

---

---

# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

*January 2013*

---

---

### *AT A GLANCE:*

DISTRICT	CASES	CASE TYPE/STATUTES
D. Alaska	<a href="#"><u>United States v. William Duran Vizzerra, Jr.</u></a>	<i>Pavement Painting/ RCRA</i>
D. Ariz.	<a href="#"><u>United States v. Patrick Scott</u></a>	<i>Feather Sales/ MBTA</i>
S.D. Calif.	<a href="#"><u>United States v. Asgard Associates, LLC</u></a>	<i>Laboratory/ RCRA</i>
S.D. Fla.	<a href="#"><u>United States v. Alberto Diaz Gonzalez</u></a>	<i>Bird Imports/ Smuggling</i>
	<a href="#"><u>United States v. Norberto Guada</u></a>	<i>Ozone Depleting Substances/ Smuggling</i>

DISTRICT	CASES	CASE TYPE/STATUTES
E.D. La.	<a href="#"><u>United States v. Tyana Navigation, Ltd.</u></a>	<i>Vessel/ APPS</i>
W.D. La.	<a href="#"><u>United States v. John Tuma et al.</u></a>	<i>Wastewater Treatment/ CWA, Conspiracy, Obstruction</i>
D. Maine	<a href="#"><u>United States v. Andrew L. Zaruskas et al.</u></a>	<i>Narwhal Tusk Trafficking/Conspiracy, Lacey Act, ESA, Money Laundering</i>
D. Mo.	<a href="#"><u>United States v. Reckitt Benckiser, Inc.</u></a>	<i>Cleaning Products Manufacturer/ RCRA</i>
D. Nev.	<a href="#"><u>United States v. DPL Enterprises, Inc., et al.</u></a>	<i>Air Duct Cleaner/ FIFRA, False Statement</i>
N.D.N.Y.	<a href="#"><u>United States v. Martin S. Kimber</u></a>	<i>Mercury Dispersal/ Use of Chemical Weapon, Consumer Product Tampering</i>
D.N.M.I.	<a href="#"><u>United States v. Juan Manglona Ayuyu et al.</u></a>	<i>Fruit Bats/ ESA, Conspiracy, Perjury, Obstruction</i>
D. Ore.	<a href="#"><u>United States v. Daniel J. Desler</u></a>	<i>Asbestos Demolition/ CAA Endangerment</i>
E.D. Tex.	<a href="#"><u>United States v. Raymond Favero</u></a>	<i>Deer Breeder/ Lacey Act</i>
W.D. Wash.	<a href="#"><u>United States v. Reid Johnston</u></a>	<i>Tree Harvesting/ Theft of Government Property, Depredation of Government Land</i>
N.D.W.V.	<a href="#"><u>United States v. Chesapeake Appalachia LLC</u></a>	<i>Gas Drilling/ CWA</i>

***Additional Quick Links:***

- ◇ [Informations/Indictments](#) pp. 3 - 4
- ◇ [Plea Agreements](#) pp. 4 - 5
- ◇ [Sentencings](#) pp. 6 – 10

***Informations/Indictments*****United States v. Juan Manglona Ayuyu et al., Nos. 1:12-CR-00033, 00036, 00039 (D.N.M.I), AUSA Garth Backe.**

On December 17, 2012, Senator Juan Manglona Ayuyu was charged in a seven-count indictment with perjury, obstruction, and witness tampering charges (18 U.S.C. §§ 1503, 1512, 1623(a), 2232) after previously being charged with smuggling eight endangered fruit bats in a box containing 40 pounds of lemons (18 U.S.C. § 371; 16 U.S.C. §§ 1538(a)(1)(G), 3372 (a)(1), 3373 (d)(2)). The new indictment alleges that Ayuyu attempted to disrupt the investigation into the fruit bats by tampering with witnesses and attempting to destroy evidence.

Ayuyu and co-defendant Ryan James Inos Manglona remain scheduled for trial on the original indictment for February 13, 2013. Manglona also had been charged in a separate indictment with obstruction and perjury violations for giving false testimony to the grand jury sitting in the wildlife matter. He pleaded guilty on December 14th to those charges and is scheduled to be sentenced on May 10, 2013.

This case was investigated by the United States Fish and Wildlife Service and the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife.

[Back to Top](#)

**United States v. Andrew L. Zaruskas et al., No. 1:12-CR-00188 (D. Maine), ECS Trial Attorney Todd Mikolop.**

On December 14, 2012, Andrew L. Zaruskas was arrested on charges related to the illegal importation and trafficking of narwhal tusks, along with money laundering violations.

A 29-count indictment also names Jay G. Conrad as a co-conspirator. Specifically, the two are charged with conspiring to violate the Marine Mammal Protection Act and the Endangered Species Act, along with an additional money laundering conspiracy, and substantive smuggling and money laundering violations (18 U.S.C. §§ 371, 545, 1956(h); 1956(a)(2)(A)).

From 2007 to 2010, Conrad and Zaruskas are alleged to have purchased illegally imported narwhal tusks and to have conspired with others in Canada to illegally import the protected tusks for

re-sale in the United States. The two are further charged with conspiring with persons located in Canada to launder the funds used to purchase the narwhal tusks by transporting, transmitting, or transferring checks and money orders from Tennessee and New Jersey to Canada. Narwhal tusks are commonly collected for display purposes and can fetch large sums of money.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the United States Fish and Wildlife Service Office of Law Enforcement.

[Back to Top](#)

## ***Plea Agreements***

### **United States v. Patrick Scott, No. 3:12-CR-08257 (D. Ariz.), ECS Trial Attorney Todd Mikolop and AUSA Jennifer Levinson.**

On December 12, 2012, Patrick Scott pleaded guilty to a felony violation of the Migratory Bird Treaty Act (16 U.S.C. §§ 703, 707(b)) for his involvement in the sale of a golden eagle fan to law enforcement officials for \$900. Scott admitted that, between July 2007 and February 2009, he engaged in 12 sales, offers to sell, and/or purchases of migratory bird parts, including bald eagle, red-tailed hawk, golden eagle, crested caracara, anhinga, and rough-legged hawk. Sentencing is scheduled for February 26, 2013.

This case was investigated by the United States Fish and Wildlife Service and the Navajo Nation Department of Fish and Wildlife.

[Back to Top](#)

### **United States v. Alberto Diaz Gonzalez, No. 2:12-CR-20809 (S.D. Fla.), AUSA Tom Watts-FitzGerald.**



**Pants used to smuggle birds**  
States.

On December 6, 2012, Alberto Diaz Gonzalez pleaded guilty to smuggling charges (18 U.S.C. § 545) for importing undeclared wildlife from Cuba.

In October 2012, Diaz Gonzalez was intercepted at Miami International Airport returning to the United States aboard a flight from Cuba. When questioned by Customs officials, the defendant claimed to not be carrying any wildlife.

In a subsequent pat-down, 16 Cuban bullfinches were found concealed in pockets sewn into the interior of his pants and in a plastic cylinder in a pocket. Upon further questioning, Diaz Gonzalez admitted that he had obtained the birds during his trip to Cuba and had intended to sell them upon his return to the United States.

Much of the wildlife brought into this country is subject to quarantine to protect both commercial and wild bird species from exposure to diseases such as Newcastle's and other maladies against which they would have no natural immunity. Cuba also is considered a high-risk source country for high pathogenic avian influenza. Sentencing is scheduled for February 25, 2013.

This case was investigated by the United States Fish and Wildlife Service, Customs and Border Protection, with technical assistance from the U.S. Department of Agriculture Miami Import-Export Facility Veterinary Services.

[Back to Top](#)

**United States v. DPL Enterprises, Inc. et al., No. 2:12-CR-00393 (D. Nev.), ECS Senior Trial Attorney Richard Udell and AUSA Kathryn Newman.**

On December 3, 2012, DPL Enterprises, Inc., (DPL) d/b/a Air Care Indoor Air Quality Specialists, company president Richard F. Papaleo, and product engineer Michael Stanovich, pleaded guilty to FIFRA violations (7 U.S.C. § 136j(a)(1)(E)) stemming from the misuse and sale of a misbranded pesticide. Papaleo and the company also pleaded guilty to a false statement violation (18 U.S.C. § 1001).

The defendants were in the business of manufacturing, marketing, and selling air duct cleaning equipment, filters, and various chemical compounds, as well as running an air duct cleaning and repair operation. In 2008 and 2009, DPL and its employees diluted, relabeled, and repackaged Sporicidin, which was sold to companies that used it for cleaning air ducts. The fake Sporicidin label made by the defendants was copied from a real label and claimed that it could kill various organisms, including HIV, Avian Flu, Salmonella, and Staph. The product the defendants sold, however, was diluted with ten parts water for every one part of Sporicidin.

Papaleo told the investigators that his company was not diluting the pesticide but was merely re-packaging and re-labeling it for branding purposes. The company sold approximately 6,300 gallons of the misbranded and diluted pesticide between 2005 and 2010. Sentencing is scheduled for April 8, 2013.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division with assistance from the Federal Bureau of Investigation.

[Back to Top](#)

**United States v. Martin S. Kimber, No. 1:12-CR-00232 (N.D.N.Y.), AUSAs Richard Belliss and Craig Benedict.**



**Mercury found in defendant's car**

On November 29, 2012, Martin S. Kimber pleaded guilty to a three-count information charging him with two counts of using a toxic chemical (mercury) as a weapon, and one count of consumer product tampering (18 U.S.C. §§ 229, 1365).

Kimber admitted that on four occasions (in March, April, and June 2011, and March 2012) he spread mercury, a potentially fatal neurotoxin, throughout various areas of the Albany Medical Center in ways which could lead to inhalation or absorption of the mercury, to retaliate for what he thought were unfair hospital bills. Sentencing is scheduled for March 7, 2013.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Food and Drug Administration Office of Criminal Investigations, and the Federal Bureau of Investigation, with assistance provided by the Towns of Albany and Ulster Police Departments.

[Back to Top](#)

## *Sentencings*

### **United States v. Raymond Favero, No. 6:12-CR-00052 (E.D. Tex.), AUSA Jim Noble.**

On December 19, 2012, Raymond Favero was sentenced to pay a \$6,000 fine and will make a \$24,000 community service payment to the Texas Parks and Wildlife Foundation. Favero also will complete a three-year term of probation.

The defendant was in the business of collecting semen from whitetail bucks and then inseminating the deer as a service for whitetail deer breeders. In February 2007, the defendant unlawfully acquired approximately 184 straws of whitetail deer semen valued at approximately \$92,000, which he took from a buck that had been transported illegally from an out-of-state source. In January 2008, he unlawfully acquired another 110 straws valued at approximately \$55,000 that had been taken from an illegally transported buck. Favero previously pleaded guilty to two Lacey Act violations (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(2)).

This case was investigated by the Texas Parks and Wildlife Department, and the United States Fish and Wildlife Service.

[Back to Top](#)

### **United States v. William Duran Vizzerra, Jr., No. 3:12-CR-00069 (D. Alaska), ECS Trial Attorney Todd Mikolop, RCEC Karla Perrin, and AUSA Aunnie Steward.**

On December 19, 2012, William Duran Vizzerra, Jr., was sentenced to serve 15 months' incarceration, followed by three years' supervised release. He was further ordered to pay \$394,062 in restitution. Vizzerra previously pleaded guilty to a RCRA disposal violation (42 U.S.C. § 6928(d)(2)(A)) for abandoning paint waste.

The defendant was the president, director, and part-owner of Precision Pavement Markings Inc., a road and parking lot painting and striping business that operated from a storage lot in Anchorage from approximately 2006 through 2009. He used the storage lot to store hazardous waste, including methyl methacrylate paint and toluene that was used to clean and flush the paint lines, nozzles, and sprayers used in his business.

In November 2009, Vizzerra abandoned approximately 320 55-gallon drums, 180 five-gallon pails, and two 200-gallon totes of paint waste that was hazardous due to its extreme flammability. A year later, a citizen reported the abandoned drums to the U.S. Environmental Protection Agency. Investigators observed that many of the drums were marked as "waste" or displayed hazardous markings, such as "flammable" or "flammable liquid." Other containers were found to be rusted and in very poor condition. The restitution will be divided between the land owner and the lease holder of the property where the waste was abandoned.



**Abandoned paint waste**

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

[Back to Top](#)

**United States v. Reckitt Benckiser, Inc., No. 6:12-CR-03041 (W.D. Mo.), AUSA Randall Eggert.**

On December 17, 2012, Reckitt Benckiser, Inc. was sentenced to pay a \$200,000 fine after previously pleading guilty to a RCRA violation (42 U.S.C. § 6928(d)(2)(A)) for illegally disposing of hazardous waste over a three-day period in September 2008.

Reckitt Benckiser is a billion dollar global producer of consumer goods, including household cleaning products and pharmaceuticals. The company operates a distribution center in Springfield, Missouri. In September 2008, employees at the Springfield facility caused the illegal disposal of more than 22,000 pounds of hazardous waste at an unpermitted municipal landfill using a non-hazardous waste manifest. The company was notified by an employee after the illegal disposal, prompting an internal waste audit by an outside environmental company.

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

[Back to Top](#)

**United States v. Reid Johnston, No. 1:11-CR-05539 (W.D. Wash.), AUSA Matthew Diggs.**



**Base of 300-year old tree**

On December 14, 2012, Reid Johnston was sentenced to serve a year and a day of incarceration (with credit for time served) followed by two years' supervised release after previously pleading guilty to theft of government property and depredation to government land (18 U.S.C. §§ 641, 1361). A restitution hearing is scheduled for January 18, 2013.

From October 2007 through January 2010, Johnson took maple, cedar, and Douglas fir trees from the Olympic National Forest. Officials seized multiple large Douglas fir logs that had been illegally harvested from the area, one of which with a trunk that was approximately eight feet in diameter, and estimated to have been more than 300 years old. Some of the maple trees that were stolen were cut into blocks and sold for the manufacture of musical instruments.

This case was investigated by the United States Forest Service.

[Back to Top](#)

**United States v. Norberto Guada, No. 1:12-CR-20514 (S.D. Fla.), SAUSA Jodi Mazer and AUSA Tom Watts-FitzGerald.**

On December 11, 2012, Norberto Guada was sentenced to serve six months' incarceration and six months' home confinement, followed by 18 months of supervised release. Guada also will pay a \$3,000 fine.

The defendant previously pleaded guilty to a smuggling violation (18 U.S.C. § 545) for illegally importing hydrochlorofluorocarbon-22 (HCFC-22), a refrigerant widely used in residential heat pump and air-conditioning systems.

In February 2007, Guada worked as a salesman with Lateral Investments LLC (Lateral), an import company. Between June and August 2007, Lateral illegally smuggled large quantities of HCFC-22 into the United States to sell on the black market. Specifically, the company imported approximately 278,256 kilograms or 20,460 cylinders of restricted HCFC-22, with a market value of \$1,438,270. Of this amount, Guada admitted that he sold 15,640 kilograms of HCFC-22 in August 2007. At no time did the company hold unexpended consumption allowances that would have allowed it to legally import the refrigerant.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, Immigration Customs Enforcement Homeland Security Investigations, and the Florida Department of Environmental Protection Criminal Investigation Bureau.

[Back to Top](#)

**United States v. Tyana Navigation, Ltd., No. 2:12-CR-00290 (E.D. La.), AUSA Emily Greenfield.**

On December 6, 2012, Tyana Navigation Ltd., (Tyana) a Liberian corporation, was sentenced to pay a \$350,000 fine and will make a \$150,000 community service payment to the National Fish and Wildlife Foundation after pleading guilty to an APPS oil record book violation (33 U.S.C. § 1908(a)).

Tyana is the owner of the *M/V Tyana*, a 42,929 gross ton ocean-going bulk carrier cargo ship. From September 2011 through July 2012, the engine room crew used a bypass hose to discharge sludge overboard without treatment. During a port inspection in July 2012, investigators found that the ORB falsely stated that sludge had been incinerated on a particular day in June 2012, when in fact it had been dumped.

The company also will complete a three-year term of probation and will implement an environmental compliance plan.

This case was investigated by the United States Coast Guard.

[Back to Top](#)

**United States v. John Tuma et al., No. 5:11-CR-00031 (W.D. La.), ECS Trial Attorney Leslie Lehnert and AUSA Mignonne Griffing.**

On December 5, 2012, wastewater treatment manager John Tuma was sentenced to serve five years' incarceration followed by three years' supervised release. He also will pay a \$100,000 fine. Tuma previously was convicted by a jury of Clean Water Act violations for discharging untreated wastewater directly into the Red River without a NPDES permit, discharging untreated wastewater into the City of Shreveport sewer system in violation of its industrial user's permit, and of obstructing an EPA inspection (18 U.S.C. §§ 371, 1505; 33 U.S.C. §§ 1311(a), 1319(c)(2)(A)).

The Arkla Disposal Services facility received off-site wastewater from oilfield exploration and production operations and other industrial processes for treatment. These illegal discharges were made from the Arkla facility between 2005 through 2007.

John Tuma's son Cody, a shift supervisor, previously pleaded guilty to a misdemeanor CWA violation (33 U.S.C. §§ 1311, 1319(c)(1)(A)) and was sentenced to complete a five-year term of probation.

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

[Back to Top](#)

**United States v. Jerry Anglin, No. 12-CR-01083 (D. Ariz.), ECS Senior Trial Attorney Jennifer Whitfield and AUSA Jennifer Levinson.**

On December 5, 2012, Jerry Anglin was sentenced to complete a two-year term of probation and will perform 120 hours of community service. Anglin pleaded guilty to a negligent violation of the Clean Water Act (33 U.S.C. §1319(c)(1)(A)). He admitted to failing to monitor and to correctly calculate the flow rate of discharges from the City of Casa Grande's Wastewater Treatment Facility from August 2007 through August 2009.

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

[Back to Top](#)

**United States v. Asgard Associates, LLC, No. 12-CR-02905 (S.D. Calif.), AUSA Melanie Pierson.**

On December 3, 2012, Asgard Associates, LLC, was sentenced to pay \$176,411 in restitution and complete a three-year term of probation. The company previously pleaded guilty to a RCRA violation (42 U.S.C. § 6928(d)(2)(A)) for illegally storing chemicals and biological agents that are known to be a potential threat to public health and safety.

Between January 2010 and March 2010, Asgard Associates was aware that a variety of chemicals were being improperly stored at its Roselle Street laboratory. Despite knowing the hazardous nature of these chemicals, the company refused to provide funds for their proper disposal. From May 2010 through June 2010, the San Diego County Department of Environmental Health Services inspected and sampled the chemicals, and in August 2010, the U.S. EPA conducted a cleanup removing more than 2,500 vials and containers from the premises.

Among the chemicals removed were Diethyl Ether, sodium chlorate, potassium borohydride, and calcium hydride. The chemicals had to be detonated by the EPA and the San Diego Fire Department Bomb Squad as they were too unstable for safe transport.

This case was investigated by the United States Environmental Protection Agency Criminal Investigations Division, the Federal Bureau of Investigation, and the San Diego County Department of Environmental Services Hazardous Materials Management Division.

[Back to Top](#)

**United States v. Chesapeake Appalachia LLC, No. 5:12-CR-00030 (N.D.W.V.), AUSA David Perri and SAUSA Perry McDaniel.**

On December 3, 2012, Chesapeake Appalachia, LLC, was sentenced to pay a \$600,000 fine and will complete a two-year term of probation.

The company previously pleaded guilty to three misdemeanor violations of the Clean Water Act (33 U.S.C. §§ 1311 (a), 1319(c)(1)(A), 1344) for discharging 60 tons of crushed stone and gravel into a stream on at least three different occasions in December 2008, without an Army Corps of Engineers Section 404 permit. In the process of establishing gas drilling sites throughout Wetzel County, West Virginia, the company filled in a stream and created a road to improve access to Marcellus Shale drilling sites without the proper permits.



**Hazardous chemicals**

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

[Back to Top](#)

**United States v. Daniel J. Desler, No. 6:11-CR-60061 (D. Ore.), AUSA Amy Potter and SAUSA Patrick Flanagan.**

On October 31, 2012, Daniel J. Desler was sentenced to serve five months' home confinement as a condition of a three-year term of probation. He also will pay more than \$1.5 million in restitution to EPA for cleanup costs, and perform 300 hours of community service, after previously pleading guilty to a Clean Air Act negligent endangerment violation (42 U.S.C. § 7413 (c)(4)).

Desler was the managing trustee of Western States Reliance Trust, which obtained the former Willamette Industries saw mill and multiple outbuildings in 2001 or 2002. After a fire at the facility in 2004, firefighters reported suspected asbestos to state officials, who subsequently inspected the buildings and put Desler on notice of the possible presence of asbestos.

After confirming asbestos was present on site, in 2007 the defendant hired an unlicensed contractor to perform demolition and renovation work. The contractor tore down and crushed asbestos-laden roofing material, insulation, and floor tiles without wetting it; and ran some of the materials through a chipper. In 2009 Desler was fined more than \$192,000 for illegally dumping industrial waste.

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

[Back to Top](#)