine, plus \$7,503 to reimburse the San Diego County Department of Environmental Health Services for cleanup costs. The company also will complete a two-year term of unsupervised probation after pleading guilty to a misdemeanor CWA violation for failing to supervise employees who caused the toluene to be dumped into the Creek. Wagner also entered into a compliance agreement with the U.S. Environmental Protection Agency to prevent future environmental problems.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the FBI, the San Diego County Department of Environmental Health Hazardous Materials Management Division, the California Department of Fish and Game, and the Lakeside Fire Department.

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**United States v. Scott Reiter et al., No. 8:08-CR-00345 and 00350 (D. Md.), ECS Trial Attorney Mary Dee Carraway [REDACTED] and AUSA Gina Simms [REDACTED]**

On November 10, 2008, Scott Reiter was sentenced to serve 18 months' incarceration followed by three years' supervised release. Reiter also will pay a \$400,000 fine and will pay an additional \$300,000 in restitution. Co-defendant David Muir was previously sentenced to serve 30 days' incarceration. The two pleaded guilty in August of this year to conspiracy to defraud the United States Small Business Administration ("SBA"). Reiter further pleaded guilty to a money laundering conspiracy.

In the fall of 1999, Reiter worked for or was associated with three Maryland companies that performed asbestos and lead abatement and demolition work at federal and private facilities. Between 1998 and 2007, all three companies participated in the SBA's 8(a) program. For one of the companies, Reiter represented himself to different contractors and subcontractors doing business with the company as the division's manager, project manager, and as a company officer. Muir worked for these companies since 1998 and represented himself as operations manager, project manager, quality control manager and vice president.

Unbeknownst to the SBA and in violation of its regulations, Reiter, Muir, and their co-conspirators exerted significant financial and operational control over the three Maryland corporations in a variety of ways, including: personally indemnifying the liabilities of one of the companies, which enabled it to obtain higher bonding and 8(a) contracts of higher value than the company otherwise would have qualified; exercising significant control over the contracts bid upon by all three companies; and exercising control over the selection and payment of subcontractors on behalf of two of the companies.

In addition, Reiter and Muir failed to disclose that approximately \$900,000 in bonuses were paid to these defendants and their co-conspirators and that their bonuses and other compensation far exceeded the compensation paid to a non-disadvantaged individual. The defendants knew that they and the co-conspirators provided critical bonding, financial and operational support to the three 8(a) certified companies. Furthermore, during the course of the conspiracy, Muir, as a company president, submitted fraudulent annual updates to the SBA in which he falsely certified that the companies continued to meet the SBA regulations related to eligibility, including those which prohibit financial and operational control of the firm by a non-disadvantaged individual.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the EPA National Enforcement Investigations Center, the SBA Office of Inspector General, and the Naval Criminal Investigative Service.

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**United States v. Dile Kent McNair, No. 6:08-CR-00027 (E.D Tex.), AUSA Jim Noble**

On November 6, 2008, Dile Kent McNair, the operator of Extreme Metal Finishing, Inc., a metal plating business, was sentenced to serve 37 months' incarceration and will pay \$72,500 in restitution. McNair previously pleaded guilty to a RCRA storage violation for storing spent cyanide plating bath solutions and plating bath residues from the bottoms of plating baths without a permit. He also admitted to attempting to bribe an Assistant District Attorney with \$5,000 in an effort to persuade him to dismiss a pending D.W.I. charge.



**Solid hazardous wastes**

McNair operated the metal plating business from September 2004 through October 2006. On three occasions in 2006, Texas Commission on Environmental Quality inspectors conducted inspections at the facility and observed McNair's storage of thousands of gallons and pounds of both liquid and solid hazardous wastes. In October 2006, after the defendant moved the operations to a new facility, he continued to store the waste at the previous facility without a permit.

McNair and other metal plating companies with which he has been associated have a history of extensive noncompliance, two of them having been the subjects of previous criminal prosecutions. In 1994, McNair pleaded guilty to a felony CWA violation in the case against Crews Plating, Inc., and in August, 2004, Perfection Industries pleaded guilty to one CWA false statement violation for fabricating DMRs. McNair further pleaded guilty to a felony count of Felon in Possession of a Firearm. In January 2008, he was sentenced to serve 18 months' incarceration as a result of a probation violation from his conviction in the Perfection Industries, Inc., case.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Texas Commission on Environmental Quality Special Investigation Division, and the Texas Environmental Enforcement Task Force.

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**United States v. Paragon Environmental Construction, Inc., No. 5:08-CR-00624 (N.D.N.Y.), AUSA Craig Benedict**

On November 6, 2008, Paragon Environmental Construction, Inc., ("PEC") pleaded guilty and was sentenced for engaging in a conspiracy to violate the Clean Air Act. The violations related to illegal removal and disposal of asbestos at various locations throughout central New York. The company utilized the services of an air monitoring company and laboratory that falsified its results in order to convince clients that the work had been properly done and that the asbestos had been fully removed, which was false.

PEC was sentenced to pay a fine of \$160,000 and will complete a two-year term of probation. As part of the plea agreement, the company immediately surrendered all licenses related in any way to asbestos activities and may never engage in any future asbestos removal activities. It has agreed to cooperate in the on-going investigation of the air monitoring company.

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

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**United States v. Hershey Creamery Company, No. 1:08-CR-00353 (M.D. Pa.), AUSA Bruce Brandler [REDACTED] and SAUSA Martin Harrell [REDACTED]**

On October 31, 2008, Hershey Creamery Co., the manufacturer of Hershey ice cream (not the chocolate company), was sentenced to pay a \$100,000 fine and will complete a one-year term of probation for knowingly violating the Clean Air Act by failing to develop and implement a Risk Management Plan (“RMP”) at two of its facilities in Pennsylvania despite certifying to the EPA in 1999 and 2004 that it had done so. This is the first CAA prosecution in the country involving RMPs and only the second involving a prosecution for violating the CAA’s Section 112.

The CAA charge concerns the company’s failure to develop and implement a RMP concerning the storage and use of a regulated substance, anhydrous ammonia, between September 30, 2004, and April, 2007. Hershey uses refrigeration systems to manufacture and store ice cream at its plants in Harrisburg and Middletown, Pennsylvania. It used approximately 42,000 pounds of anhydrous ammonia at its plant in downtown Harrisburg and approximately 23,000 pounds at the Middletown facility.

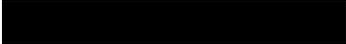
Despite providing EPA with certification in 1999 and in 2004 that it had a Plan in place for both plants, a subsequent inspection concluded that the company actually lacked viable RMPs at either of the facilities. After repeated information requests and inadequate company responses, EPA issued Hershey a detailed CAA civil compliance order in December 2006, identifying specific areas where the company had failed to comply with RMP requirements. EPA ordered Hershey to develop and implement Plans for both plants, with specific dates identified for compliance with major tasks. Hershey submitted RMPs in April, 2007 and, after inspecting both facilities, EPA found that the company was executing the Plans satisfactorily. The company came into compliance after a criminal investigation had commenced, which was based on Hershey’s failure to produce the actual Risk Management Plans after certifying their existence.

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

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