

# Environmental Crimes Case Bulletin



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

**July 2013**

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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:

- **Donald Torriero, Julius DeSimone — Region 2**
- **Benjamin Franklin Pass, P&W Waste Oil Services, Inc. — Region 4**
- **Brian Raphael D'Isernia, Lagoon Landing, LLC. — Region 4**
- **Halliburton Energy Services, Inc. — Region 6**
- **Executive Recycling, Inc., Brandon Richter, Tor Olson — Region 8**
- **Martin Glaves Kuna — Region 10**

## ***DEFENDANT SUMMARY:***

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 2	<a href="#"><u>Donald Torriero, Julius DeSimone</u></a>	CWA & Superfund Statute/Illegal asbestos dumping, wire fraud, defrauding U.S.
Region 4	<a href="#"><u>Benjamin Franklin Pass, P&amp;W Waste Oil Services, Inc.</u></a>	TSCA/Unlawful handling of toxic substance, making false statements, failing to pay taxes
Region 4	<a href="#"><u>Brian Raphael D'Isernia; Lagoon Landing, LLC.</u></a>	Rivers & Harbors Act & CWA/Wetlands related: dredging an upland cut ship launching basin, illegal pollutant discharge
Region 6	<a href="#"><u>Halliburton Energy Services, Inc.</u></a>	Destruction of evidence in connection with Deepwater Horizon disaster
Region 8	<a href="#"><u>Executive Reclycing, Inc., Brandon Richter, Tor Olson</u></a>	International Crimes/Illegal exportation, smuggling, obstruction of justice
Region 10	<a href="#"><u>Martin Glaves Kuna</u></a>	Wire fraud/Lying about lead test qualifications and certification

**Quick Links:**

- [Sentencings](#) p. 3 - 7
- [Plea Agreements](#) p. 8
- [Indictments/Informations](#) p. 9 - 10

## ***Sentencings*** ([Back to Quick Links](#))

**Florida Man and His Corporation Sentenced for Wetlands Violations in Panama City** -- On July 17, 2013, **BRIAN RAPHAEL D'ISERNIA** of Panama City Beach, Florida, and **LAGOON LANDING, LLC**, a corporation controlled by D'Isernia, were sentenced in federal district court for the Northern District of



*Photo taken on February 24, 2010, which depicts dredge barge operating illegally and without a permit in upland cut launch basin. This is the crime with which Brian R. D'Isernia was charged. Photo property of US Army Corps of Engineers.*

Florida for illegal dredging and felony wetlands violations in Panama City. The two defendants were ordered to pay a criminal fine totaling \$2.25 million dollars, the largest criminal fine assessed for wetlands-related violations in Florida history. D'Isernia was sentenced to pay a \$100,000 criminal fine, while Lagoon Landing, LLC was sentenced to pay a \$2.15 million criminal fine, a \$1 million community service payment, and a term of three years probation.

D'Isernia pleaded guilty to knowingly violating the Rivers and Harbors Act. D'Isernia was charged with dredging an upland cut ship launching basin in Allanton and the channel connecting it to East Bay between December 2009 and February 2010 without obtaining a permit.

Lagoon Landing, LLC, pleaded guilty to a

felony violation of the Clean Water Act for

knowingly discharging a pollutant into waters of the United States without a permit. Between 2005 and 2010, Lagoon Landing, LLC, through its agents and employees in conjunction with persons using tractors and other heavy equipment, altered and filled wetland areas of property it controlled in Allanton without obtaining a permit. The wetland areas were adjacent to and had a significant nexus to East Bay.

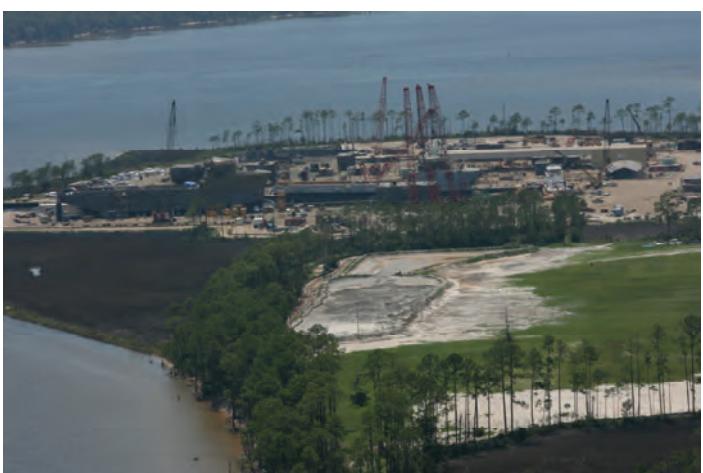
Lagoon Landing, LLC was also ordered to pay a \$1 million community service payment to the National Fish and Wildlife Foundation, a charitable non-profit organization created by Congress. The foundation will use the money to fund projects for the conservation, protection, restoration and management of wetland, marine and coastal resources, with an emphasis on projects benefiting wetlands in and around St. Andrew Bay.

In a separate but related civil settlement, Northwest Florida Holdings, Inc., a Florida holding corporation controlled by D'Isernia, entered into an Administrative Compliance Order with EPA that will result in the restoration of approximately 58.63 acres of wetlands and upland buffers. The wetlands will be protected from future development by a conservation easement. The corporation also agreed to study the water quality in and around the Allanton and Nelson Street Shipyards; upgrade stormwater protection for the Allanton Shipyard; withdraw applications to convert the launching basin to a marina and create a Planned Unit Development at the Allanton Shipyard; and hire someone to oversee environmental compliance.

In a second separate but related civil settlement, Northwest Florida Holdings, Inc. entered into a con-



*The light-colored sands depicted in the photos above are dredge spoils that have been illegally discharged into jurisdictional wetlands.*



*In the foreground is the illegal and unpermitted dredge spoils basin that was constructed on the Lagoon Landings, LLC parcel. This spoils basin was constructed in jurisdictional wetlands and had an illegal and unpermitted return water discharge to St. Andrew bay.*

sent order with the Florida Department of Environmental Protection and agreed to conduct stormwater corrective actions and water quality studies at the Allanton Shipyard. The corporation will pay a \$9,750 civil fine to the Ecosystem Management and Restoration Trust Fund, and \$94,718.25 in severed dredge materials fees to the Florida Internal Improvement Trust Fund.

In a third separate but related civil settlement, Bay Fabrication, Inc., a corporation controlled by D'Isernia, entered into a consent order with FDEP and agreed to conduct stormwater corrective actions and water quality studies at the Nelson Street Shipyard. The corporation will pay a \$6,000 civil fine to the Ecosystem Management and Restoration Trust Fund, and \$76,923 in severed dredge materials fees to the Florida Internal Improvement Trust Fund.

In a fourth separate but related civil settlement, Peninsula Holdings, LLC, a corporation controlled by D'Isernia, entered into a Consent Order with FDEP and agreed to conduct stormwater improvements at property it owns located at 2500 Nelson Street, Panama City, Florida 32401. The corporation will pay a \$1,500 civil fine to the Ecosystem Management and Restoration Trust Fund.

In a fifth separate but related civil settlement, D'Isernia and his wife Miriam D'Isernia, entered into a consent order with FDEP to remove unauthorized fill materials from property located in Panama City Beach, Fla. Brian and Miriam D'Isernia will pay a \$250 civil fine to the Ecosystem Management and Restoration Trust Fund.

These cases were investigated by the EPA's Criminal Investigation Division and the Coast Guard Investigative Service, in partnership with EPA Region 4, the U.S. Department of Transportation, Office of Inspector General, U.S. Army Corps of Engineers, U.S. Coast Guard Station Panama City, U.S. Department of Agriculture, and FDEP. They were prosecuted by the Randall J. Hensel, Assistant U.S. Attorney for the Northern District of Florida.

[Back to Top](#)

**Two New York Men Sentenced for Dumping Thousands of Tons of Asbestos in Violation of Clean Water Act** -- On July 31, 2013, **DONALD TORRIERO** and **JULIUS DeSIMONE** were sentenced in federal district court for the Northern District of New York for illegally dumping thousands of tons of asbestos-contaminated construction debris on a 28-acre piece of property on the Mohawk River in upstate New York. Torriero was sentenced to serve 36 months in prison followed by three years of supervised release. DeSimone was sentenced to five years' probation, including six months of home confinement. Both men were ordered to pay \$492,000 each in restitution for, among other things, cleanup expenses at the site. They pleaded guilty to conspiring to violate the Clean Water Act, the Superfund statute, wire fraud and to defrauding the United States. In addition, Torriero pleaded guilty to substantive wire fraud charges and DeSimone was convicted of making false statements to law enforcement in connection with a fabricated "permit letter" the conspirators created and used to dump at the Site.

According to the evidence, Torriero, DeSimone and others conspired to fill in the entire property over the course of five years with pulverized construction and demolition debris that was processed at New Jersey solid waste management facilities and then transported to open property in Frankfort, N.Y. The plot was uncovered by law enforcement just months after the operation began, but not before the conspirators had already dumped at least 400 truckloads of debris at the site. Much of the material that was dumped was placed in and around waters of the United States and some of the material was found to be contaminated with asbestos. The conspirators then concealed the illegal dumping and recruited others to join in the illegal dumping by fabricating a New York State Department of Environmental Conservation (DEC) permit and forged the name of a DEC official on the fraudulent permit.

This case is related to the guilty pleas and sentencings associated with Eagle Recycling, Mazza & Sons, Inc., Dominick Mazza, Cross Nicastro and Jon Deck. Deck is the last remaining individual awaiting sentencing.



*The illegal landfill where asbestos-contaminated construction debris was being dumped. The site borders the Mohawk River.*



*Illegally dumped asbestos-contaminated construction debris at the site.*

The case was investigated by EPA's Criminal Investigation Division, the New York State Environmental Conservation Police, Bureau of Environmental Crimes, the Internal Revenue Service, the New Jersey State Police Office of Business Integrity Unit, the New Jersey Department of Environmental Protection, and the Ohio Department of Environmental Protection. The case is being prosecuted by Assistant U.S. Attorney Craig A. Benedict of the Northern District of New York, and Trial Attorneys Todd W. Gleason and Gary Donner of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division.

[Back to Top](#)

**Executive Recycling Company and Executives Sentenced for Fraud and International Environmental Crimes** -- On July 23, 2013, **EXECUTIVE RECYCLING, INC.**, and **BRANDON RICHTER**, of Highlands Ranch, Colorado, the owner and chief executive officer of Executive Recycling, were sentenced in federal district court for the District of Colorado for their roles in a fraudulent scheme related to the disposal and exportation of electronic waste to foreign countries. Executive Recycling, the corporation, was sentenced to pay a \$4,500,000 fine and to serve three years on probation. Richter was ordered to serve 30 months in federal prison, followed by three years on supervised release. He was also ordered to pay a \$7,500 fine and \$70,144 in restitution joint and several with the victims of the crime. He was ordered \$142,241.10 in asset forfeiture. Richter was ordered to report to a Bureau of Prisons facility within 15 days of designation. The defendants were convicted in December 2012 of multiple counts of mail and wire fraud and environmental crimes related to the illegal disposal of electronic waste, smuggling, and obstruction of justice, following an 11-day trial.

Previously former vice president of operations, **TOR OLSON**, of Parker, Colorado, was sentenced to serve 14 months in prison, pay a \$5,000 fine, and pay over \$15,000 in restitution. Olson remains free on bond pending appeal. Olson was sentenced on July 17, 2013. Executive Recycling, Inc., as a corporation, Richter and Olson were indicted by a federal grand jury in Denver on September 15, 2011.

According to the indictment, as well as the facts presented at trial, Executive Recycling was an electronic waste recycling business located in Englewood, Colorado with affiliated locations in Utah and Nebraska. The company collected electronic waste from private households, businesses, and government entities. Executive Recycling was registered with the Colorado Department of Public Health and Environment as a "Large Quantity Handler of Universal Waste." Richter, as owner and CEO, was responsible for supervising all aspects of the company. Olson, the vice president of operations, was responsible for running day-to-day operations.

A significant portion of electronic waste collected by the defendants were Cathode Ray Tubes (CRTs). CRTs are the glass video display component of an electronic device, usually a computer or television monitor, and are known to contain lead. The defendants engaged in the practice of exporting electronic waste, including CRTs, from the United States to foreign countries, including the People's Republic of China. They regularly negotiated the sale of electronic waste to brokers who represented foreign buyers or who sold the electronic waste overseas. The foreign buyers often paid the defendants directly. To transport the electronic waste, the defendants used shipping cargo containers which were loaded at the company's facility. The containers were then transported by rail to domestic ports for export overseas.

Executive Recycling appeared as the exporter of record in over 300 exports from the United States between 2005 and 2008. Approximately 160 of these exported cargo containers contained a total of more than 100,000 CRTs.

Between February 2005 and continuing through January 2009, the defendants knowingly devised and intended to devise a scheme to defraud various business and government entities who wanted to dispose of their electronic waste, and to obtain these business and government entities' money by means of



*Port in Hong Kong where Executive Recycling exported electronic waste. Approximately 21 million containers are processed through this Port annually.*

materially false and fraudulent pretenses. The defendants represented themselves on a website to have “extensive knowledge of current EPA requirements.” The defendants falsely advertised to customers that they would dispose of electronic waste in compliance with all local, state and federal laws and regulations. It was part of the scheme that the defendants falsely represented that they would dispose of all electronic waste, whether hazardous or not, in an environmentally friendly manner. Specifically, the defendants falsely represented that the defendant company recycled electronic waste “properly, right here in the U.S.” They also stated that they would not send the electronic waste overseas.

The defendants’ misrepresentation induced customers to enter into contracts or agreements with the defendants for electronic waste disposal. Each victim paid the defendants to recycle their electronic waste in accordance with the representations made by the defendants. Contrary to their representations, the defendants sold the electronic waste they received from customers to brokers for export overseas to the People’s Republic of China and other countries.

The case was investigated by EPA’s Criminal Investigation Division, the U.S. Immigration and Customs Enforcement’s Homeland Security Investigations, and the Colorado Attorney General’s Office, Special Prosecutions Unit. It was prosecuted by Assistant U.S. Attorneys Suneeta Hazra and Valeria Spencer and Special Assistant U.S. Attorney Lillian Alves.

[Back to Top](#)

### **Washington Man Sentenced to 14 Months in Prison for Lying About His Ability to Conduct Lead Testing**

-- On July 23, 2013, **MARTIN GLAVES KUNA**, of Vancouver, Washington, was sentenced in federal district court for the District of Oregon to 14 months in prison after pleading guilty to one count of wire fraud. Kuna falsely advertised and told customers that he was certified to perform lead-based paint



*One of the homes Kuna performed illegal lead-based paint inspection and where children were exposed.*

inspections and testing in homes where children resided, when in fact, he was not properly qualified or certified by state authorities to do so.

From May 2008 to September 2012, Kuna advertised his services to conduct lead-based paint inspections and testing, and indicated to individuals via the internet and in person that he was certified to do so. Kuna, however, had not received the required certification and training to inspect and test target housing or child-occupied facilities for lead-based paint despite his representations that he had. Over the course of the scheme,

Kuna conducted more than ten such inspections. In one instance where Kuna performed lead-based paint inspections and testing, children resided in the home and Kuna provided the home

owner a false negative for the detection of lead. Evidence introduced by the government at sentencing demonstrated that the defendant failed to perform the appropriate tests to determine lead in the home. As a result, some of the children in the home experienced increased lead levels in their blood.

In January 2012, civil EPA investigators intervened in Kuna’s business activities and ordered him to stop lead-based paint inspections and testing. Despite EPA’s order, Kuna continued to advertise and perform lead-based paint inspections and testing through September 2012. In sentencing Kuna, the Judge declared, “Our first duty in society as adults is to protect children.” Following his findings and imposition of 14 months in prison, the Judge told the defendant, “The bottom line is, the actions you engaged in put children at risk. Our society just cannot allow that.”

The investigation was conducted by EPA’s Criminal Investigation Division. The prosecution was handled by Assistant U.S. Attorney Michelle Holman Kerin.

[Back to Top](#)

**North Carolina Used-Oil Recycling Business and Owner Plead Guilty to Unlawful Handling of PCB-Contaminated Used Oil and Other Crimes** -- On July 15, 2013, **BENJAMIN FRANKLIN PASS** and **P&W WASTE OIL SERVICES, INC.**, of Wilmington, North Carolina, pleaded guilty in federal district court for the Eastern District of North Carolina for violations of the Toxic Substances Control Act, as well as for making false statements and failing to pay several years of taxes. The defendants admitted to, among other things, the unlawful handling of a toxic substance that resulted in widespread contamination.



*A section of the tank farm at P&W Waste Oil Services, Inc.*

The P&W facility in Leland, N.C., included a tank farm consisting of multiple tanks ranging from 20,000 gallons to 500,000 gallons. The facility is located approximately 500 feet to the east of the Cape Fear River and a federally recognized wetland. As part of its business operations, P&W transported, processed and marketed used oil contaminated with polychlorinated biphenyls (PCBs). P&W received the used oil from small and large companies, such as automotive service stations, transformer repair companies and marinas. P&W also conducted tank cleaning and waste removal.

As part of the plea agreements, Pass agreed to pay \$538,587, plus interest, in restitution to the Internal Revenue Service. P&W agreed to pay restitution in the amount of \$19 million as compensation to Colonial Oil and International Paper for the costs associated with the storage and proper disposal of PCB-contaminated used oil as well as any monetary losses associated with the illegal handling, storage and transportation of toxic substances. P&W also agreed to a five-year term of probation and to take remedial action to address the environmental contamination at its facility in eastern North Carolina and other leased property in eastern North Carolina, including but not limited to, the proper treatment and/or disposal of PCB-contaminated waste oil.

According to the charges filed in federal court in Raleigh, N.C., and information stated in open court, the defendants knowingly failed to comply with regulations covering PCB-contaminated used oil by unlawfully transporting, storing and disposing of used oil contaminated with PCBs. Specifically, in July 2009, an employee transported waste oil containing fluid from five PCB transformers from a site in Wallace, S.C., to the P&W facility. The investigation revealed that the waste oil was contaminated with PCB concentrations in excess of 500 parts per million.

Despite knowledge of the investigation into the defendants' illegal handling of PCB-contaminated used oil, Pass and an employee of P&W (at Pass' direction) continued to unlawfully dilute the contaminated used oil. The mishandling of the PCB-contaminated used oil resulted in the wide-spread contamination at the site and other sites, resulting in millions of dollars in cleanup costs. Currently, efforts are underway to clean up the contamination at P&W's facility in Leland, N.C., which has been designated a Superfund site by the EPA.

The case was investigated by EPA's Criminal Investigation Division, the IRS's Office of Criminal Investigations, and the U.S. Coast Guard's Criminal Investigative Services. It is being prosecuted by Assistant U.S. Attorney Banumathi Rangarajan of the Eastern District of North Carolina and Trial Attorney Shennie Patel of the Justice Department's Environmental Crimes Section of the Environment and Natural Resources Division.

[Back to Top](#)

### **Halliburton Agrees to Plead Guilty to Destroying Evidence in Connection with Deepwater Horizon Tragedy**

**Tragedy** -- On July 25, 2013, **HALLIBURTON ENERGY SERVICES, INC.** agreed to plead guilty to destroying evidence in connection with the *Deepwater Horizon* disaster. A criminal information charging Halliburton with one count of destruction of evidence was filed in U.S. District Court in the Eastern District of Louisiana.

Halliburton has signed a cooperation and guilty plea agreement with the government in which it has agreed to plead guilty and admit its criminal conduct. As part of the plea agreement, Halliburton has further agreed, subject to the court's approval, to pay the maximum-available statutory fine, to be subject to three years of probation and to continue its cooperation in the government's ongoing criminal investigation. Separately, Halliburton made a voluntary contribution of \$55 million to the National Fish and Wildlife Foundation that was not conditioned on the court's acceptance of its plea agreement.

According to court documents, on April 20, 2010, while stationed at the Macondo well site in the Gulf of Mexico, the *Deepwater Horizon* rig experienced an uncontrolled blowout and related explosions and fire, which resulted in the deaths of 11 rig workers and the largest oil spill in U.S. history. Following the blowout, Halliburton conducted its own review of various technical aspects of the well's design and construction. On or about May 3, 2010, Halliburton established an internal working group to examine the Macondo well blowout, including whether the number of centralizers used on the final production casing could have contributed to the blowout. A production casing is a long, heavy metal pipe set across the area of the oil and natural gas reservoir. Centralizers are protruding metal collars affixed at various intervals on the outside of the casing. Use of centralizers can help keep the casing centered in the wellbore away from the surrounding walls as it is lowered and placed in the well. Centralization can be significant to the quality of subsequent cementing around the bottom of the casing. Prior to the blowout, Halliburton had recommended to BP the use of 21 centralizers in the Macondo well. BP opted to use six centralizers instead.

As detailed in the information, in connection with its own internal post-incident examination of the well, in or about May 2010, Halliburton, through its Cementing Technology Director, directed a Senior Program Manager for the Cement Product Line (Program Manager) to run two computer simulations of the Macondo well final cementing job using Halliburton's Displace 3D simulation program to compare the impact of using six versus 21 centralizers. Displace 3D was a next-generation simulation program that was being developed to model fluid interfaces and their movement through the wellbore and annulus of a well. These simulations indicated that there was little difference between using six and 21 centralizers. Program Manager was directed to, and did, destroy these results.

In or about June 2010, similar evidence was also destroyed in a later incident. Halliburton's Cementing Technology Director asked another, more experienced, employee ("Employee 1") to run simulations again comparing six versus 21 centralizers. Employee 1 reached the same conclusion and, like Program Manager before him, was then directed to "get rid of" the simulations.

Efforts to forensically recover the original destroyed Displace 3D computer simulations during ensuing civil litigation and federal criminal investigation by the Deepwater Horizon Task Force were unsuccessful.

In agreeing to plead guilty, Halliburton has accepted criminal responsibility for destroying the aforementioned evidence.

The guilty plea agreement and criminal charge 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 Acting Assistant Attorney General Mythili Raman and led by John D. Buretta, who serves as the director of the task force. The task force includes prosecu-

tors from the Criminal Division and the Environment and Natural Resources Division of the Department of Justice; the U.S. Attorney's Office for the Eastern District of Louisiana and other U.S. Attorney's Offices; and investigating agents from: EPA's Criminal Investigation Division; the FBI; Department of the Interior, Office of Inspector General; Environmental Protection Agency, 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 is being 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.

An information is merely a charge and a defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt.

[Back to Top](#)