



# Environmental Crimes Case Bulletin

U.S. Environmental Protection Agency  
Office of Criminal Enforcement, Forensics and Training

This bulletin summarizes publicized investigative activity and adjudicated cases conducted by OCEFT Criminal Investigation Division special agents, forensic specialists, and legal support staff.

**November 2014**

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# Defendant Summary

Region	Defendants	Case Type/Status
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Region 10	<a href="#">XS Platinum, Inc., Bruce Butcher,</a> <a href="#">Mark Balfour, James Slade, Robert Pate, James Staeheli</a>	CWA/Knowingly violating terms of company's CWA permit, conspiracy

**Supervisors At Seafood Processing Facility in Alaska Sentenced to Jail for CAA Crime** -- On November 12, 2014, **JAMES HAMPTON**, the former assistant chief engineer for Westward Seafoods, Inc. (Westward), and **RAUL MORALES**, the former powerhouse supervisor, were each sentenced in the federal district court for the District Court in Anchorage to serve time in jail after previously pleading guilty to falsifying data to cover



*Westward Seafoods, Inc.*

up the fact that they intentionally failed to operate air pollution controls required under the Clean Air Act at the Westward seafood processing facility in Dutch Harbor. Hampton was sentenced to just over two months in prison (70 days). Morales was sentenced to 1.5 months in prison (45 days). Both defendants were ordered to pay \$1,000 fine and will serve a one-year term of supervision upon release from prison. The judge noted that both defendants knew what they were doing was against the law, but they did it anyway, and that the sentences imposed should deter others from committing similar crimes.

On November 25, 2014, **BRYAN BEIGH**, a powerhouse operator, was sentenced after previously pleading guilty to charges that he tampered with the meters used to monitor the operation of the CASS pollution control equipment. Beigh was sentenced to three years probation and a \$750 fine.

Westward has operated a sizeable seafood processing facility in Dutch Harbor since 1999, processing approximately 250 million pounds of seafood per year. Westward is a wholly owned subsidiary of Maruha-Nichiro Holdings, Inc., a Japanese-based company, and maintains its headquarters in Seattle, Washington. The Dutch Harbor facility generates its own electricity with three diesel-fueled generators contained in its powerhouse building. Air emissions from these generators are vented through a single combined smokestack, and these emissions are regulated by a Title V Permit under the Clean Air Act. The permit was issued by the Alaska Department of Environmental Conservation (ADEC), under delegated authority from the U.S. Environmental Protection Agency.

Under the terms of its permit, Westward was required to install and use pollution control equipment to decrease the amount of nitrogen dioxide (NO<sub>x</sub>) being emitted from the powerhouse smokestack. To meet this requirement, Westward installed a Combustion Air Saturation System (CASS) for each generator unit, which uses water to saturate the air and reduce emissions from each generator. The permit also required Westward to operate each generator with a “dedicated fuel and water flow meter” and to record the fuel and water consumption “at a consistent time once per day.”

Beginning in 2009, and continuing until August 2011, Westward failed to operate the CASS pollution control equipment. Raul Morales discussed with James Hampton that he and the powerhouse staff had stopped operating the CASS. Thereafter, Hampton not only allowed this permit violation to continue, but he used his position to actively participate in a cover-up designed to make it appear that the CASS was in fact being used as required by law. Morales, along with Bryan Beigh, a powerhouse operator, falsified data

collection forms called “Engine Round” forms on a daily basis when it came to recording information about the operation of the CASS. The false information not only included indicating that the CASS was operating “OK” when it was off, but also included generating false water meter flow readings. Because the CASS was not being operated, no water was flowing through the system and therefore the actual water flow meter readings would have revealed no water use. Morales maintained a running calculation of what the flow meters should have indicated if the CASS had been properly operated, and Beigh went so far as to develop a system of removing the water flow meters and manually spinning them using a drill and a magnet to make it appear that water had been flowing through the system.

The false information from the Engine Rounds was then included in the End of Day (EOD) reports and the Environmental Report Sheets (ERS) maintained by Westward. This false information was in turn reported to ADEC and EPA. On several occasions, Westward’s environmental compliance manager noticed a discrepancy and had questions about the water usage data recorded for the CASS and contacted Hampton for answers. In response, Hampton either changed the numbers or requested that Morales provide new numbers, knowing that both

the previous numbers and the new numbers he provided were false. Hampton then submitted the new, but still false, water usage numbers to the environmental compliance manager.

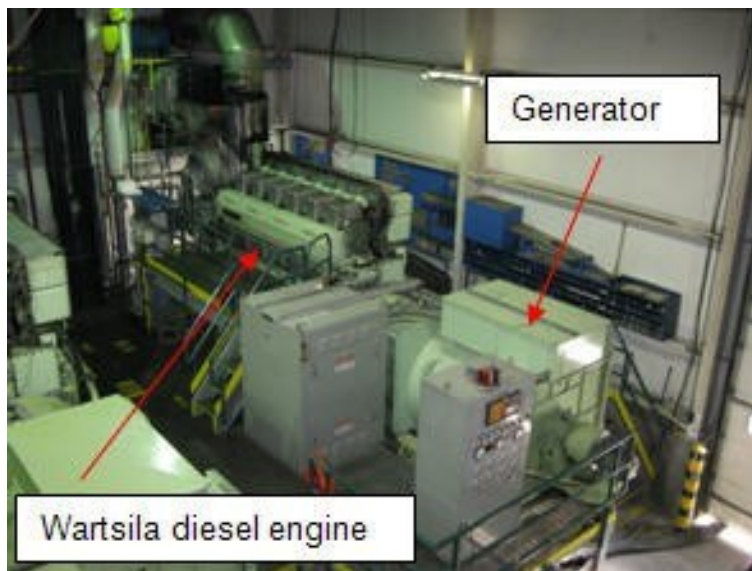
Additionally, in April 2011, Hampton escorted an EPA inspector through the powerhouse at Westward during an inspection. Westward had advance notice of the inspection and the powerhouse supervisor and operators began operating the CASS in preparation for the inspection to make it appear that they were in fact operating the CASS routinely as required by the permit. During the inspection, Hampton guided the EPA inspector around the powerhouse and to view the daily logs which indicated that the CASS had been regularly operating, when Hampton knew that it was not being operated and the logs were false.

In 2010, Westward entered into a civil consent decree with the United States and agreed to pay a civil penalty following prior allegations that the company had, among other things, violated emissions limits under the Clean Air Act. The consent decree, filed in *United States v. Westward*, 3:10-cv-00073-JWS, required Westward to reduce its NOx emissions by properly operating pollution prevention equipment. Hampton and Morales were aware of the consent decree.

While the EPA did not receive any reports of harm to human beings as a result of the emissions at Westward during this period of time, NOx can cause airway inflammation in otherwise healthy people and can cause or worsen symptoms of asthma, bronchitis, and other respiratory diseases.

The case was investigated by EPA’s Criminal Investigation Division. It was prosecuted by Karla Perrin, EPA regional criminal enforcement counsel, in conjunction with the United States Attorney’s Office.

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***Diesel-fueled generators contained in Westward Seafood’s powerhouse building.***



**Former New York State Inspector Sentenced for Negligent Dangerment Under the CAA** -- On November 6, 2014, **THEODORE LEHMANN**, of Buffalo, New York, who was convicted of a misdemeanor charge of negligent endangerment under the Clean Air Act, was sentenced in federal district court for the Western District of New York to one year probation.

Lehmann was employed by JMD Environmental, Inc. (JMD) as an air sampling technician and a project monitor, and was certified by the New York State Department of Health to conduct asbestos project monitor and air sampling duties. From June 9, 2009 to January 11, 2010, co-defendants Johnson Contracting of WNY, Inc., Ernest Johnson, and Rai Johnson, conducted asbestos abatement activities at six



***Aerial view of the six buildings at the Kensington Towers Apartment complex where asbestos was illegally abated. The area includes a school, hospital, and residences nearby.***

buildings at the Kensington Towers Apartment Complex in Buffalo. During the abatement process, Rai Johnson created daily project logs to document the progress at Kensington Towers. The logs are documents required to be maintained under the Clean Air Act.

At the conclusion of the abatement for building B-2 by Johnson Contracting, Rai Johnson wrote in his daily project log that all material containing asbestos had been removed from the boiler room, when in truth, all asbestos had not been removed. Thereafter, on August 25, 2009, Lehmann conducted a visual inspection of the boiler room at building B-2 and issued a satisfactory visual inspection, when in truth, he was aware that all asbestos had not been removed. In doing so, he acted as an accessory after the fact to the false statement made by the Johnsons.

This is the final defendant to be sentenced as part of the Kensington Towers asbestos abatement project. In addition to Ernest and Rai Johnson, other defendants who have been convicted include JMD project monitors Evan Harnden and Brian Scott; and current and former public officials responsible for certifying the project's compliance with applicable laws and regulations, including Donald Grzebielucha and William Manuszewski.

The case was investigated by EPA's Criminal Investigation Division, the Federal Bureau of Investigation, the U.S. Department of Housing and Urban Development - Office of Inspector General, and the New York State Department of Environmental Conservation Police, BECI. Additional assistance was provided by the New York State Department of Labor, Asbestos Control Bureau. It is being prosecuted by Assistant U. S. Attorney Aaron J. Mango.

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**West Virginia Woman Pleads Guilty to Filing Fraudulent Water Quality Reports** -- On November 13, 2014, **BONITA WITT-HIRD**, of Thorpe, West Virginia, pled guilty in federal district court in Charleston to filing fraudulent water quality reports. She is scheduled to be sentenced on January 5, 2015.

Witt-Hird was formerly employed as the office manager for Richmorr Associates, Inc., an environmental engineering firm in Elkview, West Virginia, which provides water sampling services to wastewater treatment plants throughout West Virginia. Wastewater plants are required by state and federal law to sample wastewater discharges. The results are submitted to the West Virginia Department of Environmental Protection (WVDEP). WVDEP reviews the results to ensure compliance with water quality standards. In the event of non-compliance, WVDEP may levy fines or, in extreme cases, shut down the wastewater treatment plant.

From April of 2012 to June of 2013, Witt-Hird filed approximately 80 false reports with the WVDEP. These false reports made it appear that current water quality sampling had been performed for the wastewater plants when, in fact, the test results had been copied from previous years.

Witt-Hird previously plead guilty on September 26, 2013 to obstructing an IRS investigation and is currently imprisoned on the sentence imposed for that offense. For the fraudulent water quality report offense, Witt-Hird faces a maximum penalty of two years imprisonment, and a fine of up to \$250,000.

The case was investigated by EPA's Criminal Investigation Division, the WVDEP and the Federal Bureau of Investigation. It is being prosecuted by Assistant United States Attorney Erik S. Goes.

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**Oklahoma Corporation Pleads Guilty to CWA Violations** -- On November 19, 2014, **XPLOR ENERGY SPV-1, Inc.**, an Oklahoma corporation residing in Southlake, Texas, pled guilty in federal district court for the Eastern District of Louisiana with knowingly violating the Clean Water Act. The charges concern XPLOR's oil and gas production activities in the Breton Sound Area of the Gulf of Mexico. As part of the guilty plea, the



*Well site platform and flow lines*

company agreed to pay a total monetary penalty of \$3.1 million and serve a three-year term of probation. Of the monetary penalty \$2.5 million will go to the United States Treasury and \$600,000 to Louisiana Department of Environmental Quality Trust Fund. Sentencing is set for March 4, 2015.

According to the court documents, from on or about November 24, 1997 until November 18, 2011, XPLOR operated the MP 35 offshore facility ("MP 35 Platform") for the purpose of extracting oil and natural gas. As part of the oil and gas production, separation and processing, XPLOR was tasked with disposing of the pollutant known as "produced water" or "brine" which is produced with the extracted oil and natural gas. The MP 35 Platform was designed to dispose of this pollutant by forcing the produced water, under pump generated pressure, into disposal/injection wells located in Gulf of Mexico waters near the MP 35 Platform.

In or near November 2011, XPLOR transferred ownership and operation to another corporation. The platform's new owner quickly discovered the platform was continuously discharging produced water containing oil and other harmful substances into the waters of the United States. The new owner immediately contacted regulatory authorities to report the discharge.

The ensuing investigation revealed that XPLOR had knowingly discharged produced water containing oil into waters of the United States without any permit from faulty injection lines/pipes leading from the platform to the disposal wells used to store the produced water containing oil, and from



*Offshore storage tanks*

produced water disposal wells which had insufficient capacity to hold the produced water. Despite knowing of this consistent discharge from the injection lines and the insufficient capacity of their disposal wells, XPLOR failed to adequately repair these faulty injection lines and disposal wells. XPLOR's intentional failure to make these repairs resulted in the repeated discharge of produced water containing oil into the waters of the United States from in or near October 2009, and continuing through to November 18, 2011. XPLOR's actions resulted in a total monetary savings or gain to them in the amount of approximately \$1,550,000.

The case was investigated by EPA's Criminal Investigation Division and the Criminal Investigation Division of the Louisiana Department of Environmental Quality. It is being prosecuted by Assistant United States Attorney Matt Coman.

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**Former Massachusetts Department of Agriculture Pleads Guilty to Falsifying EPA Reports** – On November 20, 2014, **PAUL RICCO**, of Springfield, Massachusetts, a former inspector for the Massachusetts Department of Agriculture, pleaded guilty in federal district court for the District of Massachusetts to making false statements on inspection reports he submitted to federal regulators. He was charged in September and his sentencing is scheduled for February 11, 2015.

From March 2010 through May 2012, Ricco was in charge of the Producer Establishment Inspection program at the Massachusetts Department of Agriculture where he inspected establishments that produce, sell and/or distribute pesticides. During that time period, Ricco submitted 15 false reports of purported inspections that he never performed. Ricco submitted the false reports to EPA to conceal the fact that he was not performing environmental inspections which he was required to perform. Those inspections were necessary to insure that pesticide manufacturers across the state were producing and packaging pesticides safely.

The charging statute provides a statutory maximum sentence of no greater than five years in prison, three years of supervised release, and a fine of \$250,000. Actual sentences for federal crimes are typically less than the maximum penalties. Sentences are imposed by a federal district judge based upon the U.S. Sentencing Guidelines and other statutory factors.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Carlos A. López of the U.S. attorney's office's major crimes Unit.

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## **California Business and Its Owner Plead Guilty to Illegal Disposal of Untreated Human Waste and Sewage --**

On November 19, 2014, **GLAMIS DUNES STORAGE, INC.** and its owner, **MICHAEL MAMELLI, SR.**, pleaded guilty in federal district court for the Southern District of California to the illegal underground disposal of



*Glamis Dunes Storage site*

potentially millions of gallons of untreated human waste and sewage at the Glamis Dunes Storage site for more than four years, in violation of the Safe Drinking Water Act. The Glamis Dunes site advertises storage services near the Imperial Sand Dunes Recreation Area. Sentencing is scheduled for February 17, 2015. The maximum penalty for Mamelli is three years in prison and up to \$250,000 fine or twice the illegal gain or loss, whichever is greater. The maximum penalty for the corporation is a fine of up to \$500,000.

The defendants admitted that in August of 2007, Glamis Dunes Storage obtained a conditional use permit from Imperial County to install and operate a 20,000 gallon holding tank for RV waste (including human waste and grey water) at the facility. When acquiring the permit, Glamis Dunes Storage represented that the wastewater would be pumped out by a licensed septage hauler and disposed of at the Holtville wastewater treatment plant. According to Glamis Dunes Storage, the holding tank could be expected to dispose of approximately 1,250,000 gallons of RV sewage and grey water per year. The permit specifically prohibited any underground leach system attached to the holding tank.

As the defendants admitted, however, between February 16, 2010, and March 12, 2010, the defendants arranged for a contractor to build a leach field in the rear of the property, install a pump in the RV holding tank, and connect a pipe directly from the RV holding tank out to the leach field. The defendants also arranged for the power connection for the pump to be concealed under gravel near the RV holding tank. Thereafter, they admitted that they repeatedly disposed of the human waste and sewage from the RV holding tank by activating the pump and discharging the sewage through the underground leach field.

The defendants acknowledged that between August and October of 2012, they had a contractor add a new pump and two 2,500 gallon tanks in series to the pipe connecting the RV holding tank to the leach field. The defendants continued to illegally dispose of the sewage in the RV holding tank by discharging it through the underground tanks and leach field without a permit or other authorization from the EPA. The defendants agreed to forfeiture of the sum of \$50,000, as the proceeds of the offense, and to make restitution to the Bureau of Land Management and the Imperial County Department of Environmental Health and to fund the restoration of the site to the satisfaction of the Imperial County Department of Environmental Health.

The case was investigated by EPA's Criminal Investigation Division.

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**Maine Man Pleads Guilty to Making False Statements** -- On November 20, 2014, **CLYDE ELDRIDGE**, of Calais, Maine, pled guilty in federal district court for the District of Maine to making a false statement to federal agents.

According to court records, Eldridge owned C&E Feeds, a feed and pet store in Calais. In 2010, EPA and its Canadian counterpart, Environment Canada, were investigating the illegal use of the pesticide cypermethrin. On September 23, 2010, when asked by two EPA special agents to identify anyone to whom he had sold cypermethrin and whether he had kept records of the sales, Eldridge said he sold different amounts of cypermethrin to different people and that he did not keep track of the sales. The investigation revealed, however, that Eldridge sold cypermethrin on 10-11 occasions to one regional production manager employed by Kelly Cove Salmon Ltd., a subsidiary of Cooke Aquaculture, and that on each occasion Eldridge made a note of the quantity picked up by the manager. In April of 2013, Cooke Aquaculture pled guilty in New Brunswick Provincial Court and paid a \$490,000 fine for illegally using pesticides that killed hundreds of lobsters in waters that were about a mile from Maine's border.

Eldridge faces up to 5 years in prison and a \$250,000 fine. He will be sentenced after completion of a presentence investigation report by the U.S. Probation Office.

The investigation was conducted by EPA's Criminal Investigation Division and Environment Canada.

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**Delaware Corporation and Five Officials Indicted for Illegal Discharges From a Mine in Alaska and for False Statements to Federal Officials** -- On November 19, 2014, **XS PLATINUM, INC.**, and five of its officers and employees were indicted in federal district court for the District of Alaska for five felony violations, including conspiracy to violate the Clean Water Act and for submitting material false statements.

The indictment charges XS Platinum, Inc. (XSP), a Delaware corporation, and five of its officers and employees, **BRUCE BUTCHER** and **MARK BALFOUR** (both Australian citizens), **JAMES SLADE** (a Canadian citizen) and **ROBERT PATE** and **JAMES STAEHELI** (both U.S. citizens residing in Washington state) with conspiracy to violate the Clean Water Act during the defendants' operation of the Platinum Creek Mine on the Salmon River in Western Alaska. In addition, the indictment charges XSP, Butcher, Balfour, Slade, and Pate with knowingly violating the terms of XSP's CWA permit in 2010; and XSP, Butcher, Balfour, Slade, and Staeheli with knowingly violating the terms of XSP's CWA permit in 2011. The indictment also charges XSP, Butcher, Balfour, Slade and Pate with submitting a false statement in violation of the CWA. Finally, the indictment charges XSP and Balfour with submitting a separate false statement.

According to the indictment, XSP held 159 placer mining claims and 36 hard-rock claims totaling more than 4,000 acres at the Platinum Creek Mine, which was situated along the Salmon River and its tributaries. The mine contains placer deposits of platinum metal, along with smaller amounts of gold and palladium. All but 21 of the claims were on land managed by the BLM, with the remaining (undeveloped) claims lying within the Togiak National Wildlife Refuge. The Salmon River is an anadromous fish stream that is important for the spawning of all five species of Pacific salmon (chinook, chum, coho, pink, and sockeye), and the rearing of coho and sockeye salmon. After flowing through BLM land, the Salmon River crosses the Togiak National Wildlife Refuge before entering the Pacific Ocean at Kuskokwim Bay. An indictment contains allegations that a defendant has committed a crime. Every defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt.

The CWA prohibits discharges of industrial wastewaters from mining operations in violation of CWA permits which govern those discharges. According to the indictment, beginning in 2010 and continuing through 2011, XSP and the individual defendants knowingly discharged industrial wastewaters from XSP's mechanical placer mining operation at the Platinum Creek Mine into the adjacent Salmon River in violation of the terms of XSP's CWA General Permit. According to the indictment, XSP told federal regulators in its mining and CWA permit applications that the operation of the mine would recycle all of its wastewater and result in "zero discharge" of mine wastewater to the Salmon River. The indictment alleges that XSP and the individual defendants conspired to violate the CWA by concealing the 2010 and 2011 mine wastewater discharge violations from federal officials, and submitting material false statements to federal agencies. The indictment further alleges that the industrial wastewaters discharged from XSP's operation of the Platinum Creek Mine included large amounts of sediment, turbidity, and toxic metals. It is further alleged that these discharges exceeded the CWA General Permit limits for those pollutants and that the defendants failed to report the violations as they were required. According to the indictment, XSP and its corporate officers submitted an annual report in 2011 to federal and state agencies which indicated that the mine had "zero discharge" during the 2010 mining season, when XSP's own monitoring data showed that it had numerous discharges to the Salmon River.

The investigation is being conducted by EPA's Criminal Investigation Division and the U.S. Department



of Interior Bureau of Land Management Office of Law Enforcement and Security. The case is being prosecuted by First Assistant U.S. Attorney Kevin Feldis of the U.S. Attorney's Office for the District of Alaska, Trial Attorney Todd S. Mikolop of the U.S. Justice Department's Environmental Crimes Section, and EPA's Regional Criminal Enforcement Counsel Dean Ingemanson.

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