

ENVIRONMENTAL CRIMES MONTHLY BULLETIN

November 2007

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.regionalassociations.org>.

You may quickly navigate through this document using electronic links for *Significant Opinions*, *Active Cases*, and *Quick Links*.

AT A GLANCE

SIGNIFICANT OPINIONS

☞ [United States v. McWane, Inc., et al.](#) [F.3d](#) , 2007 WL 3087419 (11th Cir. Oct. 24, 2007).

Districts	Active Cases	Case Type / Statutes
D. Alaska	<p>[REDACTED]</p> <p><u>United States v. Polar Tankers</u></p> <p><u>United States v. Michael Zacharof</u></p> <p><u>United States v. Frederick Reynolds</u></p>	<p>[REDACTED]</p> <p><i>Vessel/ APPS, Whistleblower Award</i></p> <p><i>Sale of Marine Mammal Parts/ Marine Mammal Protection Act</i></p> <p><i>Walrus Ivory Sale/ Conspiracy, Marine Mammal Protection Act, Lacey Act, False Statement</i></p>
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N.D. Calif.	<u>United States v. Kenneth Eller</u>	<i>Harbor Seal Pup Death/ Marine Mammal Protection Act</i>
D. Colo.	<u>United States v. Fu Yiner et al.</u>	<i>Int'l Trade of Exotic Skins/ Conspiracy, Money Laundering, Smuggling</i>
D. Conn.	<u>United States v. Edgardo Mercurio</u>	<i>Vessel/ APPS</i>
M.D. Fla.	<u>United States v. Zane Fennelly</u>	<i>Spiny Lobster Harvesting/ Destruction of Property to Avoid Seizure</i>
S.D. Fla.	<u>United States v. Lawrence Beckman</u>	<i>Coral and Sea Fan Harvest/ Lacey Act</i>
N.D. Ga.	<u>United States v. Daniel Schaffer</u>	<i>Chemical Manufacturer/ Conspiracy, CWA</i>
D. Idaho	<p><u>United States v. Krister Evertson</u></p> <p><u>United States v. Gary Lehnherr et al.</u></p>	<p><i>Chemical Manufacturer/ RCRA, HMTSA</i></p> <p><i>Mule Deer Hunt/ Lacey Act</i></p>
D. Md.	<p><u>United States v. Mark Humphries</u></p> <p><u>United States v. Robert Langill</u></p> <p><u>United States v. Paul Prendergast</u></p> <p><u>United States v. Isabel Dryden</u></p>	<p><i>Vessel/ Conspiracy, False Statement</i></p> <p><i>Asbestos Abatement/ CAA</i></p> <p><i>Bribery/ Travel Act</i></p> <p><i>Undersized Crab Harvesting/ Lacey Act</i></p>
[REDACTED]	[REDACTED]	[REDACTED]
D.N.H.	<u>United States v. Kip's Seafood Company</u>	<i>Shellfish Shipments/ Conspiracy, Lacey Act</i>

Districts	Active Cases	Case Type / Statutes
W.D.N.C.	United States v. Ralph Rogers	<i>Grease Disposal/ Conspiracy, CWA</i>
N.D. Ohio	United States v. David Geisen et al.	<i>Nuclear Facility/ Concealment, False Writings</i>
D. Ore.	United States v. Spencer Environmental Inc. et al.	<i>Waste Recycler/ RCRA</i>
D.P.R.	United States v. Ramallo Brothers Printing, Inc. et al.	<i>Waste Ink Discharges/ False Statements, Negligent Clean Water Act</i>
D.R.I.	United States v. Southern Union Company	<i>Mercury Storage/ RCRA, Failure to Notify</i>
E.D. Tex. (E.D. La.)	United States v. Rowan Companies, Inc. et al.	<i>Sandblasting/ Clean Water Act, APPS, Negligent Clean Water Act, Failure to Report</i>
	United States v. Spindletop Drilling Company	<i>Oil Drilling/ Migratory Bird Treaty Act</i>
S.D. Tex. (D. Alaska)	United States v. British Petroleum et al.	<i>Refinery Explosion and Pipeline Spill/ CAA, CWA</i>
D. Utah	United States v. Larkin Baggett	<i>Chemical Distributor/ CWA, RCRA</i>
W.D. Wash.	United States v. Frankie Gonzales et al.	<i>Whale Hunt/ Conspiracy, Unauthorized Whaling, Marine Mammal Protection Act</i>
	United States v. Craig James et al.	<i>Timber Harvesting/ Conspiracy, Depredation against Govt. Property, Theft of Govt. Property</i>
	United States v. Calypso Maritime Corporation et al.	<i>Vessel/ APPS, False Statement, Whistleblower Award</i>

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Significant Opinions

11th Circuit

United States v. McWane, Inc., et al. ___ F.3d ___, 2007 WL 3087419 (11th Cir. Oct. 24, 2007).

On October 24, 2007, the Eleventh Circuit vacated the convictions in *United States v. McWane, Inc., et al.* and remanded the case for a new trial. The court held that the district court failed, in light of *Rapanos v. United States*, 126 S.Ct. 2208 (2006), to provide the correct jury instructions on the jurisdictional issue of what constituted a “water of the United States” under the Clean Water Act, that the error was not harmless, and that the defendants therefore were entitled to a new trial on the Clean Water Act counts. The *Rapanos* case was decided by the Supreme Court almost one year after the trial had ended. The court also reversed the defendants’ convictions on the conspiracy charge alleged in Count 1, without discussion, and on the false statement violation charged in Count 24. *Slip op. at 45.*

The lion’s share of the court’s opinion is devoted to the CWA jurisdiction issue. After summarizing the facts and the *Rapanos* decision, the court considered at length the question of which of the three approaches to jurisdiction under the CWA it should follow. *Slip op. at 22.* The court noted that at least two different approaches have been adopted by other courts; the Seventh and Ninth Circuits have adopted Justice Kennedy’s “significant nexus” approach, *N. Cal. River Watch v. City of Healdsburg*, (496 F.3d 993, 999-1000(9th Cir. 2007); *United States v. Gerke Excavating, Inc.*, 464 F.3d 723, 724-25 (7th Cir. 2006), *cert. denied*, 76 U.S.L.W. 3156 (2007), whereas the First Circuit has concluded that because the dissenting Justices would find jurisdiction under either Justice Scalia’s plurality test or Justice Kennedy’s “significant nexus” test, “the United States may elect to prove jurisdiction under either test.” *United States v. Johnson*, 467 F.3d 56, 64 (1st Cir. 2006) (citations omitted), *cert. denied*, 76 U.S.L.W. (Oct. 9, 2007).

After some discussion, the court opted to follow Justice Kennedy’s “significant nexus” approach for two primary reasons. *Slip op. at 25.* First the court, citing *Gerke*, 464 F.3d at 724-25, found that Kennedy’s was narrower than the plurality and therefore deserved primacy under *Marks v. United States*, 430 U.S. 188 (1977), a case in which the Supreme Court held that “[w]hen a fragmented

Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding . . . may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” 430 U.S. at 193. The narrowest ground is understood as the “less far-reaching” common ground. *Johnson v. Board of Regents*, 263 F.3d 1234, 1247 (11th Cir. 2001). Second, the court held that it should not be bound by the dissenting Justices, noting that “[d]issenters, by definition, have not joined the Court’s decision” and that “[i]t would be inconsistent with *Marks* to allow the dissenting *Rapanos* Justices to carry the day and impose an “either/or” test, whereby CWA jurisdiction would exist when either Justice Scalia’s test or Justice Kennedy’s test is satisfied” (citations omitted). *Slip op. at 26-27*.

After finding Justice Kennedy’s “significant nexus” approach to be applicable, the court then applied that standard to the present case. *Slip op. at 28-29*. First it noted that the trial court did not mention the phrase “significant nexus” in its instructions or advise the jury to consider the chemical, physical, or biological effect of Avondale Creek on the Black Warrior River. *Slip op. at 29*. The court concluded that the trial court’s instruction, which provided that a continuous or intermittent flow into a navigable-in-fact body of water would be sufficient to bring Avondale Creek within CWA jurisdiction, was erroneous. *Id.*

The court then concluded that the government failed to meet its burden of showing that the error was not harmless. *Slip op. at 30-32*. Specifically, the court noted that although the government’s witness testified as to the continuous and uninterrupted flow from the outfall at Avondale Creek to the Black Warrior River, he did not testify as to the “nexus” between those two waters, including any “possible chemical, physical, or biological effect that Avondale Creek may have on the Black Warrior River,” nor was there evidence of “actual harm” to the River. *Slip op. at 31*. On this basis, the court concluded that the error was not harmless. *Id.*

Significantly, the court then went on to acknowledge that:

This case arguably is one in which Justice Scalia’s test may actually be more likely to result in CWA jurisdiction than Justice Kennedy’s test, despite the fact that Justice Kennedy’s test, as applied in *Rapanos*, would treat more waters as within the scope of the CWA. To be sure, the district court’s jury instruction was still erroneous even under Justice Scalia’s plurality opinion, because the instruction allowed the jury to find that defendants’ discharges were into a “navigable water” even if the jury also concluded that Avondale Creek flowed “only intermittently.” But under Justice Scalia’s test, that error may well have been harmless, because Wagoner, the EPA investigator, clearly and unambiguously testified that there is a continuous, uninterrupted flow between Avondale Creek and the Black Warrior River. Under Justice Scalia’s test, the district court’s jury instruction error arguably “did not affect the verdict, ‘or had but very slight effect.’” Thus, the decision as to which *Rapanos* test applies may be outcome-determinative in this case, and so it is not surprising that the government advocates a practical, *Johnson*-style approach whereby all votes – from plurality, concurring, and dissenting Justices – are counted.

Slip op. at 32-33 (citations omitted).

At the conclusion of the CWA jurisdiction discussion, the court then considered other issues raised by defendants. These were all rejected, except for the last one, which the court used a basis for reversing McWane’s conviction for the 18 U.S.C. § 1001 false statement charge alleged in Count 24. Count 24 alleged that McWane and Robison falsely certified in submissions made to EPA that daily and monthly inspection forms were true, accurate, and complete, when in fact the defendants knew that

they were not. Specifically, the defendants argued that they should be acquitted because the representations made in the certifications that Robison signed were not false and the government presented no evidence that the certifications – as opposed to the underlying inspection reports prepared by others – were false. The court agreed, and reversed the defendants' convictions with respect to Count 24.

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Trials

United States v. David Geisen et al., No. 3:06-CR-00712 (N.D. Ohio), ECS Senior Trial Attorney Richard Poole [REDACTED], ECS Trial Attorney Tom Ballantine [REDACTED], AUSA Christian Stickan [REDACTED] and ECS Paralegal Lois Tuttle [REDACTED]



Hole in reactor lid

FENOC owns and operates the Davis-Besse plant near Oak Harbor, Ohio. Power plants similar to Davis-Besse developed a cracking problem that could lead to breaks where control rod nozzles penetrate the steel-walled vessel that contains the nuclear fuel and the pressurized reactor coolant water. Such a break could cause a serious accident and would strain the plant's safety systems. In March of 2002, workers discovered a sizeable cavity in the head (or lid) of the reactor vessel at Davis-Besse. Subsequent analysis showed that this pineapple-sized hole was the result of corrosive reactor coolant leaking through a nozzle crack.

FENOC previously entered into a deferred prosecution agreement in this case, agreeing that the United States can prove that knowing false statements were made on behalf of the corporation.

Siemaszko, whose trial was severed, is now scheduled for trial to begin on May 19, 2008, with August 11, 2008, as a backup trial date. Jury selection will occur during the week preceding trial. This case was investigated by the NRC Office of Investigations.

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United States v. Mark Humphries, No. 1:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence [REDACTED], ECS Senior Trial Attorney Richard Udell [REDACTED] AUSA Tonya Kowitz [REDACTED] and ECS Paralegal Kate Hasty [REDACTED]

On October 16, 2007, Mark Humphries was convicted by a jury of conspiracy with four objects: to make illegal discharges, in violation of APPS; to maintain a false ORB, in violation of APPS; to make false statements, in violation of 18 U.S.C. §1001; and to obstruct an agency proceeding, in violation of 18 U.S.C. §1505. He also was convicted of two false statement violations and acquitted on an obstruction violation.

Humphries was a former chief engineer for the *M/V Tanabata*, a vessel managed by Pacific Gulf Marine ("PGM"), who was involved in the illegal dumping of bilge waste.

The investigation began in September 2003 after the U.S. Coast Guard inspected the *Tanabata* and the *M/V Tellus* in Baltimore. During the inspection Humphries denied involvement in any illegal conduct. Evidence proved, however, that the pipe used to bypass the oily water separator on the *Tanabata*, was thrown overboard by Humphries after the Coast Guard had inspected the vessel in Baltimore.

A number of engineers already have pleaded guilty as a result of the investigation and PGM was sentenced to pay \$1.5 million.

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

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United States v. Dimitrios Georgakoudis, No. 2:07-CR-00024 (E.D. Calif.), ECS Assistant Chief Kris Dighe [REDACTED] and ENRD Attorney John Irving [REDACTED]

On October 25, 2007, following a bench trial, the judge acquitted Dimitrios Georgakoudis.

Athenian Sea Carriers, Ltd. ("ASC"), the operator of the *M/T Captain X Kyriakou*, chief engineer Artemios Maniatis, and first engineer Georgakoudis, were variously charged in January 2007 in a seven-count indictment with conspiracy to violate APPS, false statements, obstruction, destruction of evidence, and substantive violations of the same statutes stemming from the routine illegal discharge of sludge and waste oil from the vessel.

Investigation began during the fall of 2006 when a crew member informed the Coast Guard National Response Center that he was routinely ordered to discharge oil overboard. Coast Guard inspectors subsequently discovered part of a bypass pipe. The crew member also alleged that the oil content sensor in the oil water separator had been removed to allow bilge holding tank waste to be discharged directly overboard. ASC and Maniatis were acquitted of all charges in June of this year.

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



Oily residue in pipe leading to overboard discharge

Indictments

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

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

On October 16, 2007, a three-count indictment was returned charging Southern Union Company with two counts of illegal storage of waste mercury and one count of failing to immediately notify local authorities of a release of mercury from its facility.

Beginning in 2002, Southern Union stored mercury waste, in the form of various containers of liquid mercury and mercury-contaminated obsolete gas regulators, without a permit at a company-owned vacant facility in Pawtucket, Rhode Island. Southern Union did not provide security for the property that was



Vacant building

regularly accessed by vandals and homeless people. There were no signs posted indicating hazardous wastes were being stored on site.

Safety concerns regarding the mercury waste storage were raised during three separate company safety committee meetings in the summer of 2004. In September of 2004 vandals broke into the building where the mercury was stored, released it on the property, and brought some back to their apartment complex resulting in the exposure to mercury of dozens of people. When Southern Union discovered the release on October 19, 2004, it failed to immediately notify the local fire department as required by the Emergency Planning and Community Right to Know Act.

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

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United States v. Frankie Gonzales et al., No.3:07-CR-05656(W.D. Wash.), AUSA Jim Oesterle [REDACTED]



Gray Whale

On October 4, 2007, Frankie Gonzales, Wayne Johnson, Andrew Noel, Theron Parker, and William Secor, all members of the Makah Tribe, were charged with conspiracy, unlawful taking of a marine mammal and unauthorized whaling violations for the illegal killing of a gray whale off the coast of Washington on September 8, 2007.

According to the indictment, the day before the hunt, Noel sought weapons and ammunition from the Makah Tribe, claiming he was going to use the weapons for practice. Noel also received

permission to borrow a 12-foot boat from the Tribe and obtained a large red buoy from a Makah tribal employee. On September 8, 2007, the five men set out from a location near Neah Bay in the 12-foot boat and a 19-foot boat registered to Frankie Gonzales.

Near Seal Rock off the northwest coast of Washington State, the men encountered a gray whale and struck it with at least four harpoons. They attached buoys to the whale to stop it from escaping, and then shot it approximately 16 times with the high powered weapons earlier obtained by Noel. The fatally injured whale swam approximately nine miles and then, some 12 hours after it was struck, it died and sank in about 700 feet of water. The buoys had been removed at the direction of the Makah tribal marine mammal biologist.

This case was investigated by the NOAA Fisheries Service Office of Law Enforcement and the United States Coast Guard.

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United States v. Kip's Seafood Company et al., No. 1:07-CR-00214 (D.N.H.), AUSA Donald Feith

On October 3, 2007, Kip's Seafood Company and owner Karl Crute were charged in a two-count indictment after a two-year investigation for allegations that it shipped thousands of pounds of potentially dangerous shellfish to Philadelphia and New York fish dealers who sold it to restaurants and other businesses. Specifically, they were charged with conspiring to transport and sell in interstate commerce shellfish as well as a felony Lacey Act violation for shipping and selling it.

According to court documents, in September 2003, the Maine-based company shipped 16 loads of shellfish totaling 20,000 pounds after its interstate license was suspended because the water used to wash the seafood at its plant was unclean.

Crute is alleged to have obtained approximately 800 interstate certification tags from Young's Shellfish Company in Maine. All shellfish is required to have tags to allow authorities to track it back to the location where it was harvested in case there is a contamination issue. Kip's Seafood apparently used the Young's Shellfish tags to try to deceive law enforcement from being able to track their seafood shipments.

The shipments of clams and mussels were sent to the Boston area, Chicago, Virginia, Maryland, Rhode Island, Connecticut, and the Fulton Fish Market in the Bronx. The shipments had a wholesale value of about \$54,000. Authorities are unaware of anyone getting sick from the shellfish.

This case was investigated by the National Oceanic and Atmospheric Administration Law Enforcement Office.

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United States v. Larkin Baggett, No. 2:07-CR-00609 (D. Utah), AUSA Jared Bennett **and SAUSA Alicia Hoegh**

On September 24, 2007, an indictment was unsealed charging Larkin Baggett, doing business as Chemical Consultants, with two CWA and two RCRA violations stemming from his discharge of chemical waste with a pH of less than 5.0 into the local POTW and disposing of and treating hazardous wastes without a permit between 2003 and 2005.

Baggett is the owner and operator of Chemical Consultants, which is in the business of mixing, selling, and distributing various chemicals used in the trucking, construction, and concrete industries. The chemicals are transported to customers in 55-gallon drums, which then are returned to the business to be cleaned and reused. The defendant is alleged to have instructed employees to use a variety of techniques to illegally clean the drums. Employees would either dump the contents onto the floor or

onto a paved alleyway behind the plant, leaving the chemicals there to evaporate. Baggett is further alleged to have instructed employees to wash out the drums directly into a sanitary sewer grate.

After the local sewer authority blocked the company's access to the POTW by plugging its sewer line, Baggett instructed employees to dump the residual chemicals from the drums, plus process wastewater and spilled chemicals from mixing operations, into this plugged sewer grate. After the sewer grate spilled over, Baggett and/or his employees would pump the contents of the sewer grate into clear, uncovered 55-gallon drums to allow the dye to evaporate. Once the chemicals in the drum were colorless, they then would dump the chemicals onto a gravel area outside. Chemicals used in this process included 49% hydrofluoric acid, muriatic acid, hydrochloric acid, sulfuric acid, xylene, and toluene.

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

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United States v. Craig James et al., No. 3:07- CR-05642 (W.D. Wash.), AUSA Jim Oesterle [REDACTED]

On September 19, 2007, Craig James, Bruce Brown and Floyd Stutesman were charged in a three-count indictment with violations stemming from their illegally cutting down of trees in the Olympic National Forest.

From between November 2006 and February 2006, the defendants are alleged to have damaged and stolen a variety of trees including 31 old growth western red cedar trees, some of which were over six hundred years old, to sell to timber mills for processing. They are further alleged to have obtained legitimate forest harvesting permits and then used those permits to illegally transport this old growth wood. The defendants are specifically charged with conspiracy to commit depredation against Forest Service property, one count of damage to United States property, and one count of theft of government property.

Trial is scheduled to begin on November 26, 2007. This case was investigated by the United States Forest Service Office of Enforcement and Investigations.

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United States v. Fu Yiner et al., No. 1:07-CR-00357, 360 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [REDACTED], **Trial Attorney Colin Black** [REDACTED] and **AUSA Linda McMahan** [REDACTED]

On September 6, 2007, Fu Yiner and Wang Hong, both Chinese nationals, were arrested in Denver on charges of smuggling and money laundering in connection with the unlawful importation into the United States from China of Hawksbill sea turtle parts and products. The Hawksbill sea turtle is listed as endangered under the Endangered Species Act.

Yiner was charged in August 2007 with four smuggling violations and three counts of money laundering stemming from his alleged sale and shipment to the United States of 300 guitar picks made from Hawksbill sea turtle shell and approximately five kilograms of raw Hawksbill sea turtle shell.

Hong was charged separately along with another Chinese national, Stephen Cheng, with conspiracy to smuggle Hawksbill sea turtle parts and products into the United States from China. The indictment also charged Hong and Cheng with four counts of smuggling and three counts of money laundering for the alleged sale and shipment to the United States of eight violin bows decorated with Hawksbill sea turtle shell as well as 10 kilograms of raw Hawksbill sea turtle shell.

This case was investigated by the Special Operations Branch of the United States Fish and Wildlife Service.

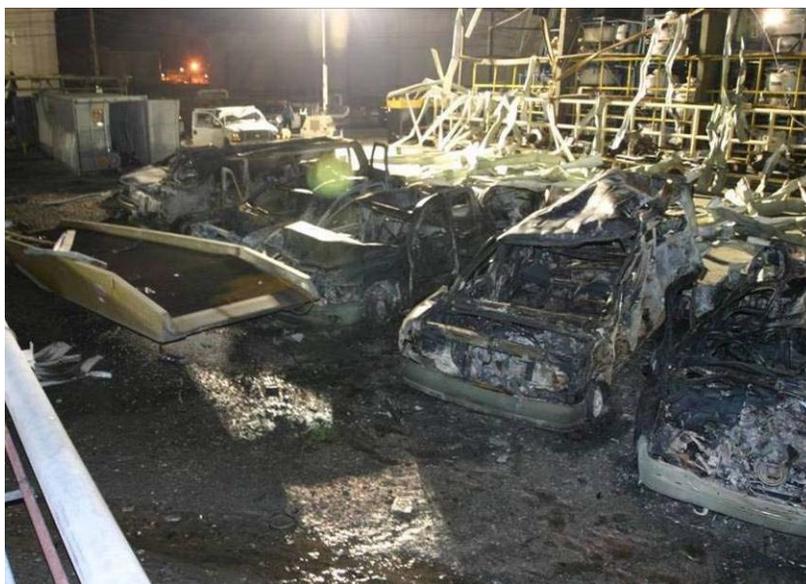
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Pleas / Sentencings

United States v. BP Products North America, Nos. 4:07-CR-00434 and 3:07-CR-00125 (S.D. Tex. and D. Alaska), ECS Senior Trial Attorney Dan Doohar [REDACTED], ECS Trial Attorney David Joyce [REDACTED] and AUSA Mark McIntyre [REDACTED], ECS Trial Attorneys Chris Costantini [REDACTED] and Ron Sutcliffe [REDACTED], AUSA Aunnie Steward [REDACTED], SAUSA Daniel Cheyette [REDACTED], ECS Supervisory Paralegal Will Taylor [REDACTED] and former ECS Contract Paralegal Joyce Russell.

On October 25, 2007, British Petroleum and several of its subsidiaries agreed to pay approximately \$373 million in fines and restitution for environmental violations stemming from a fatal explosion at a Texas refinery in March 2005, leaks of crude oil from pipelines in Alaska, and fraud for conspiring to corner the market and manipulate the price of propane carried through Texas pipelines.

The total payments agreed to be paid by BP include: \$50 million in criminal fines to be paid by BP Products North America Inc., as part of an agreement to plead guilty in the Southern District of Texas to a



Explosion aftermath

one-count felony violation of the Clean Air Act. The agreement resulted from a catastrophic explosion that occurred at the BP Texas City refinery on March 23, 2005, that killed 15 contract employees and injured more than 170 others. For the case in Alaska, British Petroleum Exploration (Alaska), Inc. (BPXA), will pay \$12 million in criminal fines, \$4 million in community service payments, and \$4 million in restitution to the state of Alaska, for pleading guilty to a Clean Water Act violation for pipeline leaks.

BP America, Inc., will pay a criminal penalty of \$100 million, a payment of \$25 million to the U.S. Postal Inspection Consumer Fraud Fund, and restitution of approximately \$53 million, plus a civil penalty of \$125 million to the Commodity Futures Trading Commission, as part of an agreement to defer the prosecution of a one-count criminal information filed in the Northern District of Illinois charging the company with conspiring to violate the Commodity Exchange Act and to commit mail fraud and wire fraud.

Finally, a 20-count indictment was returned in the Northern District of Illinois charging four former employees of a subsidiary of BP America, Inc., with conspiring to manipulate and corner the TET propane market in February 2004, and to sell TET propane at an artificially inflated index price in

violation of federal mail and wire fraud statutes, along with substantive violations of the Commodity Exchange Act and wire fraud.

Specifically regarding the case in Texas, BP Products North America Inc., will plead guilty to a felony violation of the Clean Air Act for the fatal explosion. The explosion was the result of hydrocarbon liquid and vapor being released from a "blowdown stack" and igniting during the startup of a unit that is used to increase octane content in unleaded gasoline. The unit had been shut down for nearly a month for maintenance and repairs. BP admitted that from 1999 up until the morning of March 23, 2005, several procedures required by the Clean Air Act for ensuring the mechanical integrity and a safe startup had either not been established or were ignored. This is the first prosecution under a section of the Clean Air Act specifically enacted to prevent accidental releases that may result in death or serious injury. In addition to the \$50 million criminal fine, the company will complete a three-year term of probation, which will include compliance with a settlement agreement with OSHA and an agreed order with the Texas Commission on Environmental Quality.

As to the case in Alaska, British Petroleum Exploration (Alaska), Inc., will plead guilty to a violation of the Clean Water Act stemming from pipeline leaks of crude oil onto the tundra as well as a frozen lake in Alaska. As part of the guilty plea, BPXA has agreed to pay a \$12 million criminal fine, \$4 million in community service payments to the National Fish and Wildlife Foundation (NFWF) for the purpose of conducting research and activities in support of the arctic environment in the state of



March 2006 oil pipeline spill

Alaska on the North Slope, and \$4 million in criminal restitution to the state of Alaska. A three-year term of probation will run concurrent with the term sentenced in Texas.

This investigation involved two different leaks from oil transit lines (OTLs) operated by BPXA. The leaks occurred in March and August of 2006, and were the result of BPXA's failure to heed many red flags and warning signs of imminent internal corrosion that a reasonable operator should have recognized. The first pipeline leak, discovered by a worker on March 2, 2006, resulted in more than 200,000 gallons of crude oil spreading over two acres of tundra, reaching a nearby frozen lake, where oil spread out onto the ice along one shore. This spill was the largest spill to ever occur on the North Slope. The second leak occurred in August of 2006, but was quickly discovered and contained after leaking approximately 1,000 gallons of oil. Nevertheless, the second leak led to the shut down of Prudhoe Bay oil production on the eastern side of the field. BPXA shut down production because it could not guarantee the condition of the line and whether it was fit for service.

During the investigation the government obtained a section of pipe where the March 2006 leak occurred. Approximately six inches of sediment were found on the bottom of the 34-inch-diameter pipe. When sediment builds up in a pipeline it creates conditions in which acid-producing bacteria can thrive undisturbed by the flow of oil and chemicals intended to protect the pipe from corrosion. The acid produced by these bacteria can cause corrosion, which causes pits or, if unchecked, holes in the wall of the pipe.

United States v. Robert Langill, No. 8:07-CR-00425 (D. Md.), ECS Trial Attorney Noreen McCarthy [REDACTED] and AUSA Gina Simms [REDACTED]

Asbestos stored in truck

On October 26, 2007, Robert Langill pleaded guilty to violating the Clean Air Act in connection with an illegal asbestos abatement at the U.S. Naval Air Station, Patuxent River.

From 2001 to 2004, Langill was employed with a Maryland asbestos abatement company as an asbestos abatement project supervisor. In 2003, the company entered into an agreement with the U.S. Navy to remove asbestos-containing material from several buildings undergoing renovation or demolition at the U.S. Naval Air Station, Patuxent River, Maryland.

From October 2003 to January 8, 2004, Langill directed the removal of transite panels containing asbestos from three Buildings in a manner that violated federal asbestos abatement work practice standards, in that workers were directed to remove the panels by smashing them with hammers and crowbars and allowing the transite to fall to the ground and break, causing asbestos fibers to be released into the environment. The transite panels from one building had not been adequately wet and no notification of the abatement activity had been given to the Maryland Department of Environment prior to the commencement of the abatement activity. In addition, unlabelled, improperly sealed bags of the broken asbestos-containing transite panels from one building were stored on the grounds of the naval facility overnight in a truck owned by the company.

Langill is scheduled to be sentenced on January 11, 2008. The case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Naval Criminal Investigative Service.

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United States v. Ramallo Brothers Printing, Inc. et al., No. 3:07-CR-00449 (D.P.R.), ECS Senior Litigation Counsel Howard Stewart [REDACTED]

On October 24, 2007, guilty pleas were taken from Ramallo Brothers Printing, Inc. ("Ramallo Bros."), and Angel Ramallo for violations stemming from illegal waste ink discharges onto property owned by the company.

These guilty pleas have resolved three separate matters. Ramallo Bros. pleaded guilty to two false statement counts and Angel Ramallo pleaded guilty to a misdemeanor violation for the negligent discharge of wastes into the Loiza River.

In approximately 1985, Ramallo Bros. leased a 47-acre plot of land northwest of the city of Canobanas, Puerto Rico. The site is referred to as "La Finka" (the farm) by employees of Ramallo Bros. and is a former sugar mill. The printing process used by the Ramallo Bros. created a variety of wastes including an oily liquid from the after burner process, waste ink and solvents. These wastes and by-products were placed in drums and disposed of at "La Finka" on a regular basis. Ramallo Bros.

leased the property from Southwire Company and operated at the site until approximately June of 1999.

In September 15, 2000, the EPA issued a request for information to Ramallo Bros. seeking information about the site pursuant to Section 104(e) of CERCLA. The Section 104(e) request was related to EPA's investigation of the "La Finka" site. In its response, the company falsely denied knowledge of any disposals. In a separate inquiry by the Puerto Rico Environmental Quality Board ("EQB"), the company provided EQB with dump tickets purporting to show the proper disposal of ink and waste water at a local POTW. The POTW that was to have received the waste, however, was closed and the environmental manager for the company was aware of the closure.

The company was sentenced to pay a \$500,000 fine for the false statement made to EPA and \$250,000 for the false dump tickets provided to EQB. The company also will complete a four-year term of probation to run concurrently for each false statement.

In a third matter, EQB inspected the Ramallo warehouse located in San Juan. A subsidiary company, Caribbean Forms, shares and operates in the same warehouse space. An EQB inspection of the property behind the warehouse revealed that the ground was saturated with blue ink and other liquid wastes. A pipe had ruptured, but Angel Ramallo, who was responsible for safety and environmental compliance, did nothing to prevent the wastes from reaching the Loiza River. Ramallo could be sentenced to pay a \$25,000 fine and could serve six to 12 months' incarceration for pleading guilty to this negligent discharge. He has been scheduled for sentencing on January 16, 2008.

This case was investigated by the United States Environmental Protection Agency Office of the Inspector General, United States Environmental Protection Agency Criminal Investigation Division and the Puerto Rico Environmental Quality Board.

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United States v. Krister Evertson, No. 4:06-CR-00206 (D. Idaho), ECS Trial Attorney Ron Sutcliffe (██████████) and AUSA Michelle Mallard (██████████).

On October 23, 2007, Krister Evertson, a.k.a. Krister Ericksson, was sentenced to serve 21 months' incarceration followed by three years' supervised release for illegally transporting hazardous materials and illegally storing hazardous waste. Evertson also was ordered to pay \$421,049 in restitution to the United States Environmental Protection Agency for cleanup costs.

Evertson, the owner and president of SBH Corporation, was convicted by a jury in June of this year of two RCRA storage and disposal violations and with violating the Hazardous Materials Transportation Safety Act.

Evertson transported 10 metric tons of sodium metal from its port of entry in Kent, Washington, to Salmon, Idaho, where he used some of the sodium in an effort to manufacture sodium borohydride. In August of 2002, the defendant arranged for the transportation of sodium metal not used in the manufacturing process and other sludges and liquids held in several above ground storage tanks from the manufacturing facility to a separate storage site. According to the indictment, Evertson failed to take protective measures to reduce the risk of possible contamination or harm during transportation, despite the fact that sodium metal and the materials in the tanks are highly reactive with water. The material subsequently was abandoned.

On May 27, 2004, the EPA responded to the storage facility and removed the sodium metal, some of the sludge in the bottom of the tank, and another tank with corrosive liquid in it. Commercial laboratories refused to accept the sludge for testing due to its reactivity with water. When EPA tested the sludge at its own lab, it was classified as a hazardous waste.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Department of Transportation Office of the Inspector General, and the FBI.

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United States v. Gary Lehnherr et al., No. 1:07-CR-00008 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [REDACTED] **and AUSA George Breitsameter** [REDACTED]

On October 22, 2007, Gary Lehnherr and Ronnie Gardner each were sentenced to serve three years' probation, during which time they may not hunt. Gardner was further ordered to pay a \$2,500 fine and \$1,000 in restitution to the Idaho Department of Fish and Game. Lehnherr was ordered to pay a \$2,300 fine and \$1,700 in restitution to the Idaho Department of Fish and Game.

The defendants pleaded guilty in July of this year to misdemeanor Lacey Act violations stemming from illegal mule deer hunting.

In October and November 2004, both hunters illegally killed mule deer and then made false statements to investigators concerning where and how the deer were killed. Specifically, they used a center-fire rifle in a traditional muzzle-loading-only game management unit and then falsely told investigators they had killed the deer in a different hunt area. DNA from blood and hair found at the actual site was matched to DNA from the deer's antlers, proving the deer was shot there.

Investigators said the deer was so big it would have gone into the record books had it been taken with a traditional muzzleloader. The deer also had an extremely rare antler configuration.

This case was investigated by the Idaho Department of Fish and Game and the United States Fish and Wildlife Service.

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United States v. Polar Tankers, No. 3:07-CR-00124 (D. Alaska), AUSA Kevin Feldis [REDACTED]

On October 15, 2007, Polar Tankers, a wholly-owned subsidiary of ConocoPhillips, pleaded guilty to, and was sentenced for, an APPS violation for failing to maintain an oil record book. The charge stems from a ship's captain faking a man overboard drill in January 2004 to allow crew members to clean oily sludge from the side of the U.S. flagged crude oil tanker, *Polar Discovery*.

This "highly dangerous" maneuver came after oily sludge from the engine room leaked en route to a holding tank on deck as the ship left an Alaskan port. Rain then washed the oil down the side of the ship and into the ocean. The captain responded by slowing down and turning the ship away from the wind to allow the crew to remove evidence of the spill, passing it off as a man overboard drill. He then falsified the bridge logbook to hide the fact the crew had discharged oil directly into the ocean. The chief engineer further failed to record the oil transfer correctly in the oil record book.

In May 2004, a crewmember notified Coast Guard officials in Valdez of the spill and later provided a video tape of crew members cleaning the oil off the side of the ship.

The judge sentenced Polar Tankers to pay a \$500,000 fine, half of which was paid to the whistleblower crew member. An additional \$2 million went to the National Fish and Wildlife Foundation, to help fund projects to protect coastal waters near Valdez and in Prince William Sound. The company also will complete a three-year term of probation and implement an environmental compliance plan. Polar Tankers confirmed the captain and chief engineer had been dismissed following the episode.

This case was investigated by the United States Coast Guard.

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United States v. Kenneth Eller, No. 3:06-CR-00735 (N.D. Calif.), AUSA Derek Owens ([REDACTED])

On October 15, 2007, Kenneth Eller was sentenced to serve nine months' incarceration. A fine was not assessed.

Eller was convicted in June of this year for the unlawful taking of a marine mammal, a misdemeanor violation of the Marine Mammal Protection Act. The jury, after deliberating for just over an hour, found that Eller did in fact take a baby harbor seal pup from Centerville Beach, near Eureka.

The defendant removed the seal from the beach, drove around with it for several hours, and took it to a friend's house the next day despite being told by many people that it was illegal to remove the seal from the beach. After the friend arranged to have marine officials pick it up for treatment, the seal died several days later. This was the first federal criminal jury trial in Eureka in more than 40 years.

This case was investigated the National Oceanic Atmospheric Administration and the National Marine Fisheries Service.

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United States v. Spencer Environmental Inc. et al., No. 3:07-00381 (D. Ore.), ECS Trial Attorney Ron Sutcliffe ([REDACTED]) and AUSA Dwight Holton ([REDACTED]).

On October 12, 2007, Spencer Environmental Inc. ("SEI") and company president Donald Spencer pleaded guilty to RCRA charges stemming from mishandling waste at a recycling and wastewater treatment plant they operated.

Specifically, SEI pleaded guilty to a RCRA violation for accepting corrosive and ignitable hazardous wastes without a permit between 2001 and 2003. The company also pleaded guilty to mishandling waste oil, in violation of RCRA. Donald Spencer pleaded guilty to a single count of mishandling waste oil, stemming from repeatedly overfilling a waste pit used for oily wastes and then failing to properly clean up the resulting spills between 1999 and 2003.

SEI received a variety of waste streams for recycling, including used oil, which was the bulk of its business. It also received wastewater from a leaking underground gasoline storage tank remediation site, which was tested to be ignitable. The company also discharged molybdenum, zinc and grease to Portland's POTW in excess of its permit limitations.

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

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United States v. Edgardo Mercurio, No. 3:07-CR-00134 (D. Conn.), ECS Trial Attorneys Lana Pettus ([REDACTED]) and Malinda Lawrence ([REDACTED]) Supervisory AUSA Anthony Kaplan ([REDACTED]) AUSA William Brown ([REDACTED]), and USCG CDR Luke Reid.

On October 12, 2007, second engineer Edgardo Mercurio was sentenced to pay a \$1,000 fine and complete a one-year term of probation. He pleaded guilty in July of this year to four APPS



Waste oil pit

violations, one from each of the four districts he had been charged. Ionia Management S.A. ("Ionia"), a Greek company that manages a fleet of tanker vessels, was convicted by a jury last month on all 18 counts charged, 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 violations.

Ionia and Mercurio were involved in the overboard dumping of waste oil from the *M/T Kriton* into international waters and falsified records to impede the United States Coast Guard and other authorities from learning of the illegal conduct.

This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division, with assistance from Secret Service.

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United States v. Paul Prendergast, No.8:07-CR-00430 (D. Md.), ECS Trial Attorney Noreen McCarthy [REDACTED] and AUSA Gina Simms [REDACTED]

On October 11, 2007, Paul Prendergast pleaded guilty to violating the Travel Act in connection with accepting bribes in violation of the West Virginia Bribery and Corrupt Practices Act.

According to the plea agreement, from 1998 to March 2003, Prendergast worked as the Occupational Health and Safety Coordinator at the West Virginia Department of Administration, General Services Division ("GSD"), receiving and reviewing bids submitted for asbestos and lead abatement projects. For certain asbestos and lead abatement jobs, Prendergast had primary authority to award contracts to the lowest bidder.

Two of these contractors were Maryland corporations engaged in asbestos and lead abatement work in Maryland and West Virginia. Immediately upon leaving his employment with GSD, Prendergast worked for one of these companies.

Prendergast admitted that he unlawfully provided one of these contractors with confidential bid information that he received from other abatement firms regarding contracts to perform asbestos and lead abatement at various buildings in the West Virginia State Capitol Complex. This contractor then used the bid information to submit bids to the state of West Virginia that were lower than those submitted by other abatement companies. Prendergast would then award the contracts, and approve payments to the contractor, and cause the state of West Virginia to mail checks to the contractor. While he maintained bid and operational authority over contracts of interest to the contractor, Prendergast also received money and other benefits from the contractor, including three checks from 2000 to 2003, two for \$2,500 and one for \$6,000.

Additionally, in April 2003, following negotiations that had begun in or about 2002, the other contractor involved hired Prendergast at nearly triple the salary he received from GSD; from April 2003 to January 2005, Prendergast received \$85,000 as "salary" from this second contractor; and from December 2003 to December 2004, Prendergast accepted \$55,000 from a subcontractor over whom he had oversight responsibility in his position as project manager for the second contractor.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the West Virginia Legislature's Commission on Special Investigations, and the United States Naval Criminal Investigative Service.

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

On October 11, 2007, Ralph Rogers, the owner and president of Ecosolve pleaded guilty to conspiracy to violate the CWA. Under the terms of the plea agreement Rogers will serve 12 months in home confinement to be followed by three years' supervised release. He also will publish a letter of apology in the local newspaper and the leading FOG industry trade magazine. The fine amount will be determined by the court at sentencing.

Ecosolve removed, hauled, pre-treated, and disposed of waste from grease traps of restaurants and other establishments. The 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.

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

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United States v. Rowan Companies, Inc., No. 2:07-CR-00298 (E.D. La., E.D. Tex.), ECS Senior Counsel Rocky Piaggione [REDACTED] ECS Trial Attorney David Kehoe [REDACTED] and AUSAs Joe Batte [REDACTED] and Dee Taylor [REDACTED]

On October 9, 2007, Rowan Companies, Inc., ("Rowan") pleaded guilty to three felonies in connection with the routine discharge of pollutants and garbage into the Gulf of Mexico from one of the firm's oil rigs.

Rowan will pay a \$7 million fine, along with community service payments totaling \$1 million to five state regional enforcement organizations for the purposes of environmental training, education, and enforcement coordination concerning violations of the Clean Water Act. Rowan also will make a community service payment of \$1 million to the National Marine Sanctuaries Foundation to be used for preservation and protection projects at the Flower Garden and Stetson Banks National Marine Sanctuary located in the Gulf of Mexico off the coasts of Texas and Louisiana. In addition, as a condition of probation, Rowan will re-organize its corporate structure to add an environmental division and will implement a comprehensive environmental compliance plan.

According to the plea agreement, the operation and cleaning of offshore drilling rigs created substantial amounts of waste. For example, the hydraulic cranes on board the Rig Midland required the use of large amounts of fresh hydraulic oil, and routine maintenance and operation of the rig necessitated the use of chemicals, paint, and other materials.

The government's investigation revealed that between 2002 and 2004, employees on the Rig Midland routinely discharged waste hydraulic oil mixed with water, used paint, paint cans, and other pollutants and garbage into the Gulf of Mexico and failed to notify the government of the discharges in violation of the CWA and APPS. The charges associated with these violations were filed in the Eastern District of Texas. In the Eastern District of Louisiana, Rowan pleaded guilty to one CWA felony count for discharging pollutants into the Sabine River as a result of sand blasting operations used to clean the rig in Port Fourchon in 2004.

Nine supervisory employees of Rowan who worked on the Rig Midland also pleaded guilty to charges related to Rowan's violations. Carl Smith, James Rawson, Warren James, and Randy Hoover each pleaded guilty to negligently discharging pollutants into U.S. waters in violation of the CWA in connection with the sandblasting operations and have agreed to pay a \$2,500 fine. David Burcham and Murphy Comardelle each pleaded guilty to a failure to report knowledge of a felony in connection with

the illegal discharges of waste oil from the Rig Midland and have agreed to pay \$5,000 in criminal fines. Terry Glen Fox and Michael Friend pleaded guilty to misdemeanor charges for negligently discharging waste oil into U.S. waters in violation of the CWA and have agreed to pay \$2,500 in fines. Finally, Michael Freeman pleaded guilty to a felony violation of the CWA for knowingly discharging waste oil into U.S. waters and faces a maximum fine of \$250,000, the exact amount to be determined by the court.

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

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United States v. Lawrence Beckman, No. 9:07-CR-801137 (S.D. Fla.), AUSA Tom Watts-FitzGerald

On October 7, 2007, Lawrence Beckman pleaded guilty to Lacey Act violations in connection with the illegal importation of more than 500 pounds of live rock, coral, and sea fans illegally harvested from Bahamian waters

According to court documents, in October 2002, Beckman made a commercial harvesting trip from Lake Worth Inlet, Florida, to the Bahamas aboard his vessel the MARY ANNE. The purpose of the trip was to acquire merchandise to sell in an aquarium supply business owned by Beckman. The defendant failed to obtain written permission from Bahamian authorities, as required by Bahamian conservation laws, to harvest hard and soft coral species within the Commonwealth of the Bahamas.

After securing 500 specimens of *Gorgonia*, commonly referred to as sea fans and 500 pounds of live rock and coral, Beckman steered a course for Lake Worth Inlet. En route, the Coast Guard spotted the MARY ANNE running without required navigation lights and intercepted the vessel.

Coast Guard boarding officers noted four large drums



Live coral

of fuel on the deck of the vessel and multiple sets of scuba equipment. During a safety and document check, they located the contraband corals in specially equipped "live wells" and in a converted fuel tank below a hatch cover in the main cabin, and took the MARY ANNE to the Coast Guard Station at Lake Worth Inlet. Beckman subsequently admitted that he had been on a commercial harvesting trip to an area about 1.5 nautical miles east of Sandy Cay in the Bahamas and that he did not possess any permit from the Commonwealth allowing him to harvest marine resources from Bahamian waters.

Coral reef destruction has been the subject of intense debate both within the United States and at the meetings of the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, a treaty to which the United States and approximately 150 other countries are party. Loss of reef habitat, which is one of the most productive and diverse ecosystems, is a world-wide concern. As nurseries for marine species of commercial value, as well as a source of income from recreational fishing and eco-tourists, and a protective barrier for coastlines, a significant effort is underway to preserve the existing reef structures and reverse their decline.

Sentencing is scheduled for December 20, 2007. This case was investigated by the NOAA Fisheries Office of Law Enforcement and the United States Coast Guard.

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United States v. Spindletop Drilling Company, No. 5:07-CR-00016 (E.D. Tex.), AUSA Jim Noble
[REDACTED]

On October 4, 2007, Spindletop Drilling Company (“Spindletop”) was sentenced to serve a two-year term of probation and pay \$10,000 in restitution to the National Fish and Wildlife Foundation stemming from the deaths of migratory birds. The company pleaded guilty in June of this year to a misdemeanor violation of the Migratory Bird Treaty Act.

On September 6, 2006, U.S. Fish and Wildlife agents inspected Spindletop’s “Pewitt D” lease in rural Titus County. The inspection led to the discovery of approximately twelve dead Northern Mockingbirds and one dead Mourning Dove in an oil sludge pit on the property. While Spindletop had originally covered the pit with a net to prevent such an occurrence, over time portions of the net had sunk below the surface.

At the time of the plea, the company offered photographs and testimony demonstrating that it already had made the necessary repairs to the netting over the oil sludge pit and was implementing additional compliance mechanisms to avoid any future incidents.

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

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United States v. Michael Zacharof, No. 3:07-CR-00026 (D. Alaska), AUSA Aunnie Steward
[REDACTED]

On October 4, 2007, Michael Zacharof was sentenced to serve three years’ probation and pay a \$1,500 fine. Zacharof pleaded guilty in June of this year to violating the Marine Mammal Protection Act for illegally selling genitalia from northern fur seal, a depleted species, to be re-sold in a Korean gift shop.

Zacharof is an Alaska native who illegally sold marine mammal parts in June 2005. Specifically, he sold more than 100 raw seal genitalia also known as “oosiks” to be re-sold at a Korean gift shop in Anchorage, Alaska, for approximately \$100 a piece. The defendant was the president of the Aleut Community of St. Paul Island Tribal Government. He also was the co-signatory with the National Marine Fishery Service on the agreement for cooperation in the conservation of the northern fur seals in 2000. Marine mammal parts are illegal to sell unless they have been converted into an authentic native handicraft by a Native Alaskan.

This case was investigated by the National Marine Fisheries Service.

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United States v. Daniel Schaffer, No. 1:06-CR-00085 (N. D. Ga.), ECS Senior Trial Attorney Dan Doohar
[REDACTED] **and AUSA Paul Jones** [REDACTED]

On October 3, 2007, Daniel Schaffer, the former environmental manager of Acuity Specialty Products, Inc. (“Acuity”), was sentenced to pay a \$5,000 fine and complete a five-year term of probation. Schaffer pleaded guilty in February 2006 to conspiracy to violate the Clean Water Act for illegal wastewater discharges from the plant.

Acuity operates a chemical blending facility and makes a variety of domestic and industrial chemicals and cleaning products. Wastewater from Acuity’s chemical blending processes contains a

significant concentration of phosphorus. In November 2002, inspectors from the City of Atlanta Watershed Department ("CAWD") discovered that Acuity personnel were diluting the facility's wastewater. This rendered inaccurate the methods that were required by the CAWD for sampling wastewater discharge, thereby hiding the actual concentration of phosphorus that was being discharged to the POTW.

The investigation showed that from 1998 until 2002, Acuity submitted to the CAWD false information regarding the level of phosphorus in its wastewater, on forms that were signed by Schaffer. Schaffer was the company's environmental manager from October 1998 until October 2003. Subsequent investigation showed that Acuity failed to report discharges of phosphorus that were in excess of the level allowed under its pretreatment permit that had been issued to the company by the CAWD.

Acuity was previously sentenced to pay a \$3.8 million fine and must complete a three-year term of probation. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Isabel Dryden, No. 1:07-CR-00410 (D. Md.), ECS Trial Attorney David Kehoe [REDACTED] and AUSA Christopher Romano [REDACTED]

On October 2, 2007, Isabel Dryden, owner of N.R. Dryden and Company, pleaded guilty to illegally selling undersized Chesapeake Bay crabs, a felony Lacey Act violation.

The investigation began when the government received information that crabbers from Tangier Island, Virginia, were selling soft shell blue crabs from the Chesapeake Bay to seafood dealers in Crisfield, including N.R. Dryden and Company. Many of these crabs were found to be under 3 ½ inches in length in violation of Maryland state law. Posing as representatives from a business in West Virginia, United States Fish and Wildlife Service ("USFWS") agents and an officer from the Maryland Department of Natural Resources ("MDNR") purchased 240 dozen crabs worth approximately \$1,500 on three separate occasions in 2005 and 2006 from the defendant, with approximately 80% determined to be undersized.

The subsequent execution of a search warrant at the facility's warehouse resulted in the seizure of approximately 648 dozen undersized soft shell crabs labeled as "COCKTAILS", valued at approximately \$3,888. Additionally, records seized during the search showed total sales of about \$4,400 worth of undersized "COCKTAIL" crabs in 2005 and 2006.

Dryden was sentenced to pay a \$10,000 fine and to forfeit the undersized crabs seized during the search. During the two-year term of probation the defendant will allow agents and inspectors from the USFWS and the MDNR increased access to her facility, and will implement employee training programs and more effective notice measures with her suppliers to prevent similar violations in the future.

This case was investigated by the United States Fish and Wildlife Service and the Maryland Department of Natural Resources.

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United States v. Frederick Reynolds et al., No. 1:06-CR-00004 (D. Alaska), ECS Senior Trial Attorney Bob Anderson [REDACTED] and SAUSA Todd Mikolop [REDACTED]

On October 1, 2007, Frederick Reynolds was sentenced to serve eight months' incarceration followed by one year of supervised release. A fine was not assessed.

Reynolds pleaded guilty in May of this year to conspiracy to violate the Lacey Act, Marine Mammal Protection Act, and to make false statements. Co-defendant Michael Sofoulis pleaded guilty earlier this year to a similar conspiracy violation and was sentenced to serve six months' incarceration, followed by one year of supervised release. Sofoulis will pay a \$15,000 fine and a \$5,000 community service payment.

The defendants were charged in September 2006 with conspiracy, Lacey Act, false statement, and witness tampering violations, as well as a violation of the Marine Mammal Protection Act, stemming from the illegal sale of beach-found walrus ivory. Federal law allows for this ivory to be legally retained for 30 days prior to registration or tagging. The ivory also subsequently may be transferred, but only for non-commercial purposes, and prior written authorization must be obtained from the United States Fish and Wildlife Service.

Reynolds removed ivory from walrus carcasses that had washed ashore and then prepared certificates that falsely listed other persons as the "hunter" or "owner" of the walrus parts. Reynolds used tagging gear owned by his mother-in-law to sell the ivory (configured as "headmounts") for \$1,000 or more with the help of his friend, Sofoulis, a guide. After hearing of the investigation, Sofoulis approached a fellow guide to whom he had sold ivory and advised him to hide the headmount and remove the tags. He later suggested to this guide/customer that the latter lie to investigating agents about his purchase of the headmount.

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

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United States v. Calypso Maritime Corporation et al., No's 3:07-05367 and 05412 (W.D. Wash.), AUSA Jim Oesterle [REDACTED] and SAUSA Benes Aldana.

On September 21, 2007, Greek shipping company Calypso Marine Maritime Corp. ("Calypso") was sentenced to pay a \$1.4 million fine with \$400,000 to be paid into the Columbia River Estuarine Coastal Fund. Two employee whistleblowers each were paid \$125,000 and the company also will implement an environmental compliance plan along with a four-year term of probation.

Calypso pleaded guilty in June of this year to one APPS and one false statement violation for the chief engineer's failure to maintain the oil record book for the *M/V Tina* and for his presenting the book with the false entries to investigators. Engineer Jesus Reyes earlier was sentenced to serve a one-year term of probation and no fine was imposed. He pleaded guilty to a false statement violation.

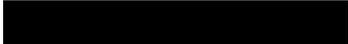
After the Coast Guard inspected the ship on May 21, 2007, while it was anchored in Kalama, Washington, crew members were ordered to use two sections of pipe, at night, to bypass the oil water separator. Reyes, acting under the direction of an engineering superintendent who had boarded the ship in Astoria, Oregon, ordered crew members to paint over and conceal the flanges where the bypass pipe had been.

This case was investigated by the United States Coast Guard.

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