


ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

January 2008

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: (██████████) 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.regionalassociations.org>.

You may quickly navigate through this document using electronic links for *Significant Opinions, Active Cases, Quick Links* and *Back to Top*. Just hold down the **ctrl** key while clicking on the link.

AT A GLANCE

SIGNIFICANT OPINIONS

[United States v. Sheon DiMaio, et al., No. 06-0619 \(2nd Cir. 2007\).](#)
[United States v. W.R. Grace et al., No. 9:05-CR-0007 \(D. Mont.\).](#)

Districts	Active Cases	Case Type / Statutes
C.D. Calif.	<u>United States v. Bruce Penny et al.</u>	<i>Fish Sales/ Lacey Act Conspiracy, Lacey Act Smuggling</i>
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S.D. Ind.	<u>United States v. Derrik Hagerman et al.</u>	<i>Wastewater Treatment/ CWA</i>
W.D. N.C.	<u>United States v. Ecosolve, LLC et al.</u>	<i>Grease Disposal/ CWA Conspiracy</i>
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W.D. Va.	<u>United States v. Southern Finishing, Inc.</u>	<i>Wood and Metal Components/ RCRA Storage</i>

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Significant Opinions

2nd Circuit

United States v. Sheon DiMaio, et al., 2007 WL 3256658 (2nd Cir. 2007).

On December 5, 2007, a summary order was filed by the Second Circuit affirming Sheon DiMaio's sentence of 42 months' incarceration imposed in February 2006. DiMaio was a defendant in the Salvagno litigation, and was employed as a field supervisor who carried out the Salvagnos' orders to engage in and direct others in illegal asbestos activities during approximately five years of this 10-year conspiracy. He pleaded guilty in 2002 to conspiracy to violate the Clean Air and the Toxic Substances Control Acts and to a substantive Clean Air Act violation.

DiMaio challenged his sentence as being unreasonable, pointing to the disparity between his sentence and those who had been given lesser sentences. While some supervisors received longer sentences, other supervisors (who cooperated far more extensively) received greater leniency than DiMaio. The Court rejected his argument, recognizing that DiMaio had cooperated far less than others who received reduced sentences.

The five remaining cooperating defendants were sentenced in December 2006, and in August 2006, Alexander Salvagno was re-sentenced to serve 25 years' incarceration. This remains the longest sentence ever imposed for an environmental crimes' conviction. His father, Raul Salvagno, was re-sentenced to serve 19½ years' incarceration, which is the second longest environmental criminal sentence. Eight other defendants have been prosecuted in this matter.

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9th Circuit

United States v. W.R. Grace et al., No. 9:05-CR-0007 (D. Mont.), ECS Trial Attorney Kevin Cassidy [REDACTED] and AUSA Kris McLean [REDACTED]

On December 6, 2007, the Ninth Circuit denied W.R. Grace's petitions for *en banc* review of Grace Interlocutory Appeal II. On September 20, 2007, in *United States v. W.R. Grace et al.*, 504 F.3d 745 (9th Cir. 2007), the Ninth Circuit reversed six pretrial orders issued by the district court and remanded the case for trial. Specifically, the Ninth Circuit's order restored the Clean Air Act knowing endangerment object of the conspiracy count that had been twice dismissed by the district court; agreed with the government's definition of asbestos under the Clean Air Act; granted a writ of mandamus to rule that the defendants were not entitled to an affirmative defense that would have required the government to prove visible emissions of asbestos had occurred; and ruled that three categories of evidence excluded by the district court were "of the type reasonably relied upon" by experts under Rule 703 and, therefore, could be used for that purpose by the government. This ruling follows a previous Ninth Circuit opinion issued in July, 2007, that reversed two additional pretrial orders by the district court, which had limited the government's ability to call witnesses and precluded

the government's experts from relying on certain studies and data that had not been identified nine months prior to trial. (*United States v. W.R. Grace et al*, 439 F. 3d 1119 (9th Cir. 2007)). The defendants' petition for *en banc* review of that decision was granted, and oral argument before the Ninth Circuit *en banc* court was heard on December 12, 2007, in Pasadena, Calif.

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Pleas / Sentencings

United States v. Ionia Management et al., No. 3:07-CR-00199 (D. Conn.), ECS Trial Attorney Lana Pettus [REDACTED], AUSA Bill Brown [REDACTED] and Supervisory AUSA Anthony Kaplan [REDACTED]

On December 14, 2007, Ionia Management ("Ionia"), a Greek company that manages a fleet of tanker vessels, was sentenced to pay a \$4.9 million fine and will complete a four-year term of probation. A Special Master will be appointed to oversee the company's record keeping on a monthly basis. This Special Master will hold hearings every six months to interview crew members and review records to ensure compliance. Also as part of the sentence, no ship owned by Ionia will be permitted into U.S. ports without first having installed in it special monitoring equipment.

Ionia was convicted by a jury in September on all 18 counts, including several charges that were transferred from three other districts to Connecticut for trial. Ionia was on probation in the Eastern District of New York for a similar case in 2004 at the time of these new offenses.

The indictments, returned in Connecticut, Florida, New York, and the Virgin Islands, variously charged Ionia and two crew members with obstruction, with falsifying records to conceal the illegal discharge of waste oil, and with using and presenting false oil record books to the Coast Guard during port inspections. Petros Renieris, the chief engineer of the *M/T Kriton*, was sentenced last month to pay a \$9,000 fine and complete two years' probation. After pleading guilty to an APPS violation, Renieris admitted that he deliberately ignored the conduct of employees he supervised as they dumped oil-contaminated wastes from the ship, bypassing the oily water separator. He also admitted to destroying the bypass hose while the Coast Guard conducted an inspection of the ship.

Second engineer Edgardo Mercurio was sentenced in October 2007 to pay a \$1,000 fine and will complete a one-year term of probation. He earlier pleaded guilty to four APPS violations, one from each of the four districts in which he had been charged.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigative Division, with assistance from the Netherlands Royal Military Police, Ministry of Transport, Public Works, and Water Management.

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United States v. Ecosolve, LLC, et al., No. 3:07-CR-00098 (W.D.N.C.), AUSA Steven Kaufman
[REDACTED] **with assistance from ECS Senior Trial Attorney Jennifer Whitfield** [REDACTED]

On December 11, 2007, Thomas Forebush, a driver and operations manager for Ecosolve, LLC, pleaded guilty to conspiracy to violate the CWA.

Ecosolve was in the business of removing, hauling, pre-treating, and disposing of waste from grease traps of restaurants and other establishments. The nine-year conspiracy involved a scheme in which the defendants agreed to have Ecosolve truck drivers discharge customers' fat, oil, grease, and other waste back into the customers' own grease traps or sometimes have it diverted into other businesses' grease traps instead of removing all of the waste and hauling it to the company's pretreatment facility for processing and disposal. Ecosolve pleaded guilty to three CWA violations and a CWA false statement violation on November 4th. Ralph Rogers, the company owner and president, pleaded guilty to conspiracy to violate the CWA in October of last year.

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

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United States v. Lawrence Lewis, No. 1:07-mj-00553 (D.D.C.), ECS Trial Attorney Noreen McCarthy
[REDACTED] **and AUSA Angela Hart-Edwards** [REDACTED]

On December 10, 2007, Lawrence Lewis pleaded guilty to an information charging a negligent CWA violation for discharges of sanitary sewage into Rock Creek in March 2007. Lewis was the director of engineering for a retirement facility located in the District of Columbia and was responsible for, among other things, overseeing the disposal of sanitary wastewater at the facility.

On or about March 29, 2007, Lewis caused a discharge of untreated sanitary sewage into Rock Creek, a navigable water of the United States, when he directed an employee of the facility to connect a hose to a bypass pipe within the facility and to run the hose onto a parking lot where it eventually flowed into a storm drain. The unpermitted discharge into the Creek lasted several hours until Park Police arrived on the scene.

Lewis is scheduled to be sentenced on March 24, 2008. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the National Park Service.

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United States v. Southern Finishing, Inc., No. 4:07-CR-00027 (W.D. Va.), AUSA Jennie Waering and SAUSA David Lastra

On December 7, 2007, Southern Finishing, Inc., a manufacturer of wood and metal components for the furniture and cabinet industry, was sentenced to pay a \$200,000 fine and must further invest \$250,000 into an environmental management system.

The company pleaded guilty in September 2007 to one RCRA violation for illegally storing hazardous waste at its facility in Martinsville, Virginia.

The company accumulated, without a permit, a total of 150 55-gallon drums containing waste paint,

solvents and finishes from January 2002 to April 2004. In June 2003,

Southern Finishing received an additional shipment of metal-coating material that contained hazardous air pollutants. After later learning that the Clean Air Act prohibits the application of this coating, the company stored this material with the other wastes when the manufacturer refused to take it back. To evade detection by regulators, the hazardous waste drums (many of which were leaking or punctured) were concealed among labeled drums of other waste and product material.

This case was investigated by the Blue Ridge Environmental Task Force, which includes the United States Environmental Protection Agency Criminal Investigation Division, the National Enforcement Investigations Center, the Roanoke Police Department, and the Virginia Department of Environmental Quality.

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Hazardous waste drums mixed with product drums

United States v. Coleman Lau, No. 07-CR-0482 (N.D. Calif.), AUSA Stacey Geis [REDACTED]

On November 30, 2007, Coleman Lau pleaded guilty to one felony count of smuggling and one felony count of making a false statement to a government official. Specifically Lau was charged with attempting to smuggle 14 live, baby Fly River turtles into the U.S., and then lied about it on U.S. Customs documents. Fly River turtles are fresh-water turtles native to Indonesia, Papua New Guinea, and Australia, which grow to be approximately two-feet long. At the time of the smuggling, they were under a protected status from each of their native countries. The species now is further protected by the CITES treaty.



Baby Fly River turtle

In March 2004, customs officials at San Francisco Airport found Lau to have the baby turtles hidden on his person. Lau admitted that he knew it was illegal to bring the turtles into the United States and admitted to lying on the customs declaration about whether he was bringing wildlife into the United States. The turtles were turned over to Fish and Wildlife agents who placed them in various zoos and aquariums in the state, as well as in one research center. Lau has managed an aquarium store for several years and Fly River turtles can sell for \$500 each.

The defendant is scheduled to be sentenced on February 14, 2008. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Hai Nguyen, No. 2:07-CR-00880(C.D. Calif.), AUSA Craig H. Missakian [REDACTED]

On November 28, 2007, Hai Nguyen pleaded guilty to violating the Marine Mammal Protection Act for stabbing a California sea lion, which had to later be euthanized.

On July 27, 2007, Nguyen was fishing from a dock on the Balboa Peninsula in Newport Beach. The sea lion, which had been swimming in the water near the dock and may have been interfering with Nguyen's fishing, approached the dock, getting close enough so that he could reach down and stab the animal. Witnesses in the area contacted the Newport Beach Police Department, and the defendant was arrested. Animal control officers were later able to trap the sea lion, which was transported to the Pacific Marine Mammal Center in Laguna Beach. Doctors who examined the animal determined that its wounds were too severe for it to recover.

Nguyen is scheduled to be sentenced on March 19, 2008. This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement, and the Newport Beach Police Department.

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United States v. Derrick Hagerman et al., No. IP06-CR-0139 (S.D. Ind.), AUSA Steve Debrot

On November 15, 2007, Derrick Hagerman, president and owner of Wabash Environmental Technologies (“WET”), was sentenced to serve five years’ incarceration after being convicted by a jury earlier this year on all 10 CWA falsification counts charged. WET also was similarly convicted and was sentenced to complete a five-year term of probation. Both defendants will be held jointly and severally liable for \$237,680 in restitution to the USEPA Hazardous Substance Superfund.

The defendants were convicted of CWA violations for falsifying monthly monitoring reports and discharge monitoring reports which were sent to the Indiana Department of Environmental Management (“IDEM”). WET formerly operated a waste water treatment facility that accepted liquid waste water from industrial customers. The waste water was treated and eventually discharged into the Wabash River.

The company was permitted to discharge wastes into the river within specific limitations. From January 2004 to November 2004, the defendants reviewed data indicating that they had repeatedly violated their permit limits for ammonia, biological oxygen demand, total suspended solids, copper, zinc and phenol. Hagerman and WET then created and submitted to the IDEM false reports showing few, if any, violations. The court at sentencing described Hagerman’s conduct as “cold-blooded deception for profit”.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, IDEM, the Indiana Department of Natural Resources, the Defense Criminal Investigation Service and the FBI.

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United States v. Bruce Penny et al., Nos. 2:06-CR-00761 and 765; 2:06-mj-01688 (C.D. Calif.), AUSA Dorothy Kim [REDACTED]

On November 13, 2007, Bruce Penny was sentenced to serve 12 months and one day of incarceration, followed by three years' supervised release. Penny pleaded guilty earlier this year to conspiracy to violate the Lacey Act for his involvement in illegally transporting and selling Asian Arowanas, commonly known as "dragon fish" or "lucky fish."

The dragon fish is native to Southeast Asia and can grow to approximately three feet in length. Under the ESA and international treaties, permits are required to export endangered species from their country of origin, as well as to import them into the United States. Asian Arowanas can sell on the black market for as much as \$10,000 in this country.

Penny sold several lucky fish to a purchaser in New York; Anthony Robles bought some dragon fish, sold some to Penny, and helped Penny ship some of the fish to a New York buyer. Peter Wu transported and sold an Asian Arowana to an undercover agent with the U.S. Fish and Wildlife Service. Robles pleaded guilty to conspiracy to violate the Lacey Act, was sentenced to pay a \$2,500 fine, and must complete a three-year term of probation. Wu pleaded guilty to a Lacey Act smuggling violation for his involvement in the scheme; he was sentenced to pay a \$11,000 fine and will complete a three-year term of probation.

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

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