

Environmental Crimes Case Bulletin



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

February 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:

- **Rodney R. Hailey — Region 3**
- **Werner Transportation Services, Inc. — Region 4**
- **Angel Dario Rodriguez Nunez — Region 4**
- **House of Raeford Farms, Inc. — Region 4**
- **Robert D. Armstrong & RCA Oil and Gas LLC — Region 5**
- **Ben Lupo — Region 5**
- **Temple Inland — Region 6**
- **Transocean Deepwater, Inc. — Region 6**
- **Martin Graves Kuna — Region 10**
- **Douglas Greiner, Bradley Eberhart — Region 10**

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 3	<u>Rodney R. Hailey</u>	CAA/Selling fraudulent renewable fuel credits and obstruction of justice
Region 4	<u>Angel Dario Rodriguez Nunez</u>	CAA/Falsely passing vehicle inspections
Region 4	<u>Werner Transportation Services, Inc.</u>	CAA/Illegal chemical leak
Region 4	<u>House of Raeford Farms, Inc.</u>	CWA/Disposing untreated waste water into city treatment system without notifying city officials
Region 5	<u>Robert D. Armstrong & RCA Oil and Gas LLC</u>	CWA/Illegal wastewater discharge

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 5	Ben Lupo	CWA/Discharging fracking waste into river tributary
Region 6	Transocean Deepwater, Inc.	CWA/Illegal conduct leading to 2010 <i>Deepwater Horizon</i> disaster
Region 6	Temple Inland	CWA & Refuge Act/Negligent pollutant discharge leading to fish kill
Region 10	Martin Glaves Kuna	RRP Rule/Lying about ability to test for lead-based paint
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North Carolina Emissions Inspector Sentenced for Falsely Passing Vehicle Inspections -- On February 20, 2013, **ANGEL DARIO RODRIGUEZ NUNEZ**, of Durham, North Carolina, was sentenced in federal district court for the Eastern District of North Carolina to five years of probation with a special condition of six months house arrest and a \$500 fine. The sentence reflected a reduction for Nunez' cooperation in the on-going investigation. A criminal information was filed on March 6, 2012, charging Nunez with conspiring to violate the Clean Air Act and making a material false statement, representation, or certification. On April 9, 2012, Nunez pled guilty to the charges.

According to the criminal information, Nunez worked at both Express Auto Sales and Services and Car Care Express Auto Sales and Services, both in Durham, as a licensed North Carolina emissions inspector. From May 2009 to July 2010, Nunez conspired with others to pass vehicles that would normally have failed the emissions inspection in exchange for \$150 to \$225 per car.



Express Auto Sales and Service located in Durham, NC

The information further alleges that Nunez and his co-conspirators would enter the vehicle identification number either manually or by scanning. A surrogate vehicle, usually one manufactured between 1996 and 1999 that would not generate a vehicle identification number when connected to the analyzer, would be selected. Using the surrogate vehicle, an emissions report would be generated for the customer's vehicle. During this period 817 vehicles passed the false inspection. Of those 817, Nunez falsely tested 353.

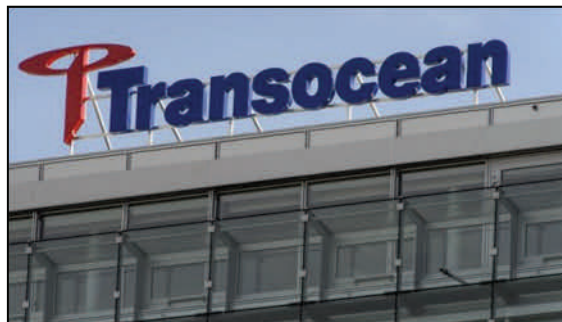
Emissions inspection reports are electronically transferred to the North Carolina Office of Information and Technology Services in Raleigh, North Carolina. The U.S. EPA requires the state to conduct vehicle emissions testing in certain areas because the areas exceed national standards for carbon monoxide and ozone.

Investigation of this case was conducted by the EPA Criminal Investigation Division; the North Carolina State Bureau of Investigations; and the North Carolina Department of Motor Vehicles, License and Theft Bureau. Assistant United States Attorney Banumathi Rangarajan is prosecuting the case.

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Transocean Pleads Guilty, Is Sentenced to Pay \$400 Million in Criminal Penalties for Criminal Conduct Leading to *Deepwater Horizon* Disaster

On February 14, 2013, **TRANSOCEAN DEEPWATER, INC.** pleaded guilty in federal district court for the Eastern District of Louisiana to a violation of the Clean Water Act for its illegal conduct leading to the 2010 Deepwater Horizon disaster, and was sentenced to pay \$400 million in criminal fines and penalties. In total, the amount of fines and other criminal penalties imposed on Transocean are the second-largest environmental crime recovery in U.S. history – following the historic \$4 billion criminal sentence imposed on BP Exploration and Production Inc. in connection with the same disaster. The criminal payments will be directed to the National Academy of Sciences and National Fish and Wildlife Foundation to help remedy the harm to the Gulf of Mexico caused by Transocean’s actions. Transocean was also sentenced, according to the plea agreement, to five years of probation – the maximum term of probation permitted by law.



Transocean pleaded guilty to an information, previously filed in federal court in New Orleans, charging the company with violating the CWA. During the guilty plea proceeding, Transocean admitted that members of its crew onboard the *Deepwater Horizon*, acting at the direction of BP’s well site leaders, known as “company men,” were negligent in failing to investigate fully clear indications that the Macondo well was not secure and that oil and gas were flowing into the well.

The criminal resolution is structured to directly benefit the Gulf region. Under the order entered by the court pursuant to the plea agreement, \$150 million of the \$400 million criminal recovery is dedicated to acquiring, restoring, preserving and conserving – in consultation with appropriate state and other resource managers – the marine and coastal environments, ecosystems and bird and wildlife habitat in the Gulf of Mexico and bordering states harmed by the *Deepwater Horizon* oil spill. This portion of the criminal recovery will also be directed to significant barrier island restoration and/or river diversion off the coast of Louisiana to further benefit and improve coastal wetlands affected by the spill. An additional \$150 million will be used to fund improved oil spill prevention and response efforts in the Gulf through research, development, education and training.

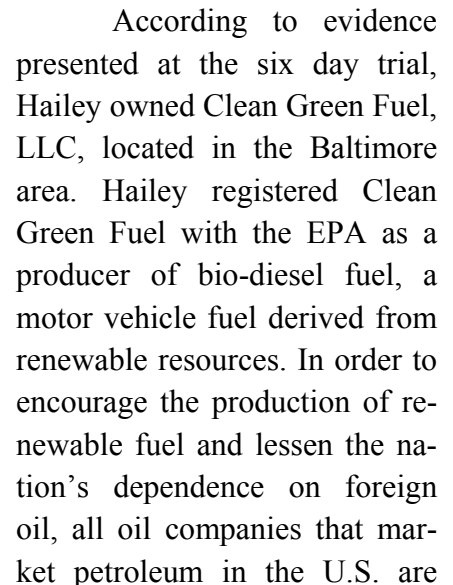
A separate proposed civil consent decree, which resolves the United States’ civil CWA penalty claims, imposes a record \$1 billion civil Clean Water Act penalty, and requires significant measures to improve performance and prevent recurrence, is pending. The charges and allegations pending against individuals in related cases are merely accusations, and those individuals are considered innocent unless and until proven guilty.

The guilty plea and sentencing announced on February 14 are part of the ongoing criminal investigation by the Deepwater Horizon Task Force into matters related to the April 2010 Gulf oil spill. 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, as well as other U.S. Attorneys’ Offices; and investigating agents from: the FBI; Environmental Protection Agency, Criminal Investigative Division; Environmental Protection Agency, Office of Inspector General; Department of Interior, Office of Inspector General; National Oceanic and Atmospheric Administration, Office of Law Enforcement; U.S. Coast Guard; U.S. Fish and Wildlife Service; and the Louisiana Department of Environmental Quality.

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

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2013, **RODNEY R. HAILEY**, of Perry Hall, Maryland, was sentenced in federal district court for the District of Maryland to 151 months in prison followed by three years of supervised release in connection with a scheme in which he sold \$9 million in renewable fuel credits which he falsely claimed were produced by his company, Clean Green Fuel, LLC. Hailey's sentence was enhanced when the judge learned that he obstructed justice by concealing, selling and spending assets that were protected by court order. Hailey was also ordered to pay restitution of \$42,196,089 to over 20 companies, and forfeit \$9.1 million in proceeds of the fraud including cars, jewelry, his home and bank accounts already seized by the government in partial satisfaction of such \$9.1 million judgment. Hailey was convicted on June 25, 2012, of eight counts of wire fraud, 32 counts of money laundering and two counts of violating the Clean Air Act. He has been detained since the guilty verdict.



required to produce a given quantity of renewable fuel or to purchase credits, called renewable identification numbers (RINs), from producers of renewable fuels to satisfy their renewable fuel requirements.

Federal law enforcement agents investigated the scheme after a Baltimore County police detective working with Maryland's federal financial crimes task force received a report about a large number of luxury cars parked in front of Hailey's house. The financial crimes task force contacted the EPA's Criminal Investigation Division and initiated a criminal investigation.

Hailey made over \$9.1 million from selling the false RINs. The loss to the traders and major en-

ergy companies who purchased Hailey's false RINs is over \$40 million, but the loss also extends to small bio-diesel companies which, as a result of Hailey's scheme, were unable to sell their RINs and have been forced out of business.

Hailey used the proceeds of the scheme to purchase luxury vehicles, including BMWs, Ferraris, Bentleys, a Mercedes Benz, a Rolls Royce Phantom, a Lamborghini, a Maserati and others, as well as real estate and more than \$80,000 in diamond jewelry. In all of these transactions, Hailey generally used cash or checks drawn on accounts he controlled to make the purchase, including a check for \$645,330.15 to buy his home in Perry Hall.

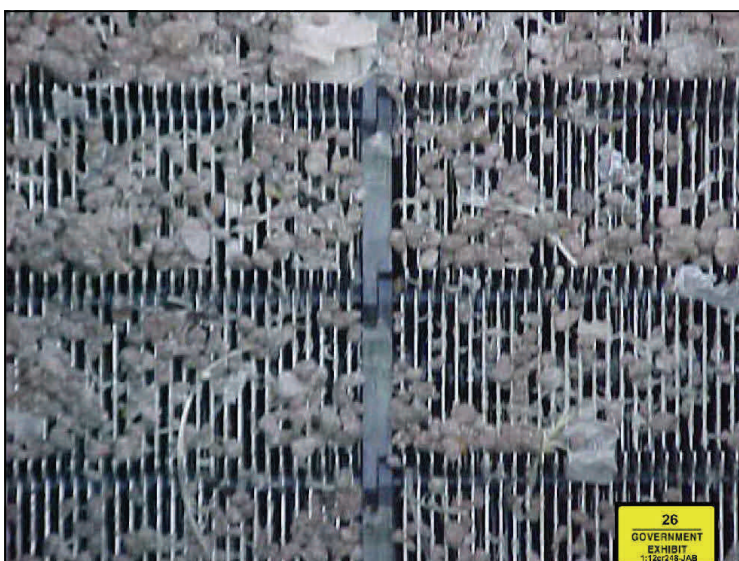
The case was investigated by the Maryland Financial Crimes Task Force which included EPA's Criminal Investigation Division, the U.S. Marshals Service, the Baltimore County Police Department and IRS - Criminal Investigation; the U.S. Postal Inspection Service, and EPA Office of Inspector General - Office of Investigations. It was prosecuted by Assistant U. S. Attorneys Tonya N. Kelly and Stefan Cassella.

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North Carolina Poultry Processing Plant Sentenced for Knowing Violations of Clean Water Act --

On February 26, 2013, **HOUSE OF RAEFORD FARMS, INC.** was sentenced to pay \$150,000 fine, serve 2 years probation, and pay a \$4000 special assessment for knowingly violating the Clean Water Act. In August 2012, a federal jury found House of Raeford Farms, Inc., the owner and operator of a poultry slaughtering and processing facility located in Raeford, North Carolina, guilty of 10 counts of knowing violations of the Clean Water Act. House of Raeford allowed plant employees to bypass the facility's pretreatment system and send its untreated wastewater directly to the city of Raeford's wastewater treatment plant without notifying city officials. The untreated wastewater that was discharged directly to the city plant was contaminated with waste from processing operations, including blood, grease and body parts from slaughtered turkeys. A House of Raeford former employee admitted that the facility would continue to slaughter and process turkeys despite being warned that the unauthorized bypasses had an adverse impact on the city's wastewater treatment plant. The city plant is responsible for treating industrial, commercial and residential wastewater before it was discharged to Rockfish Creek in Hoke County.

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The bar screen at the City of Raeford's POTW contaminated with turkey parts / turkey solids.

Texas-Located Company Pleads Guilty to Violations that Led to Large Fish Kill -- On February 6, 2013, **TIN, INC.**, d/b/a/ **TEMPLE INLAND**, a Delaware Corporation located in Austin, Texas, pled guilty in federal district court for the Eastern District of Louisiana to negligently causing the discharge of a pollutant from its Bogalusa Facility into the Pearl River and to the negligent taking of fish from the Bogue Chitto National Wildlife Refuge. The violations relate to the Clean Water and Refuge Acts. On the CWA violation the maximum penalty is a fine of up to \$200,000 and a term of probation up to five years. The maximum penalty for the Refuge Act violation is a fine of up to \$10,000 per taking. Sentencing has been scheduled for May 1.



Fish kill as a result of Temple Inland's negligent discharge of pollutants into the Pearl River. Over 500,000 fish were killed.

dissolved oxygen in rivers and streams. The greater the BOD, the more rapidly oxygen is depleted in rivers and streams. This means less oxygen is available to fish and higher forms of aquatic life. The consequences of high BOD are the same as those for low dissolved oxygen, namely that aquatic organisms become stressed, suffocate, and die.

In the early morning hours of August 9, 2011, and again late on August 9, 2011, a piece of equipment called an "evaporator" became clogged. As a result of the clogged evaporator, an extremely excessive quantity of liquor overflowed from the boil-out tank. The liquor flowed out of the containment area to the wastewater treatment plant and effluent pond, and ultimately into the Pearl River. The discharge reached the Pearl River sometime beginning August 10, 2011, and continued to at least August 13, 2011, when the facility was shut down. Temple Inland admitted that the discharge of the liquor resulted in a fish-kill in the Pearl River of over 500,000 fish due to high level of BOD. The sample of the discharge collected on August 12, 2011, recorded the discharge as having a 5-day BOD of 116,000 lbs/day exceeding the daily maximum permitted limit of 35,610 lbs/day.

The Bogue Chitto National Wildlife Refuge is a federal wildlife refuge created in 1980, encompassing 36,000 acres of the Pearl River Basin. It is located northeast of Slidell, Louisiana, in the Eastern Dis-

Court documents reflect that the charges stem from a release of a pollutant into the Pearl River in August 2011 which resulted in a large fish kill. Temple Inland was required by the Louisiana Department of Environmental Quality and the U.S. EPA to possess and operate the Bogalusa Facility pursuant to a National Pollutant Discharge Elimination System permit. The permit imposed limitations on the amount of pollutants that could be discharged from the Bogalusa Facility into the Pearl River, a navigable water of the United States. Additionally, the permit required that Temple Inland maintain a certain Biological Oxygen Demand (BOD) level. BOD directly affects the amount of



trict of Louisiana. The southern swampland is one of the least disturbed in the country. The Pearl River and its tributaries run through the refuge. The National Wildlife Refuge System, comprises a national network of lands and waters for the conservation, management and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The National Wildlife Refuge System law enacted by Congress prohibited the disturbance, injury or destruction of property and the taking of fish on a national wildlife refuge. Temple Inland admitted that it negligently caused the taking of fish from the Bogue Chitto National Wildlife Refuge. On August 15, 2011, black water, dead fish, and mussels were observed by the United States Fish and Wildlife Service in waters on the Bogue Chitto National Wildlife Refuge. All fish observed were intact and included recognizable species such as catfish, sturgeon and fresh water drum. Mussels were seen intact with their shells floating in the water. Many were floating in the center of the water and others were grouped and caught by branches in the water. The numbers of fresh dead fish and mussels seen in refuge waters within the water body known as the Government Ditch equaled 1,000 or more each.

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Washington Man Pleads Guilty to Lying About His Ability to Conduct Lead Testing -- On February 8, 2013, **MARTIN GLAVES KUNA**, of Vancouver, Washington, plead guilty in federal district court for the District of Oregon to one count of wire fraud for falsely telling customers that he was certified to perform lead-based paint inspections and testing in homes, where children resided, when in fact, he was not properly certified by state authorities to do so.

The information that Kuna plead guilty to states that from May 2008 to September 2012, Kuna advertised his services to conduct lead-based paint inspections and testing and indicated to individuals via the internet and in person that he was certified to do so. Kuna, however, had not received the required certification and training to inspect and test target housing or child occupied facilities for lead-based paint despite his representations that he had. Over the course of the scheme, Kuna conducted more than ten such inspections. In one instance where Kuna performed lead-based paint inspections and testing, children resided in the home and Kuna provided the home owner



One of the homes Kuna performed lead-based paint inspection and where children were exposed. Kuna was not certified to perform this work.

a false negative for the detection of lead. In January 2012, civil EPA investigators intervened in Kuna's business activities and ordered him to stop lead-based paint inspections and testing. Despite EPA's order, Kuna continued to advertise and perform lead based paint inspections and testing through September 2012.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Michelle Holman Kerin.

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Ohio Company and Its Owner Plead Guilty to Illegal Wastewater Discharge -- On February 11, 2013, **ROBERT D. ARMSTRONG**, of New Matamoras, Ohio, pleaded guilty in federal district court for the Southern District of Ohio to violating the Clean Water Act by causing wastewater from oil and gas wells to



Photograph taken from inside the reservoir towards the area that Armstrong breached with his excavator.

flow into a tributary of the Little Muskingum River in 2010. He also pleaded guilty on behalf of his company, **RCA OIL AND GAS LLC**, which was charged with the same offense. Armstrong is the owner and operator of RCA Oil and Gas which provides services for oil and gas wells in southeast Ohio, including the services related to the hydrofracturing or “fracking” of oil and gas wells.

During June 2010, Armstrong built a reservoir with an earthen wall to hold water he intended to use in the fracking process of a nearby well. The reservoir contained approximately 2.2 million gallons of fresh water. Armstrong added thousands of gallons of brine or wastewater

from the fracking process at two other oil and gas wells to the reservoir. As a result of the addition, all of the liquid in the reservoir was classified as oil field wastewater.

On June 19, 2010, Armstrong used a backhoe to breach a wall of the reservoir, releasing the wastewater into Rockcamp Run. The reservoir contained about 800,000 gallons of wastewater at the time. Most of the water flowed into Rockcamp Run. Analysis of a sample of the wastewater from the reservoir showed significant concentrations of barium and sodium.

The case was investigated by EPA’s Criminal Investigation Division, the Ohio EPA, the Ohio Department of Natural Resources, and the Bureau of Criminal Investigation’s Environmental Enforcement Unit in the Ohio Attorney General’s office. Assistant U.S. Attorney Michael Marous is representing the government in this case.

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Photograph taken from the backside of the reservoir. It shows the breach and the slope of the terrain.

Two Southwest Idaho Men Plead Guilty to Violating the Clean Air Act -- On February 26, 2013, **DOUGLAS GREINER**, of Boise, Idaho, and **BRADLEY EBERHART**, of Garden Valley, Idaho, pleaded guilty in federal court to a one-count Information charging violations of Work Practice Standards of the Clean Air Act, a felony. Both are scheduled to be sentenced on June 3, 2013.

According to court documents, in 2009 and 2010, both men were employees of Owyhee Construction Incorporated, a Boise-based company which contracted to renovate water lines for the City of Orofino. Greiner was the project superintendent, and Eberhard was the on-site supervisor for Riverside Water and Sewer District's Phase III project. During re-construction of the Water System Improvement Project an old cement asbestos pipe was encountered and improperly handled.



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

Greiner pled guilty to a violation of the Clean Air Act's work practice standards and waste disposal standards by knowingly causing another employee to pick up pieces of cement asbestos pipe from a dump site without ensuring proper retrieval and disposal of the asbestos pipe.

Eberhard pled guilty to a violation of the Clean Air Act's work practice standards and waste disposal standards by his own actions or the actions of employees he supervised, when he knowingly failed to



adequately wet the cement asbestos pipe during cutting or disjoining operations; failed to place the asbestos material in proper containers with clear labeling; and failed to dispose of the asbestos material in a licensed facility.

The case was investigated by EPA's Criminal Investigation Division.

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

Georgia Transportation Company Indicted for Chemical Leak that Killed One Person -- On February 6, 2013, **WERNER TRANSPORTATION SERVICES, INC.**, of Gainesville, Georgia, was indicted in federal district court in Columbia, South Carolina, for allegedly violating the Clean Air Act. The company could be fined up to \$500,000.

In July 2009, Werner Transportation Services negligently released anhydrous ammonia, a hazardous substance, and “negligently placed another person in imminent danger of death and serious bodily injury” in violation of federal law. Unaware of the leak, motorist Jacqueline Ginyard died after driving through a toxic ammonia cloud in front of the Tanner Industries Inc. plant in Swansea, South Carolina. The leak occurred after a hose blew out while ammonia was being transferred between the Tanner plant and a Werner tanker truck. Some 7,000 pounds of poisonous ammonia leaked after the wrong type of hose was used to make the transfer, according to state regulators. The spreading ammonia, which can burn people’s lungs, sent at least seven people in the Swansea area to the hospital and caused others to flee from the toxic threat. Leaking ammonia blackened trees and other vegetation for hundreds of yards around the Tanner Industries plant.

The South Carolina Department of Health and Environmental Control fined Tanner \$91,000 in 2010 for a series of emergency preparedness failures connected to the spill. Tanner officials have said they were relying on the trucking company to use the right hose. The state labor department also has fined Tanner \$23,625 for workplace safety violations.

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Ohio Man Charged with Violating Clean Water Act by Discharging Fracking Waste into River Tributary -- On February 14, 2013, **BEN LUPO**, of Poland, Ohio, was charged in federal district court for the Northern District of Ohio with one count of violating the Clean Water Act. He is accused of directing an employee on January 31, 2013, to illegally discharge brine and oil-based drilling mud into a stormwater drain which flowed into an unnamed tributary of the Mahoning River and ultimately into the Mahoning River near Youngstown. The statutory maximum for violating the Clean Water Act is three years in prison, a \$250,000 fine and one year of supervised release. In all cases, the sentences will not exceed the statutory maximum and in most cases they will be less than the maximum.

According to an affidavit filed in federal court, Hardrock Excavating LLC is owned by Lupo and located in Youngstown, Ohio. The company provides services to the oil and gas industry in Ohio and Pennsylvania, including the storage of brine and oil-based drilling mud. There are approximately 58 mobile storage tanks at the facility and each holds approximately 20,000 gallons. The Ohio Department of Natural Resources received a call from an anonymous person who stated that on the night of January 31, 2013, someone would be illegally discharging wastewater from the Hardrock facility.

Ohio DNR inspectors arrived and found a hose, connected to a storage tank, discharging wastewater into a stormwater drain at the facility. Inspectors took a sample of the wastewater, which was black in color. Ohio EPA personnel arrived at the facility on February 1 and found that the unnamed tributary had puddles of oil throughout its length, from where the stormwater drained to the Mahoning River, approximately one mile away. Oil and an oily sheen were also visible in the Mahoning River.

That day, an EPA representative spoke with Lupo about the discharge into the storm drain. Lupo admitted he directed a Hardrock employee to discharge the contents of the storage drain into the stormwater drain, and further admitted that he directed discharge from a storage tank a total of six times, according to the affidavit. Lupo later told EPA and DNR personnel that he directed a Hardrock employee to drain stor-

age tanks at Hardrock into the nearby stormwater drain six times over the previous six months, and that Lupo was the one who “gave the word” for the storage tanks to be discharged, according to the affidavit.

On February 12, a Hardrock employee stated that the discharges began in November 2012 at the direction of Lupo and that the employee was aware of at least 20 discharges into the stormwater drain. The employee further stated that Lupo directed the employee, if questioned by authorities, to state that the discharges were limited to a total of four to six times , according to the affidavit.

The case was investigated by EPA’s Criminal Investigation Division, the Ohio EPA, Ohio Department of Natural Resources, the Ohio Bureau of Criminal Investigation, the Youngstown Department of Public Works, and the Youngstown Fire Department. It is being prosecuted by Special Assistant U.S. Attorney Brad Beeson. A charge is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government’s burden to prove guilt beyond a reasonable doubt.

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