

ENVIRONMENTAL CRIMES

MONTHLY BULLETIN

May 2007

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email it, along with your information, to Elizabeth Janes at [REDACTED]. Material may also 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 at <http://www.regionalassociations.org>.

You may quickly navigate through this document using electronic links for the *Active Cases* and *Additional Quick Links*.

AT A GLANCE

- [Environmental Defense v. Duke Energy Corp., 127 S. Ct. 1423 \(2007\)](#)

Districts	Active Cases	Case Type / Statutes
S.D. Alaska	United States v. Robert Becker	<i>Illegal Rockfish Catch/ Lacey Act</i>
C.D. Calif.	United States v. Hisayoshi Kajima	<i>Butterfly Trafficking/ Endangered Species Act, Smuggling</i>
D. Colo.	United States v. Edward Borner United States v. Willem Basson [REDACTED]	[REDACTED]
M.D. Fla.	United States v. Kassian Maritime Navigation Agency Ltd.	<i>Vessel/ APPS, False Statement, Obstruction</i>
N.D. Fla.	United States Michael Bonner	<i>Charter Vessel Permits/ Conspiracy, Magnuson Stevens Act, False Statement</i>
S.D. Fla.	United States v. David Sparandara United States v. Alexandre Alvarenga-Freire	<i>Bengal Cats/ Endangered Species Act</i> <i>Coral Harvesting/ Lacey Act</i>
D. Idaho	United States v. Tim Sundles	<i>Wolf Poisoning/ Endangered Species Act</i>
D. Mass.	United States v. Michael Zak	<i>Bird Killings/ Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act</i>
D. Md.	United States v. Stephen Karas	<i>Vessel/ Conspiracy, False Statement</i>
D. Nev.	United States v. Greg Street Plating	<i>Electroplater/ CWA</i>
D. N. J.	United States v. Clipper Wonsild Tankers Holding A/S	<i>Vessel/ Conspiracy, APPS, False Statement, Obstruction</i>
N.D. N. Y.	United States v. Everett Blatche	<i>Asbestos Abatement/ Conspiracy</i>
E.D. N. C.	United States v. Jerry Gaskill	<i>Dredge and Fill/ CWA, Rivers and Harbors Act</i>
D. Okla.	United States v. Sinclair Tulsa Refining Company	<i>Oil Refinery/ CWA NPDES</i>
D. P. R.	United States v. Puerto Rico Aqueduct and Sewer Authority	<i>Water Authority/ CWA NPDES</i>
M.D. Tenn.	United States v. James Holden	<i>Sewage Treatment Plant/ False Statement, Obstruction</i>
[REDACTED]	[REDACTED]	[REDACTED]

Additional Quick Links

- ◇ [Significant Opinions](#) pp. 3 – 4
- ◇ [Trials](#) p. 4
- ◇ [Indictments](#) pp. 4 - 6
- ◇ [Pleas/Sentencings](#) pp. 6 - 15

Significant Opinions

Supreme Court

The United State Environmental Protection Agency’s regulations promulgated under two air pollution control schemes within the Clean Air Act – New Source Performance Standards (“NSPS”) and Prevention of Significant Deterioration (“PSD”) – define the term “modification” differently. Under the NSPS, regulations require a source to use the best available pollution-limiting technology when modifications would increase the pollutants released as measured in kilograms per hour. Conversely, the PSD regulations require a permit for a modification when the modification would increase annual emissions above the actual average for the two prior years.

At issue in **Environmental Defense v. Duke Energy Corp., 127 S. Ct. 1423 (2007)**, was whether Duke Energy was required to obtain permits when it replaced and redesigned its coal-fired electric generating units. In the District Court and the Court of Appeals for the Fourth Circuit, Duke Energy successfully argued that a PSD permit was not required because none of its projects increased the hourly emissions rate. The two lower courts each held that the term “modification” as defined in the NSPS provisions mandated that the term receive the same definition in the PSD regulations. Consequently, the lower courts held that PSD regulations must measure an increase in the amount of an emitted air pollutant in terms of an hourly rate and because Duke’s hourly emissions did not increase – though total emissions increased – no permit was necessary. Intervening environmental groups subsequently petitioned the Supreme Court for certiorari.

The Supreme Court, in a 9-0 decision, vacated the judgment below. Justice Souter, writing for the Court, stated that the “principles of statutory construction are not so rigid” as the lower courts held. Specifically, “a given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.” The Court made clear that in interpreting a definition in a statute, “there is ... no effectively irrebutable presumption that the same defined term in different provisions of the same statute must be interpreted identically. Context counts.” The PSD regulations are designed to measure actual operations and emissions over time, and the regulatory purpose was invalidated by lower courts’ elimination of the requirement that net emissions over time not increase and replacing it with a test based only on hourly emissions. Because the Court of Appeals erroneously applied the PSD definition of modification to the NSPS regulations, the Supreme Court vacated the judgment below and remanded the case for further proceedings.

This issue of how a definition in one part of a statute may affect regulation under other provisions may arise in the context of criminal enforcement actions.

United States v. Clipper Wonsild Tankers Holding A/S et al., No. 2:07-CR-00264 (D.N.J.), AUSA Brad Harsch [REDACTED] with assistance from ECS Senior Counsel Claire Whitney [REDACTED]

On March 27, 2007, Clipper Wonsild Tankers Holding A/S, Clipper Marine Services A/S, and Trojan Shipping Co. Ltd., were charged in an 11-count indictment with violations stemming from the dumping of oily waste in international waters from the *M/T Clipper Trojan*.

The indictment states that vessel crew members dumped oil sludge directly overboard in May and June of 2006, and they regularly dumped oil-contaminated bilge water overboard between March and June of 2006. Clipper Wonsild Tankers Holding A/S and Clipper Marine Services A/S are Danish companies that commercially operated and managed the vessel. The Trojan Shipping Co., Ltd., a Bahamian company, is the ship's registered owner. All three companies are part of The Clipper Group A/S, a global shipping consortium based in Denmark.

On February 2, 2007, Fernando Magnaye, the ship's chief engineer, pleaded guilty to charges of presenting a false document to Coast Guard inspectors and to attempting to obstruct a Coast Guard inspection in an effort to conceal the ship's illegal overboard discharges of oil sludge and oil-contaminated bilge waste.

This case was investigated by the United States Coast Guard.

[Back to Top](#)

United States v. Robert Becker, No. 1:07-CR-0002 (D. Alaska), SAUSA Todd Mikolop [REDACTED]

On March 21, 2007, Robert Becker was charged in a three-count indictment with violating the Lacey Act. According to the indictment, between November 2004 and January 2005, Becker made three unlawful fishing trips to the Fairweather Grounds in the Gulf of Alaska and caught approximately 17,000 pounds of Demersal Shelf Rockfish. During these three fishing trips, the Fairweather Grounds and all of the East Yakutat Section were closed to directed fishing.

Becker allegedly falsified his fish landing tickets and his logbook to reflect that the fishing took place in open waters. The total wholesale value of Becker's unlawfully caught fish was nearly \$25,000.

This case was investigated by the NOAA Office for Law Enforcement.

[Back to Top](#)

United States v. Edward Borner, No. 07-CR-01053 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [REDACTED], ECS Trial Attorney Jim Nelson [REDACTED], and AUSA Greg Holloway [REDACTED]

On March 6, 2007, taxidermist Edward Borner pleaded guilty to a one-count information charging him with a misdemeanor Lacey Act violation in connection with his receiving leopard skins and skulls.

In November 2004, Borner took possession of five leopard hides and three leopard skulls which he should have known were illegally imported into the United States from Zimbabwe as they were not accompanied by valid CITES permits.

This is the first plea entered in a related case in which two South African outfitters, Jan Swart and Willem Basson, were charged with smuggling and Lacey Act false labeling charges after

engineering the smuggling of the trophy parts of leopards illegally killed in South Africa by U.S. hunters. Several other hunters are expected to plead guilty. Borner is scheduled to be sentenced on July 24, 2007.

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

[Back to Top](#)

United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR00048 (M.D. Fla.), SAUSA John Irving [REDACTED] ECS Trial Attorney Jeff Phillips [REDACTED] and AUSA John Sciortino [REDACTED]

On March 8, 2007, Greek-based shipping company Kassian Maritime Navigation Agency Ltd., (“Kassian Maritime”) and Spyridon Markou, the second engineer for the *M/V North Princess*, were charged in a three-count indictment with APPS, false statement and obstruction violations. Kassian Maritime is charged with the illegal dumping of bilge and oily wastewater, making false statements to U.S. Coast Guard inspectors, and obstruction of justice in relation to the Coast Guard’s inspection of the *North Princess*. Markou is charged with obstructing the ship’s inspection.

The indictment states that, on or about November 20, 2006, after the ship was inspected by Coast Guard inspectors in Jacksonville, evidence was found that the company, through its employees, made false statements and used false documents during the course of the inspection. The indictment further alleges that the shipping company failed to maintain an accurate oil record book.

The obstruction charge against Markou stems from his providing false information to inspectors regarding the ship’s use of an illegal bypass pipe.

The case remains scheduled for the June 4, 2007, trial calendar and was investigated by the United States Coast Guard.

[Back to Top](#)

Pleas / Sentencings

United States v. Michael Bonner et al., No. 3:06-CR-00450 (N.D. Fla.), ECS Trial Attorney Mary Dee Carraway [REDACTED]

On April 24, 2007, Michael Bonner and Gerald Andrews were each sentenced to complete three-year terms of probation and pay \$25,000 and \$40,000 fines, respectively. The two pleaded guilty in February of this year to a one-count misdemeanor information charging them with knowingly and willfully submitting false information to the Secretary of Commerce in violation of the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”).

In November 2003, the Magnuson-Stevens Act placed a moratorium on charter vessel/head boat permits for Gulf coastal migratory pelagic fish and Gulf reef fish in an effort to address concerns regarding over-fishing and declining fish stocks. The regulation required that any person who could provide the National Marine Fisheries Service (“NMFS”) with documentation verifying that, prior to March 29, 2001, s/he had a charter vessel or headboat under construction and had spent at least \$5,000 toward construction as of that date, was eligible for the permit. The moratorium created a limited-entry fishery in that the permits were not available to all charter boat owners.

Bonner was an Alabama boat builder and Andrews was a charter-boat fisherman in Florida. The defendants submitted false information (back-dated checks and sales agreements) to the NMFS in an attempt to secure letters of eligibility for permits for two commercial fishing vessels.

This case was investigated by the NOAA Office of Law Enforcement.

[Back to Top](#)

United States v. Tim Sundles, No. 4:05-po-00223 (D. Idaho), AUSAs George Breitsameter ([REDACTED]) and Michael Fica ([REDACTED]).



On April 20, 2007, Tim Sundles was sentenced to serve six days' incarceration and was banned from public lands for two years for attempting to kill federally protected wolves, in violation of the Endangered Species Act, with poisoned meatballs in 2004. He will also complete a two-year term of probation and pay a \$1,500 fine.

The sentencing ends a three-year investigation involving state and federal wildlife investigators that began with the poisoning of pet dogs and other animals at a popular recreation area in the Salmon-Challis National Forest. Agents obtained DNA evidence to link the pesticide-tainted meatballs to Sundles. They had further evidence that a person claiming to be Tim Sundles spelled

out on the Internet how to poison wolves using a common pesticide.

Sundles, a specialty ammunition maker, was a vocal critic of the federal government's push to restore wolves to the Northern Rockies beginning in 1995, making known his opinion that the wolves would destroy livestock and game populations.

At sentencing the court further ordered the defendant to pay \$128 in veterinarian bills for treatment of the dogs he poisoned. A total of 73 tainted meatballs were recovered.

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

[Back to Top](#)

United States v. James Larry Holden et al., No. 1:05-CR-00011 (M.D. Tenn.), AUSA Samuel Williamson ([REDACTED]).

On April 20, 2007, James Larry Holden was sentenced to serve 24 months' incarceration, followed by two year's supervised release with 90 days to be served in a community correctional facility. James Michael Holden will serve 32 months' incarceration followed by two years' supervised release and 90 days in a community correctional facility.

The father and son defendants were found guilty by a jury in September of last year of making a material false statement to the Tennessee Department of Environment and Conservation and the U.S. Environmental Protection Agency. James Michael Holden, the son, also was found guilty of obstruction of justice, but his father was acquitted on this charge.

James Larry Holden is the former Director of the Mt. Pleasant, Tennessee, Department of Public Works. James Michael Holden is the former licensed operator of the Mt. Pleasant Sewage

Treatment Plant. James Michael Holden's obstruction conviction stemmed from his instructing employee Marty Roddy to alter documents to make it appear that required water-quality testing had been performed.

Investigation revealed that on 21 dates from January 2002 to October 2003, Roddy's initials appeared on test reports despite the fact that he was absent from work on those days. Spot testing by officials revealed that fecal coliform bacteria levels were as much as 20,000 times greater than stated in the reports. Roddy pleaded guilty in September 2005 to a false statement violation.

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

[Back to Top](#)

United States v. David Sparandara, No. 1:06-CR-20627 (S.D. Fla.), AUSA Tom Watts-FitzGerald



Asian Leopard Cat

On April 20, 2007, David Sparandara pleaded guilty to a Lacey Act violation for the illegal sale and transportation from the Czech Republic to Miami of a live Asian Leopard Cat, an endangered species.

In January 2005, a Fish and Wildlife inspector in Texas was informed that the defendant and a Prague-based entity known as the European-American Consortium for Small Felines, for which the defendant is the director, were preparing to ship two Asian Leopard Cats to the United States. Investigation revealed that none of the parties involved possessed the required paperwork to legally import the cats. Even when advised by law enforcement of the necessity to obtain these permits, Sparandara failed to do so and in fact re-routed one of the cats through the Miami International Airport in February 2005.

Paperwork accompanying the animal indicated that it was being sold to the importer for in excess of \$4,000. A subsequent effort by Sparandara in December 2005 to ship another cat into Miami led to the interception and seizure of the animal.

The Asian Leopard Cats are prized for their rarity and color pattern. They also have substantial commercial value in the pet trade due to their susceptibility to hybridization with domestic cats, which produces the "Bengal cat" pet species.

Sentencing is scheduled for July 20, 2007. This case was investigated by the United States Fish and Wildlife Service.

[Back to Top](#)

United States v. Puerto Rico Aqueduct and Sewer Authority, No. 3:06-CR-00202 (D. P. R.), ECS Senior Litigation Counsel Howard Stewart and SAUSA Silvia Carreno

On April 19, 2007, Puerto Rico Aqueduct and Sewer Authority ("PRASA") was sentenced in accordance with the plea agreement reached in July of last year. PRASA pleaded guilty to a 15-count indictment charging CWA violations based upon a 25-year history of inadequately maintaining and operating the island's wastewater and water treatment systems. PRASA was specifically charged with nine counts of discharges in violation of its NPDES permit at the nine largest POTWs on the island; five counts of illegal discharges from the five water treatment plants that supply drinking water to the largest portion of the local population; and one count charging a direct discharge from the PRASA system to the Martin Pena Creek.

PRASA is a public corporation of the Commonwealth of Puerto Rico created to provide adequate water and sanitary sewer service. PRASA operates the island's entire sewage collection and treatment system of 68 POTWs, 508 pump stations, and related infrastructure. PRASA also operates the island's 133 water treatment plants ("WTP"), which provide drinking water for the local population. The POTWs each discharge treated water under the authority of an NPDES permit issued by EPA. The WTPs also discharge what is referred to as "backwash" under the terms of an NPDES permit. PRASA is the named permittee for each NPDES permit. The illegal discharges from PRASA's POTWs and WTPs are a direct result of the corporation's poor maintenance and operational practices.

The Authority was sentenced to serve a five-year term of probation, pay a \$9 million fine, pay an additional \$109 million to make repairs and upgrades at the nine POTWs named in the indictment, pay \$10 million for repairs and upgrades to the Martin Pena sewer system, and fund a study of the five water treatment plants identified in the indictment. The study, which must commence within six months, will be conducted by CH2M Hill, an independent environmental engineering firm, and it will be presented to the district court to determine the appropriate remedy to impose with respect to the water treatment facilities.

The court entered an additional order that required PRASA to post a notice in every plant in Spanish and in English, which informs employees that they are encouraged to report any illegal activity that they are aware of to EPA, DOJ, or directly to the court. If the court learns that any employee was prevented from coming forward, that person or entity that prevented the person from reporting will be held in contempt of this order. The court further stated that, given the 25 year history of violations, he would have sentenced the Authority to pay a \$50 million fine. He also stated that EPA was somewhat to blame for not being more aggressive in its enforcement efforts.

An additional comprehensive civil settlement was previously reached, as well, requiring PRASA to spend an estimated \$1.7 billion implementing capital improvement projects and other remedial measures at all of its 61 wastewater treatment plants and related collection systems over the next 15 years.

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



Final Clarifier

United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [REDACTED]

On April 16, 2007, Hisayoshi Kajima was sentenced to serve 21 months' incarceration followed by two years' supervised release. He also must pay a \$30,000 fine and \$7,656 in restitution to the United States Fish and Wildlife Foundation.

Kajima pleaded guilty in January of this year to a 17-count indictment charging him with Endangered Species Act and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation revealed that Kojima sold and smuggled numerous endangered butterfly species into the United States, including a pair of Queen Alexandra's Birdwings. This is the largest known butterfly in the world with a wing span of 12 inches. Documents submitted with this particular shipment declared that the package was a gift of "dry butterfly" worth \$30, when in fact it consisted of the two giant butterflies which had been sold for \$8,500.

On two other occasions Kojima offered for sale the endangered Giant Swallowtail butterfly, an endangered species from Jamaica. The Giant Swallowtail butterfly is the largest butterfly in the western hemisphere.

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

[Back to Top](#)

United States v. Willem Basson, No. 07-CR-00021 (D. Colo.), ECS Senior Trial Attorney Bob Anderson [REDACTED], **ECS Trial Attorney Jim Nelson** [REDACTED] **and AUSA Greg Holloway** [REDACTED]

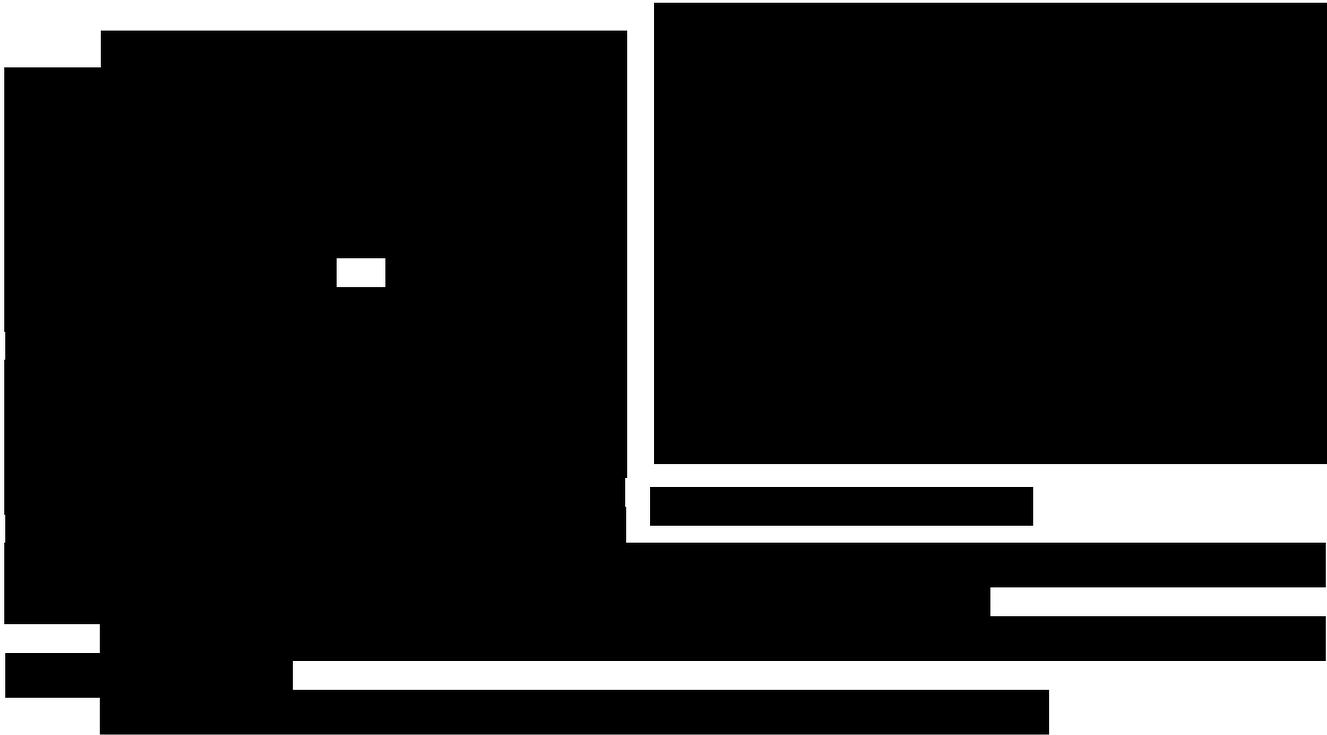
On April 13, 2007, Willem Basson, a South African big-game outfitter, pleaded guilty to a one-count indictment charging a felony Lacey Act false labeling violation. The charge stems from his involvement in a scheme to import, through Denver in 2004, the hide and skull of a leopard one of his clients had illegally killed in South Africa in 2002.

Basson was arrested in Pennsylvania in February of this year, along with Jan Swart, another South African outfitter, at a sports show where both were advertising their businesses. Basson was sentenced to pay a \$5,000 fine, serve 19 days' imprisonment (with credit for 19 days already served) followed by three years' unsupervised probation in South Africa. The probation term requires Basson to return to the United States, at his own expense, to cooperate in the government's prosecution, if summoned. The government recommended that he pay a \$10,000 fine and \$5,000 community service payment, but the court reduced the fine upon a finding that Basson was likely to lose his firearm rights and livelihood in South Africa due to the conviction in this case, and declined to impose the community service payment on philosophical grounds.

Swart remains scheduled for trial to begin on June 4, 2007. This case was investigated by the United States Fish and Wildlife Service.

[Back to Top](#)

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[Back to Top](#)

United States v. Greg Street Plating, Inc., No. 3:06-CR-00081 (D. Nev.), ECS Trial Attorney Lary Larson [REDACTED] and AUSA Ronald Rachow [REDACTED]

On April 6, 2007, Greg Street Plating, Inc. ("Greg Street"), an electroplating, metal plating and finishing company, pleaded guilty to a Clean Water Act violation for discharging highly acidic waste into the sewer system that leads to the Truckee Meadows Sewage treatment facility. The company, which is out of business, was sentenced to pay a \$30,000 fine.

Late Saturday night, April 12, 2003, or early on Sunday morning, April 13, 2003, an unknown Greg Street employee dumped this acid waste into the sewer system. The acid discharge reached the sewage treatment plant, setting off alarms. The operators of the treatment plant acted quickly and efficiently to isolate and neutralize the acid waste, thereby avoiding the possibility of substantial damage to the facility. The source of the discharge was quickly identified as Greg Street Plating by investigators from the Truckee Meadows Water Reclamation Facility and the Nevada Department of Environmental Protection.

As part of its metal plating process, Greg Street generated hundreds of gallons of rinse wastewater each week that exhibited a pH of less than 5.0 and was contaminated with heavy metals. The wastewater from the facility was supposed to be treated in a closed loop evaporation system and none of the wastewater from the plating process was permitted to be discharged into the sewer system.

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

[Back to Top](#)

United States v. Sinclair Tulsa Refining Company et al., No. 4:06- CR- 00214 (N.D. Okla.), ECS Senior Trial Attorney Mark Kotila [REDACTED] and AUSA Susan Morgan [REDACTED]

On April 4, 2007, Sinclair Tulsa Refining Company ("Sinclair"), a subsidiary of oil and gasoline producer Sinclair Oil, and company managers Harmon Connell and John Kapura all were sentenced for their manipulating the sampling and discharges of wastewater in violation of their NPDES permit over an extended period of time.

Sinclair will serve a two-year term of probation, pay a \$5 million fine, and make an additional \$500,000 community service payment to the River Park's Authority, which works to preserve the Arkansas River and adjacent lands. Connell and Kapura will both complete three-year terms of probation to include six months' home confinement. Connell will pay a \$160,000 fine and serve 100 hours' community service. Kapura must pay a \$80,000 fine and serve 50 hours' community service.

Between January 2000 and March 2004, the Sinclair refinery discharged an average of 1.1 million gallons of treated wastewater per day into the Arkansas River. On numerous occasions in 2002 and 2003, Sinclair directed employees to limit wastewater discharges with high concentrations of oil and grease to manipulate the result of required bio-testing. During monitoring periods, Sinclair, through its employees, reduced flow rates of wastewater discharges to the river and diverted more heavily contaminated wastewater to holding impoundments as one way of ensuring that they had passed the tests.

The company pleaded guilty in December 2006 to two felony CWA violations for deliberately manipulating wastewater discharges at its Tulsa Refinery. Connell and Kapura each pleaded guilty to one felony CWA count.

This case was jointly investigated by the Oklahoma Environmental Crimes Task Force which includes the United States Environmental Protection Agency Criminal Investigation Division and the Oklahoma Attorney General's Office.

[Back to Top](#)

United States v. Stephen Karas et al., 1:06-CR-00299 (D. Md.), ECS Trial Attorney Malinda Lawrence [REDACTED] ECS Senior Trial Attorney Richard Udell [REDACTED] and AUSA Tonya Kowitz [REDACTED]

On March 29, 2007, Stephen Karas pleaded guilty to a conspiracy to violate APPS, to make false statements, and to obstruct a Coast Guard proceeding, as well as a substantive false statement violation.

Karas and Mark Humphries, former chief engineers of the *M/V Tanabata*, a vessel managed by PGM, were charged in June 2006 with violations related to the illegal dumping of bilge waste. The criminal investigation began in September 2003 after the U.S. Coast Guard inspected the *M/V Tellus* and the *M/V Tanabata* in Baltimore. During the September inspection both engineers denied involvement in any illegal conduct. On the *Tanabata*, the pipe used to bypass the oily water separator ("OWS") allegedly was thrown overboard by the Humphries after the Coast Guard had inspected the vessel in Baltimore.

Karas admitted to using the bypass pipe and to concealing it during U.S. port calls. He also admitted to making false entries in the oil record book which stated that discharges were being made through the oily water separator, when it was bypassed entirely.

Humphries remains scheduled for trial to begin on October 1, 2007. This case was investigated by the United States Coast Guard and the United States Environmental Protection Agency Criminal Investigation Division.

[Back to Top](#)

United States v. Alexandre Alvarenga-Freire, No. 1:07-CR-20078 (S.D. Fla.), AUSA Tom Watts-FitzGerald [REDACTED].

On March 22, 2007, Alexandre Alvarenga-Freire pleaded guilty to an information charging him with a Lacey Act violation in connection with the illegal harvesting and sale in interstate and foreign commerce of *Ricordia florida*, an invertebrate corallimorph (coral).

Ricordia florida, are prized by aquarists for their varied coloration and the "natural" look they give to tank displays. Both federal and Florida law closely regulate the harvesting and sale of such marine life, requiring that a person who sells salt water marine-related wildlife such as this hold a state wholesale and retail license. Freire had none of the required permits or licenses.



Freire harvesting coral

In November 2006, two German nationals were intercepted at Miami International Airport attempting to export 500 specimens of *Ricordia florida* for sale through their business in Dusseldorf, Germany. They admitted to investigators that they had been involved with Freire in harvesting the marine life while aboard his vessel, the "PIPPIN", east of Cudjoe Key in Monroe County. Their description made clear the activity had occurred in the Florida Keys National Marine Sanctuary.

Investigators placed a Global Positioning System tracking device on the boat and monitored its location through January 25, 2007, at which point Freire was arrested at Cudjoe Key Marina returning from the Sanctuary with a load of 400 specimens of *Ricordia florida*. The tracking device placed the harvesting location within the Sanctuary, confirming the information from the German nationals. Further confirmation was acquired by having an Immigration and Customs Enforcement aircraft conduct an overflight of the vessel during the three-day harvesting trip prior to Freire's arrest.

The Sanctuary is a highly-valued 2,800 square nautical mile area that surrounds the entire archipelago of the Florida Keys and includes the productive waters of Florida Bay, the Gulf of Mexico, and the Atlantic Ocean. It is home to unique and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive coral reefs. The cost to remediate the damage caused by the defendant's removal of the coral from the seabed is estimated to exceed \$78,000.

At the sentencing, which is scheduled for June 1, 2007, Freire will forfeit his 1969, 34-foot fiberglass hulled Morgan sailing vessel.

This case was investigated by the United State Fish and Wildlife Service, the NOAA Office for Law Enforcement, the Florida Fish and Wildlife Conservation Commission, Immigration and Customs Enforcement, and NOAA's National Marine Sanctuary Program.

[Back to Top](#)

United States v. Everett Blatche, No. 5:06-CR-00474 (N.D.N.Y.), AUSA Craig Benedict [REDACTED]

On March 21, 2007, Everett Blatche pleaded guilty to one felony count of conspiracy to violate the Clean Water Act, Clean Air Act, and CERCLA. He is scheduled to be sentenced on August 21, 2007.

Blatche was a supervisor for AAPEX Environmental Services, Inc., an asbestos removal company. From June through November, 2006, the defendant supervised numerous individuals who removed approximately 220,000 square feet of spray-on fire proofing asbestos material from a large building. Blatche supervised the illegal removal activities at numerous locations throughout the building, discharged asbestos that ran down the outside of the structure and onto surrounding grounds, disposed of asbestos as if it were simply construction debris, and released asbestos into storm drains leading to the Erie Canal system.

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

[Back to Top](#)

United States v. Jerry Gaskill, No. 2:05-mj-00094, 2:05-CR-00035, and 2:06-CR-00003 (E. D. N.C.), AUSA Banu Rangarajan

On March 20, 2007 Jerry Gaskill was sentenced to serve a three-year term of probation and was ordered to pay a \$5,000 fine. Gaskill, the Director of the North Carolina Department of Transportation's ("NCDOT") Ferry Division, was convicted by a jury in June of last year of a false statement violation and acquitted on the remaining charge of conspiracy to violate the Clean Water Act. The court granted the defendant's Rule 29 motion, dismissing the CWA and Rivers and Harbor Act violations.

The charges stem from an illegal dredging project, the purpose of which was to establish ferry service from Currituck County on the North Carolina mainland to Corolla, which is located on the Outer Banks. The



Prop washed channel

The indictment filed in January of this year alleged that Gaskill participated in "prop washing," that is the unauthorized dredging of a channel by using the propellers of NCDOT vessels in the Corolla basin, ultimately altering the bottom of the Currituck Sound. The defendant knew that permits had not been issued, and he subsequently lied to the United States Army Corps of Engineers about these activities. Federal agencies had previously denied Currituck County authorities permission to dredge the channel due to potential impacts on fish and wildlife. Evidence at trial established that Gaskill signed a written false statement claiming that the creation of the channel was unintentional. Four other NCDOT employees, Billy Moore, Herbert O'Neal, Douglas Bateman, and Stephen Smith, pleaded guilty last December. Moore also was sentenced March 20th to serve a three-year term of probation and pay a \$5,000 fine. O'Neal, Bateman and Smith have not yet been sentenced.

The unauthorized dredging created a 730-foot long by 30-foot wide by five-foot deep channel that resulted in the destruction of an essential fish habitat that supports commercially important fish and wildlife species found in the area.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the United States Coast Guard Investigative Service, with investigative assistance from the United States Army Corps of Engineers.

[Back to Top](#)

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Elizabeth R. Janes
Program Specialist
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