

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. To subscribe to this monthly bulletin you may sign up for email alerts at <http://www2.epa.gov/enforcement/criminal-enforcement-policy-guidance-and-publications>.

April-May 2016

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Defendant Summary

Region	Defendants	Case Type/Status
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Florida Fumigation Company and Two Individuals Sentenced in Connection with Illegal Pesticide

Application That Resulted in Injuries to a Minor

On May 12, 2016, SUNLAND PEST CONTROL SERVICES, INC., (Sunland), GRENALE WILLIAMS, of South Bay, Florida, and CANARIE DEON CURRY, of Riviera Beach, Florida, were sentenced in federal district court for the Southern District of Florida in connection with the illegal application of a pesticide that resulted in injuries to a minor child. Sunland was sentenced to five years of probation. Williams and Curry were sentenced to one year in prison.

Sunland, Williams, and Curry, previously pled guilty for their involvement in the illegal application of sulfuryl fluoride (a pesticide), contrary to the label's safety requirements. Sunland also pled guilty to making false statements in connection with the investigation.

According to court documents, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates the use of pesticides, including those designated for restricted use due to their potential adverse effects, including serious injury. Application of restricted use pesticides is limited to certified applicators or those under the direct supervision of certified applicators. Sulfuryl fluoride, a commonly used antimicrobial in structural fumigations for termites, is one such restricted use pesticide that is registered with the EPA. At the heart of the safe use of such pesticides is compliance with the product label, which includes the written, printed, or graphic matter associated with the pesticide. Under FIFRA, the label is the law, and strict compliance with it is critical to the safe application of the restricted use pesticide. Federal law also prohibits the making of material false statements in a matter within the jurisdiction of the EPA.

Terminix, without warning or approval, subcontracted the job to Sunland. The fumigation occurred over a weekend and the residents returned to their home on Sunday, August 16, 2015 to find a clearance tag on the front door indicating that it was safe to enter. During the evening several family members became ill, and medical attention was sought for their nine year old son.

Court records and a joint factual statement indicate that in June 2015 residents contracted with Terminix for a home fumigation for termites under an existing warranty. Terminix, without warning or approval, subcontracted the job to Sunland. The fumigation occurred over a weekend and the residents returned to their home on Sunday, August 16, 2015 to find a clearance tag on the front door indicating that it was safe to enter. During the evening several family members became ill, and medical attention was sought for their nine year old son. It was determined that the family's symptoms were consistent with pesticide poisoning.

A subsequent investigation revealed that contrary to the label requirements for use of the potentially deadly gas, the defendants failed, among other violations, to: provide the Fact Sheet for the pesticide being used; have the required number of properly trained personnel on site following the

application of the pesticide; properly aerate the fumigated space; and conduct clearance testing with an approved and calibrated Low Fumigant Level Detection Device. In addition, a clearance tag was left at the premises indicating it was safe to enter when in fact the requisite procedures had not been completed. The family was falsely assured by Terminix and Sunland that the aeration and clearance requirements had been met. Additionally, Sunland representatives misrepresented the specific brand of pesticide that was used and indicated that the fumigation, aeration, and clearance of the home was in accordance with the law when in truth and fact, the defendants were not in compliance.

The case was investigated by EPA's Criminal Investigation Division, the Florida Department of Agriculture and Consumer Services, Bureau of Pesticide and Incident Response, and the Florida Office of Agricultural Law Enforcement. It was prosecuted by Special Assistant U.S. Attorney Jodi A. Mazer and Assistant U.S. Attorney Thomas Watts-FitzGerald of the Economic & Environmental Crimes Section.

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Mine Operator Sentenced for Polluting Alaska River -- On April 1, 2016, **JAMES SLADE**, of Calgary, Canada, was sentenced in federal district court for the District of Alaska to 12 months in prison for violating the federal Clean Water Act. Slade was convicted of two Clean Water Act crimes for discharging polluted wastewater into the Salmon River as a result of his operation of the Platinum Creek Mine located in western Alaska. Slade was ordered to serve a one-year term of supervision after he is released from prison. The court concluded he did not have the ability to pay a fine.

Evidence at trial showed that the polluted discharges from the mine were hundreds of times over the legal limits set in the National Pollution Discharge Elimination System water quality permit issued for the mine. The Clean Water Act violations occurred during the 2010 and 2011 mining seasons, and were shown to be repetitive and ongoing. At the sentencing hearing, the United States presented evidence from a contaminants biologist who took samples of the turbid wastewater being discharged from the mine into the Salmon River in September 2011. Laboratory analysis conducted on the samples showed that the wastewater from the mine contained toxic levels of metals, including aluminum and copper that can be deadly to fish and aquatic life in the river. Prior to imposing the sentence, U.S. District Judge Sharon L. Gleason noted that Slade made a choice to continue the mining production going even after the turbidity levels in the river were off the charts.

The Salmon River is located in Western Alaska, running past the Platinum Creek Mine and emptying into Kuskokwim Bay. It passes through the Togiak National Wildlife Refuge before entering the bay, and all five species of Alaska Salmon spawn in the river. Evidence admitted at trial showed a flow of up to 1200 gallons per minute of wastewater was discharged from the mine's processing plant into one or more settling ponds that were not lined, and that did not contain the wastewater. Instead, the wastewater flowed out of the ponds and into the Salmon River, turning it from crystal clear to dirty brown. More than one million gallons of wastewater was therefore discharged each day the plant operated.



Slade was the chief operating officer for XS Platinum, the company that owned the mining claims, and he is the third manager or senior executive of that company to be convicted in this case. Robert Pate, who was employed as the mine manager previously pled guilty to violating the Clean Water Act, along with James Staeheli, the prior processing plant manager, who also pled guilty to a Clean Water Act crime. All three individuals worked for the now defunct XS Platinum, Inc. That company was registered in name only in Delaware, and was 100 percent owned by an offshore company. Two other senior executives from XS Platinum, both Australian citizens, were also indicted but have refused to return to the United States to stand trial on the charges.

The case was investigated by EPA's Criminal Investigation Division and the U.S. Department of

Oil Company Sentenced for Multiple Felonies Related to Violations of Offshore Oil Production Safety and Environmental Regulation --On April 6, 2016, **ENERGY RESOURCE TECHNOLOGY GOM, LLC (ERT)**, was sentenced in federal district court for the Eastern District of Louisiana to three years of probation and ordered to pay a \$4 million fine and \$200,000 community service payment. The company pled guilty to two felony counts of violating the Outer Continental Shelf Lands Act and two felony counts of violating the Clean Water Act related to conduct on its offshore oil production facilities in the Gulf of Mexico. During the period of probation, ERT, its subsidiaries, agents and affiliated business entity Talos Energy Offshore, LLC, and employees thereof, will be required to comply with a Safety and Environmental Compliance Plan.

According to court documents, on or about November 26, 2012, ERT knowingly and willfully failed to comply with the regulations for hot work on its offshore production platform known as Ship Shoal 225. Specifically, contractors for ERT violated Title 30, Code of Federal Regulation, Section 250.113(c)(4), which mandates that welding and associated activities, also known as hot work, on offshore facilities shall not take place within 10 feet of a well bay unless production in that area is shut-in.

On or about November 27, 2012, on Ship Shoal 225, ERT knowingly and willfully failed to comply with the regulations for blowout preventer testing. A blowout preventer system is designed to ensure well control and prevent potential release of oil and gas and possible loss of well control. According to the Code of Federal Regulations, the blowout preventer system must be pressure tested at regular intervals, and the entire system must pass the pressure tests prior to resuming normal operations. According to Title 30, Code of Federal Regulations 250.617, the results of the pressure testing, including any problems or irregularities observed during the testing and the actions taken to remedy the problems, must be recorded. The blowout preventer test record and pressure chart must be signed and dated by the onsite representative as correct. The blowout preventer pressure chart and operations log are required to be maintained on the platform and available for inspection by BSEE.

According to the pressure chart for the tests conducted by ERT's contractors on November 27, 2012, only 6 of the 7 required components were tested. The chart showed pressure testing failures that required the workers on the platform to re-test the blowout preventer system. However, at the conclusion of the testing, the blowout preventer chart was not approved for accuracy by the ERT on-site representative on duty nor did the workers re-test the system. Then, on or about November 29, 2012, inspectors with BSEE came onboard the platform at Ship Shoal 225 for a routine inspection and requested blowout preventer testing records. ERT could not produce an acceptable pressure test chart because of the deficiencies in the November 27, 2012 testing.

ERT also violated the Clean Water Act by tampering with the method of collecting the monthly overboard produced water discharge samples to be tested for oil and grease content pursuant to its NPDES permit. In Spring 2014, ERT became suspicious that contract operators were manipulating the integrity of the overboard produced water samples at some of its platforms by filtering the sample through coffee filters or other similar means to ensure that ERT would not be found to be in violation of its Permit. Although the Discharge Monitoring Reports for the platforms from October 2012 through March 2014, showed that the

platforms were not discharging oil and grease in excess of the permit requirements, when ERT began an investigation, the results of which it self-reported to the United States, and took the samples in accordance with the Permit requirements, multiple platforms were shown to be in violation of the monthly discharge allowances. From April 2014 through June 2014, discharge monitoring samples correctly taken by ERT showed multiple Gulf of Mexico platforms, including High Island 557A, South Marsh Island 107A, Ship Shoal 225, Ship Shoal 224A, East Cameron 346A, Eugene Island 302C, South Timbalier 63A, Vermilion 331A and 171A, to be discharging oil and grease in excess of their monthly allowance under the Permit.

ERT's most recent Clean Water Act violation occurred on or about June 9, 2015. On that day, two contract operators on an ERT oil production platform in the Gulf of Mexico at platform Vermilion 195A were engaged in bleeding pressure from the production casing on a plugged well. Operators routinely encounter liquid, including pollutants such as well bore fluid, acid, and hydrocarbon/oil residue, when bleeding pressure from well casings, and therefore precautions against an unpermitted discharge into the Gulf of Mexico should be taken. On or about June 9, 2015, the two contract operators onboard VR 195A did not take any precaution against a discharge of pollutants when they began bleeding down the pressure from the production casing. The contract operators attached a hose to the valve from which the casing pressure was to be released and put the end of the hose at the edge of the platform, allowing well bore fluid mixed with hydrocarbons to shoot out over the Gulf of Mexico falling into the water below in violation of the Clean Water Act.

The case was investigated by EPA's Criminal Investigation and the Department of Interior-Office of Inspector General (Energy Investigations Unit) with assistance from the Investigations and Review Unit, Bureau of Safety and Environmental Enforcement. It was prosecuted by Assistant United States Attorney Emily K. Greenfield of the United States Attorney's Office's National Security Unit.

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Norwegian Shipping Company Sentenced in Alabama to Pay \$2.5 Million for Illegally Discharging Oil into the Ocean -- On April 8, 2016, DSD Shipping (DSD), a Norwegian shipping company, was sentenced to pay a total corporate penalty of \$2.5 million as a result of its convictions in Mobile, Alabama, for obstructing justice, violating the Act to Prevent Pollution from Ships (APPS), tampering with witnesses and conspiring to commit these offenses. The company was ordered to pay \$500,000 of the penalty to the Dauphin Island Sea Lab Foundation to fund marine research and enhance coastal habitats in the Gulf of Mexico and Mobile Bay. In addition, DSD was placed on a three year term of probation and was ordered to implement an environmental compliance plan to ensure the company's vessels obeyed domestic and international environmental regulations in the future. The operation of commercial marine vessels generates large quantities of waste oil, oil-contaminated waste water and garbage. International and U.S. law forbid the discharge of waste oil and garbage into the ocean and require that these vessels use pollution prevention equipment, known as an oily-water separator, to prevent the discharge of oil-contaminated waste water. Should any overboard discharges occur, they must be documented in either an oil record book or a garbage record book, logs that are regularly inspected by the U.S. Coast Guard.



The evidence demonstrated at trial that DSD operated the *M/T Stavanger Blossom*, a 56,000 gross ton crude oil tanker, from 2010 to 2014 without an operable oily-water separator as required by law. On January 29, 2010, an internal corporate memorandum written by a vessel engineer warned DSD that the pollution prevention equipment

did not work. The memo further warned that if the problem was not addressed, "some day, it might end up that someone is getting caught for polluting." However, rather than repair or replace the oily-water separator, DSD operated the vessel illegally for the next 57 months before the conduct was identified by U.S. Coast Guard inspectors in November 2014. As the testimony at trial revealed, DSD illegally discharged approximately 20,000 gallons of oil-contaminated waste water and plastic bags containing 270 gallons of sludge into the ocean during the last two-and-a-half months of the vessel's operation.

The evidence also established that DSD lied about these activities by maintaining fictitious record books aboard the vessel. These records omitted the illegal discharges of oil and garbage and falsely claimed that pollution prevention equipment was used when it was not. Further, when the U.S. Coast Guard examined the ship, DSD's senior ship officers lied about the discharges and ordered their subordinates to do the same.

In court documents filed prior to sentencing, prosecutors informed the court that despite convictions for eight felony offenses, DSD continued to deny wrongdoing in Norwegian press accounts. Prosecutors also noted that previous deficiencies in the operation of pollution prevention equipment had been identified in

other DSD vessels while they were in international ports.

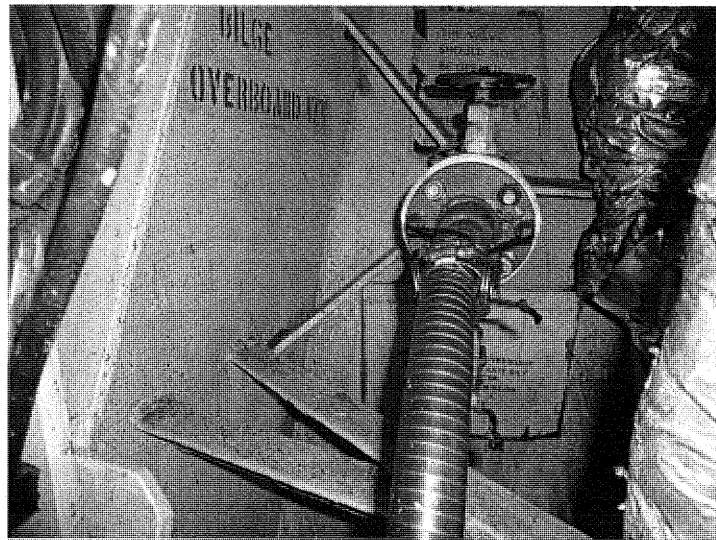
Three senior engineering officers employed by DSD to operate the ship were also sentenced. Defendant Bo Gao, chief engineer of the vessel, and Xiaobing Chen, second engineer of the vessel, were both sentenced to six months imprisonment as a result of their conduct. Defendant Xin Zhong, fourth engineer of the vessel, was sentenced to two months imprisonment. All three also face the loss of their marine engineering license and exclusion from employment in the merchant marine. A fourth DSD employee, Daniel Paul Dancu, pleaded guilty in October 2015.

The case was investigated by EPA's Criminal Investigation Division, the U.S. Coast Guard Sector Mobile, and the U.S. Coast Guard District Eight, the Coast Guard Investigative Service. It was prosecuted by Assistant U.S. Attorney Michael D. Anderson, with the U.S. Attorney's Office for the Southern District of Alabama, and Trial Attorney Shane N. Waller, with the Department of Justice's Environmental Crimes Section.

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Korean Company Fined \$750,000 and to Make \$200,000 Community Service Payment for Illegal Discharge of Waste Water -- On April 5, 2016, **DOORAE SHIPPING COMPANY, LTD**, a South Korean maritime operations company, plead guilty in federal district court for the District of Hawaii and was sentenced to pay a fine of \$750,000, a community service payment of \$200,000, and a term of two years of probation for the failure to maintain an accurate oil record book, in violation of the Act to Prevent Pollution from Ships, and making false statements to the U.S. Coast Guard concerning the discharge of oil contaminated bilge water.

According to the Information to which Doorae pled guilty, the operation of a marine vessel, such as the *B. Sky*, an oil tanker ship flagged out of Vanuatu and operated by Doorae, generates large quantities of waste oil and oil-contaminated waste water. International and U.S. law requires that these vessels use pollution prevention equipment to preclude the discharge of these materials. Should any overboard discharges occur, they must be recorded in an oil record book, a log that is inspected by the U.S. Coast Guard.



Bilge sent overboard with flexible hose.

Information produced to the court established that instead of running bilge water through an oil water separator, the Chief Engineer of the *B. Sky* discharged over 500 gallons of oily machinery space bilge water directly into the ocean. The Court approved the payment of the \$200,000 community service payment, per an agreement between the government and Doorae to be donated to the National Fish and Wildlife Service Foundation to fund projects that preserve and enhance coral reefs and reef ecosystems in Hawaii.

In addition, the Court also took the guilty plea of the Chief Engineer of the *B. Sky*, **JEUNG MUN**, to one charge of causing the maintenance of a faulty oil record book in violation of the Act to Prevent Pollution from Ships. The Court scheduled Mun's sentencing for July 27, 2016.

The case was investigated by EPA's Criminal Investigation Division, the U.S. Coast Guard Sector Honolulu, and the U.S. Coast Guard Investigative Service. It was prosecuted by Assistant U.S. Attorney Ken Sorenson.

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Texas Man Sentenced to Prison for Violating Asbestos Work Practice Standards -- On May 26, 2016, **RODNEY K. BESHEARS**, of Kennard, Texas, was sentenced in federal district court for the Eastern District of Texas to prison for federal environmental violations. Beshears pleaded guilty on February 9, to violating the work practice standards of the Clean Air Act and was sentenced to 12 months and one day in federal prison.

According to information presented in court, Beshears admitted that in October of 2011, he and his employees began excavating and removing a pipeline in northeast Texas. On December 16, 2011, an inspector with the Texas Department of State Health Services conducted a site inspection where Beshears was removing the pipeline near Diana, Texas, and informed Beshears that the pipeline had a coating of asbestos. On December 21, 2011, Beshears received training on asbestos removal practices which included instructions on the proper handling of asbestos material required under the work practice standards of the National Emission Standards for Hazardous Air Pollutants or "NESHAP" rules for asbestos when excavating and removing pipe with a coating of asbestos. On January 13, 2012, the Texas Department of State Health Services inspected another site where Beshears was excavating and removing the pipeline just outside of Ore City, Texas, and again informed Beshears that the pipe had a coating of asbestos material.

Beshears' removal of the pipeline continued through March, 2012, during which time, Beshears removed, and caused others to remove, several thousand feet of pipeline which contained regulated asbestos containing material, between Diana and Ore City, Texas. The excavation, cutting and removal of the pipeline, as directed by Beshears, included no wetting of the asbestos material that coated the pipeline as Beshears had been instructed during the training. The asbestos material was crumbled and pulverized by hitting the pipe coating with a hammer to knock it off the pipe to expose the pipe so it could be cut into pieces; asbestos was crumbled and pulverized by dragging the pipe segments across the ground; and asbestos was not disposed of at approved disposal facilities. Beshears was indicted by a federal grand jury on September 3, 2014.

The case was investigated by the EPA's Criminal Investigation Division, the TCEQ's Criminal Investigation Division, and the Texas Department of Parks and Wildlife. It was prosecuted by Assistant U.S. Attorney Jim Noble.



Asbestos Coated Pipeline

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Owner Admits Illegal Underground Sewage Dumping at RV Site in California -- On May 10, 2016, **DANIEL WILLIAMS** of Arizona pleaded guilty in federal district court for the Southern District of California, admitting that he concealed the illegal underground disposal of sewage at a recreational vehicle storage location in Holtville, California. He is scheduled for sentencing on August 5.

In 2005, Williams formed a partnership known as Dunes Toy Storage with another individual. In entering his plea, Williams acknowledged that a septic leach system was installed at Dunes Toy Storage even though he had no authorization from the EPA, and the permit obtained from Imperial County specifically prohibited the use of leach lines.

Williams admitted that he was aware that the sewage was leaching out underground at the site from 2006 to 2015. Williams stated that even after he became aware of the federal felony prosecution of Glamis Dunes Storage for the same offense, he concealed the existence of the underground discharge at Dunes Toy Storage and did not bring it to the attention of the authorities. Over the last decade, hundreds of thousands of gallons of improper waste was discharged at the site.

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

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Owner of California Trucking Company Pleads Guilty to Dumping 11,000 Gallons of Waste Soap into River -

- On May 9, 2016, **DAVID LEE FLURY**, owner and operator of Flury Industries, Inc., a Santa Fe Springs-based waste-hauling company, pleaded guilty in federal district court for the Central District of California to a felony charge of water pollution, specifically to dumping 11,000 gallons of waste water and soap into a tributary of the San Gabriel River in Santa Fe Springs. His sentencing has been set for August 15. He faces a statutory maximum sentence of three years in prison and a \$250,000 fine.

The San Gabriel River, one of the three most important waterways in Southern California, flows into the Pacific Ocean at Alamitos Bay between the cities of Long Beach and Seal Beach. Flury admitted that the city of Santa Fe Springs spent nearly \$750,000 cleaning up the soapy waste that he illegally dumped into Los Coyotes Creek.

Flury had previously been indicted with multiple felony counts, including water pollution, mail and wire fraud, witness tampering, destruction of evidence and identity theft. The federal grand jury indictment alleged that Flury used interstate wire communications and the mail system to defraud approximately 17 customers out of more than \$350,000. The indictment alleges that Flury told his customers that he would pick-up their various waste products and transport the waste for disposal at a facility licensed to receive and dispose of such waste products. Instead, Flury illegally dumped tens of thousands of gallons of waste products into the San Gabriel River and desert areas in Riverside County, according to the indictment.

The case was investigated by EPA's Criminal Investigation Division, the city of Santa Fe Springs Fire Department, the city of Santa Fe Springs Police Department, the Los Angeles Department of Public Works, and the California Department of Toxic Substances Control.

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New York Village Employee Pleads Guilty to Illegally Dumping Sewage into Creek -- On May 20, 2016, **ANDREW THOMPSON**, of Westfield, New York, 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, and a fine up to \$25,000 per day of violation. Sentencing is scheduled for August 16, 2016.

Assistant U.S. Attorney Aaron J. Mango, who is handling the case, stated that the defendant was the chief operator of the Waste Water Treatment Plant for the Village of Westfield, New York. On June 12, 2014, a malfunction occurred at the West Side Pump Station located in the Village. The pump station was unable to pump the untreated sewage flowing through the station, which resulted in untreated sewage being discharged into Chautauqua Creek. Based on an alarm that was triggered due to the sewage overflow, Thompson was aware of the discharge of sewage into the creek.

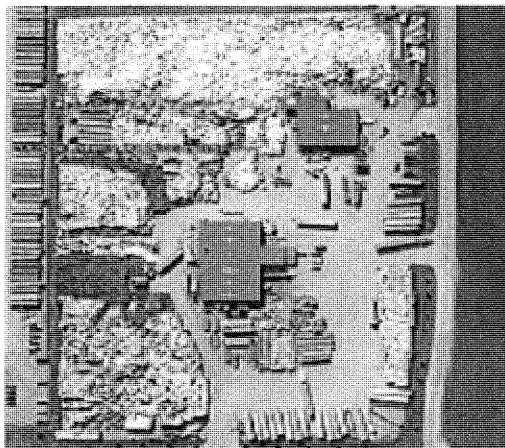
The following day on June 13, 2014, as workers were attempting to fix the pump station, Thompson directed them to discharge the untreated sewage pumped out of the pump station into Chautauqua Creek. Thompson did not have a permit issued under the Clean Water Act for the discharge of untreated sewage, a pollutant, into the creek and acted negligently in allowing the untreated sewage to be discharged in such a manner.

The case was investigated by EPA's Criminal Investigation Division and the New York State Department of Environmental Conservation. It is being prosecuted by Assistant U.S. Attorney Aaron J. Mango.

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Texas Corporation Chief Executive Admits Unlawfully Storing Hazardous Waste -- On May 5, 2016, **JAMES ALEXANDER**, the president and chief executive officer of Southco Enterprises, Inc. of Sherman, Texas, pleaded guilty in federal district court for the Northern District of Texas on behalf of the corporation to a one-count Information charging treating, storing or disposing of hazardous waste without a permit.

According to the factual resume filed in the case, Southco Enterprises, Inc. operated several waste transportation vehicles in the Dallas area that were stored at facilities including Al-Kel Chemical, located on



Aerial view of Al-Kel facility



55-Gallon drums, in various stages of deterioration, containing hazardous waste were stored in trailers.

Goode Road in Hutchins, Texas. In approximately December 2007, Al-Kel Alliance, Inc., (Al-Kel) received a Notice of Violation from the Texas Commission on Environmental Quality for storing numerous 55-gallon drums and 350-gallon totes that contained

unknown chemicals. The Notice of Violation also noted two stationery “box trailers” with totes and fiber pack drums. TCEQ instructed Al-Kel to evaluate all the containers, including the contents of the two trailers, conduct an adequate waste determination, and ship the waste to the appropriate facility.

From approximately October 1, 2010, through August 1, 2011, accumulated hazardous wastes were again stored on several “box trailers” owned by Southco and located at the Al-Kel facility. Southco knew the accumulated hazardous waste in the “box trailers” must be disposed of at an appropriate facility.

If the court agrees to the terms of the plea agreement, the maximum possible sentence imposed includes a \$400 mandatory special assessment and \$250,000 in monetary penalties. The \$250,000 in penalties consists of a \$150,000 criminal fine payable to the U.S. District Clerk, \$50,000 payable to the Southern Environmental Enforcement Network Training Fund in Birmingham, Alabama, and \$50,000 payable to Hutchins Fire and Rescue. The payments to Hutchins Fire and Rescue are to be specifically used to acquire, purchase, lease, contract for, maintain, calibrate, test, transport, stage or store specialized equipment and gear used exclusively for actions related to spills, leaks, emissions or release of toxic or hazardous materials constituting, or possibly leading to, environmental pollution in North Texas.

In addition, if the plea agreement is accepted by the court, Southco Enterprises, Inc. may be subject to suspension and disbarment at the discretion of the U.S. Environmental Protection Agency.

The case was investigated by EPA's Criminal Investigation Division and the Texas Commission on Environmental Quality. It is being prosecuted by Deputy Criminal Chief Assistant U.S. Attorney Lisa J. Dunn and Assistant U.S. Attorney Errin Martin.

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Montana Man Convicted of CWA Violations and Destruction of U.S. Property – On April 7, 2016, **JOSEPH DAVID ROBERTSON** was found guilty in federal district court for the District of Montana on two counts of unauthorized discharge of pollutants into waters of the United States and one count of injury or depredation of United States property. Robertson was indicted by a grand jury in May of 2015 as a result of illegal ponds he built on two parcels of land near Basin, Montana, one on Beaverhead-Deerlodge National Forest land and the other on adjacent private property. The ponds resulted in the discharge of dredged and fill material into a tributary stream and adjacent wetlands and caused widespread damage to both properties.

At trial, the government introduced evidence that in October of 2013, a United States Forest Service special agent visited the National Forest property to determine whether Robertson had complied with previously issued conditions of probation for misdemeanor violations of USFS regulations. The agent testified at trial that during the site visit, she observed multiple ponds dug into an existing stream on both USFS and adjacent private property.



One of nine ponds illegally constructed on U.S. Forest Service land.

During a subsequent site visit in November of 2013, Robertson admitted to Environmental Protection Agency and USFS criminal special agents that he had performed the work on the National Forest property using an excavator. State and federal officials visited the site again in May of 2014, and observed that Robertson had done additional work. The site was now approximately 1.2 acres in size, and extended beyond the National Forest property to a private property that he did not own. The work consisted of nine ponds of varying sizes, including some as large as approximately 4900 square feet that were placed directly in the stream and wetlands area. Unconsolidated dredged material from the ponds had been used to create the berms and had been placed in and around the stream and wetlands. Robertson admitted that he had completed the additional work. Additional investigation revealed that Robertson continued to construct ponds on the USFS property after May of 2014, despite being told repeatedly that he had no legal right to do so.

One of the central legal issues at trial was whether the waters polluted by Robertson were “waters of the United States” for purposes of the Clean Water Act. The United States introduced evidence and

expert testimony from the Army Corps of Engineers and the EPA that the stream and wetlands had a significant nexus to traditional navigable waters, and therefore were “waters of the United States.” Fishery biologists from the Montana Fish, Wildlife and Parks and the USFS testified that this headwater and wetland complex provided critical support to trout in downstream rivers and fisheries, including the Boulder and Jefferson Rivers.

The case was investigated by EPA’s Criminal Investigation Division, the United States Forest Service, the Environmental Protection Agency Criminal Investigation Division, the Army Corps of Engineers, and the Jefferson County Sheriff’s Office. Other agencies that assisted the investigation included Montana Fish, Wildlife and Parks and the Jefferson Valley Conservation District. It was prosecuted by Assistant U.S. Attorney Bryan Whittaker and Special Assistant U.S. Attorney Eric Nelson from EPA.

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District of Columbia Man Indicted for Improperly Removing Asbestos and Defrauding Investors -- On May 5, 2016, **JAMES POWERS**, of Washington, D.C., was indicted in federal district court for the District of Columbia for violating the Clean Air Act and for fraud stemming from a scheme to improperly remove asbestos from a historic building in the District of Columbia.

The seven-count indictment charges Powers with violations of the Clean Air Act, wire fraud and first-degree fraud, which is a District of Columbia offense. The indictment also includes a forfeiture allegation seeking all proceeds that can be traced to the fraud scheme.

According to the indictment, asbestos, a once-popular fireproofing insulation, is now known to cause lung cancer, asbestosis and mesothelioma in people who inhale the fibers released when asbestos is disturbed. Congress has determined that there is no safe level of exposure to asbestos. The Clean Air Act requires that renovation in asbestos-containing properties follow specific protocols designed to safely remove asbestos from the property prior to any renovation or demolition activity, so as not to expose workers to the risk of deadly respiratory diseases.

The development project at issue involved renovating the historic Friendship House, located at 619 D Street SE in Washington, D.C., into condominiums, a development known as the Maples. The indictment alleges that, in March 2010, Powers formed a partnership with a local real estate development firm to purchase and renovate the property. According to the indictment, an asbestos survey of the property documented asbestos throughout the property, including in floor tiles, wall board, and pipe insulation. After the survey, the partnership received bids from licensed professional asbestos abatement and renovation firms in the area. The indictment alleges that, despite receiving those bids and despite knowing that the building contained asbestos, Powers hired Larry Miller, of Palmetto, Georgia, a general contractor from Atlanta with no training, certification, or experience in asbestos abatement, to conduct interior demolition and renovation of the building. Powers represented to his partners that a qualified entity would conduct appropriate asbestos abatement at the property and emailed them a proposed contract, but the contract was with a corporation that, unbeknownst to his partners, was an alter-ego for Powers.

The indictment further alleges that Miller and his crew of workers conducted interior demolition at the Maples during September and October 2011, without any asbestos abatement having occurred. Even after an inspection by local environmental authorities revealed asbestos in the building, Powers had the workers continue demolition. Over the course of the project, the workers disturbed substantial quantities of asbestos, exposing themselves to a substantial risk of serious illness later in life.

Miller pleaded guilty on Nov. 19, 2015, to one count of negligent endangerment under the Clean Air Act. The charge carries a maximum sentence of not more than one year of imprisonment, a fine of up to \$100,000, and a term of supervised release and/or probation.

If convicted, Powers faces up to five years in prison and a fine of up to \$250,000 or twice the gross gain or loss to victims under the Clean Air Act, and a maximum of 20 years in prison and a fine of up to \$250,000 or twice the gross gain or loss to victims under the wire fraud statute.

After the acts described in this Indictment, a licensed asbestos abatement firm conducted abatement at the Maples. The District of Columbia Department of the Environment subsequently conducted inspections and found the property to be free of all asbestos-containing materials.

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

The case was investigated by EPA's Criminal Investigation Division and the Department of Transportation. Among those also involved in the case are trial attorney Cassandra J. Barnum, senior trial attorney Lana Pettus and paralegal specialist Cynthia Longmire of the Environmental Crimes Section and those working at the U.S. Attorney's Office, including paralegal specialists Kaitlyn Krueger, John Lowell, and former paralegal specialist Krishawn Graham and Assistant U.S. Attorneys Jonathan Hooks and Zia Faruqui.

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German Shipping Company Charged with Covering Up Illegal Dumping of Oil Waste Water into Great Lakes -- On May 11, 2016, **MST MINERALIEN SCHIFFFAHRT SPEDITION UND TRANSPORT GMBH**, a German company and operator of the M/V Cornelia, was indicted in federal district court for the District of Minnesota with violating the Act to Prevent Pollution from Ships (APPS) by failing to maintain an accurate ship record about the disposal of oil-contaminated waste. The defendant is also charged with presenting falsified records to the U.S. Coast Guard.

According to the indictment and documents filed in court, from February 2015 through October 2015, the M/V Cornelia, a German-owned commercial vessel, experienced significant leakages of oily waste-water. As a result, the M/V Cornelia was accumulating a substantial volume of machinery space bilge water.

On at least ten occasions during the indicted period, the M/V Cornelia's Chief Engineer and/or Second Engineer instructed members of the engine room crew to transfer machinery space bilge water from the dirty bilge tank to the clean bilge tank, which is a separate tank that is supposed to contain only clean, oil-free water, and then discharge the oily waste-water overboard. At least one occasion when machinery space bilge water was transferred to the clean bilge tank and then discharged overboard occurred in approximately May 2015 while the ship was in the Great Lakes.

On each occasion in which oily waste-water was transferred internally and then discharged overboard, the Chief Engineer intentionally failed to record the transfers and subsequent discharges of oily waste-water in the M/V Cornelia's Oil Record Book (ORB). This gave the false impression in the ORB that all of the oily waste-water had been properly handled and disposed.

On November 3, 2015, the M/V Cornelia called upon the Port of Duluth to load grain for transport to Africa. At that time, U.S. Coast Guard inspectors boarded the vessel to conduct a Port State Control examination and were presented with the M/V Cornelia's ORB containing the omissions and false entries.

The indictment is the result of an investigation conducted by EPA's Criminal Investigation Division and the U.S. Coast Guard Investigative Service. It is being prosecuted by Assistant U.S. Attorneys Benjamin F. Langner and John Kokkinen.

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Illinois Man Charged with Violating Clean Air Act, Making False Statements Related to Asbestos

Removal -- On May 10, 2016, **JOSEPH J. CHERNIS, IV**, of Sherman, Illinois, is scheduled to face charges in federal district court for the Central District of Illinois that he violated the Clean Air Act and made false statements related to asbestos removal at the former Pillsbury Mills / Cargill facility in Springfield. The indictment, returned by the grand jury on May 5, 2016, charges Chernis with illegal and unsafe asbestos removal and with making false statements during a hearing in the Circuit Court of the Seventh Judicial District, Sangamon County.

The indictment alleges that in October 2014, Chernis hired an untrained individual to illegally remove dry asbestos pipe insulation from the facility located at 1525 East Phillips Street. From October 2014 to August 2015, dry asbestos-containing insulation was allegedly cut and stripped from pipes inside four buildings at the facility, including the structure known as the Dryer building. The asbestos debris was stuffed into approximately 300 garbage bags and at least two open-topped cardboard boxes, and left inside vacant buildings at the facility. The indictment further alleges that in late October 2014, Chernis caused the Dryer building to be demolished with more than 1,000 linear feet of asbestos pipe insulation remaining inside the structure.

The indictment further charges Chernis with two counts of making false statements during a hearing on October 1, 2015, in the Circuit Court of the Seventh Judicial District, Sangamon County, in connection with a civil action filed against him by the Illinois Attorney General's Office at the request of the Illinois Environmental Protection Agency. The indictment alleges Chernis falsely represented that he did not know who had performed the demolition work at the Pillsbury Mills / Cargill facility, when he knew that he had personally participated in the demolition work and had solicited others to assist him. In addition, Chernis allegedly falsely represented that another individual was responsible for the work activity by the untrained individual hired to remove dry asbestos pipe insulation when he knew that he had hired and directed the individual's activity at the facility.

The indictment specifically charges Chernis with four violations of the Clean Air Act and the federal asbestos regulations from October 1, 2014, to August 31, 2015: failure to have at least one on-site representative, trained in federal asbestos regulations, present during the removal of regulated asbestos-containing material; failure to adequately wet all regulated asbestos-containing material and ensure that it remained wet until collected and contained or treated in preparation for disposal; failure to remove all regulated asbestos-containing material from a building before beginning any activity that would break-up, dislodge or similarly disturb regulated asbestos-containing material; and failure to deposit all asbestos-containing waste material as soon as was practical at a waste disposal site operated in accordance with the federal asbestos regulations.

If convicted, the statutory penalty for each count charged in the indictment, violation of the Clean Air Act (four counts) and making a false statement (two counts), is a maximum of five years in prison and a term of supervised release of up to three years following any term of imprisonment, as well as a fine of up to \$250,000.

The case was investigated by EPA's Criminal Investigation Division. It is being prosecuted by Assistant U.S. Attorney Katherine Boyle and Special Assistant U.S. Attorney James Cha. An indictment is merely an accusation; the defendant is presumed innocent unless proven guilty.

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Washington State Attorney General Files Criminal Charges Against Hotel Owner Over Asbestos Removal -

-On May 11, 2016, Kent, Washington-based **2013 INVESTORS, LLC**, its owner, **DAYABIR BATH**, his nephew, **GEE GREWAL**, and employee **JOHN HICKSON** were accused in Spokane Superior Court by the Washington state attorney general of multiple violations of the Washington Clean Air Act and reckless endangerment. Grewal is also accused of making false statements to a public servant. The improper asbestos removal and disposal endangered the health of neighbors and workers, the attorney general alleges.

In 2013 and 2014, the state alleges, 2013 Investors performed extensive renovation work on an 89-room hotel at 4301 W. Sunset Blvd. in Spokane. Although the building, the former Spokane House Hotel, contained asbestos, the owners didn't obtain the proper asbestos surveys or city permits to do the work as required by law, according to the allegations.

One city of Spokane permit application filed by the defendants asserted they planned only to replace, texture and paint drywall, though more extensive renovation was already underway.

Investigators from the Spokane Regional Clean Air Agency only became aware of the full extent of the renovation when one of them happened to drive by and noticed the extensive work in June of 2013. Investigators reported piles of debris likely to contain asbestos sitting out in the open air, endangering workers and neighbors.

Again in 2014, Clean Air Agency investigators spotted another debris pile, containing visible asbestos. The asbestos allegedly sat in the open air for several months, experiencing winds of up to 43 mph in that timeframe. During such winds, delicate and breakable asbestos fibers can freely blow around the neighborhood, endangering the health of those nearby.

2013 Investors, Bath, Grewal and Hickson are each charged with three counts of violating the Washington Clean Air Act, and one count of reckless endangerment. Additionally, Grewal is charged with one count of making false statements to a public servant. Each count carries a maximum of 364 days in jail and/or \$5,000 in fines. The charges contained in the complaint are only allegations. A person is presumed innocent unless and until he or she is proven guilty beyond a reasonable doubt in a court of law.

The case was investigated by EPA's Criminal Investigation Division and the Spokane Regional Clean Air Agency, and others. The lead prosecutor in the case is Assistant Attorney General Bill Sherman.

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