

Environmental Crimes Case Bulletin



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

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

Defendants in this edition:

- **Gene Cornell Smith — Region 2**
- **Frank Zuspan — Region 3**
- **Michael Pinski — Region 5**
- **W&T Offshore — Region 6**
- **BP Exploration and Production Inc. — Region 6**
- **Connie M. Knight — Region 6**
- **Bruce Raymond Morris — Region 7**
- **Hurley Enterprises, MON-DAK Water and Septic Services, LLC — Region 8**
- **Cenex Harvest States, Inc. — Region 8**

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 2	Gene Cornell Smith	CAA/Illegal asbestos removal
Region 3	Frank Zuspan	CWA/Illegally dumping raw sewage into U.S. waters
Region 5	Michael Pinski	CAA/Illegal asbestos removal
Region 6	W&T Offshore	CWA/Disguised dirty discharges
Region 6	BP Exploration and Production, Inc.	CWA & Migratory Bird Act/ Felony manslaughter, obstruction of Congress

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 6	<u>Connie M. Knight</u>	ID fraud and impersonating a gov- ernment official
Region 7	<u>Bruce Raymond Morris</u>	CWA/Submitting false water sam- ples for testing
Region 8	<u>Hurley Enterprises, MON-DAK Water and Septic Services, LLC</u>	CWA/Illegal dumping of untreated wastewater
Region 8	<u>Cenex Harvest States, Inc.</u>	CAA/Failure to report release of hazardous substance

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Final Defendant Sentenced in Illinois Clean Air Act Asbestos Case – On January 14, 2013, **MI-CHAEL PINSKI**, who previously pled guilty to violation of the Clean Air Act related to illegal and unsafe asbestos removal from a Kankakee, Illinois, building he owned, was sentenced in federal district court for the Central District of Illinois to serve six months in prison, followed by two years of supervised release including six months of home detention. He was ordered to report to the federal Bureau of Prisons on Feb. 20, 2013.

On Aug. 19, 2011, Pinski entered a plea of guilty to violating the Clean Air Act by failing to notify the Illinois EPA of an asbestos removal job that took place at a warehouse he owned in Kankakee. He was



Bags filled with asbestos-containing insulation dumped in an open field by workers recruited by James Mikrut

charged in June 2010, along with Duane “Butch” O’Malley, of Bourbonnais, and James A. Mikrut, of Manteno.

Mikrut, who pled guilty to five counts of violating the Clean Air Act, was sentenced on September 20, 2012, to twelve months and one day in prison, followed by one year of supervised release under home detention. Mikrut was ordered to pay restitution of \$47,085 to EPA along with co-defendant O’Malley. On July 25, 2012, O’Malley, convicted by a jury in September 2011, was sentenced to ten years in prison, fined \$15,000, and ordered to remain on supervised release for a period of three years following completion of his prison sentence.

Under provisions of the Clean Air Act, EPA has promulgated rules, regulations and requirements to control the removal, handling and disposal of asbestos, a hazardous air pollutant. Any owner or operator of a renovation or demolition activity which involves removal of specified amounts of asbestos-containing material must comply with the EPA regulations.

Pinski pled guilty to violation of the Clean Air Act related to the illegal and unsafe removal of asbestos-containing insulation from pipes in a five-story building in Kankakee, that he owned through his company, Dearborn Management, Inc. In August 2009, Pinski hired O’Malley, owner and operator of Origin Fire Protection. During O’Malley’s trial, the government presented evidence that neither O’Malley nor his company was trained to perform the asbestos removal work and that O’Malley agreed to remove the asbestos insulation for an amount that was substantially less than a trained asbestos abatement contractor would have charged to perform the work. Further, O’Malley arranged for Mikrut to recruit and oversee workers to remove the asbestos.

The government’s evidence showed that there was no notification of the planned asbestos removal work given to the Illinois EPA or the U.S. EPA, among other various violations of the Clean Air Act and EPA regulations.

The case was investigated by EPA’s Criminal Investigation Division with assistance from the Illinois Environmental Protection Agency and the U.S. EPA’s Superfund Division. Assistant U.S. Attorney Eugene L. Miller and Special Assistant U.S. Attorney James Cha prosecuted the case.

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Montana Company Fined for Failing to Report Release of Hazardous Substance – On January 22, 2013, **CENEX HARVEST STATES, INC.** was fined \$500,000 in federal district court in Great Falls, Montana, for failure to report release of a hazardous substance. The company was also ordered to pay the Phillips County Rural Fire Department \$50,000 and given a \$400 special assessment. The terms of CHS's sentence were agreed upon in an October 2012 plea agreement.



The photo above and below (incorrectly date stamped) were taken by a Cenex employee. A fire broke out at the Cooperative's warehouse, and a substantial amount of chemical products were combusted causing the release of heavy smoke.

According to court documents, Milk River Cooperatives, a retail sale business in Malta, which is owned by CHS, caught fire on November 21, 2009. Feed, seed, fertilizers, pesticides and herbicides, including approximately 1,800 pounds of materials containing the chemical 2,4-D, were stored at the facility. According to a chemical summary by EPA, 2,4-D is a widely used commercial broadleaf herbicide that occurs in crystalline form. In humans, chronic exposure to 2,4-D has been linked to blood, liver and kidney toxicity. Acute exposure to high concentrations of 2,4-D can lead to burning feelings in the lungs, loss of muscular coordination, nausea, vomiting and coma, among others.

Court documents indicate the Phillips County Volunteer Fire Department responded to the fire, during which large barrels of chemicals, including 2,4-D, burned. The MRC facility manager was also on the scene and, later, the general manager for all MRC facilities. The general manager called the CHS environmental, health and safety manager to notify him of the fire. The state Disaster and Emergency Planning Services was notified, and understood the fire was in a warehouse that stored chemicals. MDES understood that "the fire was small and of no significance. The MDES planner was not told that chemicals were released onto the ground or that the chemicals posed any risk," according to court documents.

Another CHS manager later came to the scene and provided an inventory of the chemicals located at the facility to the Malta fire department. "The manager later stated that if the wind had been blowing west, towards Malta, they would have evacuated the town."

According to court documents, 14 calves died on a ranch east of the facility, and a veterinarian stated toxic smoke from the fire "could not be ruled out as a cause of death." CHS paid the owner fair market value for the calves and purchased approximately 473 head of cattle that had been exposed to smoke from the MRC facility fire. Court documents indicate cleanup after the fire included collection of 6,750 gallons of a water/chemical mixture created by fire suppression efforts. Impacted soils, including 130 cubic yards of soil contaminated by 2,4-D, was disposed of.



According to CHS, MRC employees cooperated with Phillips County Sheriff's Department deputies and Phillips County Volunteer Fire Department in alerting proper authorities, evacuating nearby homes and fighting the spread of the fire and chemicals. MRC employees notified state authorities of a possible chemical spill.

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BP Exploration and Production Inc. Pleads Guilty; Is Sentenced to Pay Record \$4 Billion for Crimes Surrounding Deepwater Horizon Incident – On January 29, 2013, **BP EXPLORATION AND PRODUCTION, INC.** pleaded guilty in federal district court for the Eastern District of Louisiana to 14

criminal counts for its illegal conduct leading to and after the 2010 *Deepwater Horizon* disaster, and was sentenced to pay \$4 billion in criminal fines and penalties, the largest criminal resolution in U.S. history.

During the guilty plea and sentencing proceeding, the judge in the case found, among other things, that the consequential fines imposed under the plea agreement far exceed any imposed in U.S. history, and are structured so that BP will feel the full brunt of the penalties. The judge also noted that the agreement provides just punishment and significant deterrence, requiring detailed drilling safeguards, monitors and other stringent, special conditions of probation so that BP's future conduct will be closely watched.



BP pleaded guilty to each count charged in an information filed in U.S. District Court in the Eastern District of Louisiana, including 11 counts of felony manslaughter, one count of felony obstruction of Congress and violations of the Clean Water and Migratory Bird Treaty Acts. In its guilty plea, BP admitted that on April 20, 2010, the two highest-ranking BP supervisors onboard the *Deepwater Horizon*, known as BP's "Well Site Leaders" or "company men," negligently caused the deaths of 11 men and the resulting oil spill. The company also admitted that on that evening, the two Well Site Leaders observed clear indications that the Macondo well was not secure and that oil and gas were flowing into the well, but chose not to take obvious and appropriate steps to prevent the blowout. Additionally, BP admitted that as a result of the Well Site Leaders' conduct, control of the Macondo well was lost, resulting in catastrophe.

BP also admitted during its guilty plea that the company, through a senior executive, obstructed an inquiry by the U.S. Congress into the amount of oil being discharged into the Gulf while the spill was ongoing. BP also admitted that the senior executive withheld documents, provided false and misleading information in response to the U.S. House of Representatives' request for flow-rate information, manipulated internal estimates to understate the amount of oil flowing from the well and withheld data that contradicted BP's public estimate of 5,000 barrels of oil per day. At the same time that the senior executive was preparing his manipulated estimates, BP admitted, the company's internal engineering response teams were using sophisticated methods that generated significantly higher estimates. The Flow Rate Technical Group, consisting of government and independent scientists, later concluded that more than 60,000 barrels per day were leaking into the Gulf during the relevant time, contrary to BP's representations to Congress.

According to the sentence imposed pursuant to the plea agreement, more than \$2 billion dollars will directly benefit the Gulf region. By order of the court, approximately \$2.4 billion of the \$4.0 billion criminal recovery is dedicated to acquiring, restoring, preserving and conserving – in consultation with appropriate state and other resource managers – the marine and coastal environments, ecosystems and bird and wildlife habitat in the Gulf of Mexico and bordering states harmed by the *Deepwater Horizon* oil spill. This portion of the criminal recovery is also to be directed to significant barrier island restoration and/or river diversion off the coast of Louisiana to further benefit and improve coastal wetlands affected by the oil spill. An additional \$350 million will be used to fund improved oil spill prevention and response efforts in the Gulf through research, development, education and training.

BP was also sentenced to five years of probation – the maximum term of probation permitted under

law. The company is also required, according to the order entered by the court pursuant to the plea agreement, to retain a process safety and risk management monitor and an independent auditor, who will oversee BP's process safety, risk management and drilling equipment maintenance with respect to deepwater drilling in the Gulf of Mexico. BP is also required to retain an ethics monitor to improve its code of conduct to ensure BP's future candor with the U.S. government.



The charges and allegations pending against individuals in related cases are merely accusations, and those individuals are considered innocent unless and until proven guilty.

The guilty plea and sentence are part of the ongoing criminal investigation by the *Deepwater Horizon* Task Force into matters related to the April 2010 Gulf oil spill. The *Deepwater Horizon* Task Force, based in New Orleans, is supervised by Assistant Attorney General Breuer and led by Deputy As-

sistant Attorney General John D. Buretta, who serves as the director of the task force. The task force includes prosecutors from the Criminal Division and Environment and Natural Resources Division of the Department of Justice; the U.S. Attorney's Office for the Eastern District of Louisiana, as well as other U.S. Attorneys' Offices; and investigating agents from: the FBI; EPA's Criminal Investigative Division; EPA's Office of Inspector General; Department of Interior, Office of Inspector General; National Oceanic and Atmospheric Administration Office of Law Enforcement; U.S. Coast Guard; U.S. Fish and Wildlife Service; and the Louisiana Department of Environmental Quality.

The case was prosecuted by Deepwater Horizon Task Force Director John D. Buretta, Deputy Directors Derek A. Cohen and Avi Gesser, and task force prosecutors Richard R. Pickens II, Scott M. Cullen, Colin Black, and Rohan Virginkar.

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West Virginia Man Sentenced to Prison for Illegally Dumping Raw Sewage – On January 15, 2013, **FRANK ZUSPAN**, of Mason County, West Virginia, was sentenced to a year and a half in federal prison for dumping a pollutant into waters of the United States without a permit. Zuspan pleaded guilty in September 2012. He admitted that in or about December 2010, he took a 2400-gallon sewage hauling truck to property in Mason County and illegally dumped sewage onto the property. Zuspan further admitted that the sewage was dumped into a lake and stream watershed in Mason County that connected to the Ohio River. He also admitted that he discharged untreated sewage onto the Mason County property on multiple occasions between November 2010 and February 2011.

The case was investigated by EPA's Criminal Investigation Division. It was prosecuted by Assistant U.S. Attorney Erik S. Goes and Special Assistant U.S. Attorney Perry McDaniel.

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The sewage hauling truck Zuspan used to discharge untreated sewage.

Jury Convicts New Jersey Man of Asbestos Violations – On January 18, 2013, **GENE CORNELL SMITH**, of Lumberton, New Jersey, was convicted in federal district court for the Eastern District of Pennsylvania of conspiring with contractor Clarence Cole, a co-defendant who previously pleaded guilty to ripping out a boiler and asbestos insulated pipes illegally, after finding out how much it cost to properly remove asbestos. The jury also convicted Smith of five separate counts of Clean Air Act violations. Smith faces a maximum possible sentence of 30 years imprisonment; three years of supervised release; a fine of up to \$1,500,000; and a \$600 special assessment. The case was investigated by EPA's Criminal Investigation Division and is being prosecuted by Assistant U.S. Attorney Elizabeth Abrams and Special Assistant U.S. Attorney Thomas Moshang. This matter was brought to EPA's attention by the City of Philadelphia Air Management Services and City of Philadelphia Law Department.

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Bags of illegally abated asbestos left in front of Smith's warehouse in Philadelphia, PA. Smith had Cole illegally remove the asbestos from the HVAC system and leave these bags on the street for regular trash collection. Residential housing is directly across the street. EPA's Superfund program ultimately remediated the site due to extreme asbestos contamination, at a cost of approximately \$450k.

Missouri Man Pleads Guilty to Submitting False Water Samples – On January 22, 2013, **BRUCE RAYMOND MORRIS**, of Taney County, Missouri, pleaded guilty in federal district court in the Western District of Missouri to submitting false water samples for testing from a wastewater treatment facility that dumped raw, untreated sewage into Table Rock Lake for much of 2008 in violation of the Clean Water Act. Under federal statutes, Morris is subject to a sentence of up to two years in federal prison without parole, plus a fine up to \$250,000.

Morris was employed by Light Environmental, Inc., which provides environmental and waste treatment services. Landmarc Estates, a Taney County subdivision, hired Light Environmental to operate its wastewater treatment facility, to conduct wastewater sampling at the facility, and to submit wastewater sample results to the Missouri Department of Natural Resources as required by its federal permit. Morris was responsible for operating the wastewater treatment facility serving Landmarc Estates from March 2008 to January 2009.

The Landmarc Estates wastewater treatment facility was located less than 100 yards from Table Rock Lake. It discharged into a roadside ditch, and from there the discharged materials flowed downhill into Table Rock Lake. From March 2008 to January 2009, the Landmarc Estates facility did not properly treat its wastewater. Its electrically-operated motor, providing the only source of operating power for the facility, was inoperable for this entire period. As a result, raw, untreated sewage was released into the roadside ditch, and that untreated sewage flowed directly into Table Rock Lake.

Morris knew the Landmarc Estates facility did not properly treat its wastewater, and was in violation of its permit. As operator of the facility, Morris was responsible for its upkeep and repair; however, Morris did not repair the facility. Knowing that wastewater samples taken from the facility would not pass state tests, Morris substituted test samples from another wastewater treatment facility. Morris submitted those substituted test samples for biochemical analysis, falsely certified on the quarterly Wastewater Discharge Monitoring Reports that the test samples and laboratory test results were for the Landmarc Estates facility, and caused those false reports to be submitted to the state. A state inspector found at least 10 violations by the wastewater treatment facility, the most egregious of which was that raw, untreated sewage was released directly into the environment.

This case was investigated by EPA's Criminal Investigation Division and the Missouri Department of Natural Resources. It is being prosecuted by Assistant U.S. Attorney Steven M. Mohlhenrich.

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Two Service Companies for Oil Drilling Activity (Bakken Shale) Plead Guilty to CWA Crimes – On

January 4, 2012, **HURLEY ENTERPRISES** and **MON-DAK WATER & SEPTIC SERVICE, LLC (MON-DAK)**, each pled guilty to a felony violation of the Clean Water Act for dumping untreated domestic wastewater (sewage) in locations where it caused pollution of waters of the state. As part of the plea agreements, the subjects are expected to pay a \$50,000 criminal fine and comply with Clean Water Act pertinent regulations. Subsequent proceedings (i.e. initial appearance or change of plea hearing) have not been scheduled as of the date of this submission. The increased oil production activity in the Bakken shale has significantly increased the volume of waste disposal needs in the Williston Basin in North Dakota. Hurley Enterprises and MON-DAK admitted to illegally dumping waste from drilling rigs and man-camps



MON-DAK truck observed dumping septage waste.

posing significant threats to the safety of the public in water in the Williston Basin. In total, it

is estimated that Hurley Enterprises disposed of approximately 400K gallons of septage waste over an 18-month period. It is estimated that MON-DAK disposed of 2,236 loads of domestic septage which totaled approximately 5,146,127 gallons from January 2011 through May 2012.

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Septage waste dumped by Hurley Enterprises on land where it caused pollution to waters of the U.S.

Louisiana Offshore Oil Company Admits to Coffee Filter Sample Scheme, Settles for \$1 Million – On

January 3, 2012, **W&T OFFSHORE** agreed to a \$1 million penalty for running water samples that were subject to pollution tests through coffee filters to collect the oil and other pollutants, and disguise the dirtiness of their discharge. The coffee filter coverup was used at least nine times in 2009. As a result of running the samples through the filters, the company did not have to pay any laboratory or regulatory costs,



W&T owned Outer Continental Shelf production platform identified as Ewing Banks 910 from which oil had been discharged into the Gulf of Mexico.

since they did not fail the tests. W&T was also faulted for a light oil sheen that discharged around one of their oil platforms after an angry worker shot a flare on the facility on Nov. 27, 2009. The flare ignition left a light coating of oil that workers attempted - but failed - to clean for three weeks following the incident. The sheen was associated with the cleaning efforts, and never reported to the Coast Guard. In addition to the seven-figure penalty, W&T Offshore will be on probation for three years. While on probation, W&T will comply with an extensive Environmental Compliance Plan requiring them to complete a Safety and Environmental Management System audit on nearly 90% of the platforms W&T operates in the Gulf of Mexico. The company operates 107 facilities in the Gulf.

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Woman Pleads Guilty to ID Fraud and Impersonating an OSHA Official in Wake of Gulf Oil Spill --

On January 24, 2013, **CONNIE M. KNIGHT**, previously of Belle Chasse, Louisiana, pleaded guilty in federal district court for the Eastern District of Louisiana to three felony criminal charges and one misdemeanor criminal charge for creating false identification documents and impersonating a federal official

According to the plea agreement, in the wake of the *Deepwater Horizon* oil spill, Knight impersonated a high-ranking Occupational Safety and Health Administration (OSHA) hazardous waste safety instructor



Federal agents seizing evidence in connection with Knight's crimes.

and inspector in order to collect money from individuals who hoped to work on the cleanup effort that followed the spill. The plea agreement describes Knight's methods, which included creating a false federal identification badge declaring that she was an "OSHA Master Level V Instructor and Inspector." In reality, OSHA has no such designation. Knight also created false federal identification badges for her employees, who believed that they were working for OSHA. The employees were residents of Southeast Asian fishing communities in Southern Louisiana, and provided Knight a way to access those communities.

From the time of the spill through the end of 2010, many fisheries were closed and Gulf fishermen were seeking other means of employment. Knight held fake OSHA training seminars and assured attendees that they would receive lucrative employment working on the *Deepwater Horizon* oil spill cleanup once they paid for and completed her course. Knight did not, however, actually have any connection to the cleanup effort.

Court documents also describe the training seminars themselves. Knight required each attendee to pay between \$150 and \$400 cash to enter a class. She claimed her classes satisfied the various safety requirements that all individuals were to complete in order to be employed at a *Deepwater Horizon* hazardous waste cleanup site. Knight's classes lasted as little as two hours, while the legitimate certifications would take at least six days of classroom training and three days of on-site training. Though many of her attendees were Vietnamese, Laotian or Cambodian, Knight spoke only English at the classes, and all materials were in English. At least some attendees later gained access to hazardous waste cleanup sites based on the fraudulent certifications created by Knight.

Producing fraudulent federal identification documents carries a maximum sentence of fifteen years in prison and a fine of \$250,000. Possessing a fraudulent federal identification document carries a maximum sentence of one year in prison and a fine of \$100,000. The two counts of falsely impersonating a federal employee each carry a maximum sentence of three years in prison and a fine of \$250,000.

The case was investigated by EPA's Criminal Investigation Division and the U.S. Department of Labor Office of Inspector General with assistance from the Occupational Safety and Health Administration, the FBI, and investigators from the Florida Fish and Wildlife Conservation Commission and the Plaquemines Parish, La., Sheriff's office.

The case is being prosecuted by Patrick M. Duggan of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division and Emily Greenfield of the U.S. Attorney's Office for the Eastern District of Louisiana.

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