

Environmental Crimes Case Bulletin



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

December 2013

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:

- **Conopco, Inc. (dba Unilever Home & Personal Care USA) — Region 1**
- **Patrick Brightwell — Region 3**
- **Jason Hudnall, John Wesley Tucker — Region 3**
- **Tap Root Dairy, LLC — Region 4**
- **William R. “Rusty” Miller — Region 4**
- **Michael Moshe Shimshoni — Region 4**
- **Marietta Industrial Enterprises, Inc. — Region 5**
- **John J. Mayer — Region 5**
- **Lamont P. Pryor — Region 5**
- **Roger J. Dies — Region 6**
- **Kurt Mix — Region 6**
- **Z-Group, LLC — Region 7**
- **Eric Russell — Region 9**

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 1	<u>Conopco, Inc. (dba Unilever Home & Personal Care USA)</u>	CWA/Illegally discharging industrial wastewater and failing to report the discharge in a timely manner
Region 3	<u>Patrick Brightwell</u>	CWA/Conspiracy, making false claims, obstructing the investigation, making false statements
Region 3	<u>Jason Hudnall, John Wesley Tucker</u>	CAA/Conspiracy to steal anhydrous ammonia and negligently releasing it into the air
Region 4	<u>William R. "Rusty" Miller</u>	CWA/Unpermitted filling of wetlands
Region 4	<u>Tap Root Dairy, LLC</u>	CWA/Discharging cow feces into river
Region 4	<u>Michael Moshe Shimshoni</u>	TSCA, Lead Hazard Reduction Act/Failing to provide approved EPA lead paint warning notices and brochures to tenants, and alteration or falsification of records

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 5	<u>Marietta Industrial Enterprises</u>	CAA/Failing to report permit violations
Region 5	<u>John J. Mayer</u>	CAA/Illegal removal and disposal of asbestos-containing material
Region 5	<u>Lamont P. Pryor</u>	CAA/Improper handling of asbestos
Region 6	<u>Roger J. Dies</u>	CWA/Falsifying and concealing material facts, creating false documents, witness tampering, obstruction of justice, making false statements to a federal criminal investigator, and a forfeiture allegation
Region 6	<u>Kurt Mix</u>	CWA/Obstruction of justice in Deepwater Horizon case
Region 7	<u>Z-Group, LLC</u>	RCRA/Illegal transportation of hazardous waste
Region 9	<u>Eric Russell</u>	CWA/Dumping raw sewage onto government-owned land

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Nevada Sewage Dumper Sentenced to Six Months in Prison -- On December 2, 2013, **ERIC RUSSELL**, of Las Vegas, Nevada, was sentenced in federal district court for the Southern District of California, to time served (approximately six months) in custody for dumping thousands of gallons of raw sewage



All-in-One waste disposal truck on BLM land from which Russell illegally discharged domestic sewage onto the land.

on Bureau of Land Management (BLM) land in Imperial County. Russell, who has been in custody since June 2013 after absconding from authorities, was also ordered to pay \$21,244.19 in restitution.

Russell had been a driver for All-in-One Environmental Services of Havasu, Arizona. On January 3, 2012, Russell was driving an All-in-One waste disposal truck along Highway 72 in Imperial County. In order to save the time it would take to drive to a lawful disposal site and properly dispose of his cargo, Russell illegally dumped approximately 1,500-2,000 gallons of domestic sewage onto BLM land alongside Highway 72. BLM rangers responded to the scene, and saw Russell's sewage tanker truck stuck in a wash along Highway 78 (SR 78), near mile post 66 in

Imperial County, and smelled a strong stench of sewage. Russell, the driver of the truck, told the ranger that the trunk contained nothing but water, but he declined to take a sip of the "water" himself. The passenger in the sewage truck advised the ranger that they had ended up in the wash after pumping out the holding tanks at a commercial center in the Imperial Sand Dune Recreation Area. But the passenger also indicated that Russell's stepfather directed him to dump the sewage, and it was their practice to drive 10-15 miles outside of Blythe and dump waste on Red Cloud Road. BLM had to send a team to remediate the dump site, at a cost to the taxpayers of \$21,244.19

Another All-in-One Environmental Services driver, Dennis Johnson (Russell's stepfather) previously pleaded guilty to dumping sewage on the ground in Imperial County and was sentenced to probation and a fine.

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Stains on the ground from the dumped sewage.

Federal Prison for Would-be Thieves Who Released Cloud of Hazardous Pollutants and Prompted a Community to Shelter in Place

-- On December 18, 2013, **JASON HUDNALL**, of Malden, West Virginia, was sentenced in federal district court for the Southern District of West Virginia to three and a half years in prison after previously pleading guilty in September to conspiracy to steal anhydrous ammonia and negligent release of anhydrous ammonia into the air. Hudnall's co-defendant **JOHN WESLEY TUCKER**, of Georges Creek, West Virginia, was sentenced on the same day and in the same court to one year in prison and fined \$1,000 after pleading guilty in October to conspiracy to steal anhydrous ammonia to be used to manufacture methamphetamine. The two men participated in a scheme to steal anhydrous ammonia from an eastern Kanawha County mining waste water treatment site in October 2008 in order to make methamphetamine.

Anhydrous ammonia, an extremely hazardous chemical, is ammonia in a gaseous form that does not contain water. The chemical is generally used to treat mining runoff in waste water ponds. Anhydrous ammonia has also been sought by individuals as a component in the illegal production of methamphetamine.



During the scheme, Tucker, Hudnall and two other co-conspirators, used tools, including a battery-powered saw, to cut a security lock on a 1000-gallon storage tank containing anhydrous ammonia. The co-conspirators also brought portable tanks onto the property to store and transport the stolen anhydrous ammonia.

Tucker, Hudnall and two associates split a theft-prevention valve cover which caused anhydrous ammonia to leak into the air. As a result of the chemical exposure, the co-conspirators fled the scene and left the anhydrous ammonia storage tank valve open. Approximately 500 gallons of anhydrous ammonia leaked into the air. Emergency service units, including the Belle and Chesapeake Fire Departments, DuPont Chemical Company's Hazardous Material Team, members of the West Virginia State Police, employees from Penn-Virginia Resources, and employees from Republic Mining, responded to the unsuspected leak. The anhydrous ammonia leak also prompted the Kanawha County Office of Emergency Services to issue a shelter-in-place safety procedure as a precaution for nearby eastern Kanawha County residents.

Penn-Virginia Resources, owner of the damaged storage tank, lost approximately 2500 pounds of anhydrous ammonia at a cost of \$1,725. The company also paid Mallard Environmental approximately \$3,325 to clean up the area surrounding the damaged tank. DuPont Emergency Response Group also incurred approximately \$1,800 in expenses as a result of the chemical leak.

Co-conspirator Mitchell Ray Workman, of Chelyan, Kanawha County, West Virginia, was previously sentenced in April to 2 ½ years in prison for his role in the conspiracy to steal anhydrous ammonia. A fourth co-conspirator, Jason Brown, of Malden, West Virginia, previously pleaded guilty in April for his role in the theft scheme, driving the other three conspirators to the mine site. Brown was sentenced in October to three years of supervised release with the first six months to be served in community confinement. Brown's supervised release term also called for six months to be served home confinement, which included an electronic monitoring device. Each defendant was ordered to pay restitution in the amount of \$6,850 for the damage caused by the leak. The anhydrous ammonia tank has since been removed from the site.

The case was investigated by EPA's Criminal Investigation Division and the West Virginia State Police. It was prosecuted by Assistant United States Attorneys Erik S. Goes, William King and Blaire Malkin.

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Ohio Man Sentenced to Prison for His Role in Illegal Dumping of Asbestos -- On December 16, 2013, **JOHN J. MAYER**, of Toledo, Ohio, was sentenced in federal district court for the Northern District of Ohio to one year in prison and ordered to pay a \$2,000 fine for his role in the illegal removal and disposal of asbestos-containing material. Mayer pleaded guilty in July to violating the Clean Air Act.

Mayer directed individuals to remove asbestos-containing insulation from boilers, duct work and pipes in a former manufacturing facility in Toledo between September and December 2010, in order that Mayer could sell the scrap metal from those items. This work was performed in violation of the federal Clean Air Act regulations regarding asbestos abatement, according to court documents.

The asbestos-containing insulation was not wetted at any time during the removal process; the City of Toledo, Division of Environmental Services, was not notified prior to the work commencing and there was not on site a person trained in the provisions of the federal asbestos regulations, according to court documents. The illegally removed asbestos-containing insulation was placed into approximately 82 garbage bags, which were dumped at various locations throughout Toledo in violation of the requirement that such material be disposed at a site operated in accordance with federal law, according to court documents.

Timothy Byes, of Toledo, also pleaded guilty to violating the Clean Air Act and is scheduled to be sentenced at a later date.

The case was investigated by EPA's Criminal Investigation Division, the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency – Office of Special Investigations, the City of Toledo – Division of Environmental Services, all members of the Northwest Ohio Environmental Crimes Task Force. It was prosecuted by Assistant United States Attorney Gene Crawford and Special Assistant United States Attorney James J. Cha.

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Ohio Demolition Company Owner Sentenced to Prison for Improper Handling of Asbestos -- On December 29, 2013, **LAMONT P. PRYOR**, of Lima, Ohio was sentenced in federal district court for the Southern District of Ohio to thirteen months in prison for violating the Clean Air Act in connection with his company's handling of asbestos during the demolition of the former Piqua Medical Center in 2008.

Pryor pleaded guilty on August 8, 2013, to three counts of violating the National Environmental Standards for Hazardous Air Pollutants (NESHAP) provisions of the Clean Air Act.

According to court documents, Pryor and his company, Avalon Commonwealth, Inc., removed scrap metal from the hospital as part of the demolition process. The scrap metal was removed and sold, but the rest of the demolition debris, including friable asbestos, was piled in areas around the hospital, exposed to the wind and elements. Pryor knew that he was not supposed to leave the friable asbestos outside the hospital, exposed to the elements, but instead was supposed to properly deposit the asbestos that was generated as result of his renovation and demolition activities at the hospital at a licensed asbestos waste disposal facility. Pryor knowingly failed to do so.

A representative of the Regional Air Pollution Control Agency (RAPCA), the local air pollution control agency serving Miami County and the city of Piqua, inspected the site in December 2008, saw the damaged asbestos outside the hospital, and asked that demolition be halted while the investigation took place.

The case was investigated by EPA's Criminal Investigation Division, Bureau of Criminal Investigation's Environmental Enforcement Unit in the Ohio Attorney General's office, the Ohio EPA Office of Special Investigations and RAPCA. It was prosecuted by Assistant U.S. Attorney Alex Sistla and Special Assistant U.S. Attorney Brad Beeson with the U.S. EPA.

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Health and Beauty Products Company Pleads Guilty to Violating CWA at Connecticut Facility -- On December 5, 2013, Deirdre M. Daly, **CONOPCO, INC.**, doing business as **UNILEVER HOME & PERSONAL CARE USA**, (“Unilever”) pleaded guilty in federal district court for the District of Connecticut to two felony violations of the Clean Water Act. The charges stem from Unilever’s December 2008 illegal discharge of industrial wastewater at a manufacturing site in Clinton and the company’s failure to report the discharge in a timely manner. As part of its plea agreement, Unilever agreed to pay a \$1 million fine. The company also intends to contribute \$3.5 million to state and local environmental programs.

According to court documents and statements made in court, Unilever’s Clinton manufacturing facility produced a variety of health and beauty products for sale in the United States. The wastewater produced by the plant was regulated by a permit that prohibited the company from bypassing any portion of its wastewater treatment system unless the bypass was unanticipated, unavoidable, and necessary to prevent loss of life, personal injury or severe property damage. The permit further required that Unilever notify authorities within two hours of becoming aware of any bypass, and submit a written report within five days setting forth the cause of the problem, the duration of the event including dates and times, and corrective actions taken or planned to prevent future occurrences.

On December 5, 2008, a third party contract employee noticed that a hose was being used to bypass the industrial process wastewater treatment system by allowing the contents of a 4,500 gallon vacuum filter filtrate tank to discharge directly to a storm drain pipe that led to Hayden Creek. Upon making this discovery, the contract employee alerted the junior wastewater treatment operator for the Clinton facility and showed him the hose and ongoing wastewater bypass. These two individuals then shut off the hose. The contract employee then notified his non-Unilever supervisor about his observations, and was urged to notify the Safety, Health and Environmental (SHE) manager of the Clinton facility. The SHE manager notified the plant manager, took pictures, and observed the downstream oil/water separator. Despite the requirement that the Connecticut Department of Energy and Environmental Protection (DEEP) be notified within two hours of the detection of such a bypass, Unilever chose not to notify the DEEP within this two-hour window.

On December 6, 2008, the SHE manager referred the matter to counsel for Unilever for further investigation and notification of DEEP. The next day, in response to the SHE manager’s request, the contract employee sent the SHE manager an email detailing his observations of the bypass and stating “[t]his is not the first time I’ve seen this done at your facility, I’ve seen this on two previous occasions. At that time, however, I was still trying to learn the system as quickly as possible and didn’t understand the significance of what I was viewing.” In the email, the contract employee opined that the senior operator had performed the intentional bypass and had “done this on several occasions and perhaps more often than we care to know.”

On December 8, 2008, three days after being notified of the illegal discharge, the Unilever plant manager interviewed the two wastewater treatment operators and the contract employee who had initially discovered the bypass. All three individuals denied any responsibility for the bypass and indicated that they did not know who was responsible, although the contract employee again stated that he believed that the senior operator was responsible. From these interviews, the plant manager did not determine who was responsible for the bypass or confirm whether any prior bypasses had occurred. Later that day, the plant manager sent an email to his superior within the organization indicating that “we had somebody by pass [sic] the waste treatment process and put water into the storm water system . . . working with legal on how to handle the DEP [sic], if at all.”

Unilever conducted its own internal investigation of the December 2008 incident. In subsequent

conversations and written communications with federal and state authorities throughout 2009 and 2010, Unilever claimed it was unable to conclusively determine who was responsible for the bypass, and mischaracterized the incident as an isolated, “one-off” incident that may have been the work of unknown “vandals.”

An extensive EPA investigation revealed the truth about what had happened. The junior operator admitted to the EPA that he intentionally bypassed the system on December 5. EPA further concluded that for an extended period of time, perhaps as long as two years prior to December 2008, the wastewater treatment operators routinely bypassed the system on a weekly basis, discharging approximately 1,500 gallons of partially treated wastewater at a time to the storm drain that led to Hayden Creek. EPA’s investigation established that these bypasses were concealed from and unknown to Unilever management, including the SHE manager and the plant manager. Unilever’s management was aware, however, both that the operators were not properly overseeing the wastewater treatment system and that the system was not properly functioning.

In December 2012, Unilever ceased manufacturing operations at the Clinton facility.

Unilever pleaded guilty to two counts of knowingly violating, or causing to be violated, the Clean Water Act. Each of these counts carries a maximum term of probation of five years and a fine of up to \$500,000. Sentencing is scheduled for March 3, 2014.

Under the terms of a binding plea agreement, if accepted by the court, Unilever will be placed on probation for three years and pay a fine of \$1 million. At the time of sentencing, Unilever intends to bring to the court’s attention that it made a \$3.5 million payment to the Connecticut Statewide Supplemental Environmental Project Account (SEP) administered by DEEP. Of that money, \$2.5 million will be used to fund the Connecticut Resiliency and Climate Adaptation Center, which will conduct research, outreach and education projects related to the effects of rising sea levels. In addition, \$500,000 will be used to design and construct a fishway at the Chapman Mill Pond in Clinton, and \$500,000 will be used to fund environmentally beneficial projects proposed by the Town of Clinton, including the acquisition of open space.

Unilever also has agreed to periodic environmental compliance inspections by an outside auditor at all of its manufacturing locations in the U.S, and to certify, within one year of sentencing, that all of its employees at these facilities who perform or manage work subject to environmental compliance requirements have received basic environmental compliance training. In addition, all Unilever employees who are responsible for advising these facilities with respect to mandatory notifications to be made to state and federal environmental agencies must complete additional training to ensure they understand the legal notification requirements under applicable environmental laws.

The case was investigated by EPA’s Criminal Investigation Division and the Connecticut Department of Energy and Environmental Protection. It is being prosecuted by Assistant U.S. Attorney Ray Miller and Special Assistant U.S. Attorney Peter Kenyon.

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Ohio Company Agrees to Pay \$50,000 for Violating Clean Air Act -- On December 6, 2013, **MARIETTA INDUSTRIAL ENTERPRISES, INC. (MIE)** agreed to pay a \$37,500 fine and make a \$12,500 community service payment after pleading guilty to a felony charge of failing to report violations of the company's permit in connection with its mineral processing operation. Company president William Scott Elliott pleaded guilty to a misdemeanor charge of being an accessory after the fact for failing to notify Ohio Environmental Protection Agency of the violations.



Elliott pleaded guilty to a misdemeanor charge of being an accessory after the fact for failing to notify Ohio Environmental Protection Agency of the violations.

MIE's plea agreement includes a recommendation that the company pay a fine of \$37,500 and make a community service payment of \$12,500 to the Warren Township Fire Department. Elliott's plea agreement includes a recommended sentence of 48 consecutive hours in jail followed by 5 months and 28 days of home confinement with electronic monitoring.

According to court documents, One of MIE's manufacturing processes is crushing medium carbon ferromanganese alloy, referred to as medium carbon, in a mill line. Emissions from the mill lines are captured by equipment known as a baghouse using a large electric fan to ensure that air pollution from the facility is limited. According to court documents, company employees began turning off the fan when processing medium carbon sometime in 2006. In May 2009, Elliott learned that the baghouse fans were being turned off when medium carbon was crushed and put an end to the practice.



MIE's permit calls for the company to disclose any instances that the baghouse has not operated properly in its quarterly and annual reports to Ohio EPA. Between 2006 and 2009, MIE never reported that the baghouse fans were turned off during the processing of medium carbon. From July 19, 2009 through August 10, 2010, Elliott, on behalf of MIE, submitted reports to Ohio EPA. None of the reports stated that the baghouse fans were turned off during the processing of medium carbon.



Above photographs were taken during a covert surveillance of MIE which documented two days of visible emissions generated by MIE which were not reported.

The case was jointly investigated by EPA's Criminal Investigation Division, the Ohio Bureau of Criminal Investigation, and the Ohio EPA all members of the Central Ohio Environmental Crimes Task Force. It was prosecuted by Special Assistant U.S. Attorney Brad Beeson and Assistant U.S. Attorney J. Michael Marous.

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Missouri Company Pleads Guilty to Illegally Transporting Hazardous Waste -- On December 9, 2013, **Z-GROUP, LLC**, a Kansas company registered to do business in Missouri, pleaded guilty in federal court for the Western District of Missouri to illegally transporting hazardous waste. Company president Friedrich-Wilhelm Zschietzschmann represented the company in court.

Zschietzschmann was also the president and CEO of Z-International, Inc., which specialized in the labeling industry. Z-International used large quantities of ink and ink-related products in its business, making labels for numerous companies all over the world. Z-Group was established in 2001 by Zschietzschmann to serve as owner of real estate where Z-International operated its business. Z-International was closed by Zschietzschmann in July 2010. Any assets or fixtures remaining on the property after the business closed were sold or otherwise disposed of by a Z-International employee.

Between July 2010 and April 2012, the company authorized personnel to hire others to transport hazardous waste to a separate location. Z-International employees authorized the transportation of 23 containers of varying sizes that contained liquid hazardous waste to Studer Container Service in Kansas City. Studer did not have a permit to receive hazardous waste. In April 2012, EPA officials conducted a compliance inspection at Studer. During the inspection, they found several containers of what appeared to be hazardous materials.

On June 28, 2012, EPA began its sampling and clean-up operation. On December 21, 2012, the EPA National Enforcement Investigations Center provided analytical results for 38 samples collected from the containers dumped at Studer. Five of the samples tested positive for ignitability and two of the samples tested positive for toxicity. The EPA Superfund program cleaned up the hazardous waste at Studer to eliminate possible adverse effects on human health and environment. The total EPA Superfund cost was \$36,871.

Under the terms of the plea agreement, Z-Group, LLC must pay a \$50,000 fine and \$36,871 in restitution, for a total payment of \$86,871. The company is also subject to up to five years of probation. A sentencing hearing will be scheduled after the completion of a presentence investigation by the United States Probation Office.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Jane Pansing Brown.

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Drums and containers found at Studer Container Services

North Carolina Dairy Farm and Its Owner Plead Guilty to Discharging Cow Feces Into River --

On December 13, 2013, **TAP ROOT DAIRY, LLC**, one of North Carolina's largest dairy farms located in Fletcher, North Carolina, and one of its owners pleaded guilty in federal district court for the Western District of North Carolina, to criminal violations of the Clean Water Act.

A criminal bill of information filed in U.S. District Court on November 11, 2013, charged Tap Root and William "Billy" Franklin Johnston, of Mills River, North Carolina, with one count of violation of the Clean Water Act, in connection with the discharging of cow feces into the French Broad River. According to filed documents and statements made in court, Tap Root maintains several hundred cows and manages hundreds of acres of crop fields in Fletcher. In the annual course of its operations, Tap Root disposes millions of pounds of solid and liquid animal waste, which are considered pollutants under the Clean Water Act.

Court documents indicate that beginning in 2009, Johnson let his certification lapse as operator in charge (OIC) of Tap Root's animal waste management system. Despite receiving repeated warnings and notices, court records show that as of December 4, 2012, Tap Root still had not designated a valid OIC to oversee its waste management system. Furthermore, according to filed documents, from September 3, 2012 to December 4, 2012, for a total of 93 days, Tap



Waste lagoon pond that is overflowing at Tap Root Dairy.

Root failed to check and maintain the levels of cow waste in its on-site waste containment lagoons. This resulted in the spillover and discharge of 11,000 gallons of cow feces and other waste into the French Broad River on December 4, 2012.

In addition to pleading guilty to violating the Clean Water Act, Tap Root has also agreed: 1) to pay a fine of \$80,000, which will be directed to entities that safeguard the French Broad River and other environmental concerns in the Southeast; 2) to abandon any appeal to a related \$13,507.82 North Carolina state civil penalty; 3) to serve a probationary term of four years during which regulators and investigators can inspect their records and facilities without notice and without a warrant; and 4) to design and implement a compliance plan subject to approval by EPA. At sentencing, Johnston faces a maximum prison term of one year and has agreed to pay an additional fine of \$15,000. A sentencing date has not been set yet.

The French Broad River supplies drinking water to more than one million people and is frequently used for recreational water activities, such as swimming and kayaking. In 2012, North Carolina listed the French Broad River from Mud Creek to NC Highway 146 as impaired for fecal coliform bacteria. Tap Root is located on this impaired section of the French Broad River.

The case was investigated by EPA's Criminal Investigation Division, and North Carolina's State Bureau of Investigation's Diversion and Environmental Crimes Unit. The prosecution is being handled by Assistant U.S. Attorney Steven R. Kaufman of the U.S. Attorney's Office in Charlotte.

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Alabama Real Estate Developer Pleads Guilty to Filling Protected Mississippi Wetlands -- On December 17, 2013, **WILLIAM R. "RUSTY" MILLER**, a real estate developer from Fairhope, Alabama, pleaded guilty in federal district court for the Southern District of Mississippi to the unpermitted filling of wetlands near Bay St. Louis, Mississippi, in violation of the Clean Water Act. It is a felony under the Clean Water Act for any person knowingly to discharge pollutants into waters of the United States without a permit. Any person convicted of this offense is subject to imprisonment of up to three years and a penalty of not more than \$250,000. A sentencing hearing is scheduled for March 17, 2014.

Miller, admitted to having caused the excavation and filling of wetlands on a 1,710 acre parcel of undeveloped property in Hancock County, west of the intersection of Route 603 and Interstate 10. The charging document to which the defendant pleaded guilty states that Miller was a part-owner of corporations that purchased and intended to develop the land. It alleges that in 2001 when Miller and his companies acquired the property, he was informed by a wetland expert that as much as 80 percent of the land was federally protected wetland connected by streams and bayous to the Gulf of Mexico and as such could not be developed without a permit from the U.S. Army Corps of Engineers. Wetland permits typically require that developers protect and preserve other wetlands to compensate for those they are permitted to fill and destroy. In spite of additional notice he had received of the prohibition against filling and draining wetland without authorization, it is alleged that Miller hired excavation contractors to trench, drain, and fill large portions of the property to lower the water table and thus to destroy the wetland that would otherwise be an impediment to commercial development.

In pleading guilty, Miller has acknowledged that he knowingly ditched, drained and filled wetlands at 10 locations on the Hancock County property without having obtained a permit from the U. S. Army Corps of Engineers.

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Former BP Engineer Convicted for Obstruction of Justice in Connection with Deepwater Horizon Criminal Investigation

-- On December 18, 2013, **KURT MIX**, a former engineer for BP plc, was convicted of intentionally destroying evidence requested by federal criminal authorities investigating the April 20, 2010, *Deepwater Horizon* disaster. Mix, of Katy, Texas, was convicted by a federal jury in the Eastern District of Louisiana of one count of obstruction of justice and was acquitted on a second count of obstruction of justice. He faces a maximum penalty of 20 years in prison when he is sentenced on March 26, 2014.



According to court documents and evidence at trial, on April 20, 2010, the *Deepwater Horizon* rig experienced an uncontrolled blowout and related explosions while closing the Macondo well. The catastrophe killed 11 men on board and resulted in the largest environmental disaster in U.S. history.

Mix was a drilling and completions project engineer for BP. Following the blowout, Mix worked on internal BP efforts to estimate the amount of oil leaking from the well and was involved in various efforts to stop the leak. Those efforts included Top Kill, the failed BP effort to pump heavy mud into the blown-out

wellhead to try to stop the oil flow. BP sent numerous notices to Mix requiring him to retain all information concerning Macondo, including his text messages.

On or about October 4, 2010, after Mix learned that his electronic files were to be collected by a vendor working for BP's lawyers, Mix deleted on his iPhone a text string containing more than 300 text messages with his BP supervisor. The deleted messages included a text sent on the evening of May 26, 2010, at the end of the first day of Top Kill. In the text, Mix stated, among other things, "Too much flowrate – over 15,000." Before Top Kill commenced, Mix and other engineers had concluded internally that Top Kill was unlikely to succeed if the flow rate was greater than 15,000 barrels of oil per day (BOPD). At the time, BP's public estimate of the flow rate was 5,000 BOPD – three times lower than the minimum flow rate indicated in Mix's text.

By the time Mix deleted these texts, he had received numerous legal hold notices requiring him to preserve such data and had been put on notice of the Department of Justice's criminal investigation of the *Deepwater Horizon* disaster.

The Deepwater Horizon Task Force, based in New Orleans, is supervised by Acting Assistant Attorney General Mythili Raman and led by William Pericak, a deputy chief in the Criminal Division's Fraud Section who serves as the director of the task force. The task force includes prosecutors 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 the FBI, Environmental Protection Agency, Department of Interior, U.S. Coast Guard, U.S. Fish and Wildlife Service and other federal law enforcement agencies. The task force's investigation of this and other matters concerning the *Deepwater Horizon* disaster is ongoing.

The case is being prosecuted by Senior Trial Attorney Jennifer L. Saulino and Trial Attorney Leo R. Tsao of the Fraud Section.

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Georgia Man Accused of Discharging Waste into Potomac River -- On December 6, 2013, **PATRICK BRIGHTWELL**, of Bogart, Georgia, was indicted by a federal grand jury in the District of Columbia on charges that he orchestrated the discharge of waste into the Potomac River at Hains Point from 2009 through 2011, during the same period his company was hired by the National Park Service to clean out the storm water sewer system on the National Mall. The eight-count indictment of Brightwell, was unsealed following his arrest in Georgia on December 5, 2013. It was filed on November 15, 2013, by a grand jury in the U.S. District Court for the District of Columbia. It charges Brightwell with conspiracy, a Clean Water Act violation, false claims, and obstructing the investigation of these offenses by tampering with witnesses and making false statements.

According to the indictment, from in or about 2008 through 2011, Brightwell's company had a contract with the National Park Service to clean the storm water sewer system on the National Mall. The contract required that waste removed from the Mall's storm drains and oil-water separators be disposed of at a proper disposal facility in compliance with District of Columbia regulations and federal law. Brightwell hired employees to work under the contract in 2008, 2009, and 2010, and hired a subcontractor, B&P Environmental, LLC, to perform the work in 2011. Each year, Brightwell supervised the work, collecting waste in a vacuum truck, a vehicle designed to gather, store, and transport such waste.

As alleged in the indictment, in 2009, 2010, and 2011, Brightwell directed his employees and subcontractors to discharge waste from the vacuum truck at a storm drain on Hains Point, where the waste would flow into the Potomac River; Brightwell also directed his employees to conceal these discharges from the National Park Service and police.

During this period, Brightwell continued to invoice the National Park Service for cleaning services, but concealed and did not disclose that Brightwell's company was not properly disposing of the waste, as required by the contract. Brightwell's company received approximately \$533,000 between 2008 and 2011, according to the indictment.

The indictment further alleges that, on June 6, 2011, after the U.S. Park Police stopped the vacuum truck at Hains Point, Brightwell sought to obstruct the investigation by making false statements himself, by telling a subcontractor to make false statements to the police, and by telling an employee to leave the area to prevent police from interviewing him.

If convicted, Brightwell faces a maximum sentence of five years in prison on each of the conspiracy and false claims charges, as well as a \$250,000 fine; a maximum sentence of three years in prison on the Clean Water Act violation and a fine of up to \$50,000 per day; a maximum sentence of twenty years in prison on the witness tampering counts; and a maximum sentence of up to five years in prison on the false statement count.

Earlier this year, the subcontractor, B&P Environmental, LLC, and a B&P employee working on June 6, 2011, both pled guilty to violations of the Clean Water Act before the U.S. District Court. As part of their pleas, both the company and employee agreed to cooperate with the government's investigation. Both the company and employee are awaiting sentencing.

An indictment is merely a formal charge that a defendant has committed a violation of criminal laws and is not evidence of guilt. Every defendant is presumed innocent until, and unless, proven guilty.

The case is being investigated by EPA's Criminal Investigation Division and the U.S. Park Police. It is being prosecuted by Senior Trial Attorney Lana Pettus of the Department of Justice's Environmental Crimes Section and Assistant U.S. Attorney Jonathan P. Hooks of the U.S. Attorney's Office for the District of Columbia. Assistance was provided by Paralegal Specialist Ashleigh Nye of DOJ's Environmental Crimes Section and Paralegal Specialist Krishawn Graham of the U.S. Attorney's Office.

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Florida Landlord Charged with Lead Paint Rule Violations and Falsifying Records -- On December 12, 2013, **MICHAEL MOSHE SHIMSHONI**, of Tierra Verde, Florida, was charged in federal district court for the Middle District of Florida with a six-count superseding indictment charging with four counts of failing to provide approved EPA lead paint warning notices and brochures to his tenants, and two counts of alteration or falsification of records in a federal investigation. If convicted, he faces a maximum penalty of one year in federal prison on each of the failures to provide warning notice counts, and 20 years' imprisonment for each of the falsification of records counts.

According to the indictment, Shimshoni owned, managed, and offered commercial and residential properties for lease in St. Petersburg through Pinellas Properties, Inc., and Affordable Realty and Property Management, Inc., among other entities. The superseding indictment alleges that Shimshoni knowingly and willfully failed to provide the prescribed lead paint hazard warning notices and federally approved lead paint hazard brochures to lessees of his properties. Federal law and regulations require that landlords must provide a prospective tenant of certain "target housing" built prior to 1978, before a tenant is obligated under any lease, with various warning notices including a lead warning statement, and a statement by the tenant affirming the receipt of an EPA approved lead hazard information pamphlet. The purpose of the pamphlet is to alert tenants to the dangers of lead paint and inform them about measures to reduce the risk of lead-based hazards.

The superseding indictment further alleges that Shimshoni altered, falsified, and made false entries in documents and records with the intent to impede, obstruct, and influence EPA's investigation and administration of the Lead Hazard Reduction Act, the Toxic Substance Control Act, and related provisions by producing backdated "Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" forms.

An indictment is merely a formal charge that a defendant has committed a violation of the federal criminal laws, and every defendant is presumed innocent unless, and until, proven guilty.

The case was investigated by the EPA's Criminal Investigations Division. It will be prosecuted by Assistant U.S. Attorney Matthew J. Mueller.

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Louisiana Businessman Indicted for Environmental Crimes -- On December 12, 2013, **ROGER J. DIES**, of Zachary, Louisiana, was indicted in federal district court for the Middle District of Louisiana with five counts of violating the Clean Water Act, one count of scheming to falsify and conceal material facts, four counts of obstruction through the creation of false documents, one count of witness tampering, one count of obstruction of justice, one count of making false statements to a federal criminal investigator, and a forfeiture allegation. If convicted, Dies faces a maximum sentence up to 127 years in prison and over \$2,000,000 in fines.

According to the indictment, Dies owned and operated Baton Rouge Tank Wash (BRTW), a business focused on washing the interior of tanks hauling chemical and food-grade loads aboard trucks. BRTW was permitted to discharge wastewater resulting from the tank washes into the municipal sewer system, subject to certain requirements and limitations.

The indictment alleges that Dies illegally discharged into the municipal sewer system approximately 6,306,660 gallons of wastewater generated by industrial processes at various offsite industrial facilities in exchange for approximately \$371,000. The indictment further alleges that Dies discharged wastewater which significantly and regularly exceeded the permitted toxicity and contamination limits. According to the indictment, Dies attempted to conceal his illegal activities by creating false documents, tampering with a witness, obstructing a grand jury proceeding, and making false statements to a federal criminal investigator.

This ongoing investigation is being conducted by EPA's Criminal Investigation Division, the U.S. Attorney's Office, and the Criminal Investigation Division of the Louisiana Department of Environmental Quality. The matter is being prosecuted by Assistant U.S. Attorneys Corey R. Amundson and Alan A. Stevens.

An indictment is a determination by a grand jury that probable cause exists to believe that offenses have been committed by a defendant. The defendant is presumed innocent until and unless proven guilty at trial.

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