
ENVIRONMENTAL CRIMES SECTION



MONTHLY BULLETIN

October/November 2013



Photo of a Mountain Lion in a Tree. See [*United States versus Loncarich et al.*](#), below, for more details.

EDITOR'S NOTES:

***NOTE: DUE TO THE GOVERNMENT SHUTDOWN
WE HAVE COMBINED THE OCTOBER AND
NOVEMBER ISSUES OF THE BULLETIN INTO
THIS SINGLE EDITION.**

ANNOUNCEMENT:

On September 11, 2013, at the National Advocacy Center in Columbia, South Carolina, Herbert G. Johnson was awarded the first Raymond W. Mushal Award for Outstanding Contribution to Federal Criminal Law Enforcement. The award was established to honor our friend Ray, 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 retired from the Department in 2002, but has remained on as a Department of Justice contractor for the Environmental Crimes Section.

Herb has a Bachelors in Mechanical Engineering (Nuclear Power) from Massachusetts Institute of Technology and a Juris Doctor from Harvard Law School. After a brief time in private practice, Herb began a 40-year public service career starting with the City of New York, going on to a stint as an Assistant United States Attorney in the Eastern District of New York, then on to environmental work for the State of New York. Herb then spent several years working in the United States Environmental Protection Agency's criminal program, subsequently moving to the National Association of Attorneys General, where he focused upon environmental criminal enforcement. Herb joined the Environmental Crimes Section in 1991. After a few years in the District of Columbia, Herb moved to California, where he finished his full time career as a Special Assistant United States Attorney in San Francisco. In 2002, Herb began work for the Environmental Crimes Section as a contractor.

Almost every prosecutor who pursues a federal water pollution case uses words that Herb helped craft. Anyone who uses the Environmental Crimes Manual benefits from something that Herb has contributed. Those who have made use of the Environmental Crimes Bulletin or the case summaries that are periodically circulated have profited from Herb's work. Herb also would drop everything to dredge up some arcane scrap of caselaw to help prosecutors with thorny issues.

However, the most tangible and visible monument to Herb's labors is "Herblaw," an extraordinary compendium of case law on environmental law that is now institutionalized as a volume of the Environmental Crimes Manual. Herb created this resource on his own initiative simply because he knew we needed it.

Herb Johnson has been a public servant in the purest sense, a person who has given all of us a reason to have pride in that title. He has worked for the public good, and made enormous contributions to this specialty, working steadily, tirelessly, and selflessly to build a legal foundation for this program. In a profession notorious for its egos, Herb has shunned the plaudits merited by his achievements. He is truly one of a kind.

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 Associations' website.

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 publically available. If a press release was not issued, then please only provide facts that are appropriate to disclose to the public.

NOTICE: The United States Fish and Wildlife Service and ECS have collaborated with West Services on the publication of an updated book of federal fish and wildlife statutes. To obtain a free copy please contact Elizabeth Janes.

The [Environmental Crimes Section webpage](#) is available to those who have access to United States Department of Justice operated sites.

AT A GLANCE:

DISTRICT	CASES	CASE TYPE/ STATUTES
District of Alaska	United States versus Jessie Arnariak et al.	<i>Walrus Hunting/Lacey Act, Firearms</i>
District of Colorado	United States versus Andie Loncarich et al.	<i>Illegal Hunting/Lacey Act</i>
Southern District of Florida.	United States versus Toby Lamm	<i>Seafood Import/Lacey Act</i>
	United States versus Key Marine, Inc. et al.	<i>Marine Wildlife Sales/Conspiracy</i>
	United States versus Peter C. Covino et al.	<i>Marine Wildlife Sales/Obstruction, Lacey Act, Conspiracy</i>
Middle District of Georgia	United States versus Bio-Tech Management, Inc. et al.	<i>Pesticide Misapplication/FIFRA, Conspiracy, Falsification of Records, Mail Fraud</i>
Northern District of Georgia	United States versus Seretha Franklin et al.	<i>Vehicle Emissions Testing/CAA, Conspiracy</i>
Central District of Illinois	United States versus Edna Stoner	<i>Pipeline Testing/ False Statement</i>
Southern District of Indiana	United States versus E-Biofuels et al.	<i>Biodiesel Fuel Fraud/ Conspiracy, CAA, False Statement, Money Laundering, Wire Fraud, Tax</i>
	United States versus Eric Barnes	<i>Pipeline Testing/ False Statement</i>
District of Kansas	United States versus Marlin Butler et al.	<i>Hunting and Guiding/Lacey Act, Conspiracy, Obstruction</i>
Eastern District of Louisiana.	United States versus Halliburton Energy Services, Inc.	<i>Oil Spill/ Evidence Destruction</i>

DISTRICT	CASES	CASE TYPE/ STATUTES
District of Maryland	United States versus Michael D. Hayden, Jr.	<i>Striped Bass Investigation/ Witness Tampering, Retaliation</i>
District of Minnesota	United States versus Brent R. Feickert	<i>Metal Plating Facility/False Statement</i>
Eastern District of New York	United States versus Michael Slattery, Jr.	<i>Rhino Horn Smuggling/ Lacey Act</i>
Northern District of New York	United States versus Martin S. Kimber	<i>Mercury Dispersal/Use of Chemical Weapon, Consumer Product Tampering</i>
	United States versus Mark Desnoyers	<i>Asbestos Abatements/ Conspiracy, Mail Fraud, False Statement, CAA</i>
Western District of New York	United States versus Chris Coseglia et al.	<i>Demolition/ Accessory After the Fact, CAA, Conspiracy, False Statement</i>
	United States versus Maracle Industrial Finishing et al.	<i>Chemical Manufacturer/ CWA</i>
Eastern District of North Carolina	United States versus Freedman Farms, Inc. et al.	<i>CAFO/CWA</i>
Western District of North Carolina	United States versus Jose Cabrera	<i>Vehicle Emissions Tests/CAA, Conspiracy</i>
Northern District of Ohio	United States versus Kennedy Mint, Inc. et al.	<i>Fish Kill/CWA, Obstruction</i>
Northern District of Oklahoma	United States versus Robbie D. Tubbs	<i>Paddlefish Eggs/Lacey Act</i>

<p>Eastern District of Texas</p>	<p><u>United States versus John McCall et al.</u></p> <p><u>United States versus Stephen Anderson Sipes, Jr.</u></p> <p><u>United States versus Matthew Bowman et al.</u></p>	<p><i>Alligator Killing/Lacey Act</i></p> <p><i>Deer Transportation/Lacey Act</i></p> <p><i>Chemical Manufacturer/ OSHA, RCRA, HMTL, DOT, False Statement</i></p>
<p>Eastern District of Virginia</p>	<p><u>United States versus Kassian Maritime Navigation Agency, Ltd. et al.</u></p> <p><u>United States versus Nolan Agner et al.</u></p>	<p><i>Vessel/APPS, False Statements, Obstruction</i></p> <p><i>Striped Bass Fishing/Lacey Act</i></p>
<p>Western District of Virginia</p>	<p><u>United States versus Edward K. Durst</u></p>	<p><i>Asbestos Removal/CAA</i></p>

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- ◇ [Plea Agreements](#) pp. 11 - 14

Trials

United States versus Kassian Maritime Navigation Agency, Ltd. et al., No. 2:13-CR-00070 (E.D. Va.), ECS Trial Attorneys Ken Nelson and Stephen DaPonte, and ECS Paralegal Jessica Pannett.

***M/V Antonis G. Pappadakis***

On September 13, 2013, a jury convicted chief engineer Lambros Katsipis on seven of eight counts, including APPS, false statements, and obstruction of justice violations (18 U.S.C. §§ 1505, 1519; 33 U.S.C. § 1908), but acquitted ship operator Kassian Maritime Navigation Agency, Ltd. and ship owner Angelex Ltd.

This case stemmed from illegal overboard discharges of bilge waste from the *M/V Antonis G. Pappadakis* that had bypassed pollution prevention equipment and that were not recorded in the ship's oil record book (ORB). The falsified ORB was presented to Coast Guard inspectors during three separate boardings between July 2012 and April 2013. Evidence at trial proved that Katsipis obstructed justice by instructing crew members not to speak to Coast Guard personnel during the April 2013 boarding.

The case also resulted in a favorable opinion (*Angelex Ltd. versus U.S.*, 723 F.3d 500) upholding the Coast Guard's authority to detain a ship and require a surety bond with conditions it deems appropriate before the ship can be released.

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

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Informations/Indictments

United States versus Micheal Slattery, Jr., No. 2:13-mj-00799 (E.D.N.Y.), ECS Trial Attorney Gary Donner and AUSA Julia Nestor.

On September 18, 2013, Micheal Slattery, Jr., was detained on a complaint charging him with Lacey Act false labeling violations (16 U.S.C. §§ 3372(d)(2); 3373(d)(3)(A)) in connection with his alleged role in an international rhinoceros horn smuggling ring. The arrest is a result of “Operation Crash,” a nation-wide effort led by the U.S. Fish and Wildlife Service and the Justice Department to investigate and prosecute those involved in the black market trade of endangered rhinoceros horns.

In 2010, a complaint alleged that Slattery traveled from England to Texas to acquire black rhinoceros horns. The defendant and others purportedly used a day laborer with a Texas driver’s license as a straw buyer to purchase two horns from an auction house in Austin. The complaint charges that Slattery and his group then traveled to New York where they presented a fraudulent Endangered Species Bill of Sale and sold a total of four rhinoceros horns to an individual for \$50,000.

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

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United States versus E-Biofuels et al., Nos. 1:13-CR-00189, 00190, and 00194 (S.D. Ind.), ECS Senior Counsel Tom Ballantine, Senior Litigation Counsel Steven DeBrotta of the United States Attorney’s Office, and SEC SAUSA Jake Schmidt.

On September 17, 2013, two indictments were returned charging six individuals and three corporations with violations stemming from a multi-state criminal conspiracy to defraud biodiesel purchasers. Specifically, the indictments allege that defendants in New Jersey supplied defendants in Indiana with millions of gallons of biodiesel fuel that had already served as a basis for awarding two valuable government subsidies. The defendants in Indiana then defrauded its customers by selling the biodiesel fuel as if the subsidies were still available to purchasers. In doing so, the conspirators realized in excess of \$55,000,000 in criminal profits over an approximately three-year period. The subsidies involved “renewable identification numbers” (“RINs”) and the “blender’s excise tax credit.”

Under the Energy Independence and Security Act of 2007 (EISA), the RINs, which are generated by renewable fuel producers, signify that a certain amount of renewable fuel has been introduced into the country’s fuel stream. Petroleum refiners and importers are required to buy renewable fuel with assigned RINs in order to “retire” a certain number of them each year. This situation created a market for RINs. The EISA included a \$1.00 per gallon subsidy for people who blended petroleum diesel with biodiesel. This blender’s credit also helped to increase the market for biodiesel.

Craig Ducey, Chad Ducey, Chris Ducey, and Brian Carmichael operated E-Biofuels, an Indiana company that was a producer of biodiesel from “feedstocks” such as animal fat and vegetable oils. These defendants are alleged to have conspired with Joseph Furando and Evelyn Katirina Pattison,

individuals associated with two New Jersey-based companies that operated under the names Caravan Trading Company and CIMA Green allegedly for the purpose of illegally purchasing RINs.

The indictments charge conspiracy, wire fraud, false (tax) claims, Clean Air Act false statements, obstruction, and money laundering violations (18 U.S.C. §§ 287, 371, 1001(a)(1), 1343, 1519, 1957; 42 U.S.C. §7413(c)(2)(A)). There is a related securities fraud prosecution addressing alleged crimes committed by Jeffrey Wilson, the president and chief executive officer of Imperial Petroleum, and Craig Ducey. Imperial Petroleum is a publicly-traded company that bought E-Biofuels in 2010.

An additional defendant, Brian Carmichael, who is charged with a conspiracy to defraud the United States, has agreed to plead guilty.

This case was investigated by the U.S. EPA Criminal Investigation Division, the Internal Revenue Service Criminal Investigation, the FBI, the Securities and Exchange Commission, the U.S. Department of Agriculture, and the Indiana Department of Environmental Management.

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United States versus Michael D. Hayden, Jr., No. 13-mj-02143 (D. Md.), ECS Senior Trial Attorney Todd Gleason, ECS Trial Attorney Shennie Patel, and ECS Paralegal Casey Layman.

On September 17, 2013, Michael D. Hayden, Jr., was arrested on charges of witness tampering and retaliation (18 U.S.C. §§ 1512(b)(1), (b)(2)(a), (b)(3); 1513(b)(2)) in connection with an investigation of felony Lacey Act violations related to the illegal harvesting of striped bass from the Chesapeake Bay.

According to court documents, Hayden is a commercial fisherman who operates commercial fishing vessels on the Bay. During an investigation into the illegal harvesting of striped bass from the Bay, law enforcement agents were informed that Hayden allegedly attempted to manipulate some witnesses' testimony while trying to prevent the testimony of others. The complaint alleges that, in at least one incident, Hayden threatened to retaliate against a potential witness he believed to be cooperating with investigators.

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

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United States versus Bio-Tech Management Inc. et al., No. 5:13-CR-00068 (M.D. Ga.), ECS Trial Attorneys Richard Powers and Adam Cullman, and ECS Paralegal Ashleigh Wye.

On September 11, 2013, Bio-Tech Management, Inc., a pest control services company, and company owner Steven Murray, were charged in a 52-count indictment with conspiracy, FIFRA, false statements, falsification of records, and mail fraud violations (18 U.S.C. §§ 371, 1001, 1341, 1519; 7 USC § 136j).

The indictment alleges that from October 2005 to June 2009, the defendants repeatedly misapplied the registered pesticide Termidor SC in nursing homes in the state of Georgia and falsified documents to conceal the unlawful use. The indictment further alleges that Murray and Bio-Tech sent invoices through the mail to their nursing home clients to solicit payment for the unlawful pesticide applications.

The defendants provided monthly pest control services to nursing homes in Georgia by spraying pesticides in and around their clients' facilities. The indictment alleges that, at the direction of Murray, Bio-Tech employees routinely applied the pesticide Termidor indoors more than twice a year, contrary to the manufacturer's label instructions. After the Georgia Department of Agriculture made inquiries regarding Bio-Tech's misuse of Termidor and other pesticides, Murray allegedly directed several of his employees to alter company service reports in order to obstruct the investigation.

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

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Plea Agreements

United States versus Edna Stoner, No. 2:13-CR-200852 (C.D. Ill.), ECS Senior Trial Attorneys Jennifer Whitfield and David Kehoe, and AUSA Ronda Coleman.

On October 9, 2013, Edna Stoner pleaded guilty to a five-count information charging her with four false statement violations and one pipeline safety violation (18 U.S.C. § 1001; 49 U.S.C. § 60123(a)).

From July 2008 through January 2009 Stoner was assigned to conduct non-destructive testing of a natural gas compressor station that was under construction in Blue Mound, Illinois. She issued reports confirming that certain pipe connections had been tested and were acceptable even though she had not conducted the required test. Sentencing is scheduled for April 4, 2014.

This case was investigated by the U.S. Department of Transportation Office of Inspector General.

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United States versus Toby Lamm, No. 2:13-CR-14049 (S.D. Fla.), AUSA Norman O. Hemming, III.



Forfeited seafood

On October 4, 2013, Toby Lamm pleaded guilty to an information charging him with a Lacey Act violation (16 U.S.C. §§ 3372 (a)(2)(A), 3373(d)(2)) for illegally importing wildlife from the Bahamas in June 2013.

Lamm imported and attempted to import approximately 338 queen conch, 11 spiny lobster tails, 31 stone crab claws, and 140 pounds of Snapper and Grouper fillets, all of which are now subject to forfeiture. Sentencing is set for December 16, 2013

This case was investigated by the NOAA Office of Law Enforcement, the Florida Fish and Wildlife Conservation Commission, and the U.S. Customs and Border Protection.

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United States versus Andie Loncarich et al., Nos. 1:13-mj-00046 and 00047 (D. Colo.), ECS Senior Trial Attorney Ron Sutcliffe and ECS Trial Attorney Mark Romley.



Mountain lion in tree On October 1, 2013, Andie and Caitlin Loncarich each pleaded guilty to one misdemeanor Lacey Act trafficking violation (16 U.S.C. §§ 3372(a), 3373(d)) for their roles in guiding out-of-state hunters on hunts to kill mountain lions and bobcats in violation of Colorado and Utah laws.

From approximately 2006 to 2010, the sisters, along with their father and four other assistant hunting guides, took clients on hunts for animals that had been caged, trapped, or shot in the legs or feet. The group also had a practice of taking hunters (who were only licensed for hunting mountain lions in Colorado) on hunts in Utah. They also guided unlicensed hunters on bobcat hunts in both states.

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

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United States versus Seretha Franklin et al., No. 1:13-CR-00098 (N.D. Ga.), AUSA Stephen H. McCain.

On September 30, 2013, Ieka N. Jones and Seretha Franklin pleaded guilty to Clean Air Act violations (42 U.S.C. § 7413(c)(2)(A)) for their roles in a scheme to issue fraudulent emissions certificates for cars that would have otherwise failed inspection. Codefendants Jerome Clarence Barnes, Jr., and Jared F. Walker pleaded guilty on September 6, 2013, to conspiring to commit wire fraud and to a CAA violation, respectively.

Barnes was responsible for issuing over 4,000 fraudulent emissions certificates to car owners in Georgia from September 2011 to September 2012. He worked with other individuals to open emissions inspection stations in their names that he would then use to issue fraudulent certificates.

After state authorities closed down two of his inspection stations for fraudulent conduct, Barnes opened additional stations under the name of a different owner.

Walker, Jones, and Franklin were licensed emissions inspectors who worked with Barnes to issue the fraudulent certificates substituting data from vehicles they knew would pass the test. They charged \$100 to \$125 for their services, when the cost for a legitimate inspection was \$25.

Franklin and Jones are scheduled to be sentenced on December 20, 2013, and Walker is scheduled for November 22, 2013.

This case was investigated by the U.S. EPA Criminal Investigation Division, and the Georgia Department of Natural Resources Environmental Protection Division.

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United States versus Chris Coseglia et al., No. 1:11-CR-00241 (W.D.N.Y.), AUSA Aaron Mango.



Aerial view of apartment complex

On September 27, 2013, Chris Coseglia pleaded guilty to being an accessory after the fact to a false statement under the Clean Air Act (18 U.S.C. § 3). Coseglia had been charged, along with two companies and eight individuals, in a 23-count indictment with charges related to an asbestos abatement project at an apartment complex.

The following defendants are variously charged with CAA, conspiracy, and false statement violations: Johnson Contracting of WNY, Inc. (Johnson Contracting); JMD Environmental, Inc. (JMD); Ernest Johnson (Johnson Contracting president); Rai Johnson (Johnson Contracting supervisor); Evan Harnden (JMD supervisor); and JMD project monitor Brian Scott. Also charged are city building inspectors Donald Grzebielucha and William Manuszewski, along with Theodore Lehmann, an inspector with the New York State Department of Labor, Asbestos Control Bureau (18 U.S.C. §§ 371, 1001; 42 U.S.C. §§ 7412, 7413). JMD project manager Henry Hawkins has pleaded guilty to an accessory charge and is scheduled to be sentenced on November 12, 2013.

According to the indictment, from June 9, 2009 to January 11, 2010, Johnson Contracting, Ernest Johnson and Rai Johnson, conducted asbestos abatement activities at six buildings at the Kensington Towers Apartment Complex in Buffalo. During the abatement process, Rai Johnson created daily project logs to document the progress at Kensington Towers. At the conclusion of the abatement for building B-2, Rai Johnson allegedly documented in the project log that all material containing asbestos had been removed from the boiler room, which was false.

Coseglia was employed by JMD as an air sampling technician and a project monitor, and was certified by the New York State Department of Health to conduct asbestos project monitor and air

sampling duties. On August 25, 2009, he issued a satisfactory visual inspection report of the boiler room at building B-2 despite knowing that all the asbestos had not been removed.

The remaining defendants are scheduled for trial to begin on January 14, 2014, and Coseglia is scheduled to be sentenced on February 13, 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 versus Key Marine, Inc., et al., No. 4:1 3-CR-10020 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On September 25, 2013, Key Marine, Inc., Eric Pedersen, and Serdar Ercan pleaded guilty to conspiracy to violate the Lacey Act (18 U.S.C. § 371) for harvesting, capturing, and selling various species of marine wildlife from the Florida Keys National Marine Sanctuary and state waters.

According to the information, between October 2010 and February 2011, the defendants collected, exported, and sold in interstate and foreign commerce various species of marine life, including Live Rock and attached invertebrates, coral, sea fans, and several species of sharks. The defendants exceeded the legal limit on the harvest of coral as part of their illicit harvesting activities and did not possess any permits or licenses to remove or sell marine wildlife.

Sentencing is scheduled for December 4, 2013. This case was investigated by the NOAA Office of Law Enforcement and the U.S. Fish and Wildlife Service Office of Law Enforcement.

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Sentencings

United States versus Matthew Bowman et al., No. 1:12-CR-00042 (E.D. Tex.), ECS Senior Counsel Rocky Piaggione, AUSA Joseph Batte, and ECS Paralegal Puja Moozhikkattu.

On October 28, 2013, Matthew Bowman was sentenced after previously pleading guilty to OSHA and false statement violations (18 U.S.C. § 1001; 29 U.S.C. § 666) for his involvement in an incident that caused the death of an employee. Bowman will serve 12 months' incarceration, followed by one year of supervised release, and will pay a \$5,000 fine.

Bowman is the president of Port Arthur Chemical and Environmental Services, LLC (PACES). The company recovered hydrogen sulfide from spent caustics to create a product used by paper mills called NaSH. The production and resulting waste caused the release of highly toxic hydrogen sulfide gas. According to the National Institute for Occupational Safety and Health, hydrogen sulfide is an acute toxic substance that is the leading cause of sudden death in the workplace.

Bowman was responsible for approving and directing PACES production operations, the disposal of hydrogen sulfide wastewater, and ensuring implementation of employee safety precautions. He admitted to not properly safeguarding employees from exposure to this gas, resulting in the death of truck driver Joey Sutter at the PACES facility on December 18, 2008, and contributing to the death of truck driver Charles Sittig in April 2009. In addition, Bowman directed employees to falsify transportation documents to conceal that the wastewater was coming from PACES after a disposal facility put a moratorium on all wastewater shipments from the company after it received loads containing hydrogen sulfide

PACES is charged in a 13-count superseding indictment with two counts of violating OSHA standards that caused the deaths of two employees; conspiracy to violate Department of Transportation Laws; four counts of transportation of hazardous materials without placards; one count of treatment of hazardous waste without a permit; and five counts related to false transportation documents (18 U.S.C. §§ 371, 1001; 29 U.S.C. § 666; 42 U.S.C. § 6928; 49 U.S.C. §§ 5104 and 5124). Trial is scheduled to begin on January 27, 2014.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the United States Department of Transportation, the Texas Commission on Environmental Quality, the Houston Police Department, the United States Department of Labor, and the United States Coast Guard.

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United States versus James Bobby Butler, Jr., et al., No. 6:10-CR-10089 (D. Kansas), ECS Trial Attorney Colin Black and AUSA Matt Treaster.



Seized mounts and antlers

On October 28, 2013, James Bobby Butler, Jr., and his brother, Marlin Jackson Butler, were resentenced. James Butler will serve ten months' incarceration (versus 41 months) and Marlin Butler will serve eight months (versus 27 months). Each will complete three-year terms of supervised release and must still pay fines in the amount of \$25,000 and \$10,000, respectively, as previously ordered. The judge decided, however, not to order Marlin Butler to pay any restitution. He also would have vacated the \$25,000 in restitution James Butler was ordered to pay if the 10th Circuit had not already affirmed. James Butler will be allowed to hunt after one year of probation. The brothers also will forfeit 83 items that include a number of deer mounts, antlers, and hunting equipment.

The two variously pleaded guilty to Lacey Act, obstruction, and conspiracy violations (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B); 18 U.S.C. § 371) for their illegal operation of a guiding service and deer hunting camp. Hunters guided by the Butler brothers killed deer in excess of annual

bag limits, hunted deer without permits or with permits for the wrong deer management unit, killed deer using illegal equipment, and hunted using prohibited methods, such as spotlighting.

In September 2012, the Tenth Circuit affirmed in part, vacated in part, and remanded to the district court for further proceedings. The appellate court upheld two significant aspects of appellant James Butler's sentence, concluding that the district court properly ordered \$25,000 in restitution under the Mandatory Victims' Restitution Act and that the district court had properly applied a sentencing enhancement based on the appellant's role as a leader or organizer of criminal activity involving five or more participants. However, the court of appeals vacated the sentences imposed by the district court on two other grounds, the first applicable to both James and Marlin Butler, the second only to James Butler.

First, the appellate court concluded that the district court erred in using the price of guided deer hunts to estimate the fair market retail value of the deer killed illegally on the hunts. The court held that the price of the hunts did not constitute a direct measure of "fair market retail value" because it included the value of other incidentals such as accommodations, when it should have reflected only "the price of the animal itself." The court next found that the district court could not rely on the price of the hunts as a "reasonable estimate" of market value, because the record revealed no evidence to support the district court's determination that fair market retail value was "difficult to ascertain" within the meaning of the commentary to Sentencing Guideline 2Q2.1.

Second, the court vacated a condition of probation prohibiting James Butler from hunting, fishing, or trapping, or accompanying others engaged in such activity, because the condition would prevent the appellant from continuing his employment as business manager of a commercial deer operation, and the district court did not sufficiently find that the restriction was "the minimum restriction necessary" to protect the public.

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

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United States versus Nolan L. Agner, et al., Nos. 2:12-CR-00164 - 168 (E.D. Va.), ECS Trial Attorney Jim Nelson.

On October 28, 2013, Nolan L. Agner, captain of the *Flat Line*, and his corporation, Agner, Inc., were sentenced. Both will complete three-year terms of probation with a special condition that they must purchase and maintain a Vessel Monitoring System device on any of their vessels used for fishing purposes. Nolan Agner also will pay a \$3,500 fine.

The defendants previously pleaded guilty to a single Lacey Act trafficking violation (16 U.S.C. §§ 3372(a)(1), 3373(d)(2)) for illegally harvesting Striped Bass during a charter fishing trip in January 2011. Agner is the remaining defendant out of five charter fishing boat captains who have been prosecuted for Lacey Act and other violations stemming from the sale of illegally harvested Striped Bass from 2009 through 2011.

This case was investigated by the National Oceanic and Atmospheric Administration Fisheries, Office of Law Enforcement; and the Virginia Marine Police, with assistance from the Federal Communications Commission Enforcement Bureau.

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United States versus Eric Barnes, No. 1:13-CR-00160 (S.D. Ind.), ECS Senior Trial Attorneys Jennifer Whitfield and David Kehoe, and AUSA Steven DeBrota.

On October 23, 2013, Eric Barnes pleaded guilty to a false statement violation (18 U.S.C. § 1001) and was sentenced to serve a two-year term of probation and to perform 40 hours of community service. A fine was not assessed. Barnes admitted to falsifying documents in connection with safety testing of a natural gas pipeline compressor station.

Barnes was employed by the U.S. Inspection Service, a company that conducted, among other things, non-destructive testing (NDT) of pipeline welds. NDT is any test method that examines an object, material, or system without impairing its future use. Barnes was employed as a Level II Radiograph Technician and was responsible for conducting non-destructive tests of pipeline welds (x-rays) and for interpreting and reporting the results of those.

From approximately June through October of 2008, the defendant was assigned to conduct tests on a natural gas pipeline compressor station in Bainbridge, Indiana. The results of the testing (which included evaluation of pipe welds based on x-rays) are recorded on a reader sheet. The reader sheet must be maintained by the owner of the pipeline as proof of “non-destructive” testing of the pipeline as required by U.S. DOT Pipeline Hazardous Materials Safety Act regulations. Barnes admitted that he created five different reader sheets that falsely confirmed the testing of certain pipe welds.

This case was investigated by the U.S. DOT Office of Inspector General.

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United States versus Jessie Arnariak et al., No. 3:12-CR-00099 (D. Ak.), AUSA Steven Skrocki.

On October 18, 2013, Jessie Arnariak pleaded guilty to a violation of the Marine Mammal Protection Act and to being a felon in possession of a firearm (16 U.S.C. § 1372(a)(4)(A); 18 U.S.C. §§ 922(g)(1), 924(a)(2)).

In May 2011, Arnariak and co-defendant Sixty Arkanakyak approached a herd of walrus that were on a beach and began shooting at the animals, wounding five of them. The herd stampeded and four of the wounded walrus escaped into the sea. The one remaining walrus was trapped against a cliff and killed. The tusks were hacked off and the rest of the animal was abandoned. Arkanakyak previously pleaded guilty to similar charges and was sentenced to serve 30 months’ incarceration followed by three years’ supervised release. He also will pay \$5,000 in restitution to the Alaska Department of Fish and Game Round Island State Walrus Sanctuary. Arnariak is scheduled to be sentenced on January 13, 2014.

This case was investigated by the U.S. Fish and Wildlife Service and Alaska Department of Public Safety Wildlife Troopers.

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United States versus Robbie D. Tubbs et al., Nos. 4:13-CR-00032 – 00035, 00070 (N.D. Okla.), ECS Senior Trial Attorney Claire Whitney.

On October 17, 2013, licensed commercial fisherman Robbie D. Tubbs was sentenced to serve six months’ incarceration followed by six months’ supervised release. He was further ordered to pay a \$500 fine. Tubbs previously pleaded guilty to a Lacey Act trafficking violation (16 U.S.C. §§ 3372(a)(2)(A), 3372 (a)(4), 3373(d)(1)(B)) for his involvement in the illegal fishing and transportation of paddlefish eggs (caviar) across state lines.

This case is related to the prosecution of James Chapman, Lee A. Jobe, Jeremy Waldrip, and Jay C. Witt, who were sentenced after previously pleading guilty to Lacey Act trafficking violations. All were ordered to complete one-year terms of probation. Chapman and Witt also will spend four months and two months, respectively, in home detention. Chapman will pay a \$500 fine.

In 2007 and 2008, the defendants knowingly transported and sold in interstate commerce paddlefish eggs knowing that the eggs had been possessed and transported in violation of Oklahoma law. The eggs were sold to Tubbs who sold them to a wholesaler in Missouri to be made into caviar.

Paddlefish eggs have become more popular as traditional sturgeon caviar, such as Beluga, has become scarce. Paddlefish are shark-like plankton-eaters that can grow to weigh as much as 200 pounds, making them one of the largest freshwater fish.

These cases were investigated by the U.S. Fish and Wildlife Service.

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United States versus Brent R. Feickert, No. 13-CR-00120 (D. Minn.), AUSA David M. Genrich.

On October 9, 2013, Brent R. Feickert was sentenced to pay a \$1,000 fine, complete a one-year term of probation, and perform 50 hours of community service. Feickert previously pleaded guilty to falsifying information (18 U.S.C. § 1001) he submitted in quarterly discharge monitoring reports.

Feickert was employed at Anodize, Inc., a metal-plating facility, and was responsible for receiving and reviewing wastewater test results and for submitting the required reports. On five occasions between 2009 and 2011, the defendant admitted that he submitted reports to regulators that falsely represented the nickel and/or zinc levels in the process wastewater.

This case was investigated by the U.S. EPA Criminal Investigation Division and the Minnesota Pollution Control Agency.

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United States versus John McCall et al., Nos. 9:12-CR-00043, 9:13-CR-00014 (E.D. Tex.), AUSA Jim Noble.

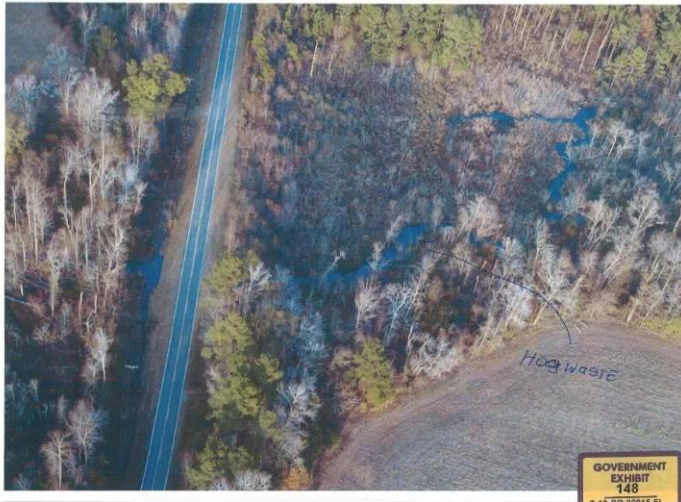
On October 8, 2013, John McCall was sentenced to pay a \$3,000 fine and \$1,187 in restitution. McCall was a client of hunting and fishing guide Steve Barclay. Both pleaded guilty to violating the Lacey Act (16 U.S.C. §§ 3372(A)(1), 3373(d)(1)(B)) in connection with the transportation of an alligator that had been illegally killed.

On three separate dates in May 2008, Barclay witnessed McCall shooting and killing three alligators knowing that Texas law limits hunters to one alligator per hunter per season.

This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement and the Texas Parks and Wildlife Department Criminal Investigations Division.

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United States versus Freedman Farms, Inc., et al., No. 7:10-CR-00015 (E.D.N.C.), ECS Trial Attorney Mary Dee Carraway, and AUSAs J. Gaston Williams and David Bragdon.



Hog waste

On October 1, 2013, William “Barry” Freedman was resentenced to serve a five-year term of probation to include ten months’ home confinement. Freedman also was ordered to pay the remaining \$760,378 in restitution payable to the N.C. Coastal Land Trust in full no later than December 20, 2013. In March 2013, the court denied the defendant’s third motion to reconsider sentence of imprisonment and ordered that he submit himself to the custody of the U.S. Marshals Service.

In February 2012, Freedman Farms, Inc. was sentenced to pay a \$500,000 fine and \$925,000 in restitution. The company also was ordered to make a \$75,000 community service payment to the Southern Environmental Enforcement Network and implement an environmental compliance plan. Freedman had been sentenced to serve six months’ incarceration followed by six months’ home confinement. Freedman actually served two months in prison before he was resentenced. The company previously pleaded guilty to a felony Clean Water Act violation and Freedman pleaded guilty to a misdemeanor CWA charge (33 U.S.C. §§ 1311(a); 1319 (c)(1)(A) and (c)(2)).

Freedman and the family-owned company are in the business of raising hogs for market. This farm housed approximately 4,800 hogs. The violations stem from a significant intentional discharge of hog waste over a five-day period directly into a nearby waterway in December 2007.

This case was investigated by the U.S. EPA Criminal Investigation Division, the North Carolina State Bureau of Investigation, with assistance from the Army Corps of Engineers Wilmington District Office.

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United States versus Edward K. Durst, No. 7:12-CR-00079 (W.D. Va.), AUSA Jennie Waering and SAUSA David Lastra.

On September 27, 2013, Edward K. Durst was sentenced to serve a one-year term of probation with a special condition of six months' home detention. Durst also will pay \$2,300 in restitution for asbestos removal. The defendant previously pleaded guilty to a Clean Air Act violation (42 U.S.C. § 7413(c)(1)) for the illegal removal of asbestos from a building at Virginia Technical University in 2007.

Durst was a foreman employed by an asbestos abatement company. During the abatement, he instructed other employees to remove and dispose of aluminum window frames with asbestos glazing by loading them onto unlabeled vehicles. The materials were then transported to a metal recycling facility where Durst was paid for the scrap aluminum.

This case was investigated by the Blue Ridge Environmental Task Force, which includes the U.S. EPA Criminal Investigation Division, the Office of Inspector General U.S. Housing and Urban Development, the Virginia Tech Police Department, and the Christiansburg Police Department.

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United States versus Jose Cabrera, No. 3:12-CR-00240 (W.D.N.C.), AUSA Steven Kaufman.

On September 26, 2013, Jose Manual Cabrera was sentenced to serve 12 months' incarceration followed by three years' supervised release. Cabrera also was ordered to pay a \$10,000 fine and will perform 100 hours of community service. He previously pleaded guilty to conspiracy to violate the Clean Air Act (18 U.S.C. § 371) stemming from his involvement in illegal vehicle emissions testing.

Cabrera worked at Carolina Tire & Auto Service Center as a mechanic and a vehicle emissions inspector licensed by the state of North Carolina. From February 2011 to May 2012, the defendant conducted 164 illegal vehicle emissions inspections (charging \$60 per car) using surrogate vehicles to falsely pass vehicles that would have otherwise failed the test. This practice is referred to in the industry as "clean scanning." Cabrera's sentence was enhanced due to his criminal history, including membership in a MS-13 gang. This particular service center was suspended from conducting emissions testing for ten years.

This case was investigated by the U.S. EPA Criminal Investigation Division, the N.C. State Bureau of Investigations Diversion and Environmental Crimes Unit, and the N.C. DMV License & Theft Bureau, with assistance from the North Carolina Division of Air Quality Mobile Sources Compliance Branch.

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United States versus Peter C. Covino et al., Nos.4:12-CR-10020, 4:13-CR-10010 (S.D. Fla.), AUSA Tom Watts-FitzGerald.

On September 25, 2013, Peter C. Covino, IV, was sentenced after previously being convicted by a jury of an obstruction violation (18 U.S.C. § 1512(b)(2)(B)) related to a case pending against his uncle, Ammon Covino. The court ordered two months' imprisonment (time served) plus six months of home confinement and two years' supervised release. A fine was not assessed.

Evidence at trial established that Peter Covino made two phone calls in February 2013 to a business in the Florida Keys involved in the wholesale marine life trade. He told one of the business owners “to erase all the text messages, and emails, or any other evidence” linking the Florida business to his uncle. As a result of that individual’s cooperation with federal authorities, those phone calls were recorded.

Also on September 25th, Ammon Covino, the Idaho Aquarium, and Christopher Conk pleaded guilty to conspiracy and Lacey Act violations (16 U.S.C. §§ 3372(a)(1), (a)(4), 3373(d)(1)(B); 18 U.S.C. § 371) for purchasing spotted eagle rays and lemon sharks in the Keys without permits over an eight-month period in 2012, and then transporting the wildlife to the aquarium in Boise. Conk was already serving a two-year term of probation imposed in Idaho for illegally shipping protected live corals to buyers around the world.

These cases were investigated by the NOAA Office for Law Enforcement and the U.S. Fish Wildlife Service Office of Law Enforcement.

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United States versus Martin S. Kimber, No. 1:12-CR-00506 (N.D.N.Y.), AUSAs Richard Belliss and Craig Benedict.



Mercury found in defendant's home

On September 19, 2013, Martin S. Kimber was sentenced to serve 14 years’ incarceration followed by five years’ supervised release. Kimber was further ordered to pay \$200,450 in restitution to the Albany Medical Center. He previously pleaded guilty to an 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 throughout various areas of the Albany Medical Center in ways which could have led to inhalation or absorption of the mercury, in retaliation for what he thought were unfair hospital bills. As part of the sentencing, Kimber also was ordered to forfeit his home and car, which were used to store the mercury.

This case was investigated by the U.S. EPA Criminal Investigation Division, the Food and Drug Administration Office of Criminal Investigations, and the FBI, with assistance provided by the towns of Albany and Ulster Police Departments.

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United States versus Halliburton Energy Services, Inc., No. 13-CR-000165 (E.D. La.), Deepwater Horizon Task Force including ECS Trial Attorney Colin Black.



Burning oil spill

On September 19, 2013, Halliburton Energy Services, Inc., pleaded guilty to destroying evidence (18 U.S.C. § 1030(a)(5)(A)) pertaining to the 2010 *Deepwater Horizon* disaster and was sentenced to pay a \$200,000 fine, the statutory maximum amount. In addition, an information was filed charging a former Halliburton manager, Anthony Badalamenti, with one count of destruction of evidence.

After the Macondo well blowout and the massive oil spill in the Gulf of Mexico, Halliburton established an internal working group to examine the well in-depth. This examination included the development of computer simulations in May 2010, the results of some of which were ordered deleted by a Halliburton supervisor despite legal obligations to retain information related to the blowout and spill. Similar evidence also was destroyed in June 2010 after an additional simulation program was run. Efforts to forensically recover the data were unsuccessful.

This case was investigated by the Deepwater Horizon Task Force, which included the FBI, the U.S. EPA Criminal Investigation Division and the Office of Inspector General, the Department of Interior Office of Inspector General, the NOAA Office of Law Enforcement, the U.S. Coast Guard, the U.S. Fish and Wildlife Service, and the Louisiana Department of Environmental Quality.

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United States versus Maracle Industrial Finishing et al., No. 6:12-CR-06171 (W.D.N.Y.) AUSA Craig Gestring.

Maracle Industrial Finishing facility On September 11, 2013, Maracle Industrial Finishing (MIF), and general manager John Maltese were sentenced after previously pleading guilty to a Clean Water Act charge (33 U.S.C. § 1319(c)(2)(A)) for discharging untreated process wastewater directly to the sewer, in violation of a pretreatment standard. The corporation was ordered to pay a \$10,000 fine, complete a three-year term of probation, and implement an environmental compliance plan. Maltese will pay a \$4,000 fine, complete a three-year term of probation, and perform 80 hours of community service.

MIF produces phosphorus and chromium products used in the metal and powder production industry. A variety of chemicals are used in the production process, with tanks used to store material for later disposal. Investigation determined that between December 2011 and March 2012, the defendants discharged untreated process wastewater directly into the sewer that connected to the local POTW, in violation of a zero discharge permit. Wastewater samples tested after being taken from a manhole nearest the facility showed an explosive hazard due to a low flashpoint.

This case was investigated by the U.S. EPA Criminal Investigation Division, the N.Y. State Department of Environmental Conservation Police, and the Village of Webster Department of Public Works.

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United States versus Stephen Anderson Sipes, Jr., No. 6:13-CR-00043 (E.D. Tex.), AUSA Jim Noble.

On September 10, 2013, Stephen Anderson Sipes, Jr., was sentenced to pay \$14,016 in restitution to the Texas Parks and Wildlife Foundation and perform 48 hours of community service as conditions of a two-year term of probation. Sipes previously pleaded guilty to a Lacey Act misdemeanor violation (16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(2)) for transporting deer across state lines.

In January 2010, the defendant illegally transported 14 whitetail deer from Carthage, Missouri, to his ranch in Texas. The fair market value of the deer was approximately \$5,650. The restitution will compensate the agency for costs incurred in protecting the native deer from the threat of disease carried by the Missouri whitetails.

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

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United States versus Mark Desnoyers, No. 1:06-CR-00494 (N.D.N.Y.), ECS Trial Attorney Colin Black and AUSA Craig Benedict.

On September 4, 2013, Mark Desnoyers was resentenced to spend 26 weekends in jail, plus pay restitution. This is the defendant's third resentencing after the Second Circuit reversed and remanded earlier this year.

Desnoyers was resentenced in October 2011 to serve a five-year term of probation and was held jointly and severally responsible for \$45,398 in restitution to victims of this illegal "rip and run" asbestos abatement scam. The Second Circuit had remanded the case to the district court for reinstatement of the verdict, for entry of a judgment of conviction on the conspiracy count, and for resentencing. Desnoyers appealed the second sentence in December 2011.

He was convicted by a jury in September 2008 of conspiring to violate the mail fraud statute and the Clean Air Act, substantive CAA violations, mail fraud, and two false statement violations (18 U.S.C. §§ 371, 1001, 1341; 42 U.S.C. §§ 7412(b), 7413(c)(1)). Desnoyers, owner of Adirondack Environmental Associates, was an air monitor who took samples required to document the purported full and safe removal of asbestos from numerous commercial buildings and private homes. Evidence at trial established that Desnoyers secretly entered into agreements with the owners of asbestos removal companies to falsify his results.

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

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United States versus Kennedy Mint, Inc. et al., No. 1:12-CR-00480 (N.D. Ohio), SAUSA Brad Beeson.**Drum of liquid cyanide**

On August 29, 2013, Kennedy Mint, Inc., and the company owner's wife, Teresina Montorsi, were sentenced after previously pleading guilty to charges stemming from the dumping of a drum of liquid cyanide into a storm drain that flowed into the Rocky River, resulting in the death of more than 30,000 fish. The company will complete a two-year term of probation, pay \$30,893 in restitution to the Ohio Department of Natural Resources Division of Wildlife, and make a \$300,000 community service payment to Cleveland Metroparks. Montorsi will pay a \$5,000 fine and complete a one-year term of probation.

The company pleaded guilty to violating the Clean Water Act (33 U.S.C. § 1319(c)(2)(A)) and Montorsi pleaded guilty to obstruction of justice (18 U.S.C. § 1519). Charges against company owner Renato Montorsi were dismissed after he was found incompetent to stand trial.

Kennedy Mint previously operated a metal plating and printing facility. On April 16, 2012, Renato Montorsi and an employee put two drums into a dumpster, but the waste hauling company refused to take them. Two days later, Montorsi moved the drums next to a storm drain, punched a hole in one of them and allowed the liquid cyanide to discharge. On April 22nd regulators were notified of a massive fish kill in the East Branch of the Rocky River. Nearly every fish was dead downstream for approximately three miles. Investigators subsequently determined that the Montorsis had moved the two drums to their residence in an effort to obstruct the investigation.

This case was investigated by members of the Northeast Ohio Environmental Crimes Task Force, including the U.S. EPA Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the Northeast Ohio Regional Sewer District, the Ohio Environmental Protection Agency Office of Special Investigations, the Ohio Department of Natural Resources Division of Wildlife, and the Cleveland Metroparks Rangers.

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