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# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

October 2014

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### EDITOR'S NOTES:

If you have significant updates and/or interesting photographs from a case, please email them to [REDACTED]. If you have information concerning state or local cases, please send it directly to the [Regional Environmental Enforcement Association's webpage](#).

REMINDER: We are now producing a *separate* public version of the Environmental Crimes Section Monthly Bulletin. When submitting details about your case developments please bear in mind that the information you provide could be disclosed to the public. As such, it would be very helpful if you would include a press release whenever possible to help ensure that the facts we are using are publicly available. If a press release was not issued, then please only provide facts that are appropriate to disclose to the public.

For those who have access to the United States Department of Justice intranet website, please visit the [Environmental Crimes webpage](#). It has a fresh new look, and we are redoubling our efforts to provide you with current, relevant, and helpful content. You will notice that we have a streamlined home page, which now includes updated press releases and photos from the Bulletin. If you have any ideas or materials to submit, please send them to [REDACTED]. We are especially looking for more recent briefs and memoranda from your cases, to ensure we have a brief bank that is up-to-date and useful.

## ~ ANNOUNCEMENT ~

On September 16, 2013, at the 41<sup>st</sup> meeting of the Environmental Crimes Policy Committee Meeting, **Dr. Joe Lowry**, Chief Scientist at U.S. EPA's National Enforcement Investigations Center, was the second recipient of the Raymond W. Mushal Award for Outstanding Contribution to Federal Environmental Criminal Law Enforcement.

The award was established to honor our friend Ray Mushal, a former Senior Counsel with the Environmental Crimes Section who served a distinguished 42-year tenure with the Federal Government, and nearly 30 years with the Department of Justice, playing a vital role in the development of the nationwide environmental crimes program. Herb Johnson received the first award last year.

Through Dr. Lowry's 35 years of service, he has contributed to the success of hundreds of enforcement actions, improved the enforceability of RCRA regulations, and established a cadre of forensic scientists skilled in representing EPA's enforcement interests. Starting as a bench chemist at NEIC in 1978, he ascended several management levels as a Section Chief, Chemistry Branch Chief, Senior Science Advisor, and finally, NEIC Chief Scientist and National Technical Expert.

Combining his comprehensive scientific knowledge with a thorough understanding of environmental regulations, Dr. Lowry has had a positive impact on all of the criminal investigations supported by NEIC, assisting both technical and legal staff in understanding the complexities of environmental forensic science. He has been able to express scientific principles and complexities to attorneys, judges and jurors in a way that allowed the environmental violation to be understandable to non-scientists. He has the ability to conceptualize what is needed to tell our story, and in many cases has developed scientific tests to re-create the original conditions underlying the violations. Many of Dr. Lowry's efforts have been on non-routine cases; he is the scientific resource called upon to evaluate criminal matters with novel fact patterns, when defendants have raised complex defenses, and when the government is applying an unusual approach to an environmental crime.

Dr. Lowry has been directly involved in over 35 federal criminal cases, providing consultations, expert reports, investigative reports, affidavits, and testifying on numerous occasions at grand jury, trial or hearings. His work also includes similar support for state-level environmental crimes prosecutions. In addition to support for individual criminal cases, Dr. Lowry has consistently worked with DOJ attorneys to provide consultation and advice concerning technical matters. Government attorneys rely on him to explain technical intricacies and ensure they understand the underlying science sufficiently to effectively refute defendants arguments. His expertise was especially important in the early years of environmental crimes when precedents were first being established and standard procedures were being developed. He also mentored many other NEIC scientists called upon to testify in other cases, ensuring that they were prepared to defend their work and respond to opposing counsel questioning.

**Glossary for October 2014 Edition of the Bulletin:**

The following Table of Cases is organized by District, the name of the case, the type of case, and the statutes. The Districts are spelled out within the chart, but they will be abbreviated within the summary of the case.

For example: District of Alaska will be noted as D. of Ak. The case name will be noted as United States v. John Doe.

The statutes are cited within the body of each case summary. The statutes will be abbreviated as follows:

CAA = Clean Air Act

CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act

CWA = Clean Water Act

ESA = Endangered Species Act

FIFRA = Federal Insecticide, Fungicide and Rodenticide Act

HMTA = Hazardous Materials Transportation Act

MBTA = Migratory Bird Treaty Act

RCRA = Resource Conservation and Recovery Act

Other abbreviations:

ECS = Environmental Crimes Section

EPA = Environmental Protection Agency

NOAA = National Oceanic and Atmospheric Administration

OSHA = Occupational Safety and Health Administration

POTW = Publically Owned Treatment Works

USC = United States Code

**AT A GLANCE:**

- [United States v. Mark Pullyblank, et al.](#), No.13-CR-00198 (N.D.N.Y.), AUSA Craig Benedict.

<b>DISTRICT</b>	<b>CASES</b>	<b>CASE TYPE/ STATUTES</b>
Central District of California	<a href="#">United States v. Steven R. Aguirre et al.</a>	<i>Illegal Campfire/Fire and timber violations</i>
Eastern District of California	<a href="#">United States v. Marcelina Botello Charles et al.</a>	<i>Marijuana Grower/ FIFRA, Drugs, Conspiracy</i>
District of Columbia	<a href="#">United States v. Patrick Brightwell et al.</a>	<i>Wastewater Discharges/CWA, False Claims</i>
Southern District of Florida	<a href="#">United States v. James O. McGriff</a>	<i>Sea Turtle Eggs/ESA, Lacey Act</i>
Southern District of Georgia	<a href="#">United States v. Chen Zong Geng</a>	<i>Repackaging Pesticides/ FIFRA, False Statement</i>
Northern District of Indiana	<a href="#">United States v. Calumite Company LLC</a>	<i>Glass Manufacturer/CAA</i>
District of Kansas	<a href="#">United States v. Harcross Chemicals Inc.</a>	<i>Chemical Manufacturer/RCRA</i>
Eastern District of Louisiana	<a href="#">United States v. XPLOR Energy SPV-1, Inc.</a>	<i>Offshore Oil Platform/CWA</i>
Middle District of Louisiana	<a href="#">United States v. Roger Dies</a>	<i>Truck Washing Company/CWA</i>
Western District of Louisiana	<a href="#">United States v. Robbie Mouton</a>	<i>Oil Production Company/CWA</i>
District of Maryland	<a href="#">United States v. Daniel Murphy et al.</a>	<i>Striped Bass/ Conspiracy</i>

<b>DISTRICT</b>	<b>CASES</b>	<b>CASE TYPE/ STATUTES</b>
District of New Mexico	<a href="#">United States v. Dale N. Smith</a>	<i>Eagle Feather Sales/MBTA</i>
District of New Jersey	<a href="#">United States v. Robert Losasso</a> <a href="#">United States v. D.C. Air &amp; Seafood Inc., et al.</a>	<i>Hawk Killings/MBTA</i> <i>Scallop Harvesting/ Lacey Act, Obstruction, Conspiracy</i>
Western District of New York	<a href="#">United States v. Lycoming Construction Services, LLC et al.</a> <a href="#">United States v. Rai Johnson et al.</a>	<i>Demolition/CAA, CWA, OSHA</i> <i>Demolition/CAA, Accessory-after-the-Fact, Endangerment</i>
Northern District of New York	<a href="#">United States v. Mark Pullyblank et al.</a> <a href="#">United States v. John Mills et al.</a>	<i>Concrete Discharges/CWA</i> <i>Asbestos Removal/CERCLA, Conspiracy</i>
Eastern District of North Carolina	<a href="#">United States v. Clinton J. Matthews et al.</a>	<i>Vehicle Emissions Tests/CAA, Conspiracy</i>
Western District of North Carolina	<a href="#">United States v. Billy Joe Hurley et al.</a>	<i>Ginseng/Ginseng Harvest</i>
District of North Dakota	<a href="#">United States v. Nathan R. Garber</a>	<i>Fracking/SDWA, Conspiracy, False Statements, Falsification of Records</i>
Northern District of Ohio	<a href="#">United States v. Kelly Plating Company et al.</a>	<i>Metal Plater/CWA, Conspiracy</i>
Eastern District of Pennsylvania	<a href="#">United States v. Action Manufacturing Company</a>	<i>Munitions Manufacturer/RCRA, HMTA</i>
District of South Carolina	<a href="#">United States v. Scott W. Farmer</a>	<i>Demolition/ CAA Knowing Endangerment</i>

## Additional Quick Links:

- ◇ [Significant Environmental Decisions](#) pp. 5 - 6
- ◇ [Informations/Indictments](#) pp. 6 - 7
- ◇ [Plea Agreements](#) pp. 8 - 12
- ◇ [Sentencings](#) pp. 12 - 19

## Significant Environmental Decisions

### District Court

#### **United States v. Mark Pullyblank, et al., No.13-CR-00198 (N.D.N.Y.), AUSA Craig Benedict.**

On *August 19, 2014*, the district court issued a memorandum and order that rejected defense motions to dismiss a Clean Water Act indictment in this case. The defendants are charged in a nine-count indictment with unpermitted discharges of high pH concrete residue and associated industrial wastewater to the Susquehanna River and the Binghamton-Johnson City POTW over a two-year period.

The defendants asserted that certain counts of the indictment did not allege violations of federal law. First, they claimed that the Binghamton-Johnson POTW had a “wet process discharge” regulated solely under local law and outside of the scope of federal CWA regulation. The court disagreed, finding that “wet process discharge” is functionally similar to “process wastewater,” which is regulated by EPA.

Second, defendants argued that under a local classification manual, companies engaged in construction and demolition work were excluded from regulation. The court found that even if the manual exempted defendants from local regulation, their discharges to the river and POTW were within the scope of federal regulation.

Third, the court rejected the defendants’ claim that there was no statutory basis for the permit requirement. The court found that 33 U.S.C. § 1342(a)(3) vested authority in EPA to approve the local pretreatment program and that the defendants violated 33 U.S.C. § 1311.

Finally, the defendants claimed that their discharges into storm drains did not constitute discharges into the waters of New York and that they therefore did not need a permit under New York law. The court rejected this claim too, noting that New York law regulates sewers at the point where they discharge into waters of the state. Because the sewers eventually drained into the Susquehanna River, the court found that the indictment alleged conduct violating the CWA.

Defendants also moved to strike as surplusage a reference to the amount of gross pecuniary gain. The court disagreed, finding that the seven-figure profits were relevant to any potential fine imposed pursuant to the Supreme Court’s recent decision in *Alleyne v. United States*, 133 S. Ct. 2151, 2155 (2013) (any fact that increases the mandatory minimum punishment for a crime -- other than a prior conviction -- “is an ‘element’ that must be submitted to the jury and found beyond a reasonable doubt”).

On September 4, 2014, the district court granted an *in limine* motion submitted by the government to bar from trial any evidence related to the defendants' claim of entrapment by estoppel. The defendants sought to introduce evidence at trial demonstrating that they had received permission from the Binghamton City Engineer to discharge into the river without a CWA permit and that their discharges had been observed on a daily basis by consultants for the N.Y. State Office of General Services (OGS), the governmental entity that hired the defendants. The government argued that neither actual nor apparent authority resided in either the City Engineer or the OGS consultants. Finding that the defendants had failed to carry their burden of proof, the district court declined to permit the defendants to raise the defense. [See also *United States v. Pullyblank*, below, in the Plea Section, for more details.]

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## Informations/Indictments

### **United States v. XPLOR Energy SPV-1, Inc., No. 14-CR-00202 (E.D. La.), AUSA Matthew Coman.**

On September 15, 2014, XPLOR Energy SPV-1, Inc. (XPLOR) was charged in a one-count information with knowingly violating the Clean Water Act (33 U.S.C. §§ 1311(a), 1319(c)(2)(A)) in connection with their oil and gas production activities in the Breton Sound Area of the Gulf of Mexico.

According to the information, from approximately October 2009 through November 2011, company employees knowingly discharged oily wastewater from an offshore oil and gas platform without a permit. Trial is scheduled for December 1, 2014.

The case was investigated by the U.S. EPA Criminal Investigation Division and the Louisiana Department of Environmental Quality.

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### **United States v. James O. McGriff, No. 1:14-CR-14051 (S.D. Fla.), AUSA Lauren Jorgensen.**

On September 9, 2014, an indictment was filed charging James O. McGriff with Lacey Act and Endangered Species Act violations (16 U.S.C. §§ 1538(a)(1)(G), 1540 (b)(1), 3372(a)(1), 3373(d)(1)(B)) for allegedly removing sea turtle eggs from a beach on Hutchinson Island in August 2014.

McGriff has a prior conviction for a similar offense from 2002 and is being detained pre-trial.

This case was investigated by the U.S. Fish and Wildlife Service.

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## Plea Agreements

**United States v. Nathan R. Garber, No. 1:14-CR-00114 (D.N.D.) ECS Senior Trial Attorney Christopher J. Costantini, AUSA Cameron W. Hayden, and ECS Paralegal Casey Layman.**



**Dump station in front of saltwater tanks**

On September 26, 2014, Nathan R. Garber pleaded guilty to multiple counts arising from the operation of a saltwater disposal well located near Dickinson, North Dakota. Specifically, he pleaded guilty to one count of conspiracy to violate the Safe Drinking Water Act and to defraud the United States. He also pleaded guilty to five SDWA counts, two counts of making false statements, two counts of falsification of records, and one count of the concealment or cover up of a tangible object (18 U.S.C. §§ 371, 1001, 1519; 42 U.S.C. § 300(h)-(2)(b)(2)).

“Saltwater” is a generic term used for a variety of waste liquids from oil wells, including waste fracking water as well as brine-laden formation water. The well began operation without a required test being conducted that was supposed to be witnessed by State officials. Garber continued to inject saltwater after the well failed a pressure test in February 2012, posing an increased risk of contaminating ground water. He also moved a safety device called a “packer” out of its proper location, in violation of the well’s permit.

Throughout the investigation, the defendant denied having knowledge and gave regulators misleading information.

Upon discovering the unauthorized injections, state officials ordered the well to be shut down in March 2012.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from the N.D. Industrial Commission.

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**United States v. Calumite Company LLC, No. 2:14-CR-00086 (N.D. Ind.), ECS Senior Counsel Jim Morgulec, AUSA Toi Houston, and RCEC Dave Mucha.**

On September 18, 2014, Calumite Company LLC (Calumite) entered a plea of guilty to two Clean Air Act false statement violations (42 U.S.C. § 7413(c)(2)(A)). The company agreed to pay a \$325,000 fine, complete a two-year term of probation, and implement an environmental compliance plan that includes an annual environmental training program. Sentencing will be scheduled for a later date.

Calumite is a manufacturer of a powdery additive used in the production of glass. The company collects slag (a waste product of the steel industry), dries it in a hot gas oven, crushes it into a fine powder, and ships it off-site to glass manufacturers, who then use it as an additive to

lower the temperature at which sand can be melted into glass. Calumite's Portage, Indiana, facility was subject to a CAA Title V Operating Permit that required, among other things that the company operate, maintain, and monitor several baghouses on site that are used to control and minimize emissions of a fine particulate. One of the baghouses, known as the loadout baghouse, was used to collect emissions of particulate that occurred during the loading of product onto tractor trailers and rail cars for shipment to customers.

A differential pressure gauge (DP gauge) attached to each baghouse continuously monitored and measured the efficiency and effectiveness of the baghouses and helped to determine whether they were operating properly. Calumite's permit required that DP gauges on the baghouses be read daily, while the baghouses were operating, and that the results be recorded on daily maintenance log sheets. The company also was required to submit quarterly reports to the Indiana Department of Environmental Management (IDEM) that certified compliance with the permit and that noted any "deviations," or violations of the permit.

Between December 2008 and late July 2009, the company did not maintain the loadout baghouse in operating condition and that DP gauge was broken. Nevertheless, employees continued to load tractor trailers and rail cars with product for shipment off-site. Employees knowingly continued to routinely fill out daily logs that falsely reflected DP gauge monitoring readings that were within the range allowed by the permit. Finally, employees knowingly caused false information to be submitted to IDEM in quarterly reports by failing to report that the DP gauge on the loadout baghouse was broken, so that any readings from the gauge during each quarter were false.

The case was investigated by the U.S. EPA Criminal Investigation Division.

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**Calumite facility**

**United States v. Mark Pullyblank et al., No. 3:13-CR-00198 (N.D.N.Y.), AUSA Craig Benedict.****Concrete residue in storm sewer**

On September 15, 2014 Crane-Hogan Structural Systems, Inc. (Crane-Hogan) and company Project Manager, Mark Pullyblank, pleaded guilty to felony violations of the Clean Water Act (33 U.S.C. § 1311, 1319(c)(2)(A), 1342(a)(3)). The charges stem from the illegal discharge of voluminous amounts of concrete slurry without a permit into the Susquehanna River in Binghamton, N.Y. over the course of two years. Project Manager William Clements pleaded guilty to a CWA misdemeanor violation (33 U.S.C. § 1319(c)(1)) related to shorter-term discharges made from the Wilson Hospital parking garage into the Binghamton-Johnson City POTW, without an

industrial wastewater discharge permit.

Crane-Hogan is a company that engages in hydro-demolition to remove concrete prior to resurfacing structures, including parking garages, dams, bridges, and highways. The process can generate tens of thousands of gallons of wastewater slurry each day. The untreated wastewater slurry in this case contained significant total suspended solids and had a pH that in some instances reached 12.5 or higher. The company's activities resulted in the cementing over of a portion of the Susquehanna River bank and bottom. The discharges occurred immediately adjacent to a protected walleye breeding ground.

The Susquehanna River is the longest river on the East Coast. It originates in New York and travels through Pennsylvania and Maryland prior to discharging into the Chesapeake Bay and Atlantic Ocean.

Sentencing is scheduled for January 23, 2015.

This case was investigated by the N.Y. State Department of Environmental Conservation Bureau of Environmental Crimes Investigations and the U.S. EPA Criminal Investigation Division, with assistance from the N.Y. State Office of General Services, the Binghamton City Engineer, and the Binghamton-Johnson City Publicly Owned Treatment Works.

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**United States v. Robert Losasso, No. 2:13-mj-08280 (D.N. J.), AUSA Kathleen O'Leary.**

On September 9, 2014, Robert Losasso admitted to killing, or attempting to kill, four different species of hawks in violation of the Migratory Bird Treaty Act. He pleaded guilty to six MBTA counts (16 U.S.C. §§ 703, 707(a)) for shooting the birds from his home.

The defendant admitted that he fatally shot or attempted to shoot red-tailed, sharp-shinned, red-shouldered and Cooper's hawks on several occasions. These species are among the tens of thousands of birds of prey that migrate every year from Canada along the Atlantic Flyway through New Jersey. In his plea agreement, Losasso agreed to pay more than \$4,000 in restitution to the wildlife rehabilitation centers that incurred losses treating or euthanizing hawks injured as a result of his conduct.

Sentencing is scheduled for December 15, 2014. This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement, with assistance from the New Jersey Division of Fish and Wildlife Bureau of Law Enforcement, and the Somers Point Police Department.

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**United States v. Daniel Murphy et al., No. 1:13-CR-00469 (D. Md.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Shennie Patel, AUSA Michael Cunningham, and ECS Paralegal Casey Layman.**

On September 5, 2014, commercial fisherman Daniel Murphy pleaded guilty to an attempted Lacey Act trafficking violation for his role in the illegal harvest of Striped Bass (16 U.S.C. §§ 3372(a)(4) and 3373(d)(1)(B)).

Murphy and other co-conspirators engaged in a multi-year scheme to illegally poach hundreds of thousands of pounds of Striped Bass from the Chesapeake Bay in violation of Maryland regulations relating to harvest method, amounts, tagging, and reporting. In an effort to conceal their crimes, they falsified paperwork related to their harvests and submitted those falsified documents to the State of Maryland. The State in turn submitted this paperwork to numerous federal and interstate agencies responsible for setting harvest levels along the eastern seaboard.

Co-defendants Michael D. Hayden, Kent Sadler, and William J. Lednum previously pleaded guilty to similar charges.

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

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**United States v. Kelly Plating Company et al., No. 1:14-CR-00225 (N.D. Ohio), SAUSA Brad Beeson.**

On September 3, 2014, Kelly Plating Company pleaded guilty to Clean Water Act and conspiracy violations (33 U.S.C. § 1319(c)(2)(A); 18 U.S.C. § 371) stemming from illegal discharges into the sewer system operated by the Northeast Ohio Regional Sewer District (NEORS).D).

Kelly Plating is a metal plating operation located in Cleveland, Ohio. Employee Thomas White was responsible for operating equipment that reduced the amount of pollutants discharged to the sewer system to permitted levels. Beginning in late January 2012 and continuing through May 2012, White allegedly altered the wastewater processing at the facility, bypassing pollution control equipment and discharging partially treated wastewater and sludge directly into the sewer system over the weekends. These discharges allegedly contained high concentrations of chrome and zinc.

White remains scheduled for trial to begin on October 14, 2014. The company is scheduled to be sentenced on December 11, 2014.

This case was investigated by the U.S. EPA Criminal Investigation Division, the NEORS, the Ohio Bureau of Criminal Identification and Investigation, and the Ohio Environmental Protection Agency, all members of the Northeast Ohio Environmental Crimes Task Force.

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**United States v. Roger Dies, No. 3:13-CR-00161 (M.D. La.), AUSAs Corey Amundson and Alan Stevens.**

On September 2, 2014, Roger Dies pleaded guilty to obstruction and Clean Water Act violations (33 U.S.C. §1319(c)(2)(A), 18 U.S.C. § 1503).

Dies owned and operated Baton Rouge Tank Wash, a company in the business of washing trucks and tanks that hauled chemical and food-grade loads. From approximately March 2009 through September 2012, the defendant began discharging third-party wastewater to the local POTW, in violation of his permit. He also failed to submit monthly and daily logs reflecting all wastewater discharged from the facility. When questioned about the nature of his business, he routinely misled and/or made false

representations to conceal the fact that the company was accepting substantial quantities of third-party wastewater.

During the grand jury investigation in late 2012, Dies provided false documents to the grand jury in an effort to disguise his company's third-party wastewater business. He later gave false testimony to the grand jury stating that he had produced all documents that were responsive to the subpoenas, when, in fact, he knew several had not been produced.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Louisiana Department of Environmental Quality.

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## Sentencings

### **United States v. Harcros Chemicals Inc., No. 14-CR-20070 (D. Kans.), ECS Senior Trial Attorney Jennifer Whitfield and AUSA Tris Hunt.**

On September 25, 2014, Harcros Chemicals pleaded guilty to an information charging it with a RCRA storage violation (42 U.S.C. § 6928(d)(2)(A)). The company was sentenced to pay a \$1.5 million criminal fine and will complete a two-year term of probation. As a condition of probation Harcros will comply with the terms of a civil compliance agreement.

Harcros Chemicals Inc., manufactures and sells surfactants, emulsifiers, custom organics, and other chemical-based products. It also operated approximately eight laboratories for the development and testing of new chemicals. In May 2006, Harcros employees created an inventory of more than 200 chemicals that were no longer in use with the intent to dispose of about half of those materials. A December 2008 inspection by local regulators revealed that most of the substances listed were still on site, some of which could be dated back to the 1960s.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Kansas Department of Health and Environment.

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**Corroded container**

**United States v. Patrick Brightwell et al., Nos. 1:13-CR-00046, 298, 00315 (D.D.C.), ECS Senior Trial Attorney Lana Pettus, AUSA John Hooks, and ECS Paralegal Ashleigh Nye.**



**Vacuum truck**

On September 23, 2014, Patrick Brightwell was sentenced to serve ten months' incarceration, followed by 36 months' supervised release. He was further ordered to pay \$270,667 in restitution. Brightwell previously pleaded guilty to a Clean Water Act violation and one count of making a false claim against the United States (for billing the United States for work not properly completed) (33 U.S.C. § 1319; 18 U.S.C. § 287).

The defendant was the Phoenix Industries (Phoenix) representative overseeing the performance of the company's contract with the National Park Service to clean out storm water sewer system inlets, catch basins, and oil-water separators on NPS property, including the National Mall, in Washington, D.C. After Phoenix employees and

subcontractors cleaned the storm water sewer components of sludge, debris, and wastewater using a vacuum truck the waste material was supposed to be transported to a landfill in Maryland for disposal. Instead, Brightwell directed them to empty the truck at a storm drain in a parking lot on NPS property, within a short distance of the Potomac River. This conduct occurred from approximately the spring of 2009 to June 2011. He instructed them to conceal their activity from NPS officials and law enforcement and, when two of the truck operators were caught in the act of discharging waste at the parking lot in June 2011, Brightwell told them to lie to law enforcement.

Subcontractor B&P Environmental LLC, and B&P employee Earl Anderson previously pleaded guilty to CWA violations. Both are scheduled for sentencing on November 6, 2014.

This case was investigated by the U.S. EPA Criminal Investigation Division and the U.S. Park Service.

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**United States v. Steven R. Aguirre et al., No. 2:14-CR-00055 (C.D. Calif.), AUSAs Amanda Bettinelli and Joe Johns.**

On September 16, 2014, Steven R. Aguirre was sentenced to serve five months' incarceration, followed by three years' supervised release. A fine was not assessed. Aguirre was previously convicted on charges stemming from an illegal campfire that caused a massive fire earlier this year (18 U.S.C. § 1855; 16 U.S.C. 551). Co-defendants Jonathan C. Jarrell and Clifford Eugene Henry, Jr., were convicted on similar charges of unlawfully setting timber afire and a misdemeanor fire related offense.

The fire started on the morning of January 16, 2014. By that evening, it had consumed more than 1,700 acres of federal, state, local, and private lands. The fire destroyed five residences, damaged 17 additional structures, and resulted in injuries to one



**Houses burned by fire**

civilian and two firefighters. The defendants were detained by local police after they were seen escaping the fire. All three eventually admitted to their involvement in starting the campfire that got out of their control. The campfire was determined to have been started on federal lands within the Angeles National Forest.

This case was investigated by the U.S. Forest Service, the Glendora Police Department, the Los Angeles County Fire Department's Arson/Fire Investigation Unit, and CAL FIRE.

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**United States v. Marcelina Botello Charles et al., No. 1:12-CR-00221(E.D. Calif.), AUSA Karen Escobar.**

On September 15, 2014, Marcelina Botello Charles, aka Marcelina Botello Arias (Botello), was sentenced to serve 50 months' incarceration, followed by five years' supervised release, for her involvement in a marijuana cultivation operation that adversely impacted public lands. She also was ordered to pay \$4,294 in restitution to the U.S. Forest Service to cover the cost of cleaning up the grow site.

Botello previously pleaded guilty to conspiracy, FIFRA, and drug charges (7 U.S.C. §§ 136j (a)(1)(A), 136l (b)(2); 18 U.S.C. § 1361(b)(2); 21 U.S.C. §§ 841, 846). Investigation revealed a great deal of damage to park land in the Sequoia National Forest. Native oak trees and other vegetation were killed or cut down to make room for almost 10,000 marijuana plants. The soil was tilled, and fertilizers, pesticides, and rodenticides were spread throughout the site. Cans of a common Mexican rat poison, Fosfuro de Zinc and "Ratone: fosfuro de zinc," and a Mexican insecticide, "QúFuran," were found at both the cultivation site and the residence where Charles temporarily resided after she was found delivering supplies to the marijuana cultivation operation. In addition to the pesticides, two handguns and numerous items relating to marijuana cultivation were seized.

The pesticide contains zinc phosphide, which can persist in soil for approximately two weeks, releasing phosphine gas as it breaks down.

This case was investigated by the U.S. Forest Service, the DEA, U.S. Immigration and Customs Enforcement Homeland Security Investigations, the U.S. EPA Criminal Investigation Division, and the Kern County Sheriff's Department.

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**United States v. Chen Zong Geng, No. 1:14-CR-00047 (S.D. Ga.), AUSA C. Troy Clark.**

On September 11, 2014, Chen Zong Geng was sentenced to serve five months' incarceration, and five months' home confinement, followed by three years' supervised release, for illegally repackaging pesticides to distribute to restaurants across the country and for making a false statement to federal agents (18 U.S.C. § 1001; 7 U.S.C. §§ 136j(a)(1)(A), 136l(b)(1)(A)). He also will pay a \$3,000 fine and is subject to a night-time curfew during the term of supervised release.

In 2012, investigators were notified that a repackaged pesticide product distributed by Chen and his company, Chen and Friends Pest Solutions (later renamed C&Z Pest Solutions) had been discovered inside a Missouri restaurant. He subsequently entered into a consent order with EPA in December, 2012, agreeing to pay a \$9,433 fine and to cease repackaging any pesticides.

In late 2013, however, investigators suspected that Chen had continued to repackage and distribute insecticide, some of which was recovered in restaurants in Indiana and Missouri. A warning had been included on the labelling of one package to not show the pesticide to the "health department." Investigators proceeded to conduct a covert conversation with the defendant posing as prospective customers. Chen told them that he was allowed to sell pesticide. When later questioned by agents (who

were identified as such) Chen stated that he was still complying with the consent order and was not repackaging pesticides.

This case was investigated by the U.S. EPA Criminal Investigation Division.

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**United States v. John Mills et al., No. 8:12-CR-00125 (N.D.N.Y.), ECS Senior Trial Attorney Lana Pettus, ECS Trial Attorney Gary Donner, and ECS Paralegal Puja Moozhikkattu.**



**Asbestos pipe wrapping**

wrap”) in a timely manner to the National Response Center. Between November 2011 and February 2012, the defendants illegally removed and disposed of more than 260 linear feet of pipe wrap containing asbestos from the basement of Mills’ buildings. They directed an employee to remove this material without warning him or giving him adequate personal protective equipment. They transported and caused others to transport the material (in open bags in the uncovered bed of a truck) where it was ultimately deposited in a U-Haul-style box truck owned by Mills as well as a shed maintained by the Malone Department of Public Works in an effort to conceal the material from authorities.

This case was investigated by the U.S. EPA Criminal Investigation Division and the N.Y. State Department of Labor Asbestos Control Bureau, with assistance from the N.Y. State Department of Environmental Conservation, the Malone Police Department, and the Malone Department of Public Works.

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**United States v. D.C. Air & Seafood Inc., et al., Nos. 2:12-CR-00338 and 339; 2:13-CR-00783, 00786 (D.N.J.), AUSA Kathleen O’Leary.**

On September 4, 2014, seafood wholesaler D.C. Air & Seafood, Inc. and its owner, Christopher Byers, were sentenced. Byers will serve 30 months’ incarceration followed by three years’ supervised release. The company will complete a five-year term of probation, implement an environmental compliance plan, and jointly and severally responsible with Byers for \$520,371 in restitution to NOAA.

Byers and his company previously pleaded guilty to conspiring to falsify records and to obstruct justice in an effort to conceal the overfishing of close to 80,000 pounds of Atlantic Sea Scallops harvested off the coast of New Jersey and Cape Cod (18 U.S.C. §§ 371, 1519; 16 U.S.C. §§ 3372(d), 3373(d)(3)(a)). They admitted to conspiring with six fishing boat operators (George Bamford, Robert E. Hersey, Jr., Daniel Mahoney, Michael McKenna, James Leighton, and Michael Johnson) to prepare false reports that concealed the overharvesting that took place between March 2007 and March 2008.

Byers and the company purchased the scallops harvested by federally-permitted vessels in a large sea scallop fishing ground managed by NOAA off the mid-Atlantic coast that was open to limited scallop fishing by permitted vessels for two-week periods. During those times, individual vessels are restricted to harvesting no more than 400 pounds of scallops per vessel per trip.

During two-week periods in 2007 and 2008, vessels operated by the four fishermen harvested thousands of pounds of scallops over the legal limit, which were subsequently purchased by D.C. Air & Seafood. The scallops were off-loaded in Atlantic City, New Jersey, from the vessels to trucks used by Byers and his company. The defendants then concealed the overharvesting by preparing reports that falsely represented the amount of scallops harvested. Bamford was sentenced on September 23, 2014, to complete a four-year term of probation with a special condition of five months' home confinement. A fine was not assessed. James Leighton is scheduled to be sentenced on October 7, 2014. The remaining defendants are awaiting sentencing dates.

This case was investigated by NOAA.

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**United States v. Lycoming Construction Services, LLC et al., Nos. 1:14-CR-00040, 000087 (W.D.N.Y.), AUSA Aaron Mango.**

On September 4, 2014, Lycoming Construction Services, LLC, and company owner Leo M. Williams were sentenced after previously pleading guilty to violations stemming from an illegal demolition project. Williams will pay a \$25,000 fine and complete a one-year term of probation. The company will pay a \$100,000 fine, complete a two-year term of probation, and implement an environmental compliance plan. Williams was further ordered to pay \$5,000 to the Occupational Safety and Health Administration to resolve OSHA violations stemming from this case.

From January 2012 to November 2013, the defendants were involved in the demolition of the Dahlstrom industrial complex. This project involved the destruction of a cluster of condemned buildings on either side of the Chadakoin River, a water of the United States. During the demolition, a significant amount of water contaminated with dust and debris flowed offsite directly into the river.

Prior to commencing the project, asbestos was identified in some of the buildings. In February 2012, employees working on behalf of Lycoming entered one of the condemned buildings and removed regulated asbestos-containing material without adequately wetting it. The company pleaded guilty to a Clean Air Act violation (42 U.S.C. §§ 7412, 7413(c)(1)) and Williams pleaded guilty to a Clean Water Act violation (33 U.S.C. §§ 1311, 1319(c)(1)(A)).

This case was investigated by the U.S. EPA Criminal Investigation Division, the U.S. Coast Guard Investigative Service, the N.Y. State Department of Environmental Conservation Police, with assistance provided by the N.Y. State Department of Labor Asbestos Control Bureau and OSHA.

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**United States v. Dale N. Smith, No. 1:14-CR-01548 (D.N.M.), AUSA Paul Spiers.**

On September 4, 2014, Dale N. Smith was sentenced to time served after pleading guilty to a violation of the Migratory Bird Treaty Act (16 U.S.C. § 703, 707(b)(2)). Smith, who has been in custody since April 2014, will remain in federal custody until December 2014, for violating his parole by committing the crime of conviction in this case.

Smith, a member of the Lakota/Sioux Tribe of the Hunkpapa Band of Lakota, was charged after investigators were informed that he had posted advertisements for numerous works of Indian art on Craigslist that appeared to be displaying federally-protected feathers. In March 2014, after being

contacted by undercover agents, the defendant offered several items for sale, including a feather fan and a medicine wheel containing Bald Eagle feathers for \$1,000, and a headdress for \$2,000.

This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement, with assistance from the New Mexico Game and Fish Department, Homeland Security Investigations, the U.S. Marshals Service, and the Santa Fe County Sheriff's Office.

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**United States v. Clinton J. Matthews et al., Nos. 5:12-CR-00083, 193, 263 (E.D.N.C.), AUSA Banu Rangarajan.**

On September 2, 2014, Clinton J. Matthews and Milton Smith were sentenced after previously pleading guilty to conspiring to violate the Clean Air Act, and to a CAA false statement violation (18 U.S.C. § 371; 42 U.S.C. § 7413(c)(2)(A))stemming from their involvement in a scheme to falsify vehicle emissions tests. Both will complete a three-year term of probation. Matthews was further ordered to pay a \$1,300 fine.

The defendants worked as licensed North Carolina emissions inspectors. The scheme involved entering the VIN from a car built between 1996 and 1999 into the analyzer as a surrogate vehicle. (Cars from this period generally would not automatically generate a VIN). The emissions report run for the surrogate vehicle would then be provided to the customer paying to receive a “clean scan.” Codefendant Angel Nunez was previously sentenced to pay a \$500 fine and to complete a five-year term of probation to include six months’ home detention.

This case was investigated by the U.S. EPA Criminal Investigation Division; The N.C. State Bureau of Investigations; and the N.C. Department of Motor Vehicles, License and Theft Bureau.

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**United States v. Billy Joe Hurley et al., No. PO 3951799 (W.D.N.C.), AUSA David Thornloe.**

On August 28, 2014, Billy Joe Hurley was sentenced to serve five and a half months’ incarceration for the illegal possession or harvesting of American ginseng from the Great Smoky Mountains National Park.

Hurley pleaded guilty to a petty offense, admitting that he had 83 American ginseng roots in his possession that he had illegally dug from areas in the Park in early 2014. This is Hurley’s fourth poaching conviction. Ginseng harvesting is entirely prohibited in the Park.

The American ginseng species is under severe pressure from poachers and may not be sustainable if it continues to be harvested illegally. Fresh ginseng can bring up to \$200 per pound on the black market. In a separate case, Christopher Ian Jacobson was sentenced on August 6 to serve 80 days’ incarceration and was ordered to pay a \$1,000 fine. Jacobson was found to be in possession of 298 ginseng roots.

These cases were investigated by the U.S. Park Service, with assistance from the U.S. Fish and Wildlife Service.

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**United States v. Action Manufacturing Company, No. 2:14-CR-00224 (E.D. Pa.), AUSA Elizabeth Abrahms.**

On August 27, 2014, the Action Manufacturing Company was sentenced after previously pleading guilty to RCRA storage and hazardous materials transportation violations (42 U.S.C. §

6928(d)(2)(A); 49 U.S.C. § 5124). The company will pay a \$1.2 million fine, complete a five-year term of probation, and comply with the terms of a consent order.

Action Manufacturing makes timing and arming devices for munitions and explosives. As part of the manufacturing process, the company mixes volatile powders, and fills boosters, detonators, and other items with this material. The company admitted that, instead of sending its waste to an approved facility, it stockpiled explosive hazardous waste on the premises without a permit. In November 2011, EPA civil inspectors and local regulators inspecting the site found the illegally stored waste, including scrap parts and components that were years or even decades overdue for disposal.

The case was investigated by the U.S. EPA Criminal Investigation Division and the U.S. DOT Office of Inspector General.

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**United States v. Robbie Mouton, No. 6:13-CR-00135 (W.D. La.), AUSA Daniel McCoy.**

On August 25, 2014, Robbie Mouton was sentenced to pay a \$10,000 fine after previously pleading guilty to a misdemeanor Clean Water Act violation (33 U.S.C. §§ 1311(a), 1319 (c)(1)(A)).

Mouton is the owner of Robbie's Gauging Service, an oilfield exploration and production company. On January 19, 2009, investigators responded to an oil spill in the Vermillion River. Further investigation at the site revealed an unauthorized bypass at the site of a land-based oil and gas production well leased by Precision Holdings, LLC. Emergency response personnel also observed extensive oil contamination and a small animal kill leading from the site and along the river for approximately one mile. Mouton admitted to negligently discharging a mixture of wastewater and crude oil into the river between January 6, 2009 and January 19, 2009, without a permit.

This case was investigated by the U.S. EPA Criminal Investigation Division, with assistance from the Louisiana Department of Environmental Quality Criminal Investigation Division, and the Louisiana State Police Emergency Services Unit.

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**United States v. Rai Johnson et al., No. 1:11-CR-00241 (W.D.N.Y.), AUSAs Aaron Mango and Russell T. Ippolito.**

Between August 25, 2014, and August 8, 2014, seven defendants were sentenced for their roles in a large-scale illegal asbestos abatement project. Rai Johnson was sentenced to time-served (160 days) and two years' supervised release. Ernest Johnson will complete a two-year term of probation. Evan Harnden, Brian Scott, Chris Coseglia, Donald Grzebielucha, and William Manuszewski each will complete a one-year term of probation.

Harnden and Scott were employed by JMD Environmental, Inc., as air sampling technicians and project monitors. Theodore Lehmann was a N.Y. State Department of Health official, and Grzebielucha and Manuszewski were City of Buffalo building inspectors. Coseglia was a JMD project manager and the Johnsons worked for Johnson Contracting of WNY, Inc., an asbestos abatement company.

In June of 2009, Johnson Contracting was awarded a subcontract to conduct the asbestos abatement project at Kensington Towers, a six-building complex owned by the Buffalo Municipal Housing Authority. In a survey conducted prior to the abatement project, it was estimated that each building at Kensington Towers contained in excess of 63,000 square feet of asbestos-containing material (ACM). In January 2010, local authorities received an anonymous call indicating that friable asbestos was being mixed with non-friable asbestos in open containers at the Towers.

The Johnsons pleaded guilty to violating CAA asbestos work practice standards (42 U.S.C. §§ 7412, 7413(c)(1)); JMD project monitor and supervisor Harnden pleaded guilty to aiding and abetting a

violation of the CAA (42 U.S.C. § 7413(c)); JMD project monitors Coseglia, Scott, and Henry Hawkins each pleaded guilty to being an accessory-after-the-fact to a CAA false statement (42 U.S.C. § 7413(c)(2)(A)); government officials Grzebielucha, Manuszewski and Lehmann pleaded guilty to CAA negligent endangerment violations (42 U.S.C. § 7413(c)(4)). Hawkins was sentenced earlier this year to serve a one-year term of probation, and Lehmann remains scheduled to be sentenced on November 6, 2014.

This case was investigated by the U.S. EPA Criminal Investigation Division, the FBI, the U.S. Department of Housing and Urban Development Office of Inspector General, and the N.Y. State Department of Environmental Conservation Police Bureau of Environmental Crimes Investigations, with assistance from the N.Y. State Department of Labor Asbestos Control Bureau.

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**United States v. Scott W. Farmer, No. 8:13-CR-00938 (D.S.C.), AUSA Jamie Lee Schoen.**

On August 19, 2014, Scott Farmer was sentenced to serve 41 months' incarceration followed by three years' supervised release, after previously pleading guilty to a Clean Air Act knowing endangerment violation (42 U.S.C. § 7413(c)(5)).

Between November 2012 and April 2013, Farmer and others demolished portions of a textile mill to sell scrap metal from the building, causing hazardous levels of asbestos to be released. Farmer ignored cease and desist orders issued by local regulators on five separate occasions, including an Emergency Order to stop all activities.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Department of Health and Environmental Control of South Carolina.

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