



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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Defendant Summary

Region	Defendants	Case Type/Status
Region 2	Rai Johnson, William Manuszewski, Donald Grzebielu-cha, Theodore Lehmann	CAA/Violating asbestos work practice standards; negligent endangerment by allowing asbestos to be released into the air
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Region 3	Arab Ship Management LTD.	Act to Prevent Pollution from Ships/Illegal disposal of oil sludge, illegal entries on oil record books
Region 3	Action Manufacturing Company	RCRA/Illegal storage of hazardous waste
Region 4	Mark Sawyer	CWA/Violation of work practice standards pertaining to wetting, stripping, bagging, and disposal of asbestos

Defendant Summary

Region	Defendants	Case Type/Status
Region 4	David Braswell	CAA/Improper asbestos work practice standards
Region 6	Colfax Treating Company , LLC	CWA/Negligent discharge of waste materials into city sewer system
Region 9	Pacific Tank Cleaning, Inc	CERCLA/Failure to report acid spill
Region 9	Marcelina Botello Charles	FIFRA/Illegal distribution of pesticides
Region 10	Owyhee Construction Incorporated	CERCLA/Failure to report releases of asbestos

Idaho Corporation Fined for Criminal Asbestos Violations -- On May 21, 2014, **OWYHEE CONSTRUCTION INCORPORATED**, a Boise, Idaho-based corporation, was sentenced in federal district court for the District of



Pieces of the old cement asbestos pipe that was improperly handled by Greiner and Eberhart.

Idaho to three years of probation for violating the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It was also fined \$100,000, ordered to implement a compliance and ethics program, and pay restitution. Two employees, Douglas Greiner and Bradley Eberhart, of Owyhee Construction were previously sentenced to prison terms for acts related to the disposal of asbestos.

Owyhee Construction Inc., was the successful bidder on a \$3 million waterline renovation project in Orofino, Idaho, a rural community in north central Idaho. The contract documents warned Owyhee Construction that the company may encounter up to 5,000 line-

ar feet of cement asbestos pipe (CAP) during the renovation. CAP is a non-friable form of asbestos that is encapsulated in a cement matrix. When the CAP is broken or crushed by heavy equipment or subjected to cutting and grinding by machinery, it becomes subject to regulation because of the threat to public health from airborne fibers.

The onsite manager and foreman failed to properly supervise the renovation. While working in the trenches to replace pipe, workers removed CAP from the trenches which ended up as part of fill material on sixteen properties around Orofino. Owyhee Construction never reported the releases of the asbestos. EPA's cleanup cost is just under \$4 million. Owyhee Construction was ordered to pay restitution to EPA based on resolution of a civil suit currently under way with other potentially responsible parties.



Superfund contractor wetting suspected asbestos containing material from the dump site.

The case was investigated by EPA's Criminal Investigation Division. It was prosecuted by Assistant U.S. Attorney, D. Marc Haws from the District of Idaho and Senior Trial Attorney J. Ronald Sutcliffe of the Justice Department's Environmental Crimes Section.

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California Tank Cleaning Firm Fined for Failing to Report Toxic Acid Spill Near Elementary School -- On May 28, 2014, **PACIFIC TANK CLEANING (PTC), INC.**, a family-owned tank cleaning firm located in San Diego, California, was sentenced in federal district court for the Southern District of California to pay a \$50,000 fine for failing to report an acid spill that occurred at its facility.



The cleanup of the acid spill outside Pacific Tank Cleaning, Inc.

The company employs 85 people on three shifts and is engaged in the business of cleaning industrial tanks and piping, primarily aboard ships. On Monday, March 28, 2011, in the former PTC yard on National Avenue in San Diego, the valve on a 275-gallon plastic container (tote) failed, spilling the contents of the tote onto the ground at the facility. The liquid pooled on the concrete at the facility, and flowed out a hole at the base of the wall. The fluid ran down an alley at the rear of the facility (etching the concrete) and pooled along the curb in front of a nearby elementary school.

Two days later a nearby business reported the spill. The San Diego Fire Department Hazardous Incident Response Team (HIRT) and the

San Diego County Department of Environmental Health Service, Hazardous Materials Management Division (DEH) responded to the scene, and closed the affected streets and alley. The responders traced the spill from the school, down the alley to the PTC facility. Samples of the liquid pooled in the street and samples of the soil just outside the PTC facility were found to be extremely acidic, with a pH of less than 1. Measured pH values are typically between 14 (most basic) to 0 (most acidic). Pure water has a pH of about 7.

One of the HIRT responders contacted a PTC vice president at the site. The vice president falsely advised that there were no acids at PTC, only contaminated water. The HIRT responder asked to inspect the facility and observed multiple large totes containing a product called Dynamic Descaler which contains hydrochloric acid. There was no evidence of any spill on the grounds of the PTC facility. Although PTC denied that they were the source of the spill, PTC contacted a clean-up company that afternoon. The clean up company washed and vacuumed the remaining liquid from the street and alley and properly disposed of the vacuumed material, at a cost of \$17,000 (which was reimbursed to PTC by its insurance carrier).

Subsequently, the criminal investigation revealed that an employee on the first shift at PTC had been directed by production manager Jorge Luquin to use the contents of a 275 gallon tote to clean piping that was in the PTC yard that had come from a Navy ship. On March 28, 2011, the first shift employee discovered that the valve on the tote of used acid had failed, spilling the contents. The first shift employee reported the spill to Luquin, and advised Luquin that he had seen liquid in the alley.

Luquin ordered the PTC employees to clean up the spill on the site. PTC employees rinsed the area and vacuumed the liquid from the yard, placing it in another tote at the facility labeled “oily water” that was later sampled by DEH (and relabeled by health officials as “corrosive”). Although PTC had a Health and Safety

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Manager, that individual was not aware of the spill until the HIRT response two days later. The acid spill involved well over the reportable quantity of a hazardous substance (100 pounds of a corrosive liquid), but upon discovery of the release, PTC did not report it to the National Response Center, or any other governmental agency, as required by law.

PTC pled guilty in February. In addition to the criminal fine, PTC was placed on probation for three years, assessed a \$400 penalty, and also ordered to reimburse DEH \$11,238.60 for the costs of responding to the spill.

Pacific Tank Cleaning Production Manager Jorge Luquin pled guilty to the unlawful discharge of pollutants in February of 2014. In pleading guilty, Luquin admitted that although he was aware the tank had leaked, he made no effort to contain the spill outside the facility, which allowed the acid to enter the storm drain system and ultimately the waters of the United States. Luquin is scheduled to be sentenced on June 24, 2014.

The case was investigated by EPA's Criminal Investigation Division, the Federal Bureau of Investigation, and the San Diego County Department of Environmental Health Services, Hazardous Materials Management Division.

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Stains on the ground caused by the acid spill

Jordanian Shipping Company Pleads Guilty and Is Sentenced for Illegally Discharging Oily Waste --On May 20, 2014, Jordan-based **ARAB SHIP MANAGEMENT LTD.**, pleaded guilty in federal district court for the District of Delaware to one count of violating the Act to Prevent Pollution from Ships. In accordance with the terms of the plea agreement, Arab Ship Management Ltd. was sentenced to pay a criminal penalty totaling \$500,000 and be placed on probation for two years, during which time ships operated by the company will be banned from calling on ports of the United States.

According to court documents and statements made in court, Arab Ship Management Ltd. operated the *M/V Neameh*, a 6,398 gross ton ocean-going livestock carrier. On March 28, 2013, the U.S. Coast Guard boarded the vessel in the Delaware Bay Big Stone Anchorage to conduct an inspection. The inspection and subsequent criminal investigation revealed heavy oil sludge inside the piping on the discharge side of the pollution prevention equipment leading directly overboard, where no oil sludge should be if the pollution prevention equipment is operated properly. Inspectors also discovered that the vessel's



The M/V Neameh

pipework arrangement had been modified in a prohibited manner so as to allow oil sludge to be pumped directly overboard. This prohibited piping arrangement was removed prior to the vessel's arrival in Delaware. Also during the inspection, Coast Guard officers were presented with two oil record books which are required by law to be accurately maintained onboard the vessel. These two oil record books contained different and contradictory entries for the time period November 30, 2011, through January 2, 2012, as well as fake oily waste disposal receipts.

The case was investigated by the U.S. Coast Guard Sector Delaware Bay, Coast Guard Marine Safety Detachment Lewes and the Coast Guard Investigative Service. The case was prosecuted by Trial Attorney Stephen Da Ponte in the Environmental Crimes Section of the Environment and Natural Resources Division of the Department of Justice and Assistant U.S. Attorney Edmond Falgowski from the U.S. Attorney's Office for the District of Delaware.

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South Carolina Contractor Gets Jail Term, Fine For Improper Asbestos Removal -- On May 22, 2014, **DAVID BRASWELL** was sentenced in federal district court for the District of South Carolina for violating the Clean Air Act. Braswell was sentenced to six months in prison, six months house arrest, three years supervised release, and a \$10,000 fine.

Braswell ran CoolCote, a construction and renovation company in the Myrtle Beach, South Carolina area. He was contracted to remove and replace siding on a high rise beach front condominium complex in Myrtle Beach. Braswell was made aware that the existing siding contained asbestos material and agreed to do the job for a lower price. He did not provide the proper work practice standards protection and, as a result, contaminated a local beach and adjacent properties.

The case was investigated by EPA's Criminal Investigation Division and the South Carolina Department of Health and Environmental Control. Assistant U. S. Attorney Jim May of the Columbia office prosecuted the case.

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Pennsylvania Company Pleads Guilty to Improper Storage of Explosive Hazardous Waste and Agrees to \$1.2 Million Fine

-- On May 21, 2014, **ACTION MANUFACTURING COMPANY**, headquartered in Bristol, Bucks County, pled guilty in federal district court for the Eastern District of Pennsylvania to storing explosive hazardous waste illegally at its facility in Atglen, Chester County, Pennsylvania.



Stockpiled explosive hazardous waste at Action Manufacturing's Atglen facility.

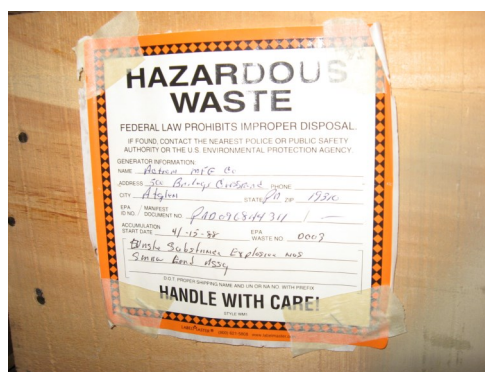
The company agreed to pay a fine of \$1.2 million, and will face a five-year term of probation and a special assessment of \$800. Its president has agreed to resign, and the company will comply with a schedule for disposing of the backlog of waste built up over many years. A sentencing hearing is scheduled for August 27, 2014. Action Manufacturing also admitted that it violated Department of Transportation recordkeeping regulations for transporting explosive material on the public roads.

Action Manufacturing makes timing and arming devices for munitions and explosives. In its manufacturing process, Action Manufacturing mixes explosive powders, and also fills boosters, detonators and other items with explosive powders.

Action Manufacturing's production process generates explosive solid waste, and the law requires that it be disposed of in accordance with the Resource Conservation and Recovery Act. The company admitted that, instead of sending its waste to an approved treatment, storage and disposal facility, it stockpiled explosive hazardous waste at its Atglen facility without a permit. In November 2011, civil inspectors from EPA's Land and Chemicals Division and the Pennsylvania Department of Environmental Protection inspected the Atglen site, and found the illegally stored waste, including scrap parts and components that were years or even decades overdue for disposal.

The case was investigated by the EPA's Criminal Investigation Division and the U.S. Department of Transportation Office of Inspector General. It is being prosecuted by Assistant U. S. Attorney Elizabeth Abrams.

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Labels on boxes of explosive hazardous waste illegally stored at Action Manufacturing

Pennsylvania Construction Services Company Owner Pleads Guilty to CWA Violation -- On May 28, 2014, **LEO M. WILLIAMS**, the owner of Lycoming Construction Services, LLC, a Pennsylvania company located in Williamsport, Pennsylvania, pleaded guilty in federal district court for the Western District of New York to violating the Clean Water Act. The charge carries a maximum penalty of one year in prison, a fine of \$25,000 per day of violation, or both. From January 2012 to November 2013, Williams was involved in the demolition of the Dahlstrom industrial complex, located in Jamestown, New York. The project involved the demolition of a cluster of condemned buildings on either side of the Chadakoin River, which is a water of the United States. During the demolition, a significant amount of water contaminated with dust and debris from the demolition flowed offsite directly into the Chadakoin River. Williams should have been aware that such contaminated water was flowing into the river, and acted negligently in allowing the water to be discharged. Sentencing is scheduled for September 3, 2014.

The plea is the culmination of an investigation on the part of special agents of EPA's Criminal Investigation Division, special agents of the U.S. Coast Guard Investigative Service, and investigators of 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 and the U.S. Occupational Safety and Health Administration. It is being prosecuted by Assistant U. S. Attorney Aaron J. Mango.

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New York Men, Including City and State Inspectors, Plead Guilty to Asbestos Crimes -- On May 1, 2014, **RAI JOHNSON**, of Buffalo, New York, 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. On May 8, 2014, **WILLIAM MANUSZEWSKI** and **DONALD GRZEBIELUCHA**, both of Buffalo, New York, pleaded guilty to a negligent endangerment charge under the Clean Air Act. The charge carries a maximum penalty of one year in prison, a fine of \$100,000 or both. On May 13, 2014, **THEODORE LEHMANN** pled guilty to a misdemeanor charge of violating the Clean Air Act. Sentencing is scheduled for August 18, 2014.



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.

Johnson was a supervisor at Johnson Contracting of WNY, Inc., an asbestos abatement company that was hired to conduct asbestos abatement activities at six buildings at the Kensington Towers Apartment Complex in Buffalo. In a pre-abatement asbestos survey, each building at Kensington Towers was found to contain 63,000 square feet of regulated asbestos-containing material. The asbestos abatement project lasted from June 2009 to January 2010. During the asbestos abatement of Building A-1, Johnson and employees working under his direction violated the Clean Air Act asbestos work practice standards by: (i) failing to adequately wet regulated asbestos during stripping and removal operations; (ii) failing to ensure that regulated asbestos remained wetted until placed in leak-tight containers; and (iii) causing regulated asbestos to be dropped down holes cut through the floors in Building A-1.

Manuszewski and Grzebielucha were employed by the city of Buffalo as building inspectors. The air monitoring at Kensington Towers was conducted JMD Environmental, Inc. On August 25, 2009, defendant Grzebielucha inspected Building A-1 at Kensington Towers, and during the inspection, negligently allowed asbestos to be released in the air. Likewise, on January 15, 2010, defendant Manuszewski inspected building A-5 at Kensington Towers, and during the inspection, negligently allowed asbestos to be released in the air. During both inspections, the defendants admitted that they were negligent in relying on the previous inspections conducted by JMD employees that indicated all asbestos had been removed from the buildings. Lehmann was a state inspector who worked on the project.

The federal investigation began in January of 2010 with an anonymous phone call to the state Department of Environmental Conservation. The caller complained about the illegal handling of asbestos at the site.

In the end, investigators determined a substantial amount of asbestos had been left inside the complex's six towers, and if a demolition had occurred as scheduled, a significant amount of asbestos would have

been released into the neighborhood, which includes a residential area, two schools and Erie County Medical Center.

Lehmann was the last of nine defendants to plead guilty as part of the Kensington Towers asbestos abatement project. Ernest Johnson and JMD project monitors Evan Harnden, Chris Coseglia, Henry Hawkins, and Brian Scott have also been convicted.

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 was prosecuted by Assistant U.S. Attorney Aaron J. Mango.

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Tennessee Salvage Company Owner Pleads Guilty to Conspiring to Violate the CWA -- On May 14, 2014, **MARK SAWYER**, the owner and operator of a Tennessee salvage and demolition company, A&E Salvage Inc., pleaded guilty in federal district court for the Eastern District of Tennessee for conspiring to violate the Clean Air Act's "work practice standards" salient to the proper wetting, stripping, bagging and disposal of asbestos. Sawyer faces up to five years in prison and a fine of up to \$250,000 or twice the gross gain or loss to the victims. Sawyer is the last of five charged co-defendants to plead guilty. Sawyer, Eric Gruenberg, Nick Smith, Armida DiSanti and Milto DiSanti are due to be sentenced on Nov. 19, 2014.



Debris piles with stripped tanks



Stripped boiler from powerhouse of the facility

According to the charges, Sawyer, along with other co-conspirators, engaged in a multi-year scheme in which substantial amounts of regulated asbestos containing materials were improperly removed from components of the former Liberty Fibers Plant or were illegally left in place during demolition.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Matthew T. Morris of the U.S. Attorney's Office for the Eastern District of Tennessee and Senior Trial Attorney Todd W. Gleason of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Matthew T. Morris of the U.S. Attorney's Office for the Eastern District of Tennessee and Senior Trial Attorney Todd W. Gleason of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division.

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Before and after demolition of the former Liberty Fibers Plant

Louisiana Wood Treating Company Pleads Guilty to Negligently Discharging Waste into City Sewer System

On May 23, 2014, **COLFAX TREATING COMPANY, LLC**, pleaded guilty in federal district court for the Western District of Louisiana to one count of negligent discharge of waste materials in violation of its daily limit permit. Company representative, Johnathan Martin, pleaded guilty on the company's behalf at the hearing. Sentencing is set for August 1, 2014.

According to evidence presented at the guilty plea, Colfax Treating Company, LLC, a wood treating facility in Pineville, Louisiana, negligently discharged pentachlorophenol on June 13, 2008, into Pineville's sewer system, which leads to the publicly-owned water treatment works. The company discharged 7.1 milligrams per liter of the chemical in violation of the Clean Water Act. The permitted discharge amount is 5.64 milligrams per liter, which is a difference of 1.46 milligrams per liter. Pentachlorophenol is used in the company's wood treating process. The minimum fine for the illegal discharge from the company's property is \$2,500 per day of violation, with a maximum fine of \$25,000 per day of violation.

The case was investigated by EPA's Criminal Investigation Division, the Louisiana Department of Environmental Quality, and the FBI. It was prosecuted by Assistant U.S. Attorney Joseph G. Jarzabek.

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Colfax Treating Company



Pentachlorophenol material from sewer

California Woman Pleads Guilty to Conspiring to Distribute Marijuana Plants, Illegal Pesticides -- On May 19, 2014, **MARCELINA BOTELLO CHARLES**, of Murrieta, California, pleaded guilty in federal district court for the Eastern District of California to conspiring to manufacture, distribute and possess with intent to distribute 9,749 marijuana plants at a grow site in the Lilly Canyon area of the Sequoia National Forest. She also pleaded guilty to distributing illegal pesticides, in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and agreed to make restitution to the U.S. Forest Service for damage caused by the marijuana cultivation operation. Sentencing is scheduled for August 11, 2014.

The drug conspiracy carries a maximum prison term of 20 years in prison and a \$4 million fine. The FIFRA violation carries a maximum penalty of one year in prison and a maximum fine of \$25,000. The actual sentence, however, will be determined at the discretion of the court after consideration of any applicable statutory factors and the Federal Sentencing Guidelines, which take into account a number of variables. According to court documents, the public land sustained extensive damage as a result of the marijuana cultivation activities there. Native oak trees and other vegetation were killed or cut down to make room for the marijuana plants. The soil was tilled, and fertilizers, pesticides, and rodenticides were spread throughout the site. Cans of a common Mexican rat poison, Fosfuro de Zinc and “Ratone: fosfuro de zinc,” and a Mexican insecticide, “QúFuran,” were found at both the cultivation site and the residence where Charles temporarily resided in Bakersfield, after she was found delivering supplies to the marijuana cultivation operation. In addition to the pesticides, two handguns and numerous items relating to marijuana cultivation were seized.

The case was investigated by EPA’s Criminal Investigation Division, the U.S. Forest Service, DEA, U.S. Immigration and Customs Enforcement’s Homeland Security Investigations, and the Kern County Sheriff’s Department. It is being prosecuted by Assistant United States Attorney Karen Escobar.

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Smuggled Mexican pesticides involved in this investigation