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## ENFORCEMENT

### ENVIRONMENTAL CRIME

The authors of this article, in their latest annual review of environmental crime enforcement, provide an update on the prosecution of the Deepwater Horizon oil rig explosion and oil spill, discuss a trend at the Justice Department of seeking to examine independent safety agency investigation interviews, report on the use of “big data” in prosecuting environmental crimes (particularly the fraudulent trade in renewable identification numbers), discuss the use of unique liability theories in the Deepwater Horizon individual prosecutions and analyze DOJ’s stated intent to target large or significant enterprises, death or serious injury and cases involving multiple locations.

### **The State of Environmental Crime Enforcement: A Survey of Developments in 2013**

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<sup>1</sup> The authors would like to thank Katie Noble, Law Clerk, Katten Muchin Rosenman LLP for her assistance in the preparation of this article. Ms. Noble is a second-year law student at Georgetown University Law Center.

The opinions expressed here do not represent those of BNA, which welcomes other points of view.

### **Changing of the Guard**

Six years ago in this space, we noted that David Uhlmann had stepped down as chief of the Environmental Crimes Section (ECS) at the Department of Justice (DOJ), to be replaced by another career prosecutor, Stacey Mitchell. Now, after the second-longest tenure as a chief of ECS, Mitchell will become the deputy general counsel at the Environmental Protection Agency (EPA). The general counsel, Avi Garbow, is also an alumnus of ECS, having served there as a trial attorney. Thus, for what may be the first time in

its history, EPA's general counsel and deputy general counsel are both former prosecutors.

In 1998, Mitchell came to ECS from the Manhattan District Attorney's Office. As a trial attorney she participated in several significant matters, including what may have been the first-ever criminal enforcement case under Title V of the Clean Air Act.<sup>2</sup> Prior to becoming chief, Mitchell served as assistant chief beginning in September 2005. During her tenure as chief beginning in 2007, ECS focused on the prosecution of stationary source Clean Air Act cases, including the prosecutions of BP Products North America Inc.,<sup>3</sup> Pelican Refining Co.<sup>4</sup> and Tonawanda Coke Corp.,<sup>5</sup> as well as fraud in the renewable fuels markets, including indictments in *United States v. Jariv*<sup>6</sup> and *United States v. Ducey*.<sup>7</sup> While doing so, nearly a quarter of ECS cases involved vessel pollution, and the section remained focused on worker endangerment cases, an initiative begun during the tenure of her predecessor, David Uhlmann. An increasing focus of ECS during Mitchell's tenure has been on wildlife trafficking cases, consistent with the issuance of Executive Order 13648 (July 1, 2013)<sup>8</sup> and the February 2014 announcement of a national strategy to combat wildlife trafficking.<sup>9</sup> Mitchell also shared with the authors that the ECS is increasingly turning its attention to prosecuting cases related to energy development including the recent criminal prosecution of wind-power operator Duke Energy in connection with the deaths of migratory birds<sup>10</sup> and efforts to investigate industry compliance in new areas of energy development, such as hydraulic fracturing.<sup>11</sup>

As described in this year's article, other changes have been under way in the past year as well. These include:

- DOJ efforts to use the results of federal safety agency reviews for criminal cases;
- the BP legal challenge to EPA's suspension of the company and more than a dozen BP affiliates, as well as the recent administrative agreement resolving the suspensions and the statutory disqualification of the company;

<sup>2</sup> See Press Release, Dep't of Justice, Ohio Man Indicted for Violation of the Clean Air Act (Jan. 15, 2003), available at [http://www.justice.gov/opa/pr/2003/January/03\\_enrd\\_019.htm](http://www.justice.gov/opa/pr/2003/January/03_enrd_019.htm). Littlehale was a vice president for a label manufacturer and was sentenced to an 18-month term of imprisonment.

<sup>3</sup> *United States v. BP Prods. N. Am. Inc.*, 610 F. Supp. 2d 655, 2009 BL 50489 (S.D. Tex. 2009).

<sup>4</sup> *United States v. Pelican Refining Co.*, No. 2:11-cr-00227 (W.D. La. sentence entered Dec. 19, 2011).

<sup>5</sup> *United States v. Tonawanda Coke Corp.*, No. 1:10-cr-00219 (W.D.N.Y. jury verdict entered Mar. 28, 2013).

<sup>6</sup> No. 2:14-cr-00006 (D. Nev. indictment entered Jan. 8, 2014).

<sup>7</sup> No. 1:13-cr-00189 (S.D. Ind. indictment entered Sept. 17, 2013).

<sup>8</sup> Exec. Order No. 13,648, 78 Fed. Reg. 40,621 (July 1, 2013).

<sup>9</sup> Press Release, Office of the Press Secretary, The White House, Fact Sheet: National Strategy for Combating Wildlife Trafficking & Commercial Ban on Trade in Elephant Ivory (Feb. 11, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b>.

<sup>10</sup> *United States v. Duke Energy Renewables, Inc.*, No. 2:13-cr-00268 (D. Wyo. sentence entered Nov. 22, 2013).

<sup>11</sup> *United States v. Integrated Prod. Servs.*, No. 6:11-cr-00068 (E.D. Okla. sentence entered Apr. 27, 2012).

- the looming use of big data to investigate alleged environmental crimes; and
- arguments by the government in the Deepwater Horizon individual prosecutions that demonstrate unique liability theories such as the attempt to use a defendant's silence in a meeting with non-criminal investigators as evidence of criminal intent and what may be the first-ever use of a computer fraud statute in an environmental case, as well as several pending appellate issues relating to the scope of criminal negligence as a basis for manslaughter prosecutions and application of the rule of lenity.

In a separate but similar context, when writing about the recent financial crisis, Federal District Court Judge Jed S. Rakoff, questioned why "not a single high-level executive" had been prosecuted.<sup>12</sup> It seems likely that, in the context of the Deepwater Horizon cases, Judge Rakoff might have a similar question. The individuals prosecuted by the Deepwater Horizon Task Force are far from high-level, and the only two prosecuted in connection with the actual events of April 20, 2010, were themselves on the rig that day. As noted by their counsel in court filings, numerous individuals participated in the events leading up to the blowout.<sup>13</sup> Selecting only these two for criminal prosecution seeks to very narrowly place the weight of liability on these few individuals.

This effort bears mention in relation to another issue discussed immediately below.

Efforts are under way by DOJ to use the outcomes of safety investigations in criminal cases. Safety investigations are related to, but differ significantly from, efforts to find a culpable individual. In the book "Guidelines for Investigating Chemical Process Incidents" it is noted at the outset that "the key to preventing disaster first lies in recognizing leading indicators."<sup>14</sup> As the book notes, doing so involves learning from both near misses and from major consequence accidents.<sup>15</sup> What does not appear to be recognized by prosecutors seeking to obtain the results of safety investigations, or who may seek to merge such investigations with investigation of criminal liability, is the risk that their efforts to find a culprit will warp the far more nuanced and complex effort to find the true causal and root reasons why an incident occurs. It is the latter effort that is necessary if others are going to be able to identify the correctable failure that resulted in an incident. It remains to be seen on what basis the government addresses the balance between law enforcement and safety investigations.

<sup>12</sup> JED S. RAKOFF, THE FINANCIAL CRISIS: WHY HAVE NO HIGH-LEVEL EXECUTIVES BEEN PROSECUTED (2014), available at <http://www.nybooks.com/articles/archives/2014/jan/09/financial-crisis-why-no-executive-prosecutions/>.

<sup>13</sup> Joint Motion to Dismiss Counts 1-23 of the Superseding Indictment, *United States v. Kaluza & Vidrine*, No. 2:12-cr-00265 (E.D. La. Sept. 26, 2013), ECF No. 104.

<sup>14</sup> CENTER FOR CHEM. PROCESS SAFETY, AMERICAN INSTITUTE OF CHEM. ENG'RS, GUIDELINES FOR INVESTIGATING CHEMICAL PROCESS INCIDENTS 1 (2d ed. 2003).

<sup>15</sup> *Id.*

## Could the Pursuit of Criminal Cases Undermine the Work of the NTSB and the CSB?

When there is a transportation accident (an airplane crash, a pipeline failure, a train collision) the National Transportation Safety Board (NTSB) investigates the cause. When there is an accidental release resulting in a fatality, serious injury or substantial property damages at a chemical plant or a refinery, the Chemical Safety Board (CSB) investigates the cause. Their unique role separates these two agencies from every other agency that investigates such accidents. Other agencies (the FBI, the U.S. Coast Guard, the EPA) investigate to determine whether the accident also involved a violation of law. These differing objectives are profound.

When the NTSB and the CSB interview individuals after an accident, they describe their mission as a safety review, and state that they are not a law enforcement agency. Indeed, the CSB MOU with the EPA states:

To ensure that during the conduct of an investigation the CSB is not perceived as an extension of a state or federal enforcement investigation, the CSB will not participate in compliance and enforcement activities conducted by other agencies.<sup>16</sup>

An individual being so interviewed, typically without counsel present, could reasonably infer that they are being interviewed for the purpose of identifying safety issues, and not as a part of a criminal investigation. As of now, that inference would appear to be a mistake.

DOJ is seeking to incorporate the work of the NTSB and the CSB into their criminal investigations and to this end has sought to obtain the results of safety agency witness interviews for use in criminal cases.<sup>17</sup> The CSB has stated that turning over interviews conducted by the CSB for “prosecution purposes,” would “likely have a devastating effect” on its work.<sup>18</sup>

In October, 2013, The Society of Chemical Manufacturers and Affiliates (SOCMA) presented comments regarding Executive Order 13650 (related to agency coordination on chemical facility safety and security), and cited efforts by DOJ to obtain CSB witness interviews to assist in a criminal investigation. SOCMA cautioned that “witnesses will not be completely forthcoming to CSB if they fear the statements they make may be provided” to criminal investigations, and that pushing to do so would “frustrate CSB’s mission.”<sup>19</sup>

Similarly, fourteen years ago the then-chairman of the NTSB, James Hall, publicly raised concerns about the potential for criminal investigations, in and of themselves, to reduce the ability of the NTSB to conduct ef-

<sup>16</sup> MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. EPA AND THE U.S. CSB ON CHEMICAL INCIDENTS (1999), available at <http://www.epa.gov/oem/docs/chem/csbepa.pdf>.

<sup>17</sup> See Pete Yost, *Safety vs Enforcement: Agencies at Odds over Probe*, AP, Aug. 27, 2013, <http://bigstory.ap.org/article/inside-washington-agencies-odds-over-probe>. Disclosure: the authors represent a client subject to a safety agency review, where the Department of Justice has made such a request for the results of witness interviews.

<sup>18</sup> *Id.*

<sup>19</sup> Letter from Society of Chem. Mfrs. and Affiliates to the Chem. Facility Safety & Security Working Grp., Comments on Implementation of Executive Order 13650 (Oct. 17, 2013), available at <http://1.usa.gov/ljwTbQ1>.

fective safety investigations.<sup>20</sup> Hall’s concern was that the mere presence of a criminal investigation could scare away critical witnesses from the NTSB’s efforts. Hall’s concern was about parallel criminal investigations. His concerns did not extend to the possibility that prosecutors would not only run parallel investigations, but would also seek to extract the results of NTSB or CSB safety interviews for use in criminal investigations.

In response to DOJ’s effort to use NTSB or CSB interviews in criminal cases, Hall told the authors, “Congress knew that it would hamper the fact-finding process to have parallel criminal and safety investigations, and that’s why it explicitly addressed this concern in the NTSB’s governing statute.” Hall pointed to 49 U.S.C. § 1131(a)(2)(B), which requires the NTSB to relinquish control of an investigation to the FBI when circumstances indicate that an accident was caused by a criminal act. “When we found evidence that an accident was caused by criminal wrongdoing, we followed Congress’s instructions and turned things over to the FBI. By the same token, when there’s no such evidence of criminal wrongdoing, any inquiry into the accident should be handled exclusively by the safety board.” As Hall explained, the NTSB fully expects other agencies to conduct their own investigations.

What is DOJ’s rationale for seeking the NTSB and CSB work product? One theory that has been raised is that the government will need to do so in order to meet its production obligations under the Federal Rules of Criminal Procedure, *Brady* and the Jencks Act.<sup>21</sup> These authorities, in addition to guidance by the United States Attorney’s Manual,<sup>22</sup> require prosecutors to disclose any potential exculpatory and impeachment information to defendants in criminal cases. Such a theory, however, appears to rest on a false premise because the NTSB and CSB are arguably excluded from these criminal disclosure obligations (given what should be their lack of involvement in criminal investigations and prosecutions).

Following concerns raised regarding the failure to disclose evidence in the prosecution of Senator Ted Stevens (R-Alaska) in January 2010, DOJ issued guidance for prosecutors regarding criminal discovery. The Department’s guidance on discovery states that the obligation to produce information to criminal defendants extends only to records of “[m]embers of the prosecution team include[ing] federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant.”<sup>23</sup> This appears to plainly exclude the NTSB and the CSB, who by statute are not “members of the prosecution team,” and do not “participate” in criminal investigations or prosecutions.

Exclusion of the NTSB and the CSB from the department’s production obligations is also supported by a

<sup>20</sup> See Matthew L. Wald, *Fear of Prosecution Hinders Crash Inquiries, Some Say*, N.Y. TIMES, Apr. 17, 2000, <http://www.nytimes.com/2000/04/17/us/fear-of-prosecution-hinders-crash-inquiries-some-say.html>.

<sup>21</sup> See Fed. R. Crim. P. 16, 26.2; *Brady v. Maryland*, 373 U.S. 83 (1963); 18 U.S.C. § 3500 (1957).

<sup>22</sup> See U.S. Dep’t of Justice, *United States Attorneys’ Manual* 9-5.001(2008).

<sup>23</sup> Memorandum from David W. Ogden, Deputy Attorney General, Guidance for Prosecutors Regarding Criminal Discovery (Jan. 14, 2010) available at <http://www.justice.gov/dag/discovery-guidance.html>.

line of cases in which courts have underlined the notion that where a federal agency did not play “any role in the investigative [sic] or prosecution” of a case, there is no production obligation on the Department.<sup>24</sup> As for the interests of defendants in obtaining such documents to assist in their own defense, the *Upton* court noted that the materials should be available to the defendant via subpoena.<sup>25</sup>

It remains to be seen how this internal conflict between government agencies will develop and how the government will balance its safety and enforcement roles.

## The Suspension and Debarment of BP

As noted above, following entry of its guilty plea in the Deepwater Horizon case, BP and more than a dozen corporate affiliates were temporarily suspended from contracting with the federal government.<sup>26</sup> On March 13, 2014, EPA lifted the suspensions of BP and resolved both the company’s statutory disqualification and the pending debarment actions against the BP suspended entities.<sup>27</sup> The five-year agreement that resolves these actions requires the company’s full compliance with both the criminal plea and the Securities and Exchange Commission (SEC) judgment arising out of the Deepwater Horizon incident, as well as the submission of all reports generated by the Ethics and Safety Monitors pursuant to the criminal plea.<sup>28</sup> The agreement requires annual audits of BP’s U.S. entities with regard to ethics and compliance, and the implementation of enhanced training regarding the same.<sup>29</sup> Notably, the agreement also requires the appointment of an EPA-approved independent monitor to oversee agreement implementation, as well as annual reporting that tracks the company’s compliance with the agreement, the status of certain legal proceedings, a summary of internal hotline

<sup>24</sup> *United States v. Upton*, 856 F. Supp. 727, 750 (E.D.N.Y. 1994).

<sup>25</sup> *Id.*

<sup>26</sup> The suspension, issued on Nov. 28, 2012, was based on the government’s finding of a “lack of business integrity,” which was tied to the conduct described in BP’s criminal plea. Notably, under federal suspension and debarment regulations, the conduct of a suspended entity may be imputed to any other entity that has the ability to control or influence the entity that performed the conduct at issue, as well as any affiliate of the suspended entity. See 2 C.F.R. § 180.630(c); 2 C.F.R. § 180.625(b) (Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official.); 2 C.F.R. § 180.905 (Parties are affiliates if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both.) Pursuant to these regulations, the suspension covered not only BP Exploration and Production Inc., which was the entity that executed the plea agreement, but also its parent company, BP PLC (the British multinational corporation) and 19 affiliates.

<sup>27</sup> EPA, Administrative Agreement, EPA Case No.’s 12-0295-00, 12-0295-02, 12-0295-05, 12-0295-06, 12-0295-19 (Mar. 13, 2014), available at <http://www2.epa.gov/sites/production/files/2014-03/documents/bpadmin-agreement-mar-13-2014.pdf>. As noted above, this action also resolves the statutory disqualification of BP Exploration and Production Inc., the convicted entity, under 33 U.S.C. § 1368(a).

<sup>28</sup> *Id.* ¶ VI.

<sup>29</sup> *Id.* ¶¶ VII.2, VII.8.

calls and a summary of credible reports of internal misconduct and the investigation of the same.<sup>30</sup>

Prior to the entry of the administrative agreement lifting the contracting ban on BP, the company had sued to overturn the suspensions and the company’s statutory debarment, which it claimed were arbitrary, capricious and an abuse of EPA’s discretion in violation of the Administrative Procedure Act.<sup>31</sup> Among other arguments in this vein, BP contended that a) EPA inappropriately suspended the BP entities without “immediate need,” b) the suspensions were in excess of the required “temporary” timeframe and c) the statutory debarment inappropriately designated and excluded the Houston headquarters of BP Exploration and Production Inc. as the “violating facility” under Section 1368 of the Clean Water Act.

With respect to “immediate need,” EPA only has the authority to suspend a party from contracting with the federal government if the “action is necessary to protect the public interest.”<sup>32</sup> In its complaint, BP stated that it spent months after the incident negotiating with EPA on the scope of an administrative agreement to resolve a potential suspension and debarment, but EPA suspended the company, without prior notice, after the entry of the criminal information and plea.<sup>33</sup> Based on these negotiations, during which EPA was allegedly aware of the events and conduct that gave rise to the plea and suspensions, as well as the government’s continued business with the company on existing contracts and leases awarded prior to the suspension, BP argued that immediate suspension was not necessary.<sup>34</sup>

The government, however, contended that many of the key facts underlying BP’s suspension, including the criminal plea, were not known until shortly before the suspension.<sup>35</sup> In addition, a suspension only effects future, not existing contracts.<sup>36</sup> Ultimately, according to the government, the EPA suspending official has “wide discretion” to infer immediate need.<sup>37</sup> The government argued that this inference was appropriate given the company’s role as a major supplier of services to the United States, its “history of environmental and safety violations resulting in criminal convictions and its failure “to make good on past promises that adequate systemic corrective measures would be taken” following these violations.<sup>38</sup>

<sup>30</sup> *Id.* ¶¶ X., XI.

<sup>31</sup> See *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. filed Aug. 12, 2013).

<sup>32</sup> 2 C.F.R. § 180.700.

<sup>33</sup> See Complaint for Declaratory and Injunctive Relief at 3, 19, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Aug. 12, 2013), ECF No. 1.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> See United States EPA’s Motion for Summary Judgment and Combined Memorandum in Support of EPA’s Motion For Summary Judgment and in Opposition to BP’s Motion for Summary Judgment at 40, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Jan. 28, 2014), ECF No. 48 (citing 2. C.F.R. § 1532.1600(b)).

<sup>36</sup> *Id.* at 13.

<sup>37</sup> 2 C.F.R. § 180.705(c) (The suspending official “may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.”)

<sup>38</sup> See United States EPA’s Motion for Summary Judgment and Combined Memorandum in Support of EPA’s Motion For Summary Judgment and in Opposition to BP’s Motion for

BP also maintained that the suspensions are not “temporary” and that under federal law, “EPA has no authority to extend the suspension beyond the conclusion of the proceeding or investigation upon which the suspension was based.”<sup>39</sup> Federal regulations do specifically define a suspension as a “temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue.”<sup>40</sup> This provision ties the length of the suspension to any associated judicial or administrative proceedings, but contrary to BP’s claim, it does not restrict these to only “proceeding or investigation upon which the suspension was based.” The regulations also provide that if legal or debarment proceedings are initiated at the time of, or during the suspension, the suspension “may continue” until the conclusion of the proceedings, and that if such proceedings are not initiated, a suspension may not exceed 12 months.<sup>41</sup>

Thus, while the plain language of the definition of suspension suggests that its timeframe is circumscribed by the length of any associated legal or debarment proceedings, a separate section of the regulations indicates that a suspension is not required to end at the close of such proceedings.<sup>42</sup> Regardless of this regulatory ambiguity, if a debarment proceeding is initiated during the suspension, the regulations suggest that the suspension “may continue” until its conclusion.<sup>43</sup> EPA effectively took this position by issuing a notice, as of Nov. 26, 2013, to commence debarment proceedings against the suspended entities and simultaneously continue the suspensions.<sup>44</sup>

BP further contended that the debarment of BP Exploration and Production Inc.’s corporate headquarters in Houston was not authorized under the plain language of the Clean Water Act and EPA’s implementing regulations.<sup>45</sup> The Clean Water Act provides that no federal agency may enter into a contract with an entity “convicted of any offense under section 1319(c),” which includes a negligent discharge, “if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred.”<sup>46</sup> Under the implementing regulations, a “violating facility” is defined as “any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations

Summary Judgment at 10, 21, 39, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Jan. 28, 2014), ECF No. 48 (citing 2 C.F.R. § 1532.1600(b)).

<sup>39</sup> See Complaint for Declaratory and Injunctive Relief at 23, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Aug. 12, 2013), ECF No. 1.

<sup>40</sup> 2 C.F.R. § 180.1015.

<sup>41</sup> 2 C.F.R. § 180.760(a) (emphasis added).

<sup>42</sup> In the case of regulatory ambiguity, a court will give discretion to the responsible agency to reasonably interpret the regulation it administers. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 21 ERC 1049 (1984). Note, however, that the regulations at issue (2 C.F.R. Part 180) were promulgated by the Office of Management and Budget (OMB), not EPA.

<sup>43</sup> 2 C.F.R. § 180.760(a).

<sup>44</sup> See Plaintiffs’ Supplemental Memorandum in Support of Summary Judgment, Exhibit A, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Feb. 14, 2014), ECF No. 56.

<sup>45</sup> See Complaint for Declaratory and Injunctive Relief at 26-28, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Aug. 12, 2013), ECF No. 1.

<sup>46</sup> 33 U.S.C. § 1368(a) (1994).

that gives rise to a . . . CWA conviction and is a location at which or from which a Federal contract . . . may be performed.”<sup>47</sup> BP argued that debarment of the corporate headquarters contravened these provisions because the CWA violation at issue did not occur in Houston and instead occurred on an rig more than 440 miles away in the Gulf of Mexico.<sup>48</sup>

The government, however, argued that EPA’s implementing regulations further provide that “if a site of operations giving rise to a . . . CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility.”<sup>49</sup> According to the government, based on this language, EPA properly determined that the corporate headquarters was a “site of operations” that gave rise to the conviction because decisions made on the rig were an extension of bad management decisions that originated from the corporate headquarters.<sup>50</sup>

Notably, the U.S. Chamber of Commerce and the Government of the United Kingdom and Northern Ireland both filed amicus briefs on behalf of BP.

## Big Data Comes to Environmental Criminal Investigations and Prosecution

In the near future, thanks to Big Data, you will never be stuck in traffic, never have a hard time finding a parking space and individuals and organizations may be faced with environmental criminal investigations based upon publicly available data.

For some years now, law enforcement has used Big Data to develop more traditional criminal cases. For example here’s how IBM describes their Big Data services for law enforcement:

Crime prediction and prevention solutions from IBM can help you reduce crime with a more forward-looking approach. These solutions help proactively reduce crime by integrating your current data, supplementing it with information sources you may not currently use, then applying predictive and identity analytics to help you recognize patterns, forecast future events, investigate and close cases faster and efficiently allocate resources.<sup>51</sup>

While designed to support the investigation and prevention of street crime, it does not require an overactive imagination to consider the kinds of data related to environmental compliance that could be utilized in the same way.

<sup>47</sup> 2 C.F.R. § 1532.1600(b).

<sup>48</sup> See Complaint for Declaratory and Injunctive Relief at 28, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Aug. 12, 2013), ECF No. 1.

<sup>49</sup> See United States EPA’s Motion for Summary Judgment and Combined Memorandum in Support of EPA’s Motion For Summary Judgment and in Opposition to BP’s Motion for Summary Judgment at 9, *BP Exploration & Prod. Co. v. McCarthy*, No. 4:13-cv-02349 (S.D. Tex. Jan. 28, 2014), ECF No. 48 (citing 2 C.F.R. § 1532.1600(b)) (emphasis added).

<sup>50</sup> *Id.* at 2.

<sup>51</sup> IBM Sales and Distribution Solution Brief, *Crime Prediction and Prevention from IBM*, 2 (2013), <http://public.dhe.ibm.com/common/ssi/ecm/en/gps03015usen/GPS03015USEN.PDF>.

Last year we reported on EPA's efforts to prosecute fraud in the market for credits for renewable identification numbers (RINs).<sup>52</sup> These cases have continued,<sup>53</sup> producing some significant penalties.<sup>54</sup> The RINs cases appear to be the vanguard of a new approach to policing by EPA's Criminal Investigation Division (CID). One reason for this approach may well be the Agency's resource limitations.

In 1990, as a part of the Oil Pollution Act, the EPA was directed by the U.S. Congress to staff the CID with 200 Special Agents.<sup>55</sup> Nearly three decades later the number of agents is below 170, including those whose work keeps them at desks at EPA's headquarters in Washington, D.C. A logical step for the Agency would be to leverage its limited resources by the use of available data sets.

Last year, the newly appointed Director of CID, Doug Parker, made clear that all of EPA, including the criminal program, would use "computer forensics" and "new tools" to analyze "large volumes of electronic . . . data."<sup>56</sup> As we have noted in the past, the government has a marked tendency to say what it is going to do and then do so.

Indeed, the government has made use of data analysis in earlier criminal cases. In the 1990's, the U.S. Customs Service was able to combine data sets from several sources and uncover the smuggling of banned refrigerants into the United States.<sup>57</sup> In this instance, the EPA had information about those authorized to bring

<sup>52</sup> See Steven P. Solow and Anne M. Carpenter, *The State of Environmental Criminal Enforcement: A Survey of Developments in 2012*, BLOOMBERG BNA, DAILY ENVIRONMENT REPORT, at 9-10 (Mar. 15, 2013), see 51 DEN B-1, 3/15/13.

<sup>53</sup> See *United States v. Ducey*, No. 1:13-cr-00189-SEB-TAB (S.D. Ind. indictment entered Sept. 17, 2013); *United States v. Wilson*, No. 1:13-cr-00190-SEB-TAB (S.D. Ind. indictment entered Sept. 17, 2013); *United States v. Carmichael*, No. 1:13-cr-00194-SEB-TAB (S.D. Ind. guilty plea entered Sept. 18, 2013).

<sup>54</sup> See *United States v. Gunselman*, No. 5:12-cr-00078-C (N.D. Tex. sentence entered Mar. 29, 2013) (sentence of 188 months in prison, 36 months supervised release, \$175,000 fine, and \$54,973,137.50 in restitution); *United States v. Hailey*, No. 1:11-cr-00540-WDQ (D. Md. sentence entered Feb. 22, 2013) (sentence of 151 months in prison, 36 months supervised release and \$42,196,089.78 in restitution).

<sup>55</sup> Pollution Prosecution Act of 1990, 42 U.S.C. § 4321 (Commentary) (1990):

(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

(5) beginning October 1, 1995, is not less than 200.

<sup>56</sup> See Steven P. Solow and Anne M. Carpenter, *The State of Environmental Criminal Enforcement: A Survey of Developments in 2012*, BLOOMBERG BNA, DAILY ENVIRONMENT REPORT, at 33 (Mar. 15, 2013), see 51 DEN B-1, 3/15/13.

<sup>57</sup> See Bruce Pasfield & Elise Paeffgen, *How to Enforce a Carbon Tax: Lessons from the Montreal Protocol and the U.S. Experience with the Ozone Depleting Chemicals Tax*, 14 Vt. J. Envtl. L. 389, 397 (2013).

the refrigerants into the U.S. and how much they could import. The Customs Service, on the other hand, had information about what was actually being imported. These data sets were never compared until they were brought together by a particularly dedicated Customs data expert. Once accomplished, smugglers popped to the surface, and a remarkable national roll up of their efforts was commenced.<sup>58</sup>

What's new now is that the government is looking beyond its own data to commercially available data sources, including the information that companies put out about themselves as part of their normal commercial activities.

What does this mean for the regulated community? It means that no one should be surprised if EPA starts to identify potential sites for investigation based on data far more wide-reaching than electronically filed regulatory reports. It could also raise concerns that the companies that generate the most data will become the target of enforcement actions more frequently than those who operate outside of reporting systems.

What should companies do? Those with the resources to do so may wish to think like enforcers and consider how their own data can be mapped and repurposed by the government to raise questions about the integrity and sufficiency of their compliance programs and practices.

## Deepwater Horizon Prosecution Update

As we near the third anniversary of the Deepwater Horizon blowout and subsequent spill of oil into the Gulf of Mexico, the federal criminal and civil investigation by the U.S. Department of Justice into the incident continues to be active. Now under the leadership of William Pericak, a deputy chief in the DOJ Criminal Division's Fraud Section, the Deepwater Horizon task force has seen the implementation of the historic criminal plea by BP Exploration and Production Inc. (BP), the criminal prosecutions of five individuals, and the criminal pleas of two service providers on the well, Transocean Deepwater Inc. and Halliburton Energy Services Inc. Each of these items is discussed in detail below.

### BP Plea Implementation

In November 2012, BP pleaded guilty to felony counts of seaman's manslaughter, one felony count of obstruction of Congress, one misdemeanor count of negligent discharge under the Clean Water Act and one misdemeanor count for violation of the Migratory Bird Treaty Act. Pursuant to the plea, BP was required to, among other actions, employ external monitors, implement certain procedural changes and undertake a pilot projects to improve operational safety in deepwater drilling.

Set forth below is a review of the status, as publicly available at the date of publication, of BP's implementation of the plea requirements.<sup>59</sup>

<sup>58</sup> *Id.*

<sup>59</sup> Note that the first annual update on BP's compliance with the plea agreement is expected to be available by March 31, 2014, and will be published at <http://bpcompliancereports.com>. See BP, INVESTIGATIONS AND LEGAL PROCEEDINGS, <http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/investigations-and-legal-proceedings.html> (last visited Mar. 12, 2014).

- *Payment of \$4 billion in fines and penalties.*<sup>60</sup> Pursuant to BP's sentence, the company will pay the fines and penalties in installments over a period of five years.<sup>61</sup> According to BP, the company has made required payments totaling \$926 million.<sup>62</sup> The next scheduled payments will total \$595 million and are due by Jan. 29, 2015.<sup>63</sup>
- *Retention of a process safety monitor to review, evaluate and provide recommendations for the improvement of BP's process safety and risk management procedures.*<sup>64</sup> According to BP, this monitor was retained for "a period of up to four years from February 2014."<sup>65</sup>
- *Retention of an ethics monitor to review and provide recommendations for the improvement, implementation, and enforcement of BP's Code of Conduct.*<sup>66</sup> According to BP, this monitor was retained for "a period of up to four years from February 2013."<sup>67</sup>
- *Creation of a real-time monitoring center for BP's drilling operations.*<sup>68</sup> According to BP, the company has a Houston monitoring center that tracks well operations 24 hours a day for BP rigs in the Gulf of Mexico using "real-time information feeds, live video and constant communication" with the rigs.<sup>69</sup>
- *Maintenance of a safety organization that has the authority to intervene or stop any operation that it deems unsafe.*<sup>70</sup> According to BP, the company employs a safety and operational risk function that

<sup>60</sup> See Proposed Plea Agreement ¶ 4., *United States v. BP Exploration & Prod., Inc.*, No. 2:12-cr-00292 (E.D. La. E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>61</sup> See Judgment in a Criminal Case, Attachment 2, *United States v. BP Exploration & Prod., Inc.*, No. 2:12-cr-00292 (E.D. La. Jan. 29, 2013), ECF No. 66.

<sup>62</sup> See BP Annual Report and Form 20-F 2013, Legal Proceedings, at 9, available at [http://www.bp.com/content/dam/bp/pdf/gulf-of-mexico/GOM\\_legal\\_proceedings\\_BPARA2013.pdf](http://www.bp.com/content/dam/bp/pdf/gulf-of-mexico/GOM_legal_proceedings_BPARA2013.pdf).

<sup>63</sup> Id.

<sup>64</sup> See Proposed Plea Agreement, Exhibit B ¶ 1.a , *United States v. BP Exploration & Prod., Inc.*, No. 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>65</sup> BP, INVESTIGATIONS AND LEGAL PROCEEDINGS <http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/investigations-and-legal-proceedings.html> (last visited Mar. 12, 2014).

<sup>66</sup> See Proposed Plea Agreement, Exhibit B ¶ 1.b, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>67</sup> BP, INVESTIGATIONS AND LEGAL PROCEEDINGS <http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/investigations-and-legal-proceedings.html> (last visited Mar. 12, 2014).

<sup>68</sup> See Proposed Plea Agreement, Exhibit B ¶ 12, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>69</sup> BP, DEEPWATER OIL AND GAS, <http://www.bp.com/en/global/corporate/sustainability/the-energy-future/the-energy-challenge/deepwater-oil-and-gas.html> (last visited Mar. 12, 2014); BP, BACK TO WORK IN THE GULF OF MEXICO, <http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/back-to-work-in-the-gulf-of-mexico.html> (last visited Mar. 12, 2014).

<sup>70</sup> See Proposed Plea Agreement, Exhibit B ¶ 25, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

supports business operations by setting clear requirements, maintaining an independent view of operating risk, providing technical support to the businesses and intervening and escalating matters as appropriate for corrective action.<sup>71</sup>

- *Review of all deepwater primary cement designs by BP subject matter experts, provision of these designs to the Bureau of Safety and Environmental Enforcement (BSEE), and observation by a BP engineer (or competent third party) of lab testing of cement slurries.*<sup>72</sup> According to BP, pursuant to recommendations in the company's investigation report (the Bly Report), the company issued new mandatory requirements and nine guidances covering cementing activities, provided training for 711 professionals on these practices (as of December 2012) and strengthened the technical approval process for cementing operations.<sup>73</sup>
- *Development of a competency assessment plan for personnel with oversight of deepwater drilling operations that includes competency requirements and training for the recognition, response and remediation of well control events.*<sup>74</sup> According to BP, as of October 2012 (prior to the plea), the company had instituted a well control competency assurance program for well site leaders (WSLs) and 374 active WSLs have been assessed under the program including 238 drilling WSLs and 136 intervention/completion WSLs.<sup>75</sup>
- *Creation of a public website that provides lessons learned, annual progress reports on compliance with the terms of the probation, and annual summaries of any recordable safety incidents, days away from work, and hydrocarbon spills.*<sup>76</sup> Based on a review by the authors, BP does not currently maintain a central webpage containing the information listed above, however, the listed items are addressed on discrete webpages maintained under the umbrella of the company's global web page. These pages include a "sharing lessons learned" site that lists the industry organizations BP works with to share lessons from the incident,<sup>77</sup> a page

<sup>71</sup> BP, HOW WE MANAGE OPERATIONAL RISK, <http://www.bp.com/en/global/corporate/sustainability/bp-and-sustainability/how-we-operate/how-we-manage-operational-risk.html> (last visited Mar. 12, 2014).

<sup>72</sup> See Proposed Plea Agreement, Exhibit B ¶ 11, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>73</sup> BP, SAFER DRILLING, <http://www.bp.com/en/global/corporate/sustainability/safety/process-safety-preventing-incidents-at-our-operations/safer-drilling.html> (last visited April 11, 2014).

<sup>74</sup> See Proposed Plea Agreement, Exhibit B ¶ 10, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>75</sup> BP, RESPONSIBLE INVESTOR BRIEFING, at 3 (Oct. 2012), [http://www.bp.com/content/dam/bp/pdf/sustainability/issue-reports/Bly\\_SRI\\_update\\_October\\_2012\\_Final.pdf](http://www.bp.com/content/dam/bp/pdf/sustainability/issue-reports/Bly_SRI_update_October_2012_Final.pdf) (last visited Mar. 12, 2014).

<sup>76</sup> See Proposed Plea Agreement, Exhibit B ¶ 23, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>77</sup> BP, OIL SPILL PREPAREDNESS AND RESPONSE, <http://www.bp.com/en/global/corporate/sustainability/environment/>

that discusses implementation of the Bly Report,<sup>78</sup> a page that provides an overview of recordable safety incidents and days away from work,<sup>79</sup> and a page that tracks the number of hydrocarbon spills greater than or equal to one barrel (159 liters, 42 U.S. gallons).<sup>80</sup>

- *Implementation of two pilot projects to improve operational safety in deepwater drilling and two pilot projects to enhance technology in one of the following three areas: (1) BOP functionality, intervention, testing and activation, (2) well design, or (3) real-time monitoring of drilling operations.*<sup>81</sup> Specific information regarding these pilot projects was not available at the time of publication, however, the company has stated that pursuant to implementation of the Bly Report it has launched a project to gather data on subsea BOP reliability and failures.<sup>82</sup> This project commenced in late 2012 and was expected to be complete in the third quarter of 2013.<sup>83</sup>

At the time of publication, based on the author's review, information was not publicly available regarding BP's obligations to create a crisis management organization and associated centers for oil spill response training and drills, conduct Safety and Environmental Management System audits of its contracted rigs and platforms; require its contractors join the Center for Offshore Safety; verify via a third party that all blowout preventer (BOP) installation by BP or its contractors is performed pursuant to manufacturer specifications and American Petroleum Institute standards; or revise the BP Oil Spill Response Plan.<sup>84</sup>

## Service Provider Prosecutions

As discussed in last year's article, in early 2013, Transocean Deepwater Inc., the owner of the Deepwater Horizon rig, agreed to plead guilty to negligently violating the Clean Water Act for its role in the blowout of the Macondo well.<sup>85</sup> The plea imposed the second largest Clean Water Act criminal monetary penalty

[Oil-spill-preparedness-and-response.html](#) (last visited April 11, 2014).

<sup>78</sup> BP, IMPLEMENTING THE BLY REPORT RECOMMENDATIONS, <http://www.bp.com/en/global/corporate/sustainability/safety/process-safety-preventing-incidents-at-our-operations/implementing-the-bly-report-recommendations.html> (last visited April 11, 2014).

<sup>79</sup> BP, HEALTH AND PERSONAL SAFETY, <http://www.bp.com/en-global/corporate/sustainability/safety/health-and-personal-safety.html> (last visited April 11, 2014).

<sup>80</sup> BP, OIL SPILL PREPAREDNESS AND RESPONSE, <http://www.bp.com/en-global/corporate/sustainability/environment/Oil-spill-preparedness-and-response.html> (last visited April 11, 2014).

<sup>81</sup> See Proposed Plea Agreement, Exhibit B ¶¶ 22, 23, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>82</sup> BP, RESPONSIBLE INVESTOR BRIEFING, at 3 (Sept. 2013), [http://www.bp.com/content/dam/bp/pdf/investors/Bly\\_report\\_progress\\_update\\_September\\_2013.pdf](http://www.bp.com/content/dam/bp/pdf/investors/Bly_report_progress_update_September_2013.pdf).

<sup>83</sup> *Id.*

<sup>84</sup> See Proposed Plea Agreement, Exhibit B ¶¶ 5-6, 9, 15, 20, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2.

<sup>85</sup> See U.S. Dep't of Justice, Press Release, *Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident* (Jan. 3, 2013).

(next to the BP plea) totaling \$400 million, and included a probationary period of five years.<sup>86</sup>

In late 2013, Halliburton Energy Services Inc. (HESI), another service provider for the well, also agreed to plead guilty for violations related to the Deepwater Horizon incident. Similar to BP, the HESI plea is premised on the actions of a mid-level company employee. HESI's plea, however, is based on actions taken in response to the government's investigation into the incident, not on actions that lead to the incident.

HESI was hired by BP to provide cementing services for the well, including the design of the cement job. In designing a cement job, HESI generally recommends the application of a certain number of centralizers on the production casing in the well bore.<sup>87</sup> Centralizers (metal collars that attach to the well casing) stabilize and center the casing in the well bore, which allows the poured cement to uniformly distribute in the space between the casing walls and the drilled formation.<sup>88</sup> Proper centralization may prevent channeling (open spaces) in the cement, which may affect the cement's ability to properly seal off pressurized hydrocarbons.<sup>89</sup> On the Macondo well, HESI recommended the use of 21 centralizers but BP choose to use six centralizers instead.<sup>90</sup>

After the incident and the initiation of the federal investigation into the matter, HESI undertook an examination of the well's design and construction, including whether the number of centralizers used on the production casing may have been a factor in the well blowout.<sup>91</sup>

In the course of this analysis, according to the HESI plea, the company's Cementing Director of Technology, Anthony Badalamenti, directed an employee to run two computer simulations to model the behavior of the cement job in relation to the use of both 21 and six centralizers.<sup>92</sup> The results of the simulations indicated little difference between the different number of centralizers.<sup>93</sup> According to the plea, Badalamenti directed the employee to delete the data and the employee complied.<sup>94</sup> Sometime later, according to the plea, Badalamenti directed a more experienced employee to re-run the simulations, which again indicated little difference between the 21 versus six centralizers.<sup>95</sup> As stated in the plea, Badalamenti also directed the more experienced employee to delete the simulations and the employee complied.<sup>96</sup> Both computers on which the data was stored and deleted were, according to the govern-

<sup>86</sup> Cooperation Guilty Plea Agreement ¶¶ 4(a), 4(c), *United States v. Transocean Deepwater Inc.*, No. 2:13-cr-00001 (E.D. La. Jan. 3, 2013), ECF No. 3.

<sup>87</sup> See Information ¶ 8, *United States v. Halliburton Energy Servs. Inc.*, No. 2:13-cr-00165 (E.D. La. July 25, 2013), ECF No. 1 (the production casing is the portion of metal pipe set across the reservoir to be produced).

<sup>88</sup> See National Commission on BP Deepwater Horizon Oil Spill and Offshore Drilling, *Report to the President*, at 96 (Jan. 2011).

<sup>89</sup> *Id.*

<sup>90</sup> See Information ¶ 8, *United States v. Halliburton Energy Servs. Inc.*, No. 2:13-cr-00165, 2013 BL 268278 (E.D. La. July 25, 2013), ECF No. 1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* ¶ 9.

<sup>93</sup> *Id.* ¶ 10.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* ¶ 11.

<sup>96</sup> *Id.*

ment, “used in and affected by interstate and foreign commerce and communication.”<sup>97</sup>

Based on the actions of Badalamenti, HESI was charged with, and pleaded guilty to, a violation of the Computer Fraud and Abuse Act (CFAA).<sup>98</sup> Although the CFAA may not be a well-known statute, it is arguably applicable to almost any interaction with a computer. Essentially, under the CFAA, anyone that causes “damage” to a “protected computer” is subject to a year in a prison and/or a fine of up to \$100,000 (individuals) or \$200,000 (organizations).<sup>99</sup> A protected computer is any computer “which is used in or affecting interstate or foreign commerce or communication.”<sup>100</sup> As noted by one commenter, the breadth of this definition “effectively expands the scope [of the Act] to any computer connected to the Internet.”<sup>101</sup>

The CFAA seems to cast a wide net for the government in a potential prosecution for the destruction of evidence covered by an internal (i.e., legal hold or preservation order) or external (i.e., government request for information) device. The statute, however, was intended to create criminal liability for newly developing computer crimes in the early 1980’s, such as hacking.<sup>102</sup> The HESI plea and associated individual criminal plea by Anthony Badalamenti, discussed further below, appear to be the first (if not the first) use of the statute in the context of criminal obstruction.

## Individual Criminal Prosecutions

As noted above, to date, five individuals have been prosecuted for their actions relating to the Deepwater Horizon incident. The charges in the BP plea, and BP’s liability, were founded on the alleged actions of three BP employees, Robert Kaluza, Donald Vidrine and David Rainey, each of whom were indicted on November 14, 2012.<sup>103</sup> Kaluza and Vidrine were indicted for involuntary manslaughter and negligent discharge under the CWA based on their alleged negligence in the supervision of the well’s negative pressure test.<sup>104</sup> Rainey was indicted for obstruction of Congress and false statements based on alleged misstatements he made regard-

<sup>97</sup> *Id.* ¶ 12.

<sup>98</sup> 18 U.S.C. §§ 1030(a)(5)(A), (c)(4)(G)(i) (2002) (whoever “knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer” is subject to one year in prison or a fine under 18 U.S.C. § 3571).

<sup>99</sup> *Id.*

<sup>100</sup> 18 U.S.C. § 1030(e)(2)(b) (2002).

<sup>101</sup> See Garrett D. Urban, *Causing Damage Without Authorization: The Limitations Of Current Judicial Interpretations Of Employee Authorization Under The Computer Fraud And Abuse Act*, 52 W.M. & MARY L. REV. 1371 n.7 (Mar. 2011).

<sup>102</sup> *Id.*

<sup>103</sup> See Proposed Plea Agreement, Exhibit A, *United States v. BP Exploration & Prod., Inc.*, 2:12-cr-00292 (E.D. La. Nov. 15, 2012), ECF No. 2; Superseding Indictment, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Nov. 14, 2012), ECF No. 7; Indictment, *United States v. Rainey*, No. 2:12-cr-00291 (E.D. La. Nov. 14, 2012), ECF No. 1.

<sup>104</sup> Superseding Indictment, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Nov. 14, 2012), ECF No. 7 (11 counts of seaman’s manslaughter under 18 U.S.C. § 1115, 11 counts of involuntary manslaughter under 18 U.S.C. § 1112, and one count of negligent discharge under 33 U.S.C. §§ 1319(c)(1)(A) and 1321(b)(3)).

ing oil flow rate estimates for the Macondo well.<sup>105</sup> Prior to these indictments, Kurt Mix was charged with obstruction of justice relating to his alleged intentional destruction of evidence requested by authorities as part of the investigation into the incident.<sup>106</sup> Most recently, Anthony Badalamenti, the former Cementing Technology Director for HESI, was charged under the CFAA with one count of destruction of evidence gathered as part of the HESI internal investigation of the incident.<sup>107</sup>

In the Kaluza and Vidrine prosecution, deadlines and motion activity have been stayed pending resolution of the government’s appeal to the U.S. Court of Appeals for the Fifth Circuit for the district court’s dismissal of the 11 counts of seaman’s manslaughter.<sup>108</sup> The court dismissed the seaman’s manslaughter counts in late 2013, finding the counts failed to charge an offense under 18 U.S.C. § 1115.<sup>109</sup> The Court reasoned that while the Outer Continental Shelf Lands Act (OCSLA)<sup>110</sup> does extend federal laws to the outer continental shelf where the rig was located, the defendants, acting as “well site leaders” directing drilling operations, did not qualify as “other persons employed” under Section 1115.<sup>111</sup> The court concluded that “other persons employed” included only those persons involved in marine operations or navigation.<sup>112</sup> This conclusion was based on a review of relevant cases, application of the statutory canon of construction *eiusdem generis*,<sup>113</sup> and a reliance on the rule of lenity.<sup>114</sup>

Also of note in the Kaluza and Vidrine prosecution, was the query raised in a separate motion to dismiss by defendants regarding whether 18 U.S.C. § 1112 and the Clean Water Act require the application of an external duty of care under the statutes’ negligence analyses.<sup>115</sup>

<sup>105</sup> Indictment, *United States v. Rainey*, 2:12-cr-00291 (E.D. La. Nov. 14, 2012), ECF No. 1 (One count of obstruction of a congressional inquiry and investigation under 18 U.S.C. § 1505 and one count of making false statements to law enforcement in violation of 18 U.S.C. § 1001(a)(2)).

<sup>106</sup> Indictment, *United States v. Mix*, No. 2:12-cr-00171-SRD-SS (E.D. La. May 2, 2012), ECF No. 7.

<sup>107</sup> Information, *United States v. Badalamenti*, No. 2:13-cr-00204 (E.D. La. Sept. 19, 2013), ECF No. 1.

<sup>108</sup> See Order and Reasons, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Dec. 10, 2013), ECF. No. 118.

<sup>109</sup> See Order and Reasons, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Dec. 10, 2013), ECF No. 118; see also 18 U.S.C. § 1115 (“[e]very captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed . . . shall be fined under this title or imprisoned not more than ten years, or both.”).

<sup>110</sup> 43 U.S.C. § 1333(a)(1) (1984).

<sup>111</sup> See Order and Reasons at 12-31, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Jan. 27, 2014), ECF No. 123.

<sup>112</sup> *Id.* at 36.

<sup>113</sup> *Id.* at 36 (citing *Northwestern Nat. Ins. Co. v. Dade Cnty.*, 461 F.2d 1158, 1164 (5th Cir. 1972) (“Under the rule of *eiusdem generis* . . . general words should be restricted in application to matters, things, or persons of the same class as those that are particularly described.”)).

<sup>114</sup> *Id.* at 49 (the “principle that criminal statutes are to be construed strictly in favor of the defendant” and one of manifestations of the “constitutional requirement that criminal statutes should provide fair warning of the boundaries of criminal conduct.”).

<sup>115</sup> Joint Motion to Dismiss Counts 1-23 of the Superseding Indictment, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Sept. 26, 2013), ECF No. 104.

In a similar vein, in last year's article, the authors suggested that the government may face obstacles with regard to establishing both such a duty of care, as well as proximate causation in these analyses. Specifically, the defendants argued that "scores of individuals" participated in the events leading to the Deepwater Horizon incident and "under the vague standard of care on which the government relies, any of them could be subject to prosecution . . . [and] bear the full weight of a felony manslaughter prosecution."<sup>116</sup>

The district court, however, explained that, in the instant matter, the standard of care need not derive from an external industry standard because the statutory negligence standards (gross and ordinary, respectively) were sufficient to provide notice that any negligent conduct was proscribed and would be sanctioned. According to the district court "any external standard guiding the negligence analysis, if any exists, may be presented as evidence to be taken into consideration by the jury."<sup>117</sup> Further, while the district court granted that the facts, as alleged in the matter, were sufficient to conclude that an ordinary person would reasonably understand that negligent administration of the negative test would result in criminal sanctions, the government must still prove that this improper administration caused the blowout that lead to both the eleven deaths and the release of oil in to the Gulf.<sup>118</sup> As discussed by the authors in 2012's and 2013's articles, this may be a difficult task for the government as defendants may likely rely on evidence that suggests the link between their alleged negligence and the resulting incident may be too attenuated to establish criminal liability.<sup>119</sup>

In the Rainey prosecution, deadlines and motion activity have also been stayed pending resolution of the government's appeal to the Fifth Circuit for the district court's dismissal of the count regarding obstruction of Congress.<sup>120</sup> The district court dismissed the count on two grounds. First, the indictment failed to charge an essential element of the offense, i.e. that Rainey knew of an inquiry or investigation being conducted by the

<sup>116</sup> *Id.* at 23.

<sup>117</sup> Order and Reasons at 10, *United States v. Kaluza & Vidrine*, 2:12-cr-00265 (E.D. La. Jan. 27, 2014), ECF No. 123.

<sup>118</sup> *Id.*

<sup>119</sup> See Steven P. Solow and Anne M. Carpenter, *The State of Environmental Criminal Enforcement: A Survey of Developments in 2011*, BLOOMBERG BNA, DAILY ENVIRONMENT REPORT, at 4 (Mar. 16, 2012), see 51 DEN BB-1, 3/16/12 ("However the government eventually proceeds, defendants in the case will most likely advance arguments that the causation between any one entity or individual's specific conduct and the rig explosion is too attenuated to establish criminal liability. The defendants may rely upon the warring theories regarding the role and behavior of the safety barriers and hydrocarbons in the Macondo well, as well as the effect of the multiple independent and intervening decisions instituted by each of the parties during the course of rig operations."); Steven P. Solow and Anne M. Carpenter, *The State of Environmental Criminal Enforcement: A Survey of Developments in 2012*, BLOOMBERG BNA, DAILY ENVIRONMENT REPORT, at 4 (Mar. 15, 2013), see 51 DEN BB-1, 3/16/12 (citing Nat'l Acad., *Interim Report On Causes Of The Deepwater Horizon Oil Rig Blowout And Ways To Prevent Such Events*, at 14-16 (2010) (management decisions vacillated between individuals and combinations of various companies and personnel changes occurred just prior to sensitive procedures)).

<sup>120</sup> Order, *United States v. Rainey*, 2:12-cr-00291 (E.D. La. Feb. 25, 2014), ECF No. 163.

relevant congressional subcommittee.<sup>121</sup> In addition, the district court held that the allegations in the indictment, as asserted, did not permit a reasonable inference that the grand jury could have considered and found the requisite knowledge on Rainey's part.<sup>122</sup> Second, the court found that a reading of the statute based on the legislative history and, as in the Kaluza/Vidrine prosecution, the application of the rule of lenity, did not include congressional subcommittees (the inquiry was conducted by the Subcommittee on Energy and Environment of the House Committee on Energy and Commerce).<sup>123</sup>

More recently, in the Badalamenti prosecution, the defendant pleaded guilty to 18 U.S.C. §§ 1030(a)(5)(A) and (c)(4)(G)(i) under the CFAA. As discussed previously, Badalamenti pleaded guilty to conduct that provided the basis for the corporate plea by Halliburton Energy Services Inc. Under the plea, filed in October 2013, Badalamenti admitted to allegations that he instructed Halliburton employees to destroy the results of computer simulations that analyzed the effect of the 21 centralizers the company recommended to BP versus the six centralizers BP ultimately used. The plea was accepted by the court on January 21, 2014, and Badalamenti was sentenced to one year of probation, 100 hours of community service and a \$1,000 fine.<sup>124</sup>

To date, Kurt Mix is the first and only individual that has undergone a criminal trial for actions related to the spill. In December 2013, Mix was found guilty by a jury of one count of obstruction of justice.<sup>125</sup> Notably, the jury also acquitted Mix of the same charge in another count, relating to conduct in and around August 2011.<sup>126</sup> The text messages at issue dealt with "top kill," BP's failed effort to cap the Macondo well, and included flow-rate assessments. Before Mix allegedly deleted the text messages, he was issued 10 legal hold orders, which instructed him to retain all records (including texts and voicemail) relevant to the Macondo well incident.<sup>127</sup> During the trial, prosecutors alleged that Mix deleted the text messages to hide evidence that BP officials had misled the public and Congress about the rate of oil escaping the well and the top kill project's chances of success.<sup>128</sup>

The case contains many significant issues including the government's effort to prosecute Mix for "lying" to a vendor conducting records custodian interviews on

<sup>121</sup> Order and Reasons at 20, *United States v. Rainey*, 2:12-cr-00291 (E.D. La. May 20, 2013), ECF No. 110 ("under section 1505, an indictment must allege the following essential elements: (1) that an inquiry or investigation [was] being had by either House, or any committee of either House or any joint committee of the Congress, (2) that the defendant knew of the pending inquiry or investigation; and (3) that the defendant corruptly . . . endeavor[ed] to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which [such] inquiry or investigation [was] being had." (internal citations omitted)).

<sup>122</sup> *Id.* at 28.

<sup>123</sup> *Id.* at 37.

<sup>124</sup> Judgment in a Criminal Case, *United States v. Badalamenti*, No. 2:13-cr-00204 (E.D. La. Jan. 21, 2014), ECF No. 25.

<sup>125</sup> Jury Verdict, *United States v. Mix*, No. 2:12-cr-00171 (E.D. La. Dec. 18, 2013), ECF No. 702.

<sup>126</sup> *Id.*

<sup>127</sup> Second Superseding Indictment at 2, *United States v. Mix*, No. 2:12-cr-00171 (E.D. La. June 19, 2013), ECF No. 424.

<sup>128</sup> Complaint at 3-4, *United States v. Mix*, No. 2:12-cr-00171 (E.D. La. Apr. 23, 2012), ECF No. 1.

behalf of BP,<sup>129</sup> the apparently largely innocuous nature of the texts alleged to be destroyed and the government attempt to include the defendant's silence at a meeting as evidence of intent.<sup>130</sup>

Mix's sentencing is set for March 26, 2014. If his conviction survives the motion to dismiss or a subsequent appeal, under the U.S. Sentencing Guidelines he could face between three to four years of prison.

## Let's Do the Numbers

Cynthia Giles, the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, previously stated that the agency will target criminal enforcement efforts at cases that involve large or significant enterprises, death or serious injury, multiple locations, or cases impacting vulnerable populations.<sup>131</sup> Using data from our 2013 survey, we examine the number of corporate defendants, the nature of cases involving death or serious injury and defendants that operated in multiple locations. This article does not analyze cases in the category of "vulnerable populations," because our review of available information did not reveal any cases identified as falling within this parameter.<sup>132</sup>

## Corporate Defendants

Excluding wildlife cases, which involve some 30 percent of the defendants in our 2013 survey, a total of 71 defendants, were companies. Our 2012 survey indicated that approximately 27 percent, a total of 89 defendants, were corporations. Of the corporate defendants from 2013, approximately 80 percent, or 57 defendants, were identified as privately owned while approximately 15 percent, or 11 companies, were identified as publicly traded. Of the corporate defendants from 2012, approximately 70 percent, or 62 companies, were identified as privately owned while approximately 9 percent, or 8 companies, were identified as publicly traded. Reliable information on this parameter was unavailable for three companies representing approximately 4 percent of corporate defendants from our 2013 survey and 19 companies representing 21 percent of corporate defendants from our 2012 survey.

Based on our 2013 survey, and excluding wildlife cases, approximately 61 percent of the corporate defendants, or 43 companies, employed fewer than 100 employees; approximately 9 percent of corporate defendants, or 6 companies, employed between 100 and 1,000 employees; and approximately 26 percent or 18 corporations, employed more than 1,000 employees. Of the 18 companies employing more than 1,000 employees, ten of them are publicly traded. Based on our 2012 survey, approximately 44 percent, or 39 companies, employed under 100 employees, approximately 10 percent, or 9 companies, employed between 100 and 1,000 employees and approximately 11 percent, or 10 companies, employed more than 1,000 employees. Of the 10

<sup>129</sup> Amended Order and Reason at 1,4-7, *United States v. Mix*, No. 2:12-cr-00171 (E.D. La. Dec. 11, 2013), ECF No. 675.

<sup>130</sup> *Id.* at 1,3.

<sup>131</sup> Cynthia Giles, *Aiming Before We Shoot: A Revolution in Environmental Enforcement* (1997).

<sup>132</sup> U.S. ENVTL. PROTECTION AGENCY, PLAN EJ 2014 PROGRESS REPORT 17 (2013), available at <http://epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-progress-report-2013.pdf>.

companies employing more than 1,000 employees, six of them are publicly traded. Reliable information on this parameter was not available 6 percent or 4 companies from our 2013 survey and 35 percent or 31 companies from our 2012 survey.

## Death or Serious Injury

Based on our 2013 survey, nine of the 235 pollution cases, involving 11 defendants, addressed violations involving death or serious injury.

In the most publicized environmental criminal case in recent memory, the Deepwater Horizon blowout involved the death of 11 individuals. The government charged BP, Transocean Deepwater Inc. and Halliburton Energy Services Inc. for their involvement in the events leading up to and following the incident. As discussed above, the convictions and sentencing of these defendants resulted in almost \$7 billion in monetary settlements. Charges against individuals Anthony Badalamenti and Kurt Mix were also included in the 2013 survey.<sup>133</sup> Each defendant was charged in a separate case.

In *United States v. Port Arthur Chem. and Envtl. Servs., LLC*<sup>134</sup> and *United States v. Thomas*,<sup>135</sup> the government indicted a company, its former president Matthew Bowman and its director of logistics for violations of the Resource Conservation and Recovery Act (RCRA) and the Occupational Safety and Health Act for alleged improper transportation of hazardous waste containing hydrogen sulfide gas that allegedly led to the death of two employees in December 2008 and April 2009. The defendants allegedly instructed employees to transport the waste without providing personal protective equipment. The company's former president Matthew Bowman pleaded guilty to the charges and was sentenced to 12 months in prison, 12 months supervised release and a \$5,000 fine. The cases against the company and the Director of Logistics are still pending.

In *United States v. Werner Transp. Servs. Inc.*,<sup>136</sup> the government charged the company with negligent endangerment for the release of 7,000 pounds of anhydrous ammonia that resulted in the death of one individual and the hospitalization of seven others. On June 15, 2009, the company was transferring the chemical from Tanner Industries Inc. to a truck owned by the company using the incorrect hose. The hose blew out and caused the release. The company pleaded guilty and was sentenced to pay a \$100,000 fine.

In *United States v. Gold Metal Paint Co.*,<sup>137</sup> the government charged the company and its owner, Norman Teltow, with violation of RCRA for illegally storing hazardous waste. Teltow instructed employees to clean out a drain containing methylene chloride without providing the employees with personal protective equipment.

<sup>133</sup> Charges against Robert Kaluza and Donald Vidrine for their involvement in the Deepwater Horizon blowout were not included in the 2013 survey because the case did not experience one of the significant milestones (charging, plea or conviction, or sentencing) that define the limits of our survey.

<sup>134</sup> No. 1:12-cr-00042-MAC-KFG (E.D. Tex. sentence entered Oct. 28, 2013).

<sup>135</sup> No. 1:13-cr-00109-MAC-KFG (E.D. Tex. indictment entered Nov. 6, 2013).

<sup>136</sup> No. 3:13-cr-00097-PJG (D.S.C. sentence entered June 18, 2013).

<sup>137</sup> No. 1:13-cr-00027-MSK (D. Colo. sentence entered Nov. 12, 2013).

One employee was treated for respiratory problems after cleaning out the drain. Teltow pleaded guilty and was sentenced to 24 months of probation including six months home detention and a \$10,000 fine. The government dismissed the charges against Gold Metal Paint Co.

### Multiple Locations

Eleven of the 235 pollution cases surveyed in 2013, involving 14 defendants, included violations in multiple locations. *United States v. Murray*,<sup>138</sup> involved alleged violations of Federal Insecticide Rodenticide and Fungicide Act for the misapplication of pesticides at a number of nursing homes across the state. *United States v. Columbia Shipmanagement Ltd.*<sup>139</sup> and *United States v. Columbia Shipmanagement GmbH*,<sup>140</sup> involve violations of the Act to Prevent Pollution from Ships from four of the companies' vessels in at least two separate jurisdictions.<sup>141</sup> The prosecution of Wal-Mart Stores Inc.<sup>142</sup> for violations of the CWA and FIFRA, involves releases of hazardous waste from multiple retail stores into publicly owned treatment works and the improper handling of returned pesticides at multiple retail stores. *United States v. Upstate Labs.*<sup>143</sup> *United States v. White*,<sup>144</sup> and *United States v. Wanner*<sup>145</sup> all involved the falsification of laboratory testing for multiple clients in violation of the CWA. Finally, *United States v. Executive Recycling*<sup>146</sup> and *United States v. Discount Computers Inc.*<sup>147</sup> each involved the shipping of hazardous waste, mainly cathode ray tubes, to locations overseas in violation of RCRA.

### Cases of Note for 2013

Like other sources, our data on environmental criminal cases is likely incomplete. Our sources, among others, include the websites of EPA CID and DOJ's Environmental Crimes Section, as well as Bloomberg BNA's Daily Environment Report and the always useful Environmental Crimes Blog of Walter James, accessible at <http://www.environmentalblog.typepad.com>. The cases listed below are in various stages of disposition and the information provided in each case summary reflects the status of the matter at the time of publication.

<sup>138</sup> No. 5:13-cr-00068-MTT-CHW (M.D. Ga. indictment entered Sept. 11, 2013).

<sup>139</sup> No. 2:13-cr-00193-SDW (D.N.J. sentence entered July 23, 2013).

<sup>140</sup> No. 2:13-cr-00205-SDW (D.N.J. sentence entered July 25, 2013).

<sup>141</sup> Three individual defendants were charged in separate indictments with violation of the Act to Prevent Pollution from Ships from the same course of conduct, but the conduct of each individual related to only one location.

<sup>142</sup> No. 3:13-cr-00333-JCS (N.D. Cal. sentence entered May 28, 2013); No. 3:13-cr-00334-JCS (N.D. Cal. sentence entered May 28, 2013); and No. 4:13-cr-00135-JTM (W.D. Mo. sentence entered May 28, 2013).

<sup>143</sup> No. 5:13-cr-00229-GTS (N.D.N.Y. guilty plea entered Nov. 18, 2013).

<sup>144</sup> No. 3:12-cr-00126-HTW-LRA (S.D. Miss. sentence entered Aug. 28, 2013).

<sup>145</sup> No. 5:11-cr-00364-LS (E.D. Pa. sentence entered Nov. 15, 2013).

<sup>146</sup> No. 1:11-cr-00376-WJM (D. Colo. sentence entered July 30, 2013).

<sup>147</sup> No. 2:12-cr-20282-DML-LJM (E.D. Mich. sentence entered Mar. 22, 2013).

### Water Cases

#### Act to Prevent Pollution from Ships

1. **United States v. Sanford Ltd. et al.**, No. 1:11-cr-00352-BAH (D.D.C. sentence entered Jan. 11, 2013).

- New Zealand based company Sanford Ltd., operator of the F/V San Nikunau, as well as crew members Rolando Vano and James Pogue were indicted for violations of the APPS, conspiracy, making false statements and obstruction of justice in connection with an alleged conspiracy to illegally discharge oily bilge wastes and conceal the discharges, as well as the presentation of false information to inspectors U.S Coast Guard (USCG) inspectors.
- The company was convicted of seven counts including falsification of records, failing to maintain an accurate oil record book and illegal discharges. The company was sentenced to 36 months of probation, a \$1.9 million fine and a \$500,000 community service payment to the National Marine Sanctuaries Foundation (NMSF).
- Pogue was convicted of failing to maintain an accurate oil record book and falsification of records. Pogue was sentenced to one month in prison, 24 months of probation and a \$6,000 fine.
- Vano pleaded guilty to failing to maintain an accurate oil record book in 2012 and was sentenced to one year of probation and a \$2,000 fine.

2. **United States v. Pacific International Lines**, No. 1:13-cr-00019-TFH (D.D.C. sentence entered Mar. 22, 2013); **United States v. Cao**, No. 1:13-cr-00020-TFH (D.D.C. sentence entered Feb. 22, 2013).

- Pacific International Lines Ltd., operator of the M/V Southern Lily 2, pleaded guilty to violation of the APPS for discharging oily waste without using the required pollution prevention equipment, failing to keep an accurate Oil Record Book and presenting false statements contained in the Oil Record Book to the USCG.
- The company was sentenced to 36 months of probation, a \$2,000,000 fine and community service payments of \$100,000 each to the National Fish and Wildlife Foundation (NFWF) and the NMSF. The company also agreed to implement an environmental compliance plan.
- Qing Cao, Second Engineer aboard the vessel, pleaded guilty to violation of the APPS for operating a vessel without an operational oil water separator. Cao was sentenced to 36 months of probation.
- 3. **United States v. Diana Shipping Services S.A. et al.**, No. 2:13-cr-00040-MSD-DEM (E.D. Va. sentence entered Dec. 5, 2013).
- Diana Shipping Services S.A., operator of the M/V Thetis, chief engineer Ioannis Prokakis and second assistant engineer Antonios Boumpoutelos were convicted of conspiracy, false statements, obstruction of justice and substantive violations of the APPS in relation to the discharge of oily waste, failure to record discharges in the ship's Oil Re-

cord Book and the concealment of equipment used to bypass mandatory oil water separators.

- The company Diana was sentenced to 42 months of probation and a \$1.1 million fine.

- Prokakis and Boumpoutelos were each sentenced to 12 months of probation.

**4. United States v. Columbia Shipmanagement Ltd.**, No. 2:13-cr-00193-SDW (D.N.J. sentence entered July 23, 2013); **United States v. Columbia Shipmanagement GmbH**, No. 2:13-cr-00205-SDW (D.N.J. sentence entered July 25, 2013); **United States v. Luperia**, No. 2:12-cr-002816-SDW (D.N.J. sentence entered Apr. 3, 2013); **United States v. Shapovalov**, No. 1:13-cr-00079-SLR (D. Del. sentence entered Sept. 25, 2013); **United States v. Kondratyev**, No. 1:13-cr-00080-SLR (D. Del. sentence entered Sept. 26, 2013).

- Columbia Shipmanagement Ltd. and Columbia Shipmanagement GmbH pleaded guilty to obstruction of justice and violation of the APPS for discharges of oily waste from the M/T King Emerald, M/T Nordic Passat, M/T Cape Taft and the M/V Cape Maas in relation to the circumvention and manipulation of the vessels' oil water separators.

- Both companies were sentenced to 48 months of probation. Columbia Shipmanagement Ltd. was sentenced to a \$3 million fine and a \$1 million community service payment to the NFWF, while Columbia Shipmanagement GmbH was sentenced to a \$4.8 million fine and a \$1.6 million community service payment to the NFWF.

- Jeffrey Luperia, second engineer on the M/T King Emerald, pleaded guilty to obstruction of agency proceedings for presenting inaccurate Oil Record Books during a USCG inspection. Luperia was sentenced to 24 months of probation.

- Vladimir Kondratyev, first engineer on the M/T Nordic Passat, pleaded guilty to making false statements and obstruction of justice for making false entries in the Oil Record Book and providing false information to the USCG regarding the use of a hose to pump oily bilge overboard. Kondratyev was sentenced to 24 months of probation and a \$500 fine.

- Sergiy Shapovalov, second engineer on the M/T Nordic Passat, pleaded guilty to making false statements regarding the use of the oil water separator equipment on board the ship. Shapovalov was sentenced to 12 months of probation.

**5. United States v. Kassian Maritime Navigation Agency, Ltd. et al.**, No. 2:13-cr-00070-MSD-TEM (E.D. Va. sentence entered Dec. 13, 2013).

- Kassian Maritime Navigation Agency Ltd. ("Kassian"), owner of the M/V Antonis G. Pappadakis, operator Angelex Ltd. ("Angelex") and chief engineer Lambros Katsipis were indicted for conspiracy, falsification of documents, obstruction of justice and the knowing failure to keep an accurate Oil Record Book as required by the APPS in connection with the alleged bypass of mandatory pollution prevention equipment, discharge of bilge water, falsification of the ship's Oil Record Book and production of the falsified book to the USCG.

- The companies were acquitted of all charges.

- Katsipis was convicted and sentenced to one year of probation.

**6. United States v. Gulf Stolt Ship Management, JLT**, No. 2:13-cr-00146-KDE-DEK (E.D. La. sentence entered Oct. 16, 2013); **United States v. Albina**, No. 2:13-cr-00073-SRD-KWR (E.D. La. sentence entered July 24, 2013); **United States v. Capillanes**, No. 2:13-cr-00049-JCZ-SS (E.D. La. sentence entered July 9, 2013).

- Gulf Stolt Ship Management, JLT operator of the M/T Stolt Facto, pleaded guilty to violation of the APPS and falsification of records in relation to the failure to maintain accurate Oil Record Book that tracked discharges of bilge water that bypassed the oil water separators.

- The company was sentenced to 36 months of probation, a \$750,000 fine and a \$100,000 community service payment to the NMSF. The company was also required to implement an environmental compliance plan.

- Inigo Albina, chief engineer, pleaded guilty to obstruction of justice for instructing crewmembers to lie to the USCG during an inspection of the vessel. Albina was sentenced to 36 months of probation and a \$10,000 fine.

- Anselmo Capillanes, second engineer, pleaded guilty to the failure to maintain an accurate Oil Record Book in relation to the discharges of bilge water that bypassed the oil water separators. Capillanes was sentenced to 24 months of probation and a \$15,000 fine.

**7. United States v. Mastermind Shipmanagement Ltd.**, No. 2:12-cr-00258-CJB-JCW (E.D. La. sentence entered Jan. 10, 2013).

- Mastermind Shipmanagement Ltd., operator of the M/V Onego Mistral, pleaded guilty to violation of the APPS for failing to maintain an accurate Oil Record Book in relation to discharges of bilge water that bypassed the ship's oil water separators.

- The company was sentenced to 36 months of probation and a \$750,000 fine. The company was also required to implement an environmental compliance plan.

- Dusko Joketic, chief engineer, pleaded to making false statements for presenting the falsified Oil Record Book to the USCG.

- Joketic was sentenced to 12 months of probation and a \$1,000 fine.

**8. United States v. Sharykin**, No. 3:13-cr-00163-HZ (D. Or. sentence entered Apr. 9, 2013).

- Valeriy Sharykin pleaded guilty to negligent operation of a commercial vessel for operating the M/V Adfines East while under the influence of alcohol.

- Sharykin was sentenced to 24 months of probation and a \$1,000 fine.

## Clean Water Act

**9. United States v. Transocean Deepwater, Inc.**, No. 2:13-cr-00001-JTM-SS (E.D. La. sentence entered Feb. 14, 2013).

- Transocean Deepwater Inc. pleaded guilty to one count of negligent discharge of pollutants into the waters of the United States for Transocean's involvement in the April 2010 Deepwater Horizon incident.
  - Transocean was sentenced to five years of probation, a \$100 million criminal fine, a \$150 million community service payment to the National Academy of Sciences (NAS) for oil spill prevention in the Gulf of Mexico and a \$150 million community service payment to the NFWF.
- 10. United States v. Halliburton Energy Services, Inc.**, No. 2:13-cr-00165-JTM-KWR (E.D. La. sentence entered Sept. 19, 2013); **United States v. Badalamenti**, No. 2:13-cr-00204-JCZ-SS (E.D. La. guilty plea entered Oct. 15, 2013; sentence entered Jan. 21, 2014).
- Halliburton Energy Services Inc. (Halliburton) pleaded guilty to destruction of evidence for directing employees to delete computer simulations modeling the difference between the use of six versus 21 centralizers in the Macondo well.
  - Halliburton was sentenced to three years of probation and a \$200,000 fine.
  - Anthony Badalamenti, former Cementing Technology Director for Halliburton, pleaded guilty to destruction of evidence for personally directing subordinates to delete the cementing computer simulations.
  - Badalamenti was sentenced to one year of probation, a \$1000 fine and 100 hours of community service.
- 11. United States v. BP Exploration and Production, Inc.**, No. 2:12-cr-00292-SSV-DEK (E.D. La. sentence entered Jan. 29, 2013); **United States v. Mix**, No. 2:12-cr-00171-SRD-SS (E.D. La. jury verdict entered Dec. 18, 2013).
- BP Exploration and Production Inc. pleaded guilty to manslaughter, obstruction of justice and violations of the Migratory Bird Treaty Act and the CWA in association with their role in the Macondo well blowout in April 2010.
  - BP was sentenced January 29, 2013, to five years of probation, criminal fines totaling \$1.25 billion, a \$350 million community service payment to the NAS for oil pollution prevention and a \$2.4 billion community service payment to the NFWF to fund the repair of habitat in the Gulf of Mexico.
  - Kurt Mix, a former engineer for BP, was convicted of obstruction of justice for deleting text messages with his supervisor regarding the rate at Macondo spill, which were requested by authorities as part of the investigation into the incident.
  - Mix was acquitted of a second count of obstruction for allegedly deleting other communications involving exchanges with his supervisor and a contractor.
  - Mix could face up to 20 years in prison and a fine of \$250,000.
- 12. United States v. Feickert**, No. 0:13-cr-00120-DSD (D. Minn. sentence entered Oct. 9, 2013).
- Brent Roland Feickert pleaded guilty to making false statements for submitting a quarterly discharge monitoring report, on behalf of Anodize Inc., that falsely certified concentrations of nickel/zinc in monitored wastewater were within industrial discharge permit limits on five separate occasions.
  - Feickert was sentenced to 12 months of probation and a \$1,000 fine.
- 13. United States v. White**, No. 3:12-cr-00126-HTW-LRA (S.D. Miss. sentence entered Aug. 28, 2013).
- Tennie White owner and operator of Mississippi Environmental Analytical Laboratories Inc., was convicted of making false statements for reporting on three discharge monitoring reports results of wastewater sampling that was not conducted and falsifying a laboratory report for his client's use in the preparation of a discharge monitoring report.
  - White was sentenced to 40 months in prison, 36 months of probation and a \$1,000 fine.
- 14. United States v. GNP Services, Inc.**, No. 4:12-cr-00443-RWS (E.D. Mo. sentence entered Mar. 8, 2013).
- GNP Services Inc. pleaded guilty to falsifying wastewater test results on a quarterly discharge monitoring report prepared and submitted, on behalf of a client, to the Missouri Department of Natural Resources.
  - The company was sentenced to 48 months of probation and a \$4,500 fine.
- 15. United States v. Upstate Laboratories Inc.**, No. 5:13-cr-00229-GTS (N.D.N.Y. guilty plea entered Nov. 18, 2013).
- Upstate Laboratories Inc. pleaded guilty to mail fraud for sending false laboratory reports to customers after receiving water and soil samples from the customers for analysis.
- 16. United States v. Wanner**, No. 5:11-cr-00364-LS (E.D. Pa. sentence entered Nov. 15, 2013).
- Debbie Ann Wanner, former laboratory manager at Blue Marsh Laboratories Inc., pleaded guilty to making false statements for the preparation of laboratory reports, at the direction of Blue Marsh owner Michael McKenna, that falsely stated EPA methods were used to test samples.
  - Wanner was sentenced to 12 months of probation and \$147 in restitution to the victims of the fraudulent scheme.
  - McKenna and Blue Marsh were sentenced in separate cases in 2012. McKenna was sentenced to nine months in prison, three years supervised release and a restitution payment of \$14,114.50 jointly and severally with Blue Marsh. Blue Marsh was sentenced to five years supervised release.
- 17. United States v. Light**, No. 2:13-cr-00208-EAS (S.D. Ohio guilty plea entered Sept. 12, 2013).
- Roy Wayne Light pleaded guilty to making false statements for reporting on Monthly Operating Reports that Oxford Resource Partners LP, a coal supplier, was in compliance with permit limits for TSS, iron and manganese, when Light knew that

sampling results indicated violations of the applicable permit limits.

**18. United States v. Morris**, No. 6:13-cr-03002-BCW (W.D. Mo. sentence entered June 12, 2013).

- Bruce Raymond Morris, former operator at the Landmarc Estates wastewater treatment facility, pleaded guilty to making false statements for reporting on quarterly discharge monitoring reports the results of testing on samples that were substituted for Landmarc's non-compliant samples and falsely certifying that the samples came from Landmarc.

- Morris was sentenced to 36 months of probation.

**19. United States v. W&T Offshore**, No. 2:12-cr-00312-EEF-SS (E.D. La. sentence entered Jan. 3, 2013).

- W&T Offshore, Inc. pleaded guilty to one count of tampering with a monitoring method and one count of negligent discharge of pollutants for running water samples through coffee filters prior to testing for oil and grease and washing spilled oil from a process upset off a platform into the Gulf of Mexico rather than reporting the spill to the National Response Center.

- W&T was sentenced to 36 months of probation, a \$700,000 fine, a \$50,000 community service payment to Southern Environmental Enforcement Network to fund environmental enforcement training and \$250,000 community service payment to the NMSF to fund restoration projects in the Gulf of Mexico. W&T was also required to implement an environmental compliance plan.

**20. United States v. Acquest Development LLC, et al.**, No. 1:11-cr-00347-WMS-JJM (W.D.N.Y. indictment dismissed Apr. 26, 2013); **United States v. Huntress et al.**, No. 1:13-cr-00199-WMS-JJM (W.D.N.Y. indictment entered Sept. 19, 2013).

- William Huntress and his companies, Acquest Transit LLC and Acquest Development LLC, were indicted for conspiracy, obstruction of justice, making false statements and the unpermitted fill of wetlands in connection with the purchase and fill of property allegedly known to contain wetlands, as well as alleged false statements to EPA indicating such property was solely used for agricultural purposes.

- The court granted defendants' motion to dismiss all charges without prejudice on the grounds that there had been interference with the grand jury. The government appealed the dismissal but later moved to withdraw the appeal. The Second Circuit dismissed the appeal with prejudice.

- The government then reindicted all three defendants.

**21. United States v. Hancock County Land, LLC**, No. 1:13-cr-00035-WJG-RHW (S.D. Miss. sentence entered May 15, 2013); **United States v. Miller**, No. 1:12-cr-00093-LG-RHW (S.D. Miss. guilty plea entered Nov. 12, 2013).

- Hancock County Land LLC pleaded guilty to the unpermitted fill of federally protected wetlands for work on a wetland area outside the scope of the

permit the company received from the U.S. Army Corps of Engineers (USACE).

- The company was sentenced to 24 months of probation and a \$1 million fine.

- William "Rusty" Miller, a part-owner of the company, pleaded guilty to knowingly filling wetlands without a permit.

**22. United States v. Madden**, No. 3:12-cr-00195-JJB-SCR (M.D. La. sentence entered June 27, 2013).

- Roy Madden pleaded guilty to forgery for falsifying a letter from the USACE to a client indicating that a property, on which Madden was employed as an environmental consultant, did not contain wetlands.

- Madden was sentenced to four months in prison followed by 24 months of probation.

**23. United States v. Pridgen**, No. 4:12-cr-00092-D (E.D.N.C. sentence entered Apr. 10, 2013).

- Harvey Bryant Pridgen, the operator of a company responsible for soil remediation, pleaded guilty to the unpermitted fill of wetlands with petroleum-contaminated soil taken from the Marine Corps Air Station New River in Jacksonville, NC.

- Pridgen was sentenced to six months in prison, 12 months of probation and a \$300,000 fine.

**24. United States v. DeSimone et al.**, No. 5:11-cr-00264-DNH (N.D.N.Y. sentence entered Aug. 7, 2013); **United States v. Deck**, No. 5:09-cr-00469-DNH (N.D.N.Y. sentence entered Aug. 29, 2013).

- Julius DeSimone, along with co-conspirators Jonathan Deck, Donald Torriero, Cross Nicastro, Dominick Mazza and Mazza & Sons Inc., were indicted as part of a conspiracy to illegally dump 8,100 tons of pulverized construction and demolition debris from a North Bergen, N.J., facility on a New York farm property that contained wetlands.

- DeSimone and Torriero pleaded guilty to conspiracy to violate the Clean Water Act. DeSimone was sentenced to 60 months of probation and Torriero was sentenced to 36 months in prison and 36 months of probation.

- Deck pleaded guilty to conspiracy to commit wire fraud for using a falsified New York State Department of Conservation disposal permit to induce solid waste management facilities to transport the debris to the farm. Deck was sentenced to 15 months in prison and 36 months of supervised release.

- Nicastro, Mazza and Mazza & Sons Inc. were found guilty of conspiracy to violate the Clean Water Act. Nicastro was sentenced to 33 months in prison, 36 months of probation and a \$25,000 fine. Mazza was sentenced to 51 months in prison, 36 months of probation and a \$75,000 fine. Mazza & Sons Inc. was sentenced to 60 months of probation and a \$100,000 fine.

- All defendants were held jointly and severally liable for restitution in the amount of \$492,494.44.

**25. United States v. D'Isernia**, No. 5:13-cr-00029-RS (N.D. Fla. sentence entered July 17, 2013); **United**

**States v. Lagoon Landing LLC**, No. 5:13-cr-00030-RS (N.D. Fla. sentence entered July 17, 2013).

- Brian Raphael D'Isernia and Lagoon Landing LLC pleaded guilty to the unpermitted fill of wetlands for instructing employees of Lagoon to fill wetlands on property owned by Lagoon between 2005 and 2010.
- D'Isernia was sentenced to a \$100,000 fine.
- Lagoon was sentenced to 36 months of probation, a \$2.15 million fine and a \$1 million community service payment to the NFWF.

26. **United States v. Clark et al.**, No. 5:13-cr-50085-JLV (D.S.D. indictment entered July 17, 2013).

- Sean Clark and Devorah Lopez, doing business as Glencoe Camp Resort II LLC, were indicted for the knowing unpermitted discharge of pollutants into Bear Butte Creek between 2011 and 2012 in connection with the alleged discharge of dirt into the waterway.

27. **United States v. Ector**, No. 8:12-cr-00574-DKC (D. Md. sentence entered Mar. 13, 2013).

- David Ector pleaded guilty to the negligent unpermitted discharge of pollutants into the Chesapeake Bay for dumping fill material off the cliff face of his property, which scraped away soil on the cliff face that served as the habitat for the Puritan Tiger Beetle, an endangered species.
- Ector was sentenced to 24 months of probation and a \$5 fine.

28. **United States v. Grow, III**, No. 2:12-cr-00326-HGB-DEK (E.D. La. sentence entered Aug. 14, 2013).

- Raymond Grow III pleaded guilty to bank fraud for filing a false USACE wetland determination letter that was required by Grow's mortgage lender to obtain a loan for the purchase of certain property that Grow proposed to develop.
- Grow was sentenced to 18 months in prison, 36 months of probation and restitution totaling \$3,184,753.83 to First American Bank and Trust for the fraudulently obtained mortgage.

29. **United States v. Hurley Enterprises, Inc.**, No. 4:13-cr-00001-DLH (D.N.D. sentence entered Mar. 22, 2013). **United States v. Mon-Dak Water & Septic Services LLC**, No. 4:13-cr-00002-DLH (D.N.D. sentence entered Mar. 22, 2013).

- Hurley Enterprises Inc. pleaded guilty to the unpermitted discharge of pollutants for dumping domestic sewage from portable toilets at oil drilling sites down a hill and into a creek.
- The company was sentenced to a fine of \$50,000.
- Mon-Dak Water & Septic Services pleaded guilty to the unpermitted discharge of pollutants after the company's employees improperly spread sewage sludge on agricultural land that entered a local waterway.
- Mon-Dak was sentenced March 22, 2013, to a fine of \$50,000.

30. **United States v. House of Raeford Farms, Inc.**, No. 1:12-cr-00248-JAB (M.D.N.C. sentence entered Feb. 26, 2013).

- House of Raeford Farms Inc., a poultry processing plant, was convicted on 10 counts for the knowing unpermitted discharge of pollutants for discharge of wastewater contaminated with blood, grease and animal parts to the local water treatment plant without implementing the required pretreatment measures.

- The company was sentenced to 24 months of probation and a fine of \$150,000.

31. **United States v. Montorsi et al.**, No. 1:12-cr-00480-JRA (N.D. Ohio sentence entered Aug. 29, 2013).

- Teresina Montorsi and Kennedy Mint Inc., a metal plating business, pleaded guilty to conspiracy to violate the CWA for draining two drums of liquid cyanide from the business into a storm sewer that led to the East Branch of the Rocky River and resulted in a three-mile long fish kill. In April 2012, Renato Montorsi attempted to dispose of the two drums by placing them in the dumpster, but the disposal company refused to take the drums.

- Teresina Montorsi was sentenced to 12 months of probation and a \$5,000 fine.

- Kennedy Mint Inc. was sentenced to 24 months of probation, \$30,893 in restitution to the Division of Wildlife and a \$300,000 community service payment to Cleveland Metroparks.

32. **United States v. East Point, LLC et al.**, No. 1:13-cr-00106-MSK (D. Colo. sentence entered July 27, 2013).

- John Albert Paquette and his self-storage company, East Point LLC, pleaded guilty to the knowing unpermitted discharge of pollutants into the Union Reservoir for the release of raw sewage from the company through a hose.

- The company and Paquette were each sentenced to pay a \$10,000 fine.

33. **United States v. Armstrong et al.**, No. 2:12-cr-00243-MHW-EPD (S.D. Ohio sentence entered July 16, 2013).

- Robert Armstrong and RCA Oil and Gas LLC pleaded guilty to the unpermitted discharge of pollutants to the Little Muskingum River for the release of 800,000 gallons of brine and fracking wastewater from an earthen pit after Armstrong breached the pit berm with a backhoe.

- Armstrong was sentenced to 12 months of probation, including eight months of home detention.

- The company was sentenced to 36 months of probation and a \$5,000 fine jointly and severally with Armstrong.

34. **United States v. Silvers et al.**, No. 2:13-cr-00024-MR-DLH (W.D.N.C. indictment dismissed Dec. 30, 2013).

- Bobby Joe Silvers, John Coleman Carver III and Joseph Kyle Orr, employees of a local wastewater treatment plant, were indicted for the alleged unpermitted discharge of 4,000 gallons of aluminum sulfate sludge into a local waterway that allegedly caused a fish kill.

- The United States moved to dismiss the indictment on Dec. 17, 2013, and the court dismissed the indictment with prejudice on Dec. 30, 2013.

**35. United States v. Omega Protein, Inc.**, No. 2:13-cr-00043-RAJ-TEM (E.D. Va. sentence entered June 4, 2013).

- Omega Protein Inc. pleaded guilty to the knowing unpermitted discharge of pollutants for the release, from fishing vessel to near shore waters, of oil and waste containing fins, scales and excrement and process waste generated at the Omega facility.
- Omega was sentenced to 36 months of probation, a \$5.5 million fine and a \$2 million community service payment to the NFWF. The company was also required to implement an environmental compliance plan.

**36. United States v. Helmerich & Payne International Drilling Co.**, No. 2:13-cr-00238-HGB-SS (E.D. La. sentence entered Nov. 8, 2013).

- Helmerich & Payne International Drilling Co. pleaded guilty to making false statements for the falsification of test results for the blowout preventer system on an offshore drilling rig.
- The company was sentenced to 36 months of probation, a \$5.4 million fine and a \$1 million community service payment to the NAS.

**37. United States v. Zuspan**, No. 3:12-cr-00189 (S.D. W. Va. sentence entered Jan. 15, 2013).

- Francis Zuspan pleaded guilty to the unpermitted discharge of pollutants for dumping sewage from his sewage hauling truck into a pond and stream that feed the Ohio River.
- Zuspan was sentenced to 18 months in prison and 36 months of probation.

**38. United States v. Barber**, No. 3:12-cr-05398-KLS (W.D. Wash. indictment dismissed Jan. 29, 2013); 3:13-cr-05288-RJB (W.D. Wash. verdict entered Dec. 9, 2013).

- James Barber, the operator of a wastewater treatment facility in Mount Rainier National Park, was indicted for the unpermitted discharge of pollutants in connection with his alleged bypass of the facility's treatment system and the release of 200,000 gallons of sewage into the Nisqually River.
- After Barber withdrew a guilty plea in the initial filing, the government dismissed the charges against Barber and re-indicted Barber on a felony violation, for which Barber was convicted.

**39. United States v. Pullyblank et al.**, No. 3:13-cr-00198-TJM (N.D.N.Y. indictment entered May 8, 2013).

- Mark Pullyblank, William Clements and Crane-Hogan Structural Systems were indicted for the unpermitted discharge of pollutants in connection with defendants' hydro-demolition activities at parking garages, which allegedly removed layers of concrete and caused the release of the resulting concrete slurry into storm drains that feed the Susquehanna River.

**40. United States v. Wal-Mart Stores, Inc.**, No. 3:13-cr-00333-JCS (N.D. Cal. sentence entered May 28, 2013); **United States v. Wal-Mart Stores, Inc.**, No. 3:13-cr-00334-JCS (N.D. Cal. sentence entered May 28, 2013); **United States v. Wal-Mart Stores, Inc.**, No. 4:13-

cr-00135-JTM (W.D. Mo. sentence entered May 28, 2013).

- Wal-Mart Stores Inc. pleaded guilty to the negligent violation of the Clean Water Act for releasing hazardous wastes from retail stores into publicly owned treatment works between 2003 and 2005.
- Wal-Mart was sentenced to 24 months of probation, a \$40 million fine, a \$6 million community service payment to the NFWF to fund a Retail Compliance Assistance Center, a \$3.5 million community service payment to NFWF to fund Advanced Environmental Crimes Training Programs, a \$9 million community service payment to the NFWF to fund environmental projects in the Northern and Central Districts of California and a \$1.5 million community service payment split between four regional environmental enforcement associations.
- Wal-Mart also pleaded guilty to violating the Federal Insecticide, Fungicide, and Rodenticide Act for the improper handling of returned pesticides that were sent for processing and resale to Greenleaf LLC, where improper oversight led to mixing of regulated pesticides and improper labeling.
- For the FIFRA charges, Wal-Mart was sentenced to three years of probation, an \$11 million fine and a \$3 million community service payment to the Missouri Department of Natural Resources Hazardous Waste Program.

**41. United States v. Chamness Technology, Inc.**, No. 4:12-cr-00149-RAW (S.D. Iowa sentence entered Jan. 23, 2013); **United States v. Simmons**, No. 4:12-cr-00152-REL-CFB (S.D. Iowa sentence entered Mar. 8, 2013).

- Dennis Simmons and Chamness Technology Inc. pleaded guilty to the unpermitted discharge of pollutants for using a spray irrigator to discharge leachate water to the Des Moines River in November 2010.
- Chamness was sentenced to 24 months of probation and a \$100,000 fine.
- Simmons was sentenced to 24 months of probation.

**42. United States v. Lupo et al.**, No. 4:13-cr-00113-DCN (N.D. Ohio guilty plea entered Aug. 29, 2013).

- An oilfield waste disposal services company, Hardrock Excavating LLC, the company's owner Ben Lupo and the company's employee Michael Guesman were indicted for the knowing unpermitted discharge of a pollutant for the release of wastewater containing brine and drilling mud from a tank into a storm drain on several occasions between November 2012 and January 2013.

■ Guesman pleaded guilty to the charge.

**43. United States v. Maltese et al.**, No. 6:12-cr-06171-DGL-JWF (W.D.N.Y. sentence entered Sept. 11, 2013).

- Maracle Industrial Finishing Company Inc. and John Maltese, the company's general manager, pleaded guilty to knowing permit violation in connection with Maltese's instruction of employees to discharge process wastewater to the publicly

- owned treatment works in violation of the company's permit.
- Maltese was sentenced to 36 months of probation and a \$4,000 fine.
  - Maracle was sentenced to 36 months of probation and a \$10,000 fine.
44. **United States v. Barnett, Jr.**, No. 2:12-cr-00378-TC (D. Utah *guilty plea entered* Nov. 1, 2013).
- Slade Barnett Jr., principal agent of the bio-diesel production company Denali Industries Inc., pleaded guilty to the knowing unpermitted discharge of a pollutant in connection with Barnett's instruction of employees to discharge waste grease and oil into the Timpanogos Special Services District and his subsequent false statements made to the District to conceal the discharges.
  - The plea agreement calls for Barnett to pay \$15,000 in restitution to the district.
45. **United States v. Hidey**, No. 1:13-cr-00462-PAG (N.D. Ohio *guilty plea entered* Nov. 20, 2013).
- James Hidey, a rig manager for Great Plains Exploration LLC, pleaded guilty to the unpermitted discharge of pollutants in connection with the release of brine from tanks on oil drilling sites into a sewer catch basin that fed Beecher Brook and led to the Chagrin River.
46. **United States v. Conopco, Inc.**, No. 3:13-cr-00223-RNC (D. Conn. *guilty plea entered* Dec. 5, 2013).
- Conopco Inc., doing business as Unilever Home & Personal Care USA, pleaded guilty to a knowing violation of the CWA in connection with the bypass of the facility's wastewater treatment system and the failure to timely notify the state environmental department of the bypass upon discovery.
  - Sentencing in the matter is scheduled for March 3, 2014.
47. **United States v. Brad Foote Gear Works, Inc.**, No. 1:13-cr-00760 (N.D. Ill. *guilty plea entered* Nov. 13, 2013).
- Brad Foote Gear Works Inc. pleaded guilty to the knowing unpermitted discharge of untreated etching process wastewater into a publicly owned treatment works on at least 300 occasions between 2007 and 2011.
48. **United States v. Brightwell**, No. 1:13-cr-00315-JEB (D.D.C. *indictment entered* Nov. 15, 2013). **United States v. B&P Environmental, LLC**, No. 1:13-cr-00298-JEB (D.D.C. *guilty plea entered* Nov. 13, 2013); **United States v. Anderson**, No. 1:13-cr-00046-JEB (D.D.C. *guilty plea entered* Feb. 19, 2013).
- Patrick Brightwell was indicted for conspiracy, false statements, witness tampering and substantive CWA violations in connection with dumping waste generated as part of a waste removal project performed by B&P Environmental LLC for the National Park Service. Brightwell allegedly instructed employees to dump waste removed from sewer systems into a stormwater inlet that fed the Potomac River, allegedly fraudulently invoiced the National Park Service for the waste removal services and allegedly instructed employees to lie to investigators about the unpermitted discharges.
- The company and Earl Anderson, a driver for company, each pleaded guilty to a negligent unpermitted discharge for the same activities.
49. **United States v. Dies**, No. 3:13-cr-00161-SDD-SCR (M.D. La. *indictment entered* Dec. 12, 2013).
- Roger J. Dies was indicted for violation of the CWA, false statements, witness tampering and obstruction of justice in connection with the unpermitted discharge of wastewater to a local water treatment plan in violation of an industrial user permit held by Dies' business Baton Rouge Tank Wash.
  - Die allegedly made false statements regarding the unpermitted discharges and allegedly instructed witness Raymond Marcel Jr. to make false statements to EPA investigators regarding the discharges. (See *United States v. Marcel, Jr.*, No. 3:13-cr-00078-JJB-SCR *infra*).
50. **United States v. Procino et al.**, No. 1:13-cr-00081-RGA (D. Del. *guilty plea entered* Oct. 13, 2013).
- Procino Plating Inc. pleaded guilty to the knowing discharge of electroplating process wastewater in violation of the facility's Industrial User Permit which authorized only the discharge of chemical etching process wastewater.
  - Patrick Henry Procino also pleaded guilty to the storage of 450 gallons of hazardous waste at the facility without a permit.
51. **United States v. Johnson**, No. 3:12-cr-05096-IEG (S.D. Cal. *sentence entered* Mar. 15, 2013); **United States v. Russell**, No. 3:13-cr-01273-BEN (S.D. Cal. *sentence entered* Dec. 2, 2013).
- Dennis Johnson and Eric Gregory Russell, drivers for All-In-One-Environmental Services, pleaded guilty to a knowing violation of the CWA for the improper disposal of sewage in connection with the dumping of domestic sewage by the individuals onto federal land to save the time required to drive to a lawful disposal site.
  - Johnson was sentenced to 24 months of probation, 200 hours of community service and a \$5,000 fine.
  - Russell was sentenced to time served, supervised release for one year and \$21,244 in restitution to the Bureau of Land Management.
52. **United States v. Tap Root Dairy, LLC et al.**, No. 1:13-mj-00061-DLH (W.D.N.C. *guilty plea entered* Nov. 18, 2013).
- Tap Root Dairy LLC and William Franklin Johnston pleaded guilty to the unpermitted discharge of animal waste from a secondary lagoon into the French Broad River after Tap Root failed to maintain sufficient freeboard levels in the secondary lagoon to prevent runoff into the river.
53. **United States v. Wolf**, No. 2:12-cr-00177-MHW (S.D. Ohio *sentence entered* Mar. 22, 2013).
- Carl Wolf, EHS Manager for Cardington Yutaka Technologies, pleaded guilty to a negligent violation of the CWA for failing to notify the publicly operated treatment works of untreated industrial waste discharges from Cardington's auto parts manufacturing activities.

- Wolf was sentenced to 12 months of probation and a \$500 fine.
- The company pleaded guilty in 2012 and was sentenced to 24 months of probation, a \$1.2 million fine, \$115,000 in restitution to the treatment works and a \$400,000 community service payment to the Village of Cardington.

**54. United States v. Palmer et al.**, No. 8:13-cr-00078-FG3 (D. Neb. sentence entered Aug. 19, 2013).

- Brian D. Palmer and Jerry McKim, directors of Vision 20-20 Inc., pleaded guilty to the negligent unpermitted discharge of asbestos laden material from the company's demolition and construction activities into a ditch leading to the Big Nemaha River.
- Palmer and McKim were each sentenced to 6 months of probation and \$6,855 in restitution to the Nebraska Department of Health and Human Services jointly and severally with Vision 20-20 Inc. (See *United States v. Vision 20-20 Inc.*, No. 8:13-cr-00161-FG3 *infra*).

**55. United States v. De La Houssaye et al.**, No. 6:13-cr-00206-PJH (W.D. La. sentence entered Aug. 14, 2013).

- Frederick Marque De La Houssaye and the company Southwest Rice Mill pleaded guilty to the failure to provide notification of a negligent oil discharge after a company employee struck the valve of an above ground oil storage tank releasing an unknown amount of oil. Despite knowledge of the spill by De La Houssaye, the release was not reported until the next day when it reached Bayou Blanc.
- De La Houssaye was sentenced to 24 months of probation and a \$2,500 fine.
- Southwest was sentenced to pay restitution totaling \$1,012,401.98 for cleanup costs.

**56. United States v. McKissick**, No. 4:12-cr-40054-JCB (D. Mass. sentence entered Apr. 4, 2013).

- Larry McKissick II pleaded guilty to a misdemeanor violation for the negligent discharge of 3,200 gallons of diesel into a wetland from a 7,000 gallon tank that lacked required secondary containment and an SPCC plan. McKissick also failed to notify authorities of the spill and used a hose to wash the oil off the property.
- McKissick was sentenced to 12 months of probation and a \$75,000 fine.

**57. United States v. TIN, Inc.**, No. 2:12-cr-00323-ILRL-DEK (E.D. La. sentence entered May 29, 2013).

- TIN Inc., doing business as Temple Inland, pleaded guilty to a misdemeanor violation for the discharge of pollutants from a paper mill with a Biologic Oxygen Demand (BOD) that was more than three times higher the required permit limit and resulted in a fish kill in the Pearl River.
- The company was sentenced to 24 months of probation, a \$1.5 million fine and \$1.2 million in restitution to the Trust for Public Land, The Nature Conservancy and the United States Fish and Wildlife Service.

**58. United States v. Podd**, No. 2:13-mj-00032-TEM (E.D. Va. sentence entered Feb. 13, 2013).

- Jason Podd, an employee of Sea Solutions, pleaded guilty to a negligent unpermitted discharge of oil to the Elizabeth River for the release of oil from a vessel that Podd attempted to scrap even though he knew the vessel contained petroleum products.
- Podd was sentenced to 12 months of probation and a \$2,500 fine.
- Sea Solutions and its owners Billy J. Avery and Steven Avery were sentenced in 2012 for their role in the spill.
- Sea Solutions was sentenced to 12 months of probation. Billy J. Avery was sentenced to 5 years of probation and a \$25,000 fine. Steven Avery was sentenced to 12 months in prison followed by 12 months of supervised release, a \$25,000 fine and \$66,042.41 in restitution to the USCG for the response to the spill. (Defendant Billy J. Avery was also charged in 2013 with violation of work practice standards for asbestos. See *United States v. Avery*, No. 2:13-cr-00129-HCM-LRL *infra*).

**59. United States v. Simpson**, No. 3:11-cr-05472-BHS (W.D. Wash. sentence entered Mar. 18, 2013).

- Bret Simpson, owner of Principle Metals LLC, pleaded guilty to the unpermitted discharge of oil into the Columbia River from the M/V Davy Crockett and the failure to report the discharge, which was caused by Simpson's attempt to salvage the vessel prior to removing the oil it contained.
- Simpson was sentenced to four months in prison and 36 months of probation.

## Safe Drinking Water Act

**60. United States v. Scaccia et al.**, No. 1:11-cr-00533 (N.D. Ill. sentence entered Nov. 26, 2013).

- Frank Scaccia, a certified water operator and Theresa Neubauer, a Water Department Supervisor, were indicted for violation of the SDWA for failing to test water used to supplement a municipal water supply and for filing false test results on monthly operating reports with the state environmental agency.

- Scaccia pleaded guilty to one count of making false statements and was sentenced to two years of probation including six months of home detention.

- Neubauer was convicted by a jury of 11 counts of making false statements and was sentenced to two years of probation, a \$2,000 fine and 200 hours of community service.

**61. United States v. Marcel, Jr.**, No. 3:13-cr-00078-JJB-SCR (M.D. La. guilty plea entered June 24, 2013); **United States v. Robicheaux**, No. 3:13-cr-00079-JJB-SCR (M.D. La. guilty plea entered June 24, 2013); **United States v. RAM Environmental Services, Inc.**, No. 3:13-cr-00080-JJB-RLB (M.D. La. guilty plea entered June 24, 2013); **United States v. Vaughn**, No. 3:13-cr-00061-JJB-RLB (M.D. La. sentence entered Oct. 24, 2013).

- The industrial wastewater disposal service company RAM Environmental Services Inc., its employees, Raymond Marcel Jr. and Cyril Robicheaux and contractor Michael Vaughn (FAS Environmental Services LLC) pleaded guilty to conspiracy to violate the SDWA for injecting industrial wastewater into a Class II injection well (which does not accept industrial wastewater) and concealing the illegal disposal with falsified documents.
  - Vaughn was sentenced to 60 months of probation including 12 months of community confinement and \$114,969.13 in restitution to FAS Environmental Services LLC. (*See United States v. Dies*, No. 3:13-cr-00161-SDD-SCR *infra*).
62. **United States v. Durham**, No. 1:12-cr-00122-SA-DAS (N.D. Miss. sentence entered May 28, 2013).
- Dan Durham pleaded guilty to making false statements on forms required under SDWA in connection with his falsification of sample collection locations and times, the name of the sample collector and the amount of free chlorine on the water sample records.
  - Durham was sentenced to three years of probation, 100 hours of community service and \$5,909 in restitution to the North Lee County Water Association.
63. **United States v. Stinson et al.**, No. 1:12-cr-00012-JHM-HBB (W.D. Ky. guilty plea entered Oct. 10, 2013).
- Charles L. Stinson and Ralph Dowell operators of Logsdon Valley Oil Co. pleaded guilty to conspiracy to violate SDWA for injecting produced water from oil wells into sinkholes without a permit.
  - Logsdon Valley Oil Co. (Logsdon) pleaded guilty to violation of the SDWA for the same activities.
- ## Air Cases
- ### Clean Air Act - Asbestos
64. **United States v. Johnson Contracting of WNY, Inc. et al.**, No. 1:11-cr-00241-RJA-JJM (W.D.N.Y. guilty plea entered Sept. 27, 2013).
- The following individuals and companies were indicted in 2011 for a scheme to falsely claim that the abatement of asbestos had been completed at a renovated apartment building: Johnson Contracting of WNY Inc. and Ernest and Rai Johnson were responsible for the renovation and abatement of asbestos in the building, but allegedly failed to remove all of the asbestos and falsely reported that the abatement was complete; JMD Environmental Inc. and employees Evan Harnden, Henry Hawkins, Brian Scott and Chris Coseglia were responsible for inspecting the building, and allegedly falsely certified that the abatement was complete; Government employees Donald Grzbielucha, William Manuszewski and Theodore Lehman were also responsible for certifying that the abatement was complete but allegedly falsified this certification.
- Coseglia pleaded guilty to one count of being an accessory after the fact to false statements for his actions.
  - Hawkins pleaded, in 2012, to four counts of being an accessory after the fact to false statements for his actions.
65. **United States v. Bozinoski**, No. 1:12-cr-00141-NLH (D.N.J. sentence entered Jan. 11, 2013).
- Vele Bozinoski pleaded guilty to conspiracy to violate Clean Air Act asbestos regulations for his failure to direct workers to follow proper removal and disposal practices and for the failure to notify EPA of the intent to renovate a facility containing asbestos.
  - Bozinoski was sentenced to 36 months of probation.
66. **United States v. Davis**, No. 1:12-cr-00235-RHB (W.D. Mich. sentence entered June 20, 2013).
- Anthony Michael Davis pleaded guilty to failure to obtain a full asbestos inspection for a facility, in violation of the Clean Air Act, in connection with the hire of inexperienced workers to salvage metal from the facility, false assurances to workers that the facility did not contain asbestos, improper removal of pipe where asbestos was present and false statements to the Michigan Department of Environmental Quality regarding the presence of asbestos.
  - Davis was sentenced to 12 months in prison, 24 months of probation and \$168,029.59 in restitution to the EPA Superfund program.
67. **United States v. Bradley et al.**, No. 1:13-cr-20622-TLL-CEB (E.D. Mich. indictment entered Aug. 29, 2013).
- Roy Bradley Sr. and Gerald Essex were indicted on four counts of violation of the Clean Air Act asbestos work practice standards for renovation activities that allegedly failed to remove all asbestos-containing material before demolition, allegedly failed to properly handle and dispose of asbestos material and allegedly failed to have a person on site trained in asbestos abatement practices.
  - Co-defendant Rodolfo Rodriguez was indicted on one count of making false statements during his grand jury testimony regarding the activities above.
68. **United States v. Pinski et al.**, No. 2:10-cr-20042-MPM-DGB (C.D. Ill. sentence entered Jan. 14, 2013).
- Michael Pinski and James Mikrut pleaded guilty and Duane O'Malley was convicted of violations of Clean Air Act asbestos work practice standards in connection with the renovation of building containing asbestos that was owned by Pinski. Pinski hired O'Malley's company, which lacked asbestos removal training, to renovate the building. O'Malley hired Mikrut to oversee the asbestos removal include, which failed to include proper handling of the asbestos-containing insulation, sealing of the containers of removed asbestos material and disposal of the asbestos material at an authorized waste disposal site.

- O'Malley was sentenced to 10 years in prison, three years of probation and a \$15,000 fine. He has since appealed his conviction and sentence.
- Mikrut was sentenced to 12 months and one day in prison and one year of home confinement.
- Pinski was sentenced to six months in prison and 24 months of probation, including six months of home confinement.
- All defendants were held jointly and severally liable for \$47,085.70 in restitution.

69. **United States v. Vision 20-20 Inc.**, No. 8:13-cr-00161-FG3 (D. Neb. sentence entered June 7, 2013).

- Vision 20-20 Inc. pleaded guilty to negligent endangerment for the release of asbestos into the ambient air in connection with the company's demolition and construction of a new motel that was performed despite the incomplete removal of asbestos by a third party contractor.
- The company was sentenced to a \$25,000 fine and \$6,855 in restitution to the Nebraska Department of Health and Human Services jointly and severally with Brian Palmer and Jerry McKim (See *United States v. Palmer et al.*, No. 8:13-cr-00078-FG3 *infra*).

70. **United States v. Smith et al.**, No. 2:11-cr-00082-JRG-HBG (E.D. Tenn. guilty plea entered Apr. 3, 2013).

- Newell Smith, Armida Di Santi, Milto Di Santi and Eric Gruenberg pleaded guilty to one count of conspiracy to violate the Clean Air Act asbestos work practice standards for salvage and demolition operations that failed to remove all asbestos-containing material from a facility, failed to wet removed asbestos and failed to properly handle asbestos when it was lowered to a disposal location.
- Mark Sawyer, an alleged co-conspirator, has opted to stand trial on the charges.

71. **United States v. Smith et al.**, No. 2:11-cr-00132-CMR (E.D. Pa. sentence entered Nov. 19, 2013).

- Gene Cornell Smith and Clarence Cole were indicted for conspiracy to violate the Clean Air Act asbestos work practice standards in connection with the removal of a boiler and insulated pipes containing asbestos, which was performed at the men's direction by day laborers that lacked appropriate personal protective equipment.
- Cole pleaded guilty and was sentenced to 24 months in prison, 36 months of probation and restitution to EPA in the amount of \$451,936.80 jointly and severally with Smith.

- Smith was convicted of the charges and was sentenced to 42 months in prison and 36 months of probation.

72. **United States v. Bieri**, No. 3:11-cr-30174-WDS (S.D. Ill. sentence entered May 9, 2013).

- Franklin Bieri pleaded guilty to violation of the Clean Air Act for mishandling asbestos-containing materials in connection with the demolitions of asbestos-containing buildings, which were performed at Bieri's direction without notification to the state environmental agency, and in violation of

required management procedures and safety measures.

- Bieri was sentenced to five months in prison, 36 months of probation and a \$3,000 fine.

73. **United States v. Eberhart**, No. 3:13-cr-00021-EJL (D. Idaho sentence entered Aug. 12, 2013); **United States v. Greiner**, No. 3:13-cr-00022-EJL (D. Idaho sentence entered Aug. 14, 2013).

- Bradley David Eberhart and Douglas Greiner pleaded guilty to violation of the Clean Air Act asbestos work practice standards for their failure to direct employees to properly wet and dispose of asbestos material during a project to replace water lines at a sewer district.

- Eberhart and Greiner were each sentenced to six months in prison and 36 months of probation.

74. **United States v. Pryor**, No. 3:13-cr-00042-TSB (S.D. Ohio sentence entered Dec. 19, 2013).

- Lamont Pryor pleaded guilty to three counts of violating the CAA asbestos work practice standards in connection with salvage work he performed on a medical center, which included the improper removal and piling of asbestos material outside the facility.

- Pryor was sentenced to 13 months in prison followed by 12 months of probation.

75. **United States v. Califco, LLC et al.**, No. 3:13-cr-00131-D (N.D. Tex. guilty plea entered Apr. 12, 2013).

- Califco LLC and Jonathan Isaac Shokrian pleaded guilty to failure to notify EPA of the intent to remove asbestos from a facility in connection with abatement work directed by Shokrian, on behalf of Califco, which was performed by day laborers without adequate personal protective equipment and included the removal of floor tile mastic with gasoline, leading to an evacuation of nearby residences.

76. **United States v. Mayer et al.**, No. 3:13-cr-00242-JGC (N.D. Ohio guilty plea entered July 26, 2013).

- John Mayer and Timothy Bayes were indicted for the improper disposal of asbestos in violation of the Clean Air Act in connection with salvage operations in a warehouse boiler room that contained pipes wrapped in asbestos insulation. Mayer oversaw the removal of the insulation without proper wetting, and hired Bayes to dispose of the asbestos material, which Bayes dumped at three locations in Toledo.

- Mayer pleaded guilty to the knowing failure to notify of the removal, failure to wet the asbestos material, failure to have a trained on-site representative present during removal and failure to properly dispose of asbestos material. Mayer was sentenced to 12 months and one day in prison, 24 months of probation and a \$2,000 fine.

- Bayes pleaded guilty to improper disposal of asbestos.

77. **United States v. Rivera**, No. 1:12-cr-00849-LEK (D. Haw. sentence entered Mar. 28, 2013).

- Aaron Rivera pleaded guilty to failing to properly wet removed asbestos material in violation of the

Clean Air Act in connection with the improper removal, by his small construction company, of asbestos-containing popcorn ceilings at an apartment complex.

- Rivera was sentenced to eight consecutive weekends in prison, 48 months of probation and 100 hours of community service.

78. **United States v. Harwood**, No. 4:13-cr-00025-REB (D. Idaho sentence entered June 26, 2013).

- Tyler Harwood pleaded guilty to negligent endangerment for the release of asbestos into the ambient air in connection with an apartment renovation for which Harwood failed to conduct an asbestos inspection and failed to notify EPA when asbestos was encountered during the renovation.
- Harwood was sentenced to 12 months of probation and a \$250 fine and is required to take a class for real estate professionals about environmental laws.

79. **United States v. Durst**, No. 7:12-cr-00079-MFU (W.D. Va. sentence entered Sept. 27, 2013).

- Edward Durst pleaded guilty to the illegal disposal of asbestos material in connection with the removal from Virginia Tech building of window frames glazed with asbestos-containing material, which Durst loaded into his truck and dropped off at a metal recycling facility that was not licensed to accept asbestos-containing material.

- Durst was sentenced to 12 months of probation, including six months of home detention and restitution of \$2,300 to the metal recycling facility.

80. **United States v. Palmer**, No. 5:13-cr-00212-FJS (N.D.N.Y. sentence entered Nov. 8, 2013).

- Edward Palmer pleaded guilty to violation of the Clean Air Act for the failure to notify EPA of asbestos-removal activities, the failure to wet asbestos containing materials and the improper disposal of asbestos-containing material in connection with renovation work that included the onsite storage of thousands of feet of stripped friable asbestos that was not properly wetted.

- Palmer was sentenced to 36 months of probation and a \$25,000 fine.

81. **United States v. Farmer**, No. 8:13-cr-00938-CRI (D.S.C. indictment entered Oct. 17, 2013).

- Scott William Farmer was indicted on eight counts of knowingly violating the Clean Air Act asbestos work practice standards and one count of knowing endangerment in connection with demolition operations that were conducted after an inspection by the state agency allegedly alerted Farmer to the presence of asbestos, and which included the alleged failure to conduct an asbestos inspection prior to a salvage operation, to notify the state agency of the operation, to use workers trained in the asbestos abatement, to provide workers with personal protective equipment, to direct employees to properly wet asbestos material prior to removal and to dispose of asbestos material at a waste disposal facility licensed to receive asbestos.

82. **United States v. Avery**, No. 2:13-cr-00129-HCM-LRL (E.D. Va. guilty plea entered Oct. 22, 2013).

- Billy J. Avery pleaded guilty to one count of knowingly violating the Clean Air Act asbestos work practice standards in connection with abatement work performed by Avery and his company EC&C Environmental, which included the improper bagging, removal and disposal of asbestos waste in roll-off dumpsters that were located on a property leased by Avery's other company S.E.A. Solutions Inc. Avery admitted to storing the asbestos material on site for approximately six months and to storing additional asbestos material in a storage unit at an apartment complex.

83. **United States v. LaCommare**, No. 1:13-cr-00248-JGK (S.D.N.Y. sentence entered Aug. 1, 2013).

- Michael LaCommare pleaded guilty to one count of knowing violation of the Clean Air Act asbestos work practice standards for failing to notify EPA prior to conducting removal activities. LaCommare was sentenced August 1, 2013, to 12 months of probation and a \$2,000 fine.

84. **United States v. Taylor**, No. 1:13-cr-00067-JTN (W.D. Mich. sentence entered July 24, 2013).

- David Taylor pleaded guilty April 4, 2013, to one count of knowingly violating the Clean Air Act asbestos work practice standards in connection with his supervision of the removal of asbestos-containing siding from an apartment building, which included the failure to wet the asbestos containing material, properly lower the asbestos material to the ground and properly collect the asbestos.

- Taylor was sentenced to one year of probation and restitution of \$26,168.63 to EPA.

85. **United States v. Block**, No. 4:13-cr-00088-SWH (W.D. Mo. sentence entered Aug. 14, 2013).

- Trent Block pleaded guilty to negligently violating the Clean Air Act asbestos work practice standards in connection with demolition activities, which included the use of workers not trained in asbestos abatement and the failure to follow appropriate removal practices.

- Block was sentenced to one year of probation and a fine of \$82,500.

86. **United States v. Saad**, No. 2:13-cr-20492-PDB-DRG (E.D. Mich. sentence entered Nov. 19, 2013).

- Khalil Mahmoud Saad pleaded guilty to the knowing failure to remove asbestos and the knowing failure to wet asbestos material in connection with the hire of improperly trained workers to demolish portions of a commercial warehouse that Saad knew contained asbestos and false statements Saad made to the local state environmental agency regarding the presence of asbestos in the building.

- Saad was sentenced in November to 14 months in prison followed by two years of probation.

87. **United States v. Coventry Building Wrecking Co., Inc.**, No. 1:13-cr-00087-S-LDA (D.R.I. sentence entered Oct. 18, 2013).

- Coventry Building Wrecking Co. pleaded guilty to making false statements to the EPA for falsely certifying that asbestos inspections had been completed at two buildings scheduled for demolition.

- Coventry was sentenced to 60 months of probation and a \$10,000 fine.

### Clean Air Act, HCFCs

88. **United States v. FSD Group, LLC**, No. 1:13-cr-20025-JAL (S.D. Fla. sentence entered Mar. 5, 2013).

- FSD Group LLC pleaded guilty to illegally importing HCFC-22 into the United States without proper permits in connection with import of 65,592 kilograms HCFC-22, worth approximately \$733,096, between October 2008 and March 2009.
- The company was sentenced to three years of probation, a \$100,000 fine and was required to pay customs duties of \$16,696.22.

89. **United States v. Morrissette et al.**, No. 3:12-cr-00037-CAR-CHW (M.D. Ga. sentence entered Apr. 22, 2013).

- Alexander Morrissette and Randall Scott Wimpey were pleaded guilty to the knowing release of refrigerants in violation of the Clean AA for dismantling air conditioning units to steal the parts for scrap metal.
- Wimpey was sentenced to 15 months in prison followed by two years of probation.

- Morrissette was sentenced to 78 months in prison followed by three years of probation and restitution of \$178,846.81 to the property owners. Morrissette has appealed his conviction.

90. **United States v. Henning**, No. 1:12-cr-00470-MSK (D. Colo. sentence entered Dec. 2, 2013).

- Terry Gene Henning pleaded guilty to violation of the Clean Air Act for venting HCFCs to the atmosphere in connection with repair work on air conditioning units performed for the Crowne Plaza Hotel, during which Henning vented HCFCs to the atmosphere (despite being trained to capture HCFCs) and instructed employees to also vent HCFCs to the atmosphere. In January 2009, in response to a request for information, Henning created false documents to conceal the venting to the atmosphere.
- Henning was sentenced to 36 months of probation and is required to perform 250 hours of community service.

### Clean Air Act

91. **United States v. Gunselman et al.**, No. 5:12-cr-00078-C (N.D. Tex. sentence entered Mar. 29, 2013).

- Jeffrey David Gunselman, owner and agent of Absolute Fuels LLC, Absolute Milling LLC, Ellipse Energy LLC, 21 Investments LLC and YGOG Holdings LLC, pleaded guilty to 51 counts of wire fraud, 24 counts of money laundering and four counts of making false statements under the Clean Air Act for falsely claiming his companies produced bio-diesel and selling the renewable fuel credits.
- Gunselman was sentenced to 188 months in prison, 36 months of probation, a \$175,000 fine

and \$54,973,137.50 in restitution. Gunselman was also required to forfeit all of the property obtained by the illegal funds.

- Absolute Fuels LLC, Absolute Milling LLC, Ellipse Energy LLC, 21 Investments LLC and YGOG Holdings LLC were indicted on similar charges in August 2012, however, the government dismissed charges against the five companies as a result of Gunselman's guilty plea.

92. **United States v. Hailey**, No. 1:11-cr-00540-WDQ (D. Md. sentence entered Feb. 22, 2013).

- Rodney Hailey was found guilty of fraud, money laundering and Clean Air Act violations for a scheme to sell renewable fuel credits based on biodiesel that his company Clean Green Fuel did not produce.
- Hailey was sentenced to 151 months in prison, 36 months of probation and \$42,196,089.78 in restitution.

93. **United States v. Ducey et al.**, No. 1:13-cr-00189-SEB-TAB (S.D. Ind. indictment entered Sept. 17, 2013); **United States v. Wilson et al.**, No. 1:13-cr-00190-SEB-TAB (S.D. Ind. indictment entered Sept. 17, 2013); **United States v. Carmichael**, No. 1:13-cr-00194-SEB-TAB (S.D. Ind. guilty plea entered Sept. 18, 2013).

- Craig Ducey, Chad Ducey, Chris Ducey, Joseph Furando, Evelyn Katirina Pattison and Jeffrey Wilson, and their companies, E-Biofuels LLC, Caravan Trading Co. and Cima Green LLC, were indicted for conspiring to sell biofuel they fraudulently claimed to have produced—the defendants used renewable fuel credit-associated biofuel produced by one company and resold the renewable fuel credits under the name of another company.

- Carmichael pleaded guilty and is cooperating with the investigation.

94. **United States v. Tonawanda Coke Corp. et al.**, No. 1:10-cr-00219-WMS-HKS (W.D.N.Y. jury verdict entered Mar. 28, 2013).

- Tonawanda Coke Corp., a coke facility, and Mark Kamholz, the facility's manager of environmental control, were convicted of violation of the Clean Air Act and Resource Conservation and Recovery Act for emitting coke oven gas via a pressure relief valve (an emission source not reported in the facility's Title V permit), operating quench towers without baffle systems, instructing an employee to conceal violations of the Title V permit when interviewed by EPA, storing benzene at the facility without a RCRA permit and spreading decanter tank tar sludge on a coal field without a RCRA permit.

95. **United States v. Barnes et al.**, No. 1:13-cr-00098-TCB-LTW (N.D. Ga. sentence entered Dec. 23, 2013); **United States v. Barnes, Jr.**, No. 1:13-cr-00349-TCB (N.D. Ga. sentence entered Nov. 22, 2013).

- Vehicle emissions inspectors Jerome Clarence Barnes, Jr., Seretha Franklin, Ieka Jones and Jared Walker were indicted for conspiracy and violation of the Clean Air Act in connection with the issuance of false vehicle emissions certificates.
- Barnes, who previously had inspection stations shut down for similar conduct, pleaded guilty to

one count of conspiracy to commit wire fraud and was sentenced to 54 months in prison followed by 36 months of probation.

■ Franklin, Jones and Walker each pleaded guilty to one count of violating the Clean Air Act. Franklin was sentenced to 36 months of probation and Walker was sentenced to 6 months in prison followed by 12 months of probation.

**96. United States v. Tran et al.**, No. 3:11-cr-00270-M (W.D.N.C. sentence entered Mar. 8, 2013).

- Nghiem Van Tran, Nghi Cong Tran, Ngan Tien Tran, Huy Ngoc Nguyen, Danh Cong Tran and Bich Dong Ngo pleaded guilty to one count of conspiracy to violate the Clean Air Act for falsely certifying that vehicles passed emissions inspections.
- Tran was sentenced to 15 months in prison followed by one year of probation and a \$5,000 fine.
- Nghi Cong Tran was sentenced to 15 months in prison followed by one year of probation.
- Ngan Tien Tran was sentenced to 12 months in prison followed by one year of probation.
- Huy Ngoc Nguyen, Danh Cong Tran, Bich Dong Ngo were sentenced to one year of probation. Danh Cong Tran's probation included eight months of home confinement.

**97. United States v. Juburi**, No. 3:12-cr-00084-MOC (W.D.N.C. sentence entered Aug. 8, 2013).

- Vehicle emissions inspectors Jassim Juburi, Tanveer Anwar and Erick Alexander Chicas pleaded guilty to conspiracy to violate the Clean Air Act for falsely certifying that over 1,000 vehicles passed emissions inspections.
- Juburi was sentenced to 18 months in prison followed by 36 months of probation and a \$15,000 fine.
- Anwar was sentenced to four months in prison followed by two years of probation including four months of home confinement. Anwar will not be permitted to conduct future emissions inspections and is required to perform 50 hours of community service.
- Chicas was sentenced to three months in prison followed by 24 months of probation and a \$7,500 fine.

**98. United States v. Cabrera**, No. 3:12-cr-00240-RJC (W.D.N.C. sentence entered Sept. 25, 2013).

- Jose Manuel Cabrera pleaded guilty to conspiracy to violate the Clean Air Act for falsely certifying that more than 150 vehicles passed emissions inspections.
- Cabrera was sentenced to 12 months and one day in prison followed by 36 months of probation and a \$10,000 fine. Cabrera also will not be permitted to conduct future emissions inspections and is required to perform 100 hours of community service.

**99. United States v. Batista**, No. 2:13-cr-00090-LDG-VCF (D. Nev. indictment entered Mar. 13, 2013); **United States v. Batista**, No. 2:13-cr-00091-APG-GWF (D. Nev. indictment entered Mar. 13, 2013).

■ Vehicle emissions inspectors Henry Alberto Batista and Luis Rafael Batista were indicted for making false statements for the submission of false emissions inspections to the Nevada Department of Motor Vehicles between March 2008 and August 2010.

**100. United States v. Nunez**, No. 5:12-cr-00083-F (E.D.N.C. sentence entered Feb. 20, 2013).

■ Vehicle emission inspector Angel Dario Rodriguez Nunez pleaded guilty to conspiracy to violate the CAA for falsely certifying, in return for money, that vehicles passed emissions inspections.

■ Nunez was sentenced to 60 months of probation and a \$500 fine.

**101. United States v. Fernald**, No. 3:12-cr-00090-RJC (W.D.N.C. sentence entered Dec. 10, 2013).

■ Vehicle emission inspector Michel Jule Fernald pleaded guilty to conspiracy to violate the CAA for falsely certifying that 60 vehicles passed emissions inspections.

■ Fernald was sentenced to five months in prison, 24 months of supervised release and a \$1,000 fine.

**102. United States v. Werner Transportation Services Inc.**, No. 3:13-cr-00097-PJG (D.S.C. sentence entered June 18, 2013).

■ Werner Transportation Services Inc. pleaded guilty to negligent endangerment for the release of 7,000 pounds of anhydrous ammonia, which resulted from the use of an improper hose during the transfer of the chemical from Tanner Industries Inc. to a Werner truck.

■ As a result of the release one individual was killed when she drove through the ammonia cloud and seven others were hospitalized.

■ Werner was sentenced to a \$100,000 fine.

**103. United States v. Workman**, No. 2:12-cr-00218 (S.D. W. Va. sentence entered Dec. 17, 2013); **United States v. Workman**, No. 2:12-cr-00226 (S.D. W. Va. sentence entered Apr. 3, 2013); **United States v. Hudnall**, No. 2:13-cr-00116 (S.D. W. Va. sentence entered Dec. 17, 2013); **United States v. Tucker**, No. 2:13-cr-00060 (S.D. W. Va. sentence entered Dec. 17, 2013); **United States v. Brown**, No. 2:13-cr-00045 (S.D. W. Va. sentence entered Oct. 23, 2013).

■ Mitchell Ray Workman, Jason Hudnall, John Wesley Tucker and Jason Howard Brown pleaded guilty to the attempted theft of anhydrous ammonia (to manufacture methamphetamine), which caused the release of the chemical and required authorities to issue a shelter-in-place order.

■ Workman was sentenced to 21 months in prison for the attempted theft and 12 months in prison for the release with sentences to run concurrently, followed by 36 months of supervised release.

■ Hudnall was sentenced to 42 months in prison and three years of supervised release.

■ Tucker was sentenced to six months in prison followed by three years supervised release and a \$1,000 fine.

- Brown was sentenced to one day in prison and three years of supervised release, including six months community confinement and six months of home confinement.

- All defendants were sentenced, jointly and severally, to \$6,850 in restitution to the mining waste company that owned the chemical and the emergency response company that responded to the release.

**104. United States v. Marietta Industrial Enterprises, Inc. et al.**, No. 2:13-cr-00252-ALM (S.D. Ohio guilty plea entered Nov. 13, 2013).

- Marietta Industrial Enterprises Inc. pleaded guilty to the failure to notify the state environmental agency that a baghouse fan for the company's medium carbon crushing line had been turned off in violation of the facility's Title V permit.
- William Scott Elliot, president of the company, pleaded guilty to being an accessory after the fact to the failure to notify the state for his submission of compliance reports that did not indicate the fan was turned off.

**105. United States v. Musgrove**, No. 4:13-cr-00164-DDB (E.D. Tex. sentence entered Sept. 12, 2013).

- William Lafon Musgrove, vice president of Industrial Precious Metal Recovery Inc., pleaded guilty to negligent endangerment for the release of nitrous oxides, which were emitted by his company during the heating, without an air scrubber, of aqua regia to recover precious metals from used aircraft parts.
- Musgrove was sentenced to 36 months of probation and a \$10,000 fine.

## Waste Cases

### Resource Conservation and Recovery Act

**106. United States v. Executive Recycling, Inc. et al.**, No. 1:11-cr-00376-WJM (D. Colo. sentence entered July 30, 2013).

- Executive Recycling Inc. owner Brandon Richter and vice-president Tor Olson were convicted of wire fraud, smuggling and violation of RCRA for the overseas shipping of electronic waste, including cathode ray tubes, while representing to customers that the waste was disposed of in compliance with all state, federal and local laws.
- Richter was sentenced to 30 months in prison, 36 months of probation and a \$7,500 fine.
- Executive Recycling was sentenced to 36 months of probation and a \$4,500,000 fine.
- Richter and Executive Recycling were also held jointly and severally liable for \$70,144 in restitution.
- Olson was sentenced to 14 months in prison, 36 months of probation, a \$5,000 fine and \$17,536 in restitution.

**107. United States v. Port Arthur Chemical and Environmental Services, LLC et al.**, No. 1:12-cr-00042-

MAC-KFG (E.D. Tex. sentence entered Oct. 28, 2013); **United States v. Thomas**, No. 1:13-cr-00109-MAC-KFG (E.D. Tex. indictment entered Nov. 6, 2013).

- Port Arthur Chemical and Environmental Services LLC and former president Matthew Bowman were indicted for violations of RCRA and Occupational Safety and Health Act regulations regarding the transportation of hazardous materials in connection with the instruction of employees to transport hydrogen sulfide gas without the required placards or proper personal protective equipment.

- The transportation is alleged to have caused the death of two employees in December 2008 and April 2009.

- Bowman was sentenced to 12 months in prison, 12 months of probation and a \$5,000 fine.

- Ryan Christopher Thomas, the company's director of logistics, was separately indicted for allegedly creating shipping manifests indicating that wastewater from the company originated from a different facility.

**108. See United States v. Procino et al.**, No. 1:13-cr-00081-RGA *supra* at 50.

**109. United States v. Z-Group, LLC**, No. 4:13-cr-00420-BCW (W.D. Mo. guilty plea entered Dec. 10, 2013).

- Z-Group LLC pleaded guilty to the illegal transportation of hazardous waste for the failure to provide manifests for hazardous waste shipments from the company's facility to a disposal facility not authorized to receive hazardous waste.

**110. United States v. Gold Metal Paint Co., LLC et al.**, No. 1:13-cr-00027-MSK (D. Colo. sentence entered Nov. 12, 2013).

- Norman Teltow and Gold Metal Paint Co. LLC were indicted for unpermitted storage of hazardous waste in an underground storage tank and for instructing employees to clean out a drain containing methylene chloride without providing them with personal protective equipment (one employee was treated for respiratory problems after cleaning out the drain).

- Teltow pleaded guilty and was sentenced to 24 months of probation including six months home detention and a \$10,000 fine.

- The government moved to dismiss the charges against the company after Teltow's plea, which were dismissed by the court with prejudice.

**111. United States v. Riley et al.**, No. 6:13-cr-10185-JTM (D. Kan. indictment entered Nov. 6, 2013).

- Sean Riley, Brian Riley, Jack Gibbons and Integrated Plastic Solutions LLC were indicted for the unpermitted storage of hazardous waste, including paints, solvents and other chemicals at the company's facility. Riley and Gibbons also allegedly supervised the dumping of hazardous waste on site.

**112. United States v. Redding**, No. 4:12-cr-00058-AGF (E.D. Mo. sentence entered June 4, 2013).

- Michael J. Redding II pleaded guilty to the illegal transportation of hazardous waste to a storage fa-

cility for instructing employees to transport drums of hazardous waste to a storage facility without obtaining a permit or including the required manifest with the shipment.

- Redding was sentenced to 36 months of probation including six months of electronic monitoring and \$9,000 in restitution to EPA's Superfund program.

113. **United States v. Discount Computers, Inc.**, No. 2:12-cr-20282-DML-LJM (E.D. Mich. sentence entered Mar. 22, 2013).

- Discount Computers Inc. and company president, Mark Glover, were indicted for trafficking in counterfeit cathode ray tubes and the unpermitted storage of hazardous waste in connection with the storage of used cathode ray tubes pending counterfeit labeling at a warehouse the company abandoned in November 2010.
- The company pleaded guilty and was sentenced to a \$2,000,000 fine and \$10,839.05 in restitution to the company that removed the materials from the abandoned warehouse.

- Glover pleaded guilty to trafficking in counterfeit goods and was sentenced to 30 months in prison followed by two years supervised release and a \$10,000 fine.

114. **United States v. Cobb**, No. 2:13-cr-00019-JPB-JSK (N.D. W. Va. guilty plea entered Oct. 23, 2013).

- Brian Cobb pleaded guilty to violation of RCRA and false statements for transporting, without a manifest, soil that he knew had tested positive for a high concentration of lead and for representing to the state environmental agency that the soil had not tested positive for lead and was properly transported.

### Toxic Substances Control Act

115. **United States v. Eisenstein**, No. 2:12-mj-07366-CLW (D.N.J. sentence entered July 17, 2013).

- Ira Eisenstein pleaded guilty to three violations of TSCA for performing lead-based paint inspections without the required certification.
- He was sentenced to 24 months of probation and a \$1,500 fine.

116. **United States v. Kuna**, No. 3:13-cr-00050-SI (D. Or. sentence entered July 22, 2013).

- Martin Glaves Kuna pleaded guilty to one count of wire fraud for falsely performing lead-based paint inspections without the required certification.
- Kuna was sentenced to 14 months in prison, three years of probation and \$2,372 in restitution to the victims of his fraudulent scheme.

117. **United States v. Pass et al.**, No. 7:12-cr-00085-D (E.D.N.C. guilty plea entered July 15, 2013).

- Benjamin Franklin Pass and P&W Waste Oil Services Inc. pleaded guilty to violation of TSCA for handling and attempting to dilute PCB-contaminated transformer oil without a permit, wire fraud for representing the oil was uncontaminated and then selling it to customers and false

statements for falsely certifying that employees of the company had received HAZWOPER training.

118. **United States v. McCambridge**, No. 3:09-cr-00153-WWE (D. Conn. sentence entered Mar. 21, 2013).

- Recycle Technology LLC and owner William McCambridge, as well as Earth Technology, Inc. and owner Boris Tomicic were indicted for their roles in a scheme to inflate prices for the disposal of lead contaminated soil.
- McCambridge pleaded guilty to conspiracy and was sentenced to 12 months of probation and \$309,940.56 in restitution jointly and severally with the other defendants.
- Tomicic was found guilty of one count of wire fraud and was sentenced to 18 months in prison, three years of probation and \$90,000 in restitution to the insurance company that paid the inflated disposal costs for the lead-contaminated soil.
- Earth Technology Inc. was acquitted of all charges.

119. **United States v. Higuera**, No. 3:13-cr-00377-ST (D. Or. sentence entered Sept. 16, 2013).

- John Higuera pleaded guilty to the failure to provide a required lead paint hazard warning notice and brochure.
  - Higuera was sentenced to 12 months of probation and 30 hours of community service.
120. **United States v. Shimshoni**, No. 8:13-cr-00355-JSM-TGW (M.D. Fla. indictment entered Dec. 12, 2013).
- Michael Moshe Shimshoni was indicted on four counts for the failure to provide required lead paint hazard warning notices and brochures to tenants of apartments that he managed and two counts of falsification of records for creating back-dated disclosure notices.
  - Shimshoni entered a plea agreement in July 2013, then later decided to withdraw his guilty plea.

### Comprehensive Environmental Response, Compensation, and Liability Act

121. **United States v. CHS, Inc.**, No. 4:12-cr-00080-SEH (D. Mont. sentence entered Jan. 22, 2013).

- CHS Inc. pleaded guilty to the failure to report a release of hazardous substances, including 2,4-D, to the National Response Center as soon as possible.
- The company was sentenced to a \$500,000 fine and a \$50,000 community service payment to the local volunteer fire department.

122. **United States v. McDonald et al.**, No. 2:09-cr-00656-SDW (D.N.J. jury verdict entered Sept. 30, 2013).

- Gordon McDonald, John Bennett and James Haas Jr. were indicted for fraud, conspiracy, money laundering, bid-rigging, filing false tax returns and obstruction of justice in connection with a scheme to rig contracting bids for the remediation of a Superfund site (Federal Creosote).

- Haas pleaded guilty and was sentenced to 33 months in prison, three years of supervised release, a \$30,000 fine and \$53,049.57 in restitution to the EPA Superfund program.
- McDonald was convicted and is awaiting sentencing.

## Federal Insecticide, Fungicide and Rodenticide Act

123. **United States v. DPL Enterprises, Inc. et al.**, No. 2:12-cr-00393-MMD-PAL (D. Nev. sentence entered Apr. 8, 2013).

- DPL Enterprises Inc. owner Richard Papaleo and manager Michael Stanovich pleaded guilty to two counts of selling a misbranded pesticide in connection with the sale of the dilute pesticide Sporicidin (the label claimed the pesticide was undiluted). The company and Papaleo also pleaded guilty to making false statements for representing to EPA investigators that they were not diluting Sporicidin.
- DPL was sentenced to 36 months of probation and a \$80,000 fine.
- Papaleo was sentenced to 24 months of probation and a \$15,000 fine.
- Stanovich was sentenced to 12 months of probation.

124. **United States v. Murray et al.**, No. 5:13-cr-00068-MTT-CHW (M.D. Ga. indictment entered Sept. 11, 2013).

- Steven A. Murray and Bio-Tech Management Inc. were indicted for conspiracy to violate FIFRA, false statements, obstruction of justice, mail fraud and application of pesticides in a manner inconsistent with the label in connection with the application of the pesticide Termidor indoors and more than twice per year (both in contravention of the labeling) and the instruction of employees to alter forms to conceal the misapplication.

125. **United States v. Charles et al.**, No. 1:12-cr-00221-LJO-SKO (E.D. Cal. guilty plea entered Nov. 12, 2013).

- Julio Cesar Cornejo pleaded guilty to distribution of an unregistered pesticide, Fosfuro de Zinc (an unregistered rat poison) used in connection with a marijuana growing operation conducted with co-defendants.

## Wildlife Cases

### Lacey Act

126. **United States v. Adams Fishing Adventures, Inc. et al.**, No. 2:12-cr-00165-MSD-TEM (E.D. Va. sentence entered Apr. 25, 2013); **United States v. Peake Enterprises Ltd. et al.**, No. 2:12-cr-00168-AWA-LRL (E.D. Va. sentence entered July 15, 2013); **United States v. Scott**, No. 2:12-cr-00166-MSD-LRL (E.D. Va. sentence entered Apr. 29, 2013); **United States v. Lowery**, No. 2:12-cr-00164-HCM-LRL (E.D. Va. sentence entered

May 30, 2013); **United States v. Agner, Inc. et al.**, No. 2:12-cr-00167-MSD-LRL (E.D. Va. sentence entered Oct. 28, 2013).

- Adams Fishing Adventures Inc., Jeffrey S. Adams (captain of the F/V Providence II), Peake Enterprises Ltd., Raymond Carroll Webb (captain of the F/V Spider Webb), David Scott (captain of the Stoney's Kingfisher), William Lowery, IV (captain of the Anna Lynn), Agner Inc. and Nolan Agner (captain of the Flat Line) all pleaded guilty to trafficking in violation of the Lacey Act in connection with the illegal harvest of striped bass.
- Adams Fishing Adventures and Adams (captain of the F/V Providence II) also pleaded guilty to making false statements to law enforcement and were each sentenced to 36 months of probation.
- Peake Enterprises and Carroll Webb also pleaded guilty to destruction of evidence and were each sentenced to 36 months of probation and \$500 restitution each. Webb was also sentenced to \$3,000 fine.
- Scott also pleaded guilty to destruction of evidence and was sentenced to 36 months of probation, a \$5,600 fine and \$1,900 in restitution.
- Lowery also pleaded guilty to destruction of evidence and was sentenced to one month in prison, 12 months of probation, a \$1,000 fine and \$1,300 in restitution.
- Agner Inc. and Agner were each sentenced to 36 months of probation and Agner was sentenced to a \$3,500 fine.

127. **United States v. Rodebaugh et al.**, No. 1:10-cr-00444-CMA (D. Colo. sentence entered Feb. 13, 2013).

- Dennis Rodebaugh and Brian Douglas Kunz were indicted for violation of the Lacey Act in connection with the use salt licks to aid in the hunting of elk and deer.
- Brian Douglas Kunz pleaded guilty to aiding the violation and was sentenced to 12 months of probation and a \$2,000 fine.
- Rodebaugh was convicted of six counts under the Lacey Act and was sentenced to 41 months in prison, 36 months of probation, a \$7,500 fine and \$37,390 in restitution.

128. **United States v. Hausman**, No. 1:12-cr-00576-JPO (S.D.N.Y. sentence entered Feb. 14, 2013).

- David Hausman, an antiques dealer, pleaded guilty to violating the Lacey Act by purchasing black rhinoceros horns.
- Hausman was sentenced to six months in prison, 12 months of probation and a \$10,000 fine.
- 129. **United States v. Glades Herp Farm, Inc. et al.**, No. 2:12-cr-00623-JS (E.D. Pa. jury verdict entered Nov. 19, 2013).
- Robroy MacInnes, Robert Keszey and their business, Glades Herp Farm Inc. were indicted for conspiracy and the transport of wildlife in interstate commerce in violation the Lacey Act for the capture of endangered or threatened snakes in Penn-

sylvania and the transport of these snakes to be sold from the company's Florida location.

- MacInnes was convicted of conspiracy and the Lacey Act violations, and Keszey was convicted of conspiracy.
  - Glades Herp Farm Inc. was severed as a defendant and filed a certificate of dissolution with the court.
130. **United States v. Covino et al.**, No. 4:12-cr-10020-JEM (S.D. Fla. sentence entered Dec. 2, 2013).

- Ammon Covino, Christopher Conk and Idaho Aquarium Inc. pleaded guilty to conspiracy to violate the Lacey Act for the purchase of Spotted Eagle Rays and Lemon Sharks that were illegally taken.
- Covino was sentenced to 12 months and one day in prison followed by 24 months of probation.
- Conk was sentenced to four months in prison followed by 24 months of probation.

131. **United States v. Hayden et al.**, No. 1:13-cr-00649-RDB (D. Md. indictment entered Nov. 20, 2013).

- Michael Hayden Jr., his company Michael D. Hayden Jr. Inc., William Lednum, Kent Sadler and Lawrence Murphy were indicted for conspiracy and Lacey Act violations in connection with the illegal harvest of striped bass, the transport of the bass in interstate commerce and the filing of false documentation to conceal the illegal harvest. Hayden was also charged with retaliation for allegedly threatening witnesses in an effort to prevent them from cooperating with the government's investigation into the illegal harvest.

132. **United States v. Virginia Star Seafood Corp. et al.**, No. 1:07-cr-00139-GBL (E.D. Va. dismissed Jan. 30, 2013); **United States v. Virginia Star Seafood Corp. et al.**, No. 2:07-cr-00449-PSG (C.D. Cal. dismissed Jan. 30, 2013).

- Two indictments alleging violation of the Lacey Act for trafficking in falsely labeled fish dating from 2007 were dismissed against Blue Ocean Seafood Co., Silver Seas Co., International Sea Products Co. and Virginia Star Seafood Corp.

133. **United States v. Praskovsky**, No. 2:13-cr-04015-BP (W.D. Mo. indictment entered Feb. 26, 2013); **United States v. Babenko et al.**, No. 2:13-cr-04016-BP (W.D. Mo. guilty plea entered Nov. 13, 2013); **United States v. Lvovskiy et al.**, No. 2:13-cr-04017-BP (W.D. Mo. indictment entered Feb. 26, 2013); **United States v. Pakhnyuk**, No. 2:13-cr-04018-BP (W.D. Mo. indictment entered Feb. 26, 2013).

- Andrew Praskovsky, Petr Babenko, Arkadiy Lvovskiy, Dmitri Elitchev, Artour Magdessian, Felix Baravik, Fedor Pakhnyuk and Bogdan Nahapetyan were indicted for conspiracy and trafficking in violation of the Lacey Act in connection with the purchase and interstate transport of paddlefish caviar.
- Nahapetyan pleaded guilty to the charges.

134. See *United States v. Bishop et al.*, No. 1:12-cr-10027-CBK *infra*.

## Migratory Bird Treaty Act

135. **United States v. Scott**, No. 3:12-cr-08257-NVV (D. Ariz. sentence entered Feb. 28, 2013).

- Patrick Scott pleaded guilty to violation of the MBTA for selling a fan containing 12 feathers from a golden eagle for \$900.

- Scott was sentenced to one month in prison, 12 months of probation and a \$2,000 fine.

136. **United States v. Duke Energy Renewables, Inc.**, No. 2:13-cr-00268-KHR (D. Wyo. sentence entered Nov. 22, 2013).

- Duke Energy Renewables Inc. pleaded guilty to two counts of taking in connection with the deaths of 163 migratory birds, including 14 golden eagles, at the company's two wind energy facilities in Wyoming.

- The company was sentenced to five years of probation, a \$400,000 fine, \$100,000 in restitution to the State of Wyoming and \$500,000 in community service payments to aid in the protection and conservation of golden eagles and their habitat (\$160,000 to the National Fish and Wildlife Foundation and \$340,000 to the Conservation Fund). The company was also required to spend approximately \$600,000/yr to develop migratory bird and eagle compliance plans to minimize the number of migratory birds taken by the wind projects and to report those that do occur.

137. **United States v. Bishop et al.**, No. 1:12-cr-10027-CBK (D.S.D. sentence entered Apr. 29, 2013).

- Mike Bishop, Damien Rexrode, Mike Evangelista, Jeremy Hoefs, Vernon Renville and Mark Belote were indicted under the MBTA in connection with guiding, allowing hunters to take more than the allowed quota of waterfowl and the sale of migratory birds to undercover agents.

- Bishop and Rexrode pleaded guilty to the unlawful sale of migratory birds. Bishop was sentenced to 11 months in prison and \$10,650 restitution jointly and severally with his co-defendants. Rexrode was sentenced to 6 months in prison and \$4,500 restitution jointly and severally.

- Evangelista, Hoefs, Renville and Belote pleaded guilty to misdemeanor violations of the Lacey Act. Evangelista was sentenced to 36 months of probation and \$4,700 restitution jointly and severally. Hoefs was sentenced to 60 months of probation, a \$500 fine and \$4,700 restitution jointly and severally. Renville and Belote were each sentenced to 36 months of probation and \$2,950 restitution jointly and severally. Belote was also sentenced to a \$500 fine.

## Endangered Species Act

138. **United States v. Steffen et al.**, No. 2:12-cr-00202-CAS (C.D. Cal. sentence entered May 15, 2013).

- Jarrod Wade Steffen, Vinh Chuong "Jimmy" Kha, Felix Kha, Zhao Feng Jin, Nhu Mai Nguyen and Win Lee Corp. (owned by Jimmy Kha) were indicted for their roles in a smuggling ring dealing in rhinoceros horns.

- Steffen, Felix Kha and Jimmy Kha pleaded guilty to conspiracy, money laundering, smuggling and wildlife trafficking. Felix Kha was sentenced to 46

months in prison, 36 months of probation and a \$10,000 fine. Jimmy Kha was sentenced to 42 months in prison, 36 months of probation and a \$10,000 fine.

- Win Lee Corp. pleaded guilty to smuggling and wildlife trafficking. The company was sentenced to 60 months of probation and a \$100,000 fine.
  - Jin pleaded guilty to smuggling and was sentenced to time served and one year of probation.
  - Nhu Mai Nguyen, owner of a nail salon that allegedly received packages of rhinoceros horns, pleaded not guilty.
139. **United States v. Kokesh**, No. 3:13-cr-00048-RV (N.D. Fla. *jury verdict entered* Nov. 12, 2013).
- Charles Kokesh was indicted for engaging in the interstate sale of African elephant tusks and allegedly making false statements that the proceeds of the sale were given to the U.S. Fish and Wildlife Service and the Rosenbruch Wildlife Museum.
  - Kokesh was acquitted after submission of a Rule 29 motion to the court.

### **Marine Mammals Protection Act**

140. **United States v. Buchanan**, No. 1:13-cr-00098-JMR (S.D. Miss. *guilty plea entered* Dec. 10, 2013).

- Brent Buchanan, a shrimper in the Gulf of Mexico, pleaded guilty to violation of the Marine Mammals Protection Act for shooting a dolphin in the Mississippi Sound with a shotgun.

### **Transportation Cases**

141. **United States v. Medchem Corporation et al.**, No. 3:11-cr-00811-EMC (N.D. Cal. *jury verdict entered* July 3, 2013).

- Hasan Ibrahim, owner of Medchem Corp., was convicted of the improper transportation of hazardous materials for attempting to send, via aircraft, improperly labeled boxes containing hazardous materials, including certain chemicals that may not be transported via aircraft.
- The government dismissed the charges against the company.

142. **United States v. Barnes**, No. 1:13-cr-00160-JMS-DKO (S.D. Ind. *sentence entered* Oct. 23, 2013).

- Eric Barnes, a Level II Radiograph Technician, pleaded guilty to making false statements for falsely stating he had performed radiographic testing on pipeline welds.
- Barnes was sentenced to two years of probation and 40 hours of community service.

143. **United States v. Stoner**, No. 2:13-cr-20052-MPM-DGB (C.D. Ill. *guilty plea entered* Oct. 9, 2013).

- Edna Stoner, a Level II Radiograph Technician, pleaded guilty to making false statements in con-

nnection with the creation of false documents that indicated radiographic testing had been performed on pipeline welds.

- Stoner also pleaded guilty to violation of the Pipeline Safety Act for the knowing failure to perform required non-destructive testing on the pipeline welds.

### **Other Cases**

144. **United States v. Knight**, No. 2:12-cr-00261-LMA-ALC (E.D. La. *sentence entered* May 16, 2013).

- Connie M. Knight pleaded guilty to impersonation of a federal employee for posing as an OSHA worker in order to give training classes on the proper handling of hazardous materials as part of the response to the Deepwater Horizon disaster.

- Knight was sentenced to 57 months in prison, 36 months of probation and \$25,300 in restitution.

145. **United States v. Kimber**, No. 1:12-cr-00506-LEK (N.D.N.Y. *sentence entered* Sept. 25, 2013).

- Martin Kimber pleaded guilty to two counts of chemical weapons (18 U.S.C. § 229) and one count of tampering with a consumer product (18 U.S.C. § 1365(a)) in connection with the placement of mercury in several locations inside the Albany Medical Center (including in food items) in retaliation for bills he received.

- Kimber was sentenced to 168 months in prison, 60 months of probation and \$200,450.48 in restitution. Kimber has appealed his sentence.

146. **United States v. Doyle**, No. 2:12-cr-02016-SRB (D. Ariz. *sentence entered* Feb. 11, 2013).

- Kevin Andrew Doyle pleaded guilty to making false statements for reporting to the Nuclear Regulatory Commission that he repaired the display on a detector unit used by the Peach Bottom Atomic Power Station, when he had in fact replaced the display.

- He was sentenced to 5 years of probation including 50 hours of community service.

- As a term of compliance with Doyle's probation, his company, Pentas Controls LLC is required to implement organizational changes to prevent recurrence.

147. **United States v. Lopez**, No. 2:12-cr-00486-GW (C.D. Cal. *sentence entered* June 10, 2013).

- Martin Lopez pleaded guilty to cutting trees on federal lands for building a road, trail, residence and water reservoir on land within the Angeles National Forest without a permit.
- Lopez was sentenced to 60 months of probation including six months of home detention and \$14,836.09 in restitution.

## INTERVIEW

### DOJ's Deepwater Horizon Task Force

On Nov. 7, 2013, William Pericak was named the new director of the U.S. Department of Justice's Deepwater Horizon (DWH) Task Force. Pericak replaced John D. Buretta, who left the DOJ to join Cravath, Swaine and Moore LLP in New York. Pericak had joined the Task Force in April of 2013. The interview, conducted via email, is set forth below.

**STEVEN SOLOW/ANNE CARPENTER:** What was your background prior to becoming director of the Deepwater Horizon Task Force?

**WILLIAM PERICAK:** I started out in private practice in Boston MA, then joined DOJ as an Assistant United States Attorney in Albany, NY, responsible for a wide range of white collar, narcotics and violent crimes. I was named Deputy Criminal Chief in Albany, then moved to the Fraud Section as an Assistant Chief, assigned primarily to health care fraud investigations. I've also handled Foreign Corrupt Practices Act ("FCPA") and securities cases, and was named Counsel to the Chief of the Fraud Section. I've tried more than 20 criminal cases to verdict, and have supervised trial lawyers in hundreds more. The subject matters of my criminal trials have included bribery, corporate fraud, health care fraud, money laundering, tax evasion, terrorism, and the murder of a federal witness. I've briefed and argued close to 50 appeals. I first joined the DWH Task Force as the lead trial lawyer on the Manslaughter/Clean Water Act indictment. I subsequently was named Deputy Director, and more recently, Director of the Task Force.

**SOLOW/CARPENTER:** How has your background in the DOJ Criminal Division's Fraud Section prepared you to lead a task force investigating liability for one of the nation's largest environmental incidents?

**PERICAK:** Every investigation presents different challenges. I have been very fortunate in my career in the U.S. Attorney's Office and in the Criminal Division to have been exposed to cases involving questions of jurisdiction, technical subject matters, novel legal issues, and large volumes of documents, each of which is in play in the Deepwater Horizon investigation. For example, I have prosecuted cases within the special maritime and territorial jurisdiction of the United States and under other jurisdictional statutes, and those experiences prepared me for litigating the hotly contested jurisdictional challenges that were made to the manslaughter charges here. Every complex white collar case is set against a background of the industry in which the crime occurred, and from FCPA and securities cases here in the section, and the corporate fraud, money laundering and bribery cases in the US Attorney's Office, I am accustomed to learning the intricacies of an industry. That is essential to properly understanding the nuances of a particular case, and holds true in the Deepwater Horizon matter as well. My experience in managing more than a dozen trial attorneys at a time prepared me to address the disparate nature of the crimes charged in the various indictments and the appropriate supervision of the different trial teams before, during and after trial. Finally, having participated in the review and approval of thousands of prosecution

memoranda, proposed plea agreements, and recommendations for declination, I am very comfortable in assessing charging decisions and recommendations to resolve cases, a capability I have put to good use as Director of the Task Force.

**SOLOW/CARPENTER:** As we understand it, the task force's investigation of this and other matters concerning the Deepwater Horizon disaster is ongoing; is there an end in sight?

**PERICAK:** The task force is well on its way to completing its mission. The major corporate actors have pleaded guilty, and each is in the process of satisfying substantial monetary fines and penalties pursuant to the timetable established by the various Plea Agreements. In addition, in accordance with the terms of the BP Plea Agreement, after interviewing multiple candidates, DOJ approved the selection of the process safety monitor, the ethics monitor, and the third party auditor. All of those monitors are at work on their assignments. BP's term of probation is five years (from January 2013), and during that time period, the monitors will be reporting their findings and recommendations to BP and DOJ pursuant to the schedule set by the Plea Agreement.

In addition to the corporations, charges were brought against five individuals in four separate cases. In one case, an individual pleaded guilty to deletion of records, and has been sentenced. In a second case, an individual was found guilty of obstruction of a grand jury investigation; post-trial motions are pending, to be followed by sentencing. In the two remaining cases, the government has taken interlocutory appeals to the Fifth Circuit from district court orders dismissing some counts of each indictment. We anticipate that trials in those two cases will take place in late 2014, or in 2015.

**SOLOW/CARPENTER:** Based on the Department's experience in the DWH case, and should there ever be a future environmental case of this magnitude, do you think DOJ will utilize a similar task force approach?

**PERICAK:** First of all, I suspect that the industry has learned a great many lessons from this case, and hope that the regulatory and other changes instituted in the aftermath of the Deepwater Horizon incident will play a part in preventing such environmental disasters from happening in the future. If another case of this magnitude arises again, however, I suspect that DOJ will give serious consideration to investigating and prosecuting it using a task force approach. DOJ has used that approach in the past in major fraud cases, and in my view, used it successfully here as well. This task force drew on the expertise of each of DOJ's components to investigate a wide range of serious criminal conduct that included manslaughter, environmental and regulatory crimes, obstruction of justice, and obstruction of Congress. DOJ put together a team of prosecutors from U.S. Attorney's Offices, the DOJ Environment and Natural Resources Division and the DOJ Criminal Division's Fraud Section, each of whom brought unique backgrounds of subject matter knowledge, litigation experience, and other considerable skills to bear. The prosecution team was supported by outstanding cooperation among various law enforcement agencies—including the Federal Bureau of Investigation, U.S. Environmental Protection Agency's Criminal Investigation Division, Department of Interior, and Fish and Wildlife agents—each agency bringing a broad range of

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investigative experiences. By organizing as a task force, multiple components were able to contribute personnel and resources without adversely impacting their other cases and commitments. Given a disaster of a similar scope, particularly one involving disparate acts of criminal conduct, in my personal view, utilizing a task force is a sound approach.

**About the Authors:** Steven P. Solow is a partner in the Washington, D.C., office of Katten Muchin Rosenman LLP, where he serves as co-chair of the firm's

National Environmental Practice Group and co-chair of the D.C. office's White Collar Criminal and Civil Litigation and Compliance Practice. He is a former chief of the Department of Justice Environmental Crimes Section.

Anne M. Carpenter is an associate in the Washington, D.C., office of Katten Muchin Rosenman LLP. Her practice focuses on environmental and white-collar law, with an emphasis on civil and criminal environmental litigation.