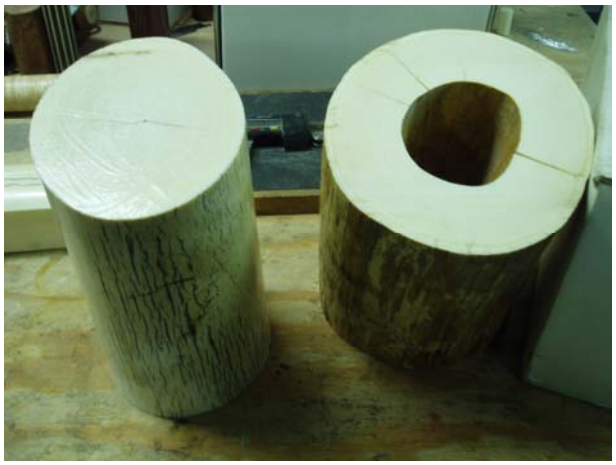
ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

May 2011

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [redacted] If you have information concerning state or local cases, please send it directly to the Regional Environmental Enforcement Associations' website: www.regionalassociations.org.



Elephant ivory "logs"
See *U.S. v. Barringer* inside, for details on a case involving pool cues made from elephant ivory.

AT A GLANCE:

United States v. Mark Desnoyers, ___F.3d ___, 2011 WL 855795 (2nd Cir. Mar. 14, 2011), rev'g 2009 WL 1748730 (N.D.N.Y. 2009).

United States v. Wilgus, ___F.3d. ___, 2011 WL 1126059 (10th Cir. Mar. 29, 2011), rev'g 606 F. Supp. 2d 1308 (D. Utah 2009).

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
E.D. Ark.	United States v. Hawk Field Services, LLC	*Natural Gas Operator/* Endangered Species Act
C.D. Calif.	United States v. Edward Wyman	*Ammunition and Explosives Storage/* RCRA
M.D. Fla.	United States v. Joseph Barringer	*Ivory Sales/* Endangered Species Act
S.D. Fla.	United States v. Van Bodden-Martinez [redacted] United States v. Richard Stowell et al. United States v. Brendan Clery United States v. Rusty Anchor Seafood of Key West, Inc.	*Seafood Imports/* Lacey Act [redacted] *Seafood Mislabeling and Misbranding/* Lacey Act, Food, Drug, and Cosmetic Act *Refrigerant Imports/* CAA *Seafood Sales/* Lacey Act Conspiracy
S.D. Ill.	United States v. Honewell International, Inc.	*Chemical Plant/* RCRA
S.D. Ind.	United States v. Joseph Biggio et al.	*Waste Oil Dumping/* CWA, False Statement

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
E.D. Ky.	United States v. Lonnie Skaggs et al.	*Bat Killings/* Endangered Species Act
E.D. La.	United States v. Stanships, Inc. (Marshall Islands), et al.	*Vessel/* Obstruction, APPS, PWSA, Probation Violation
M.D. La.	United States v. Larry Dees, Sr., et al.	*Alligator Hunting/* Endangered Species Act
D. Mass.	United States v. Stephen C. Delaney, Jr., et al.	*Seafood Mislabeling and Misbranding/* Lacey Act, Food, Drug, and Cosmetic Act
W.D. Mo.	[redacted] United States v. Richard Sparks et al.	[redacted] *Mayor and Municipal Employee/* False Statement, Misprision
D. Nev.	United States v. Wadji Waked	*Vehicle Emissions Scam/* CAA
N.D.N.Y.	United States v. Lieze Associates, d/b/a Eagle Recycling	*Massive Construction Debris Dumpsite/* Conspiracy
D. Utah	United States v. Bugman Pest and Lawn, Inc., et al.	*Pesticide Misapplication/* FIFRA
E.D. Wash.	United States v. Ricky Wahchumwah et al.	*Sale of Eagle Parts/* BGEPA
W.D. Wash.	United States v. Douglas Jay	*Seafood Mislabeling/* Lacey Act

Additional Quick Links:

Significant Environmental Decisions

Second Circuit

United States v. Mark Desnoyers, ___F.3d ___, 2011 WL 855795 (2nd Cir. Mar. 14, 2011), rev'g 2009 WL 1748730 (N.D.N.Y. 2009).

On March 14, 2011, the Second Circuit issued a published decision vacating the judgment of acquittal and remanding to the district court with instructions to reinstate the jury verdict, enter a judgment of conviction on the conspiracy count, and resentence the defendant accordingly.

Defendant (an asbestos abatement air monitor) was convicted on (1) one count of conspiracy to violate the Clean Air Act and to commit mail fraud, (2) one count of knowingly violating the Clean Air Act, (3) one count of knowingly committing mail fraud and (4) two counts of knowingly making material false statements to special agents of the U.S. EPA, all regarding eight individual abatement projects.

The conspiracy count charged a two object conspiracy to violate the CAA and the mail fraud statute. In response to Desnoyers' motion, however, the district court entered a judgment of acquittal on the conspiracy count. The district court found that there was insufficient evidence to satisfy the CAA prong of the conspiracy because, according to the district court, only one project (known as 69 Clinton Street) legally could have been covered by the CAA and the government failed to put on sufficient proof demonstrating that the project in fact met such requirements.

The government appealed and the Second Circuit found that despite Desnoyers' assertion that the government's proof with respect to 69 Clinton Street suffered both factual error and legal error, his claims raised only factual sufficiency and he did not challenge the mail fraud object at all. The court found that because Desnoyers disputed only one object of the conspiracy count (and conceded that the government proved the mail fraud object) his factual insufficiency challenge failed under settled

Supreme Court and Second Circuit law. The court also found that a caveat announced in *United States v. Papadakis* regarding multi-object conspiracies that would apply where an "overwhelming amount of evidence relevant only to the unproved part of the conspiracy may have prejudiced the jury" did *not* apply here. In the present case, an overwhelming amount of evidence was not relevant *solely* to the CAA object, but also to prove that Desnoyers and his co-conspirators engaged in schemes and used the mail to falsely represent to clients that their abatement and monitoring work complied with state law in violation of the mail fraud statute. Finally, the court found that Desnoyers failed to assert a cognizable legal challenge to the conspiracy count because his "legal" challenge merely restated his factual challenge. The defendant filed a petition for rehearing en banc on April 11, 2011.
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Tenth Circuit

United States v. Wilgus, ___F.3d. ___, 2011 WL 1126059 (10th Cir. Mar. 29, 2011), rev'g 606 F. Supp. 2d 1308 (D. Utah 2009).

The defendant was charged with possessing 140 bald and golden eagle feathers and convicted, despite his claimed religious need for the feathers. He is not a member of a federally recognized tribe. In 2002, the Tenth Circuit, sitting en banc, vacated the judgment, holding that the government had not met its burden under the Religious Freedom Restoration Act (RFRA) of proving that the Bald and Golden Eagle Protect Act (BGEPA) is the least restrictive means of furthering the government's compelling interests, and remanded to allow the government to develop a record on that point. On remand, the district court dismissed the charges finding that the prohibition against possessing eagle feathers violates RFRA.

Held: On appeal, the Tenth Circuit reversed, joining the Ninth and Eleventh Circuits in upholding the BGEPA against RFRA claims. The court first clarified the contours of the government's compelling interest in preserving Native American culture and religion, holding that that interest relates specifically to federally-recognized Indian tribes. Second, it held that the current regulatory scheme, which allows only tribal members to possess eagle parts, is the least restrictive means of furthering the government's competing compelling interests in protecting eagles and preserving tribal religion. The court recounted certain key facts: (1) although wild eagle populations are on the rise, that population increase will not increase the supply of eagle parts at the National Eagle Repository, which distributes eagle parts to tribal members; (2) the demand for eagle parts outstrips the supply; (3) some undetermined number of non-member adherents of Native American religions would apply for possession permits if they could; (4) there is a thriving black market for eagle parts; and (5) the U.S. Fish and Wildlife Service already has difficulty enforcing the BGEPA.

The Tenth Circuit then rejected both the district court's proffered alternative of opening the Repository to sincere adherents of Native American religions and the defendant's suggested alternative of allowing tribal members to give eagle parts as gifts to non-members. The court stated that opening the Repository to non-tribal members would undermine the government's interest in protecting tribal culture and religion by increasing the time tribal members must wait to receive eagle parts from the Repository.

Finally, the court held that the current regulatory scheme, under which only tribal members are permitted to possess eagle parts for religious purposes, furthers both of the government's interests in that it protects eagles and "does its best to guarantee that those tribes which share a unique and

constitutionally-protected relationship with the federal government will receive as much of a very scarce resource (eagle feathers and parts) as possible".
NOTE: In sum, this important decision, following more than ten years of litigation, recognizes the legitimacy of FWS management of eagle feathers and parts in a manner that protects eagles and is mindful of and accommodates the cultural and religious practices of federally-recognized Indian Tribes.
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Trials

United States v. Stephen C. Delaney, Jr., et al., No. 1:09-CR-10312 (D. Mass.), ECS Assistant Chief Elinor Colbourn [redacted], ECS Trial Attorney Jessica Alloway [redacted], AUSA Nadine Pellegrini [redacted] and ECS Paralegal Kathryn Loomis [redacted]

On April 9, 2011, after a week-long trial, Stephen C. Delaney was found guilty by a jury of violations stemming from the false labeling of frozen fish fillets from China. Specifically, Delaney was convicted of a felony violation of the Lacey Act for falsely labeling approximately $8,000 worth of frozen fillets of pollock (a product of China) as cod loins (a product of Canada). Evidence at trial established that the price of cod is approximately $1.00 per pound higher than that for Alaskan pollock.

In addition, Delaney was convicted of one misdemeanor violation of the Food, Drug, and Cosmetic Act for misbranding seafood. Evidence at trial proved that the defendant introduced into interstate commerce approximately $203,000 worth of frozen fish fillets that were falsely and misleadingly labeled as products of Canada, Holland, Namibia, and the United States, when they were actually products of China. He was acquitted on the remaining two counts.

Sentencing is scheduled for June 8, 2011. This case was investigated by the National Oceanic and Atmospheric Administration Fisheries Office of Law Enforcement and the Food and Drug Administration's Office of Criminal Investigations.
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United States v. Edward Wyman, No. 09-CR-00577 (C.D. Calif.), AUSAs Mark Williams and Dorothy Kim [redacted]

On April 5, 2011, after a five day trial, Edward Wyman was found guilty of illegally storing toxic and explosive hazardous wastes in his backyard. A jury convicted Wyman of a RCRA storage violation and made a special finding that the defendant's conduct knowingly placed nearby residents in imminent danger of death or serious bodily injury.

Wyman was charged in June 2009, soon after firefighters responded to a report of a fire and explosions at Wyman's residence. Due to the ammunition that was being "cooked off" in the fire, firefighters had to wear bullet proof vests. Investigators at the scene discovered a large cache of

Ammunition stored in open containers

toxic materials, including thousands of rounds of corroded ammunition, lead-contaminated waste from shooting ranges, hundreds of pounds of decades-old gunpowder and military M6 cannon powder, and industrial solvents that contained 1,1,1-trichloroethane and tetrachloroethylene. Wyman did not have a permit to store any of these materials. As a result of the fire, the surrounding community had to be evacuated.

Wyman is scheduled to be sentenced on July 11, 2011. This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Los Angeles Police Department, the California Department of Toxic Substances Control, and the Los Angeles Department of Building and Safety. Emergency Responders included the Los Angeles City Fire Department, the Los Angeles Police Department Bomb Squad, and the Federal Bureau of Investigation.

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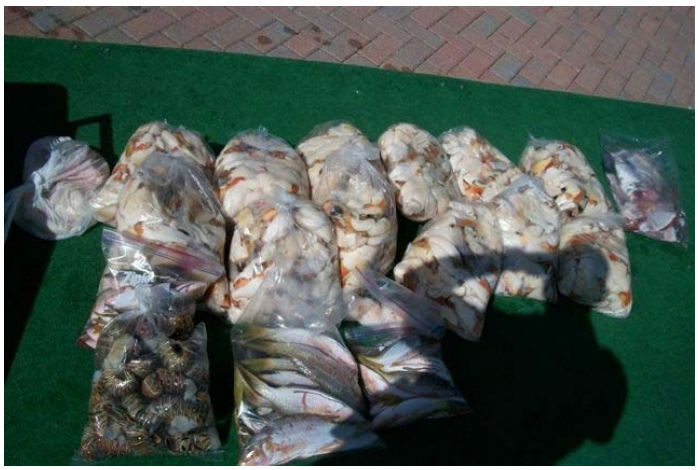
Informations and Indictments

United States v. Van Bodden-Martinez, No. 9:11-CR-80056 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]



Conch, lobster tails, and yellowtail seized by authorities

On April 19, 2011, Van Bodden-Martinez, a Bahamian national residing in Palm Beach County, was charged with a Lacey Act violation for importing and attempting to import into the United States fish and wildlife possessed and transported in violation of Bahamian laws.

According to the indictment, on or about February 19, 2011, Bodden-Martinez attempted to import spiny lobster, queen conch, and yellowtail snapper, all of which had been harvested without the necessary permits and in violation of the possession limits for each of these species as specified in Bahamian regulations. The government also is pursuing the forfeiture of the illegal catch, which consisted of approximately 45 spiny lobster tails, 42 yellowtail snapper, and 343 pounds of queen conch.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, Immigration and Customs Enforcement, Customs and Border Protection, the Florida Fish and Wildlife Conservation Commission, the United States Coast Guard, and the Palm Beach County Sheriff's Office.

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United States v. Bugman Pest and Lawn, Inc., et al., Nos. 2:11-CR-00017 and 00295 (D. Utah), AUSA Jared Bennett [redacted]

On April 13, 2011, Bugman Pest and Lawn, Inc. (Bugman), and employee Raymond Wilson, Jr., were charged with five FIFRA violations for the application of a rodent poison that is allegedly linked to the deaths of two young sisters. Bugman and employee Coleman Nocks previously were charged in a separate indictment with three FIFRA violations. The new charges allege that the pesticide was mishandled in four other homes in Utah.

The new indictment states that pellets of the pesticide Fumitoxin were misapplied in August 2009 at four homes. Specifically, it was applied into a burrow system within 15 feet of a building that may have been occupied, a method of application inconsistent with the chemical's labeling. Nocks is alleged to have disregarded the directions on the chemical's label and to have applied the Fumitoxin too close to a home in February 2010. The indictment also states that he and the company failed to provide safety information about the pesticide to the residents. Evidence indicates that a toxic gas seeped inside, likely causing the deaths of the two girls and sickening four other family members.

Records from state regulators allege that Bugman violated pesticide-related laws more than 3,500 times between April 2009 and February 2010. Some of the violations were related to poor record keeping, while others involved the misuse of chemicals. The Utah Department of Agriculture (UDA) previously reached a settlement with the company and seven of its employees, including Nocks, imposing fines of more than $46,000 after the investigation into the girls' deaths. Bugman will complete a two-year term of state probation and submit records to be audited by the UDA. Each employee is also required to attend 18 hours of pesticide applicator training. As a result of the deaths, the Environmental Protection Agency no longer permits the use of Fumitoxin in residential areas.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Layton City Police Department.

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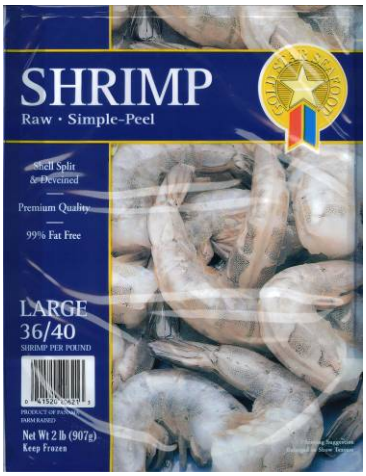
Plea Agreements

United States v. Richard Stowell et al., No. 1:11-CR-20256 (S.D. Fla.), AUSA Norman O. Hemming, III [redacted].



Repackaged shrimp

On April 27, 2011, Richard Stowell and United Seafood Imports, Inc., pleaded guilty to charges stemming from the sale of mislabeled shrimp. Stowell and the company variously pleaded guilty to conspiracy to falsely label and misbrand seafood, Lacey Act false labeling, and Food, Drug, and Cosmetic Act (FDCA) misbranding violations.

Stowell is the president, sole shareholder, and owner of United Seafood Imports. Stowell and other co-defendants conspired to violate the Lacey Act and the FDCA by mislabeling and misbranding approximately one million pounds of shrimp.

United Seafood purchased the shrimp in boxes labeled "Product of Thailand", "Product of Malaysia", and "Product of Indonesia." The defendants then re-packaged and re-labeled the shrimp as "Product of Panama", "Product of Ecuador", and "Product of Honduras". The shrimp, valued at between $400,000 and $1,000,000, was ultimately sold to supermarkets in the northeastern United States. Sentencing has been scheduled for July 15, 2011.

This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement and the Florida Department of Agriculture and Consumer Services.

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United States v. Brendan Clery, No. 1:11-CR-20280 (S.D. Fla.), SAUSA Jodi Mazer [redacted]

On April 26, 2011, Brendan Clery pleaded guilty to a one-count information charging him with a Clean Air Act violation for knowingly importing more than 270,000 kilograms of illegal hydrochlorofluorocarbon - 22 (HCFC-22) into the United States. HCFC-22 is a widely used refrigerant for residential heat pump and air-conditioning systems.

In 2005, Clery formed Lateral Investments for the purpose of importing merchandise, including refrigerant gas. Between June and August 2007, the defendant illegally imported approximately 278,256 kilograms (or 20,460 cylinders) of restricted HCFC-22, with a market value of $1,438,270. At no time did Clery or his company hold unexpended consumption allowances that would have allowed them to legally import the HCFC-22. Sentencing has been scheduled for July 29, 2011.

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

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United States v. Wadji Waked, No. 2:10-CR-00011 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted] ECS Trial Attorney Sue Park [redacted], and AUSA Roger Yang [redacted]

On April 25, 2011, the tenth and final defendant involved in the falsification of vehicle emissions data, pleaded guilty to a Clean Air Act violation.

Wadji Waked and nine others were indicted in January of 2010 after investigation revealed that they were submitting similar false test results to the Nevada Department of Motor Vehicles (NDMV) while working at different testing locations. This came to the attention of Nevada authorities in 2008 when the NDMV hired a contractor to build a vehicle identification database to find possible emissions testing fraud. The NDMV discovered that in 2008 alone, there were more than 4,000 false vehicle emissions certificates issued in Las Vegas. The database enabled investigators to check the vehicle identification number that the emissions testers entered against the vehicle actually tested. The testers did not realize that the computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee.

These cases were investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

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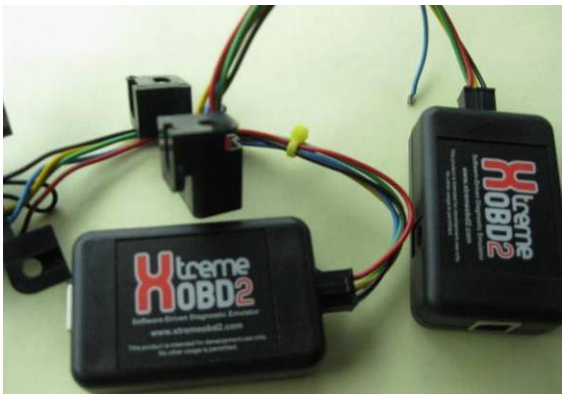
United States v. Stephen Dickinson et al., No. 3:11-CR-00101 (W.D.N.C.) AUSA Stephen Kaufman [redacted].

On April 14, 2011, Stephen Dickinson and Alexander Edwards each pleaded guilty to a one-count information charging them with conspiracy to violate the Clean Air Act, for their involvement in a scheme to bypass the state of North Carolina's vehicle emissions program.



OBDII simulators

Several former service technicians who worked for Hendrick BMW were found to have been using an illegally purchased OBDII simulator that enabled them to falsify emissions test results. Approximately 50 illegal scans were conducted between June 2010 and March 2011. The illegal simulator allowed the technicians to access the state's computerized emission program and print out falsified emissions certificates without ever actually testing a car. Illegal inspections were performed on the defendants' personal vehicles and those of family and friends, often including a cash payment to the defendants.

The investigation is ongoing and is being conducted by the United States Environmental Protection Agency Criminal Investigation Division, the North Carolina State Bureau of Investigation, and the North Carolina Division of Motor Vehicles License and Theft Bureau.

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United States v. Rusty Anchor Seafood of Key West, Inc., No. 4:11-CR-10003 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted].

On April 11, 2011, Rusty Anchor Seafood of Key West, Inc. (Rusty Anchor), pleaded guilty to and was sentenced for a Lacey Act conspiracy violation for its involvement in the illegal harvest of lobster and finfish for resale and distribution in interstate commerce. The company will pay a $500,000 fine with half to be paid immediately and the other half payable over a five-year term of probation. Rusty Anchor also must implement a comprehensive environmental compliance plan.

From as early as August 1, 2007, through approximately September 2009, Rusty Anchor (operating as Rusty Anchor Fisheries, Rusty Anchor Restaurant, and Rusty Anchor Seafoods) functioned as a licensed wholesale purchaser, seller, and distributor of seafood products and a retail restaurant. Wholesale dealers, such as Rusty Anchor, were prohibited from purchasing lobster and finfish regulated by the State of Florida without first confirming that the seller possessed all required state and federal licenses.

A total of seven different seafood transactions were offered by the government to support the charges. Among those the government described was a set of 42 purchases of spiny lobster from a single harvester by agents and employees of Rusty Anchor, reported to the State of Florida at a value of over $100,000, while the same employees concealed and did not report an additional $23,000 of lobster purchases over the daily allowable bag limit. In another instance, Rusty Anchor's agents and employees allocated 27 separate purchases of finfish to a license purportedly held in the name of the company president, although no such license existed. In January 2008, Rusty Anchor employees purchased more than $500 worth of the restricted species black grouper from an unlicensed fisherman and concealed the illegal transaction by mislabeling the catch as Mahoua, an unregulated bait fish.

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

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United States v. Lieze Associates, d/b/a Eagle Recycling, No. 1:11-CR-00142 (N.D.N.Y.), ECS Trial Attorney Todd Gleason [redacted] and AUSA Craig Benedict [redacted].

On April 11, 2011, Lieze Associates, d/b/a Eagle Recycling, pleaded guilty to conspiring to violate the Clean Water Act and to defraud the United States for its role in the creation of a massive, asbestos-contaminated dumpsite that has been designated a Superfund site. This unpermitted dumpsite was located on a farmer's open field, which also contained wetlands, and is adjacent to the Mohawk River.

According to the charges, Eagle Recycling and other co-conspirators, engaged in a multi-year scheme to illegally dump 8,100 tons of pulverized construction and demolition debris that was processed at Eagle Recycling's North Bergen, New Jersey, solid waste management facility and then transported to the farmer's property in Frankfort, New York.

Eagle Recycling and other conspirators concealed the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forged the name of a DEC official on the fraudulent permit. Eagle Recycling admitted that once DEC and the U.S. Environmental Protection Agency (EPA) learned of the illegal dumping, the company began a systematic pattern of document concealment, alteration, and destruction including, but not limited to, destroying documents during the execution of a federal search warrant, secreting documents responsive to grand jury subpoenas, falsifying certifications submitted to the grand jury, and falsifying and submitting environmental sampling provided to the EPA.

Co-defendant Jonathan Deck previously pleaded guilty to conspiracy to commit wire fraud and sentencing for all the defendants is scheduled for September 9, 2011.

This case was investigated by the New York State Environmental Conservation Police Bureau of Environmental Crimes, the Environmental Protection Agency Criminal Investigation Division, the Internal Revenue Service, the New Jersey State Police Office of Business Integrity Unit, the New Jersey Department of Environmental Protection, and the Ohio Department of Environmental Protection.

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United States v. Hawk Field Services, LLC, No. 4:11-CR-00060 (E.D. Ark.), ECS Trial Attorney Todd Mikolop [redacted] and AUSA Edward Walker [redacted].

Speckled pocket book mussel

On April 8, 2011, Hawk Field Services, LLC (HFS), a wholly-owned subsidiary of Houston-based Petrohawk Energy Corporation, pleaded guilty to three counts of violating the Endangered Species Act. HFS was a natural gas operator in the Fayetteville Shale in Arkansas engaged in gathering, conditioning, and treating activities related to the development of natural gas.

Between October 2008 and April 2009, HFS failed to control erosion during pipeline construction activities, leading to excessive sedimentation in three streams of the Little Red River watershed and the associated take of at least one endangered speckled pocket book mussel (*Lampsilis streckeri*) from each stream. Pursuant to the plea agreement, HFS will pay a $350,000 fine, complete a three-year term of probation, and will make a $150,000 community service payment to the National Fish and Wildlife Foundation, for use in the Little Red River watershed.

This case was investigated by the United States Fish and Wildlife Service with assistance from the Arkansas Fish and Game Commission.

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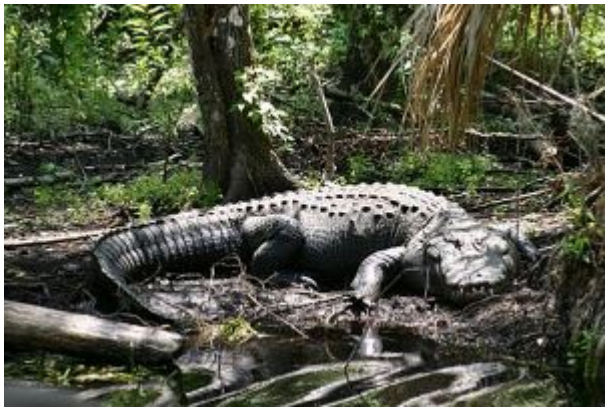
United States v. Larry Dees, Sr., et al., Nos. 3:11-CR-00029 and 00030 (M. D. La.), ECS Senior Trial Attorney Claire Whitney [redacted]

On April 14, 2010, Larry Dees, Sr., and Larry Dees, Jr., each pleaded guilty to two violations of the Lacey Act for leading sport hunters to unauthorized areas to hunt American alligators in violation of the Endangered Species Act and Louisiana law.

On September 10, 2009, and on September 24-25, 2009, Dees, Sr., and Dees, Jr., licensed alligator helpers, guided out-of-state alligator sport hunters to unapproved areas, that is, areas for which they did not have appropriate state authorization to hunt. On September 10th, a sport hunter killed a trophy-sized alligator that was over nine feet long.



American alligator

The plea agreements recommend that the defendants serve a three-year term of probation during which they will be prohibited from hunting as follows: for one year of the probation they will be prohibited from engaging worldwide in all hunting activities, including guiding, with any kind of weapon; for the remaining two years of probation they will be prohibited from engaging worldwide in all commercial alligator hunting activities, including guiding, with any kind of weapon.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property-specific and hunters may hunt only in the areas designated by the tags. The Dees were licensed alligator helpers during the hunts for which they are charged. Alligator helpers are not issued tags, but are given tags by alligator hunters. Helpers are required to comply with all alligator regulations, including ensuring they are hunting in areas designated by the tags they receive from hunters.

This case was investigated by the Louisiana Department of Wildlife and Fisheries Law Enforcement Division and the United States Fish and Wildlife Service Office of Law Enforcement.

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United States v. Stanships, Inc. (Marshall Islands), et al., No. 11-CR-00057 (E.D. La.), ECS Senior Trial Attorney Richard Udell ([redacted] and AUSAs Emily Greenfield [redacted] and Dorothy Taylor [redacted].

On April 12, 2011, Stanships, Inc. (Marshall Islands), Stanships, Inc. (New York), Standard Shipping, Inc. (Liberia), and Calmore Shipping (British Virgin Islands) pleaded guilty to an eight-count information charging them with obstruction, APPS oil record book violations, and Ports and Waterways Safety Act violations for failing to notify the Coast Guard of a hazardous condition on the *M/V Americana*, a Panamanian-registered cargo vessel operated by Stanships, Inc. (Marshall Islands).

An investigation was initiated after a crew member made allegations of illegal overboard discharges of oily waste and sludge and provided the Coast Guard with cell phone photos showing the use of a bypass pipe. The ship's oil record book was falsified to conceal the discharges. Additionally, on November 25, 2011, the *Americana's* last port call in New Orleans, the ship arrived in port with various unreported hazardous conditions, including an inoperable and unreliable generator and a hole between a fuel tank and a ballast tank. Prior to arriving in New Orleans, the ship had been adrift for approximately three to four days without engine power.

Stanships, Inc. (Marshall Islands) is a repeat offender, having been sentenced in September 2010 in the Eastern District of Louisiana to pay a $700,000 fine, make a $175,000 community service payment, complete a three-year term of probation, and implement an environmental compliance plan. In that case, the company pleaded guilty to an APPS ORB charge and a Clean Water Act violation for a knowing discharge of oil in the Gulf of Mexico from the *M/V Doric Glory*. On April 27, 2011, the previous term of probation was revoked based upon the new violations. As a result, the *M/V Americana* and the *M/V Doric Glory* are banned from entering U.S. waters.

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

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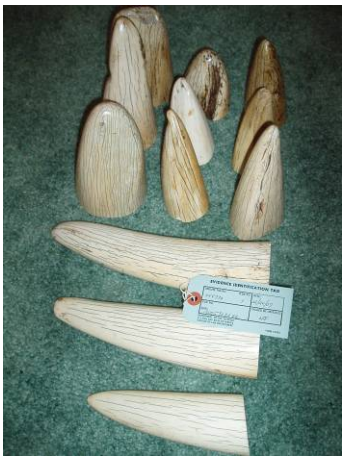
Sentencings

United States v. Joseph Barringer, No. 6:10-CR-00272 (M.D. Fla.), ECS Senior Trial Attorney Richard Udell [redacted] and AUSA Bruce Ambrose [redacted]



Seized elephant ivory

On April 27, 2011, Joseph Barringer was sentenced to pay a $3,000 fine and will complete a two-year term of probation. As a special condition of probation the defendant will be required to make quarterly reports to the court and the government recording all sales of ivory, all purchases of ivory, and all offers received from others to sell ivory.

Barringer pleaded guilty to an information charging him with an Endangered Species Act violation for the illegal sale of elephant ivory.

In December 2005, while conducting an Internet search for businesses dealing in ivory, Fish and Wildlife Service agents located a website for Cue Components, a manufacturer of custom pool cue parts. Among the items advertised for sale were components made from elephant ivory, including ferrules, joint collars, butt caps, and inlay slabs. According to its web page at the time, Cue Components (owned by Barringer) advertised that it sold "pre ban, legal and well documented" ivory and that it was for sale only to individuals in the United States. The website included the following statement: "Please Note: All pre ban elephant ivory must be sold to U.S. customers only-no exceptions. It is illegal to transport to a foreign country." The website included detailed descriptions and color photographs of a raw elephant tusk being processed into various finished pool cue parts. Neither the defendant nor Cue Components has ever been issued any CITES permits for the export of ivory.

Over the course of this two-year undercover operation (which included participation by British law enforcement officials) the defendant offered for sale and sold pool cues that were advertised as containing "genuine elephant ivory" via eBay using an alias. In one transaction, the defendant provided a false customs declaration so that an agent, posing as a buyer, could evade British customs payments.

Items seized in December 2007 as a result of search warrants executed at the defendant's home and business included approximately 197 pounds of cut ivory pieces, 24 elephant tusk tips weighing 33.6 pounds, and a bag of ivory ferrules weighing 1.2 pounds. Evidence was not obtained to establish whether the ivory was illegally smuggled into the United States, although the defendant made a practice to obtain statements from sellers indicating that the ivory he purchased was lawful.

This case was investigated by the United States Fish and Wildlife Service and United States Immigration and Customs Enforcement, with assistance from the London Metropolitan Police.

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United States v. Ricky Wahchumwah et al., No. 3:09-CR-02035 (E.D. Wash.), ECS Assistant Chief Eleanor Colbourn [redacted], and AUSAs Timothy Ohms [redacted] and Tyler Tornabene [redacted]

On April 13, 2011, Yakama tribal members Ricky Wahchumwah and his wife, Victoria Jim, were sentenced after being convicted by a jury of violations stemming from the illegal sale of bald and golden eagle parts. Wahchumwah and Jim were sentenced to serve 30 days' and 14 days' incarceration, respectively, followed by two years' supervised release. Fines were waived.

After a ten-day trial, a jury found Wahchumwah guilty of conspiracy, three counts of selling or offering to sell eagle parts in violation of the Bald and Golden Eagle Protection Act (BGEPA), and one count of selling wildlife in violation of the Lacey Act. Jim also was found guilty of conspiracy, two BGEPA violations, and one Lacey Act count.

The evidence at trial showed that the defendants had been illegally acquiring and selling bald and golden eagle parts since approximately April 2008. An undercover Fish and Wildlife agent purchased golden eagle parts from them in April 2008, May 2008, and October 2008. Among the items seized during a search of the defendants' home in March 2009 were four eagle carcasses with their wings and tail bases removed, at least 60 eagle wings, approximately 89 eagle feet with talons, and at least 728 loose wing feathers.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures, and the feathers of the birds are central to religious and spiritual Native American customs. By law, enrolled members of federally-recognized Native American tribes are entitled to obtain permits to possess eagle parts for religious purposes, but federal law strictly prohibits selling eagle parts under any circumstances.

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

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United States v. Richard Sparks et al., No. 2:10-CR-04021 (W.D. Mo.), AUSAs Daniel M. Nelson [redacted] and Jane Pansing Brown [redacted].

On April 6, 2011, Richard Sparks was sentenced to pay a $5,000 fine and to complete a five-year term of probation, after pleading guilty to making a false statement.

Co-defendant Scott Allen Beckmann, the mayor of Stover, Missouri, was convicted by a jury of charges related to the falsification of information about the city's water supply that was then submitted to the Missouri Department of Natural Resources (MDNR). Beckmann was found guilty of misprision of a felony and of making a false statement to a federal agent. Sparks, the superintendent of the city's public works department, admitted that he submitted a public water supply record to the MDNR that contained a false sampling location.

Sparks had primary responsibility for the collection and submission for analysis of water samples taken on behalf of the city. The city was required to submit monthly water samples to be analyzed for bacteriological contaminants, such as fecal coliform, and to conduct lead and copper sampling once every three years. Beckmann knew that Sparks had submitted false information to the MDNR, but denied any knowledge when questioned by an EPA agent.

Evidence at trial further confirmed that Beckmann also lied to a federal agent when asked whether he knew that Sparks was adding chlorine to the city drinking water samples being submitted to the MDNR. Beckmann falsely denied any knowledge of the activity, although he had previously admitted at a Board of Aldermen meeting that he knew Sparks was adding chlorine to the city's drinking water samples because the city water could not pass inspection. Beckmann has not yet been scheduled for sentencing.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Missouri Department of Natural Resources.

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United States v. Joseph Biggio et al., Nos. 1:10-CR-00031, 00032, and 00163 (S.D. Ind.), AUSA Gayle Helart [redacted] and RCEC James Cha [redacted]

On April 4, 2011, three former officials of a waste oil reclamation and reprocessing company were sentenced for dumping untreated wastewater and storm water into the Indianapolis sewer system. Joseph Biggio, a former operations manager and executive vice president of Ecological Systems, Inc., will complete a three-year term of probation and will pay a $15,000 fine after pleading guilty to two felony Clean Water Act counts and one false statement violation. Michael Milem, a former operations manager, was sentenced to serve six months of home confinement as a condition of a three-year term of probation, and will pay a $5,000 fine. Milem pleaded guilty to one felony CWA violation. Former laboratory manager Mark Snow was sentenced to complete a three-year term of probation and will pay a $5,000 fine after pleading guilty to one felony CWA violation. Biggio and Milem were further required (as community service) to give one lecture a year over the three-year term of probation to graduate students seeking degrees in business management (Biggio) and in environmental sciences (Milem) regarding the case and their convictions. Snow will complete 288 hours of community service during the term of probation.

A state and federal investigation began in February 2009 following complaints by nearby homeowners that "thick, oily wastewater" was flowing into their yards from manholes after a heavy rainfall. Investigators found that ESI did not have sufficient storage capacity to handle the wastewater, which prompted Milem and Snow to discharge approximately 300,000 gallons of oily wastewater directly to the sewer, bypassing any treatment process. Further investigation confirmed that the company had not been adequately treating its wastewater for several years and that it had misrepresented to authorities the actual storage capacity it had to compensate for significant rainfall events.

Evidence further confirmed that Biggio "cherry-picked" data that were submitted in monthly reports, to disguise the fact that discharge limits were being exceeded. He also ensured that samples

were taken during rainfall events in an attempt to dilute the samples. The company filed for bankruptcy protection and shut its doors in October 2010, and site cleanup is ongoing.

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

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United States v. Douglas Jay, No. 2:10-CR-00262 (W.D. Wash.), AUSA Jim Oesterle

On April 1, 2011, Douglas Jay was sentenced after pleading guilty to a Lacey Act violation for falsely labeling salmon that was sold in interstate and foreign commerce. Jay was sentenced to serve a one-year term of incarceration followed by two years of supervised release. He was further ordered to pay $347,202 in community service to the U.S. Fish and Wildlife Foundation to fund programs that protect and restore fishery resources and the habitats on which they depend.

Between May 2005 and mid-2007, Jay directed the workers at his Bellingham fish processing plant, D Jay Enterprises, Inc., to label less valuable Coho (Silver) salmon as Chinook (King) salmon. This enabled the defendant to sell the fish at a higher price. At sentencing the court remarked that the entire seafood industry is damaged when mislabeled fish are sent to the marketplace, and consumers' trust and confidence are damaged.

Jay filled approximately 125 orders for Chinook salmon with lower priced and lower quality Coho salmon, placing more than 160,072 pounds of falsely labeled fish into interstate and foreign commerce over a two-year period. Estimates of the market value of the falsely labeled fish exceed $1.3 million. D Jay Enterprises has gone out of business; however, the defendant now operates a different fish processing business, Premiere Packing LLC, out of Lynden, Washington.

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

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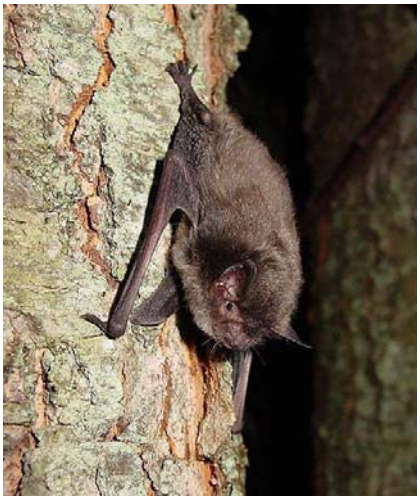
United States v. Lonnie Skaggs et al., No. 09-CR-00031 (E.D. Ky.), AUSA Roger West

On March 22, 2010, Lonnie Skaggs and Kaleb Carpenter were sentenced after pleading guilty to Endangered Species Act violations for slaughtering bats over a two-day period. Skaggs will serve eight months' incarceration followed by one year of supervised release. Carpenter will complete a three-year term of probation.

The investigation began in October 2007 when Carter Caves State Park employees documented that someone had entered Laurel Cave on two occasions and had killed a total of 105 Indiana Bats, an endangered species. Investigators determined that Carpenter and Skaggs had killed the bats with flashlights and rocks, further crushing the bats that they had knocked from the air and from the cave walls with their feet. After killing 23 bats on his own, Skaggs returned to the cave a few nights later with Carpenter when they both killed 82 more.



Indiana Bat

The Indiana Bat population has declined since it was listed as an endangered species in 1967, and in 2009, there were an estimated 391,163 remaining.

This case was investigated by the United States Fish and Wildlife Service, the Kentucky State Parks, and the Kentucky Department of Fish and Wildlife Resources.

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United States v. Honeywell International, Inc., No. 11-CR-40006 (S.D. Ill.), ECS Senior Trial Attorney Jennifer Whitfield [redacted] ECS Trial Attorney Susan Park [redacted], AUSAs Michael Quinley [redacted] and Liam Coonan [redacted], and ECS Paralegal Lisa Brooks [redacted].

Leaking and corroded drums of KOH waste

On March 11, 2011, Honeywell International, Inc., was sentenced to pay an $11.8 million fine and will complete a five-year term of probation after pleading guilty to a RCRA violation for the storage of hazardous waste without a permit.

As a condition of probation, Honeywell must comply with the terms of an interim consent order it entered into with the Illinois Attorney General's Office and the Illinois Environmental Protection Agency in April of 2010. As a further condition of probation, Honeywell will implement a community service project in the community surrounding the Metropolis facility, whereby Honeywell will develop, fund, and implement a household hazardous waste collection program and arrange for proper treatment, transportation, and disposal of this waste collected during at least eight collection events over a two-year period, at a cost of approximately $200,000.

Honeywell owns and operates a uranium hexafluoride (UF6) conversion facility near the City of Metropolis. Air emissions from the UF6 conversion process are scrubbed with potassium hydroxide (KOH) prior to discharge. As a result of this process, KOH scrubbers and associated equipment accumulate uranium compounds that settle out of the liquid and are pumped as a slurry into 55-gallon drums. The drummed material, called "KOH mud," which consists of uranium and KOH, has a pH greater than or equal to 12.5 and is classified as a D002 corrosive hazardous waste under RCRA.

Honeywell shut down part of the wet reclamation process it used to reclaim the uranium from the KOH mud in approximately November 2002, knowing that previously accumulated drums of this material and any additional drums generated thereafter would have to be stored onsite until such time as the wet reclamation process was restarted. Honeywell thus was required to have a RCRA permit to store these drums for longer than 90 days; however, it did not obtain one.

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

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