Environmental Crimes Case Bulletin

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

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

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EPA United States Environmental Protection Agency

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Unilever Pays $4.5 Million for Violating CWA at Connecticut Facility -- On April 3, 2014, **UNILEVER HOME & PERSONAL CARE USA**, ("Unilever") was sentenced in federal district court for the District of Connecticut to three years of probation and fined $1 million for violating the Clean Water Act at its former manufacturing site in Clinton in 2008. As part of the resolution of this case, Unilever also is contributing $3.5 million to state and local environmental programs, and instituting a new environmental compliance program at its U.S. manufacturing facilities.

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 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 con-

versations 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.

On December 5, 2013, Unilever pleaded guilty to two counts of knowingly violating, or causing to be violated, the Clean Water Act. On April 3, 2014, Unilever 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 directed to the Connecticut Institute for Resiliency and Climate Adaptation at the University of Connecticut's Avery Point campus, 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 various water quality or ecosystem restoration projects in the lower Hammonasset River watershed.

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 was prosecuted by Assistant U.S. Attorney Ray Miller and Special Assistant U.S. Attorney Peter Kenyon.

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North Carolina Vehicle Inspector Sentenced to Prison for Emissions Fraud – On April 3, 2014, **PEDRO SALMERON**, a licensed vehicle inspector, of Charlotte, North Carolina, was sentenced in federal district court for the Western District of North Carolina to two years of supervised release, the first four months of which he must spend under home confinement. Salmeron was also ordered to perform 50 hours of community service and to a pay a $5,000 fine. Salmeron was ordered to self-report to the Federal Bureau of Prisons upon designation of a federal facility. All federal sentences are served without the possibility of parole.

An emissions analyzer like the one used by Salmeron to conduct fraudulent inspections.

According to court records and sentencing hearing testimony, Salmeron was employed as a technician for "Carolina Inspections" – also known as "Carolinas Auto Inspection" – located in Charlotte, and was also a vehicle emissions inspector licensed by the state of North Carolina. As a state-licensed emissions inspector, Salmeron was responsible for ensuring the emissions of vehicles he tested met federally mandated emissions requirements. Court records show that from February 2010 through January 2011, Salmeron conducted 201 illegal vehicle emission inspections and falsely passed vehicles that would have failed emissions inspection. Court records indicate that Salmeron performed these fraudulent tests by entering the information of the vehicle being tested into the state database at Carolinas Auto Inspection, but then connecting the testing equipment to "surrogate" vehicles at the repair shop. The illegal practice of utilizing substitute vehicles for emissions testing is referred to in the industry as "clean scanning." Salmeron pleaded guilty in August 2012 to one count of conspiracy to violate the Clean Air Act by conducting false vehicle emission inspections. The Clean Air Act requires vehicle emission inspections in geographic regions that exceed national ambient air quality standards. According to the EPA, the Charlotte metropolitan area exceeds the 8-hour standard set for Ozone, a potent irritant that can cause lung damage and other types of respiratory problems.

Salmeron is the latest defendant to be sentenced resulting from an investigation of Charlotte-area vehicle emissions inspectors involved in conducing "clean scans." The multi-agency investigation has netted 14 prosecutions, with defendants serving sentences ranging from 18 months in prison to probation, in addition to home confinement, community service and monetary fines.

The cases were investigated by EPA's Criminal Investigation Division, the North Carolina State Bureau of Invesigation's Diversion and Environmental Crimes Unit, and the North Carolina Department of Motor Vehicle's License and Theft Bureau, with assistance from the North Carolina Division of Air Quality, Mobile Sources Compliance Branch. They were prosecuted 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 Sentenced to Jail for Filling Protection Mississippi Wetlands -- On April 17, 2014, **WILLIAM R. "Rusty" MILLER**, a real estate developer from Fairhope, Alabama, was sentenced in federal district court for the Southern District of Mississippi for the unpermitted filling of wetlands near Bay St. Louis, Mississippi, in violation of the Clean Water Act. Miller was sentenced to serve 15 months, with nine months in prison and six months in home confinement, to be followed by one year of supervised release. He was also ordered to pay a $15,000 fine and to pay $19,246 in restitution.

Dredged material that was placed in wetlands and an aerial perspective of the disturbance.

Miller pleaded guilty in December 2013 and admitted to having caused the excavation and filling of wetlands on a 1,710 acre parcel of undeveloped property in Hancock County, Mississippi. The charging document to which Miller pleaded guilty identified him as a part-owner of corporations that purchased and intended to develop the land.

According to the felony information, 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, 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.

Hancock County Land LLC (HCL), the principal owner of the land, previously entered a guilty plea to related charges. The corporation agreed and was ordered to pay a total penalty of $1 million, or $500,000 for each of the two counts. The corporation also agreed and was ordered to perform community service by completing wetland restoration and preservation plans ordered by the court. These require the defendant to replant with appropriate native vegetation the wetland area it excavated and filled, donate approximately 272 acres of the southwest quadrant to the Land Trust for the Mississippi Coastal Plain to be preserved in perpetuity, to fund its management and maintenance, to pay $100,000 toward the litigation costs of the Gulf Restoration Network and to pay a civil penalty to the United States Treasury for the amount of $95,000.

The case was investigated by the EPA's Criminal Investigation Division. It was prosecuted by Senior Trial Attorney Jeremy K. Korzenik of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division and Assistant U.S. Attorney Gaines Cleveland of the U.S. Attorney's Office for the Southern District of Mississippi.

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Washington Septic Tank Pumping Company Owner Get Prison Sentence for Illegal Sewage Dumping Scheme -- On April 14, 2014, **RAY CALDWELL**, a Longview, Washington, septic tank pumping owner, and his company, **ALL-OUT SEWER AND DRAIN SERVICE, INC.**, were sentenced in federal district court for the Western District of Washington for multiple felony criminal violations of the Clean Water Act. Caldwell was found guilty in December 2013, following a bench trial. He was sentenced to 27 months in prison, three years of supervised release, and given a fine of $250,000 for twenty-five counts of violating the Clean Water Act, six counts of mail fraud, and two counts of making false statements. The company shares in the $250,000 fine and will be on probation for three years. In May, a judge will determine the amount of restitution owed by Caldwell and the company.

Video surveillance that captured an illegal discharge occurring at All-Out Sewer and Drain Service, Inc.

According to records filed in the case, the defendants' scheme to defraud the city of Longview, Cowlitz County, and the Three Rivers Regional Wastewater Authority went on for more than ten years. All-Out was engaged in the business of pumping, hauling, and disposing of septic tank waste, grease trap waste, and industrial wastewater. Federal, state, and local regulations require that all trucked and hauled wastes of the type handled by All-Out be discharged to approve treatment facilities. It was All-Out's practice to transport the waste to its facility in Longview where it was minimally treated and stored in a 10,000 gallon storage tank. While some of the tank contents were appropriately trucked to approved treatment facilities, a majority of the commingled waste was routinely dumped down an unauthorized sewer port located on the All-Out facility.

Based on video surveillance footage seized by law enforcement authorities, Caldwell and his business partner, Randy Dingus, undertook the illegal discharges in the early morning hours, under the cover of darkness, to avoid being detected by passersby or unsuspecting employees. When a records review conducted by the city of Longview in 2010 threatened to expose the scheme, the defendants began submitting false documents underreporting the true volume of trucked and hauled waste. This deception worked until August 2012 when law enforcement surveillance activities prompted by citizen complaints revealed the early morning dumping.

On August 17, 2012, EPA criminal agents executed a search warrant at the All-Out facility and seized video footage from the company's surveillance system. The footage depicted twenty-four separate illegal dumping incidents over a six week period in July and August of 2012. EPA criminal agents returned to the All-Out facility in the early morning of December 18, 2012, after receiving reports that the illegal dumping was still occurring. The agents arrested Caldwell after observing him using large flexible hoses to dump waste from the storage tank directly into the sewer port.

Caldwell was convicted of illegally dumping waste on each of the days captured on the video footage as well as the December 18, 2012 dumping event. Caldwell was also convicted of using the mail system to further his scheme of defrauding the public utilities. Finally, Caldwell was convicted for making false statements in a mandated user survey seeking information regarding All-Out's discharges to the sewer system, and for lying to EPA agents when confronted in August 2012.

Caldwell's business partner, Randy Dingus, had previously pleaded guilty to violating the Clean Water Act for his participation in the illegal dumping scheme. He was sentenced in January 2014 to 30 days in prison, two months of home detention, one year of supervised release, 40 hours of community service, and a $15,000 fine.

The case was investigated by EPA's Criminal Investigation Division with assistance from the Washington State Department of Ecology, Cowlitz County, the City of Longview, and the Three Rivers Regional Wastewater Authority. The case was prosecuted by Assistant United States Attorneys Jim Oesterle and Lawrence Lincoln.

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German Company Ordered to Pay $1.25 Million After Failing to Report Hazardous Cargo Ship Condition in California Port -- On April 25, 2014, **HERM. DAUELSBERG GmbH & Co. KG,** a German company, was sentenced in federal district court for the Central District of California to pay a $1 million fine and another $250,000 to support environmental causes after pleading guilty to two felony environmental charges related to a cargo ship that entered the Port of Long Beach last year with an open crack in its hull that may have caused oil to leak into the port.

The M/V Bellavia

The company pleaded guilty on April 24 and was sentenced immediately. The company pleaded guilty to a felony count of failing to maintain accurate records relating to the overboard disposal of fuel oil and to a felony count of failing to report a hazardous condition aboard the *M/V Bellavia* to the United States Coast Guard.

This case was initiated after four members of the *M/V Bellavia* crew provided significant information to the United States Coast Guard, including pictures and videos of discharges from a fuel tank into the ocean. Using a federal law that allows a federal judge to award up to half of any criminal fine to "whistleblowers" who provide information concerning certain environmental crimes aboard vessels, Judge Wu ordered that the four crewmembers receive a total of $500,000 from the fine amount.

The *M/V Bellavia* is a 960-foot-long, Panamax-size ship that normally transports cargo between European, Central American and North American ports. In 2011, the *M/V Bellavia* sustained cracks in the ship's hull while transiting through the Panama Canal. On an unknown number of occasions over the past three years, the hull cracks opened to such an extent that seawater could enter one of the ship's fuel tanks. As a result of the damage, bunker fuel – a heavy, thick fuel oil – could have been released from the fuel tank into the sea.

This photo taken during a USCG inspection, shows the Oil Water Separator skin valve partially disassembled. By use of an illegal connection to that skin valve, the crew was able to discharge 120,000 gallons of oily wastewater into the sea.

Herm. Dauelsberg admitted that the *M/V Bellavia* hit the side of the Panama Canal again last September and sustained a crack that passed through the ship's hull into a fuel tank. The company also admitted that, after sustaining the crack, the ship's crew used one of the ship's pumps to discharge nearly 120,000 gallons of oil-contaminated seawater from the ship's fuel tank directly into the ocean. That discharge was not done using the ship's oil-water separator, which is supposed to be used to filter oil out of water that is pumped overboard. The ship's crew then failed to properly record the

discharge in the ship's records and did not disclose it to the Coast Guard, both of which are required by federal law, when the ship arrived in the Port of Long Beach in October 2013. In addition, the company admitted that it failed to notify the Coast Guard about the hazardous condition aboard the *M/V Bellavia*, namely, the crack that passed through the ship's hull into the fuel tank.

After accepting the guilty pleas, the judge sentenced the company to the statutory maximum fine of $1 million and ordered the company to make an additional community service payment of $250,000 to the Channel Islands Natural Resources Protection Fund, which is administered by the National Park Foundation. The community service payment will be used to fund environmental projects, enforcement efforts, and initiatives designed for the enforcement of environmental and public safety regulations.

The case was investigated by EPA's Criminal Investigation Division, the United States Coast Guard's Marine Safety Office, and the Coast Guard Investigative Service.

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Co-Owner of Louisiana Laboratory Testing Company Sentenced for Role in Falsification of Produced Water Toxicity Testing -- On April 24, 2014, **MARTHA HEBERT**, a resident of Kenner, Louisiana, was sentenced in federal district court for the Eastern District of Louisiana to two years' probation and fined $10,000 after having pleaded guilty in January to a one count felony bill of information charging her with misprision of a felony. In addition to probation and her fine, Hebert voluntarily agreed in her plea with the government to not engage in produced water toxicity testing for a period of five years and closed Laboratory Technology in March of this year.

According to court documents, Hebert was the co-owner of Laboratory Technology, (LT), in Kenner, Louisiana. LT was a company that performed water toxicity tests for companies that were required by EPA to adhere to certain limits involving the discharge of produced water. These companies were involved in the production of oil and gas in the Gulf. During the process of producing oil, a certain amount of contaminated water is produced. Untreated produced water is toxic and the discharge of untreated produced water is prohibited.

The Clean Water Act requires companies to perform toxicity tests on produced water samples pursuant to a permit issued by the EPA. The permit imposed limitations on the amount of pollutants that could be discharged into waters of the United States. The permit required monitoring of any discharges to determine whether they were in compliance with the pollutant discharge limitations set forth in the permit. The permit required that discharge samples (samples) be sent to a lab such as LT for testing. The laboratory test results of the discharge samples were recorded on a report known as a Discharge Monitoring Report, commonly known as a DMR. The DMRs were sent to EPA. Companies relied upon the accuracy of LT's test results when they submitted their DMRs to EPA.

Hebert acted as the office manager for LT and was responsible for sending clients the results of the water toxicity tests. The purpose of the toxicity test, in simple terms, was to determine if a company's treated produced water was within its permit limits. Accurate reporting of the results of the toxicity tests is material to a company's DMR. EPA has specific protocols in place for performing the toxicity tests. If one of the required steps in the protocol was not followed, the results were not valid and could not be used on the DMR.

Beginning in approximately July 2008 through June 15, 2012, LT's laboratory supervisor, Leonard Johnson, did not follow the required protocol for testing the toxicity of the companies' samples. In order for it to appear that the toxicity tests had been performed, Johnson instructed lab employees and Hebert to enter fake weight numbers in the information provided to the LT's clients. This information was used by the clients to prepare the required DMRs.

Hebert knew that Johnson was signing all reports certifying the accuracy of the toxicity test results when in fact he had not followed the required protocol and that the information was false. Hebert did not make this known to a judge or other person in civil or military authority under the United States.

The case was investigated by EPA's Criminal Investigation Divison and the Federal Bureau of Investigation.

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New York Man Pleads Guilty to Violating CAA Asbestos Work Practice Standards -- On April 4, 2014, **BRIAN SCOTT** pleaded guilty in federal district court for the Western District of New York, to being an accessory after the fact to a false statement under the Clean Air Act. The charge carries a maximum penalty of one year in prison, a fine of $125,000, or both. Sentencing is scheduled for August 8, 2014. Further, on April 30, 2014 and May 1, 2014, **ERNEST JOHNSON** and **RAI JOHNSON** (respectively) pleaded guilty in federal district court for the Western District of New York to violating the Clean Air Act asbestos work practice standards. The charge carries a maximum penalty of five years in prison, a fine of $250,000 or both. Sentencing is scheduled for August 15 and 18.

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

Scott was employed by JMD Environmental Inc. (JMD) as an air sampling technician and a project monitor and was certified by the New York State Department of Health to conduct asbestos project monitor and air sampling duties. From June 9, 2009 to January 11, 2010, co-defendants Johnson Contracting of WNY, Inc. (Johnson Contracting), Ernest Johnson, and Rai Johnson conducted asbestos abatement activities at six buildings at the Kensington Towers Apartment Complex in Buffalo. Ernest Johnson was the president and Rai Johnson was a supervisor of Johnson Contracting of WNY, Inc., an asbestos abatement company. In a pre-abatement asbestos survey, each building at Kensington Towers was found to contain 63,000 square feet of regulated asbestos containing material. During the abatement process, co-defendant Rai Johnson created daily project logs to document the progress at Kensington Towers. The logs are documents required to be maintained under the Clean Air Act.

During the abatement for building A-1 by Johnson Contracting, Rai Johnson wrote in his daily project log that all floor tiles containing asbestos had been removed from the building, when in truth, all asbestos floor tiles had not been removed. Thereafter, on July 7, 2009, Scott conducted a visual inspection of building A-1 for floor tile and issued a satisfactory visual inspection, when in truth, he was aware that all asbestos-containing floor tiles had not been removed. In doing so, the defendant acted as an accessory after the fact to the false statement made by the Johnson defendants.

During the asbestos abatement of building A-1, the Johnson defendants, and employees working under their direction, violated the Clean Air Act asbestos work practice standards by failing to adequately wet regulated asbestos during stripping and removal operations and by failing to ensure that regulated asbestos remained wetted until placed in leak-tight containers. The Johnson defendants also caused regulated asbestos to be dropped down holes cut through the floors in Building A-1.

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

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Montana Rancher Pleads Guilty to Damaging Wetland on Indian Reservation -- On April 24, 2014, **BRENT POWELL**, a St. Ignatius, Montana, area rancher, pled guilty in federal court district court for the District of Montana to violating the federal Clean Water Act by damaging a wetland on the Flathead Indian Reservation. Powell faces a possible one year in prison and a $25,000 per day fine.

In an Offer of Proof, the prosecutor told the Court that Powell operates B.P. Cattle Company on property that includes a wetland complex bordering Sabine Creek and Mission Creek in Lake County, Montana, which are waters of the United States. These wetlands also lie within the Flathead Indian Reservation.

Upper photograph depicts 5 areas where soil was dredged from a wetland area (note dark lines). Lower photograph depicts a closer image of dredged material (dark soil) next to a trench.

Through investigative interviews and a check of tribal records, EPA's Criminal Investigation Division established that in 2004 Powell failed to submit a Tribal Application for the Alteration of Aquatic Land or Wetland on the Flathead reservation, known as an 87A (ALCO), before he performed work in wetlands along Pistol Creek. As a result of the 2004 Clean Water Act violations, the United States Army Corps of Engineers issued Powell a cease and desist order for the activities on Pistol Creek and Powell was required to remediate the area.

Undeterred, in 2010 Powell again dredged several channels on his property in an effort to drain the wetlands and extend his agricultural land along the Sabine and Mission Creeks. The dredged material was cast off beside the channels and remained within the wetland area. As a result of the work, heavy sediment was observed in the manmade channels, and cloudy water was observed flowing into Sabine Creek from manmade channels.

EPA-CID conducted interviews and reviewed documents that show Powell again failed to submit a Tribal Application for the Alteration of Aquatic Land or Wetland on the Flathead reservation, before he performed work along Sabine Creek.

In March 2010, the United States Army Corp of Engineers, EPA-CID, and Flathead tribal environmental specialists participated in an on-site inspection of the disturbed wetland area; they described the disturbance of wetland and riparian vegetation as very extensive. The disturbance of the wetland area includes approximately seven different areas in which soil was dredged from the wetland area and side-casted along the trenches into waters of the United States.

The case was investigated by EPA's Criminal Investigation Division, the Army Corps of Engineers and the environmental specialists of the Flathead Tribe.

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Hawaii Waste Management Company and Managers Indicted for CWA Violations, Conspiracy, Making False Statements -- On April 30, 2014, a federal grand jury in Honolulu returned a 13-count indictment charging **JOSEPH R. WHELAN**, general manager and a vice president of **WASTE MANAGEMENT OF HAWAII, INC**. (WMH) and **JUSTIN H. LOTTIG**, WMH's environmental protection manager, with multiple felonies, including knowing violations of the Clean Water Act, conspiracy and making false statements to the Hawaii Department of Health and EPA.

The charges stem from alleged illegal discharges of contaminated storm water from the Waimanalo Gulch Sanitary Landfill into Hawaii's coastal waters after heavy rainfalls in December 2010 and January 2011. WMH was permitted to discharge storm water from the landfill to the Pacific Ocean under a National Pollutant Discharge Elimination System (NPDES) permit issued by the Hawaii Department of Health Clean Water Branch (DOH-CWB). The storm water was required to go through the landfill's storm water management system to ensure that it did not come into contact with waste in the landfill before being discharged to Hawaii's coastal waters. The NPDES permit prohibited WMH from causing or contributing to a violation of Hawaii's state water quality standards.

The indictment alleges that from April 19, 2010, until December 23, 2010, WMH Environmental Protection Manager Lottig conspired with employees from an environmental consulting firm to submit false and outdated information to DOH-CWB in June, August and September 2010. The purpose of the conspiracy was to convince DOH-CWB that the landfill had an adequate storm water management system in place in order to renew its NPDES storm water discharge permit.

The indictment also alleges that from October 27 to December 23, 2010, Lottig and WMH violated the permit by knowingly failing to inform DOH-CWB of material changes in the storm water management system that would have alerted the DOH-CWB that an inadequate system was in place.

On December 19, 2010, a heavy rainstorm struck Oahu, and Cell E6, which contained millions of pounds of waste including raw sewage, sewage sludge and medical waste, was flooded with millions of gallons of storm water from up canyon. The indictment alleges that from December 20 to 23, WMH pumped millions of gallons of contaminated storm water from Cell E6 into coastal waters near the Ko Olina Resort. The indictment alleges that on December 20 and 23, Lottig falsely stated to DOH-CWB inspectors that any storm water being discharged from the landfill had not come into contact with waste from Cell E6.

On the evening of January 12, 2011, another heavy rainstorm struck Oahu. The indictment alleges that unbeknownst to DOH-CWB, Whelan and WMH caused the discharge of millions of gallons of contaminated storm water to the coastal waters near the Ko Olina beach resort for several hours that evening and/or into the morning of January 13 without authorization from DOH-CWB. The pollutants included large amounts of medical waste, including blood vials, syringes and catheters, raw sewage and sewage sludge. The indictment alleges that on January 13 and 20, 2011, an engineer from WMH falsely stated to DOH-CWB inspectors that the manhole which WMH used for the unauthorized discharges had been closed when in fact he knew that it had been left open to serve as an overflow drain.

The indictment also alleges that Whelan and WMH submitted false material statements and concealed material information in written submissions to DOH-CWB on April 21, 2011, and to the EPA on August 1,

2011.

An indictment is merely an accusation, and a defendant is presumed innocent unless and until proven guilty in a court of law.

If convicted, WMH faces a maximum criminal fine of $500,000 for each count. If convicted of the count charging failing to inform DOH-CWB of material changes in the storm water diversion system, WMH faces a maximum fine of $50,000 per day of the alleged violation.

If convicted, Lottig faces a maximum sentence of five years in prison for each count of conspiracy and for each count of making a false statement to DOH-CWB; a maximum of three years for failing to inform DOH-CWB of material changes in the storm water diversion system plus a fine of $50,000 per day of the alleged violation; a maximum of two years for each count of providing false information to DOH-CWB; and a maximum of three years for each count of illegal discharges in violation of the Clean Water Act. If convicted, Lottig also faces a maximum criminal fine of $250,000 for each count.

If convicted, Whelan faces a maximum sentence of three years for each count alleging illegal discharges in violation of the Clean Water Act and a maximum of two years for each count of making false statements to DOH-CWB and EPA; and a maximum criminal fine of $250,000 for each count.

The case was investigated by EPA's Criminal Investigation Division with the assistance of the DOH-CWB. It is being prosecuted by Assistant U.S. Attorney Marshall Silverberg of the U.S. Attorney's Office for the District of Hawaii and Senior Trial Attorney Daniel Dooher of the Justice Department's Environmental Crimes Section of the Environment and Natural Resources Division.

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