



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.

February 2015

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Defendant Summary

Region	Defendants	Case Type/Status
Region 5	LuAnne LaBrie, Cory Hammond, Robert “Mike” White	CAA/ Failing to notify authorities that asbestos was present, failing to adequately wet asbestos while stripping
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Region 10	Rory Westmoreland	Hazardous Waste Management Act/Unlawful discharge of solid waste

Illinois Man Sentenced to Eight Years in Prison for Mail Fraud, Tax Evasion, Illegal Application of a Pesticide

-- On February 20, 2015, **CARL KIESER**, of Gibson City, Illinois, was sentenced in federal district court for the Central District of Illinois, to eight years in prison for mail fraud, tax evasion, and illegal application of a pesticide inconsistent with its labeling. In addition, he was ordered to serve three years of supervised release following his release from prison, and was ordered to pay restitution in the total amount of \$75,862; \$71,411 to the IRS and \$4,451 to victims he defrauded. He was convicted by a jury on October 31, 2014 after entering open pleas of guilty to four counts of tax evasion on July 8, 2014.



Bags of Diuron located during a search warrant at Carl Kieser's property in 2012.

Kieser owned and operated Aquatic Control of Illinois, at his Gibson City Fishing and Camping Club. At trial, the government presented evidence that Kieser manufactured, advertised, sold, and distributed a product he called Pond Clear Plus, by mixing Diuron 80DF with other ingredients, including a blue pond dye. Diuron 80DF is a pesticide registered with EPA for the control of land-

based weeds; the EPA-approved labeling for the pesticide warns that the chemical should not be applied directly to water due to its toxicity to fish and other aquatic wildlife.

Kieser's advertisements for Pond Clear Plus in newspapers and magazines falsely and fraudulently represented that Pond Clear Plus could control lake weeds and algae "Mother Nature's Way," with "No Chemicals," using a "biological method with live bacteria that dissolves plant nutrients, black muck, and rotten egg odor." Kieser also falsely and fraudulently represented to customers that Pond Clear Plus contained no chemicals. In fact, as Kieser knew full well, Pond Clear Plus contained the chemical pesticide Diuron 80DF, which was prohibited by its EPA-approved labeling from being applied directly to water. As a result of his false advertising and representations, Kieser sold and distributed Pond Clear Plus to customers from approximately July 2007 to September 2012. Kieser obtained more than \$400,000 in proceeds from customers from the sale of Pond Clear Plus, but failed to pay any federal income tax on his profits from 2008 to 2011.



A number of dead fish in a neighborhood pond following the use of the Pond Clear Plus product from Carl Kieser in 2008.

Kieser provided Pond Clear Plus to his customers via Federal Express or some other means in 2.5 gallon jugs without any labels, including any labels informing customers that Pond Clear Plus contained

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Diuron 80DF and should not be applied directly to water. To the contrary, Kieser advised customers that Pond Clear Plus contained no chemicals and should be applied by pouring it directly into the customer's pond or lake. Moreover, Kieser himself on occasion directly applied Pond Clear Plus to lakes or ponds for his customers. As a result, Diuron 80DF was directly applied to ponds and lakes throughout the U.S. in direct contravention of its EPA-approved labeling, and multiple customers experienced fish kills following the application of Pond Clear Plus to their ponds and lakes.

The case was investigated by EPA's Criminal Investigation Division, and the Internal Revenue Service Criminal Investigation Division, with the assistance of the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency, and the Illinois Department of Agriculture. It was prosecuted by Assistant U.S. Attorney Eugene L. Miller.

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This is one of the many jugs of Pond Clear Plus that was shipped from Carl Kieser. This particular unlabeled jug was purchased during an EPA undercover operation. Testing of the contents ultimately showed that there was a high concentration of Diuron. The ring of granular Diuron can also be seen in the white layer on the bottom of the container.

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Three California Men Ordered to Pay \$1.8 Million in Restitution for Unlawful Asbestos Abatement -- On February 23, 2015, **JOSEPH CUELLAR**, of Fresno, California; **PATRICK BOWMAN**, of Los Banos, California; and **RUDOLPH BUENDIA**, of Planada, California, were ordered in federal district court for the Eastern District of California to pay a total of \$1,801,832.50 in restitution to 65 victims exposed to airborne asbestos as a result of unlawful asbestos abatement work at Building 325 at the former Castle Air Force Base in Atwater, California. The order, which was a result of the defendants' prior convictions for knowingly violating the asbestos work practice standards of the National Emissions Standards for Hazardous Air Pollutants. All three men previously entered guilty pleas and all had been sentenced to terms of imprisonment of between 24 and 27 months.

The 65 victims referenced in the order made claims for restitution for the costs of medical monitoring necessary for the early detection of asbestos-related illnesses that might arise as a result of their exposure to airborne asbestos caused by the unlawful asbestos abatement crimes.

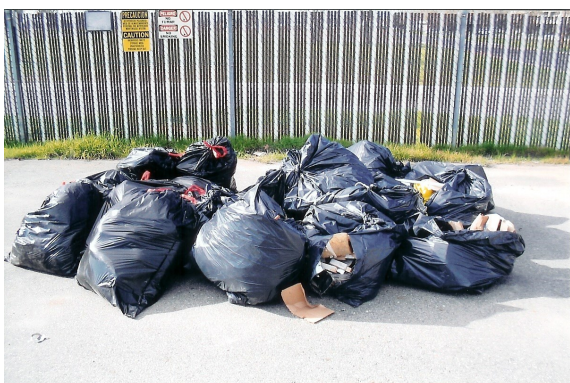
According to court documents, Firm Build, Inc., performed the demolition and renovation work to convert the former Castle Air Force Base's motor pool at Building 325 into an automotive mechanic training center. Bowman was Firm Build's president, Cuellar was its administrative manager, and Buendia was its construction project site manager. The prosecution stemmed from defendants' unlawful asbestos abatement during the demolition and renovation of Building 325 during September 2005 through January 31, 2006. During the renovation at Building 325, Firm Build, Inc., directed its employees and high school students from the Workplace Learning Academy to remove and dispose of asbestos containing insulation on pipe and on other facility components without utilizing



Regulated asbestos containing material pipe insulation debris.



Regulated asbestos containing material wrapped steam pipe attached to a heater suspended from the ceiling.



Garbage bags with regulated asbestos containing pipe insulation.

proper protective equipment or taking protective measures. Bowman was also the Vice-Principal in charge of the Workplace Learning Academy.

The case was investigated by EPA's Criminal Investigation Division, the Merced County District Attorney's Office, and the San Joaquin Valley Unified Air Pollution Control District. It was prosecuted by Assistant United States Attorneys Samuel Wong.

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West Virginia Laboratory Employee Gets Jail Time for CWA Crimes -- On February 25, 2015, **JOHN W. SHELTON**, of Daniels, West Virginia, was sentenced to 21 months in federal prison in federal district court for the District of West Virginia for tampering with water samples.

In October 2014, Shelton pleaded guilty to conspiring to violate the Clean Water Act. He admitted that he, and other employees, tampered with water samples to make them appear within permissible levels. He stated he diluted samples by adding distilled water, and substituted water samples from the “honeyhole,” named such because samples taken from that spot were always within permissible limits. Each time samples were diluted or water was substituted, Shelton allowed excessive pollutants to be discharged from mining operations into adjacent creeks and rivers.

Shelton also admitted that from 2008-2013, he and other Appalachian Laboratory employees failed to place samples on ice as required by law, and instead kept them in their trucks all day, compromising the integrity of the samples. They would place samples on ice inside coolers on known inspection days to give the appearance it was the regular practice.

The case was investigated by EPA’s Criminal Investigation Division and the Federal Bureau of Investigation. It was prosecuted by Assistant United States Attorney Blair L. Malkin and Larry R. Ellis.

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Former California Mill Superintendent Sentenced for CWA Crimes -- On February 26, 2015, **KIEDOCK KIM**, of Biggs, California, was sentenced in federal district court to six months in prison, and ordered to pay \$107,160 in restitution based on two convictions for depredation of United States property and negligent discharge of a pollutant to a water of the United States.



Mine tailings from the 2006 spill flowing from French Creek into Clear Creek.

According to court documents, Kim was the mill superintendent for the French Gulch Mine in Shasta County. As part of the mining operation, gold ore was brought from deep underground to the surface, transported to the mine mill and crushed, mixed with water to create slurry, and mixed again with foaming agents to cause the gold to separate from the remaining slurry. The gold was then removed, and the resulting waste from the mining operation — tailings, slurry, and wastewater — contained arsenic and lead.

In February 2007, a California Central Valley Regional Water Quality Control Board inspector advised the mine operators, including Kim, that the discharge of these pollutants was prohibited without a permit under the National Pollution Discharge Elimination System (NPDES). The French Gulch Mine did not have a NPDES permit, and Kim repeatedly represented to the inspector that the water treatment system used at the mine was a closed circuit, meaning there were no discharges from the water treatment system, and the mine and mill operations reused the wastewater after it had been treated.

In fact, the mine was generating more liquid wastes than the treatment system could handle, and on many occasions the system was not functioning properly causing the mine operators to discharge the liquid wastes into abandoned mines, an improvised leach field, a waste rock area, or on the county road surrounding the mine. Much of the discharges were on BLM land and resulted in hazardous levels of arsenic and lead contaminating the BLM property. The BLM conducted a study and determined that the cost to remove the contaminants and restore the property is \$107,160.

In addition, the mine improperly disposed of its mine waste rock, which contained high arsenic and lead concentrations, by using it to resurface the county road leading to the mine, which is on BLM land. Even though the mine was later forced to remove the waste rock, its conduct constitutes depredation of United States property.

According to the plea agreement, Kim ordered the construction of a substandard pipe system to remove contaminated liquid wastes from the mill to an abandoned mine on BLM property. On June 24, 2006, the pipe system broke, and during a period of six to eight hours, spilled up to 10 tons of mine tailings into Scorpion Gulch Creek, which eventually leads into the Whiskeytown National Recreation Area reservoir. The spilled mine tailings travelled about seven miles from the mine to the Whiskeytown reservoir, which empties into the Sacramento River.

The case was investigated by EPA's Criminal Investigation Division, with assistance from the Bureau of Land Management, the National Park Service, and the California Central Valley Regional Water Quality Control Board.

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Former CEO of Connecticut Manufacturing Company Sentenced for CWA Violation -- On February 13, 2015, **THOMAS H. FARIA**, the former chief executive officer and president of Faria Limited, LLC, doing business as Sheffield Pharmaceuticals, was sentenced in federal district court for violating the Clean Water Act and was ordered to serve three years of probation, perform 300 hours of community service and pay a \$30,000 fine.

According to court documents and statements made in court, the Clean Water Act requires that every company obtain a permit from the Connecticut Department of Energy and Environmental Protection (CT DEEP) before it can discharge its industrial wastewater to the public sewage system, commonly known as the publicly owned treatment works (“POTW”). Companies are also required, among other things, to test and monitor their industrial wastewater monthly to ensure that the chemical levels in the wastewater do not exceed federal and state limitations.

Sheffield Pharmaceuticals has a factory in New London that manufactures a wide range of over-the-counter pharmaceutical creams, ointments and toothpastes. From approximately 1986 to July 2011, Sheffield discharged industrial wastewater from its New London manufacturing operations to the New London POTW without a permit and in violation of Connecticut’s approved pretreatment program. The New London POTW discharges to the Thames River in southeastern Connecticut. During this entire time period, Sheffield lacked a pretreatment system at its factory to treat its industrial wastewater prior to discharge to the New London POTW, performed no regular monitoring of its discharges of industrial wastewater, and submitted no monthly monitoring reports to the CT DEEP.

After becoming the company’s president and chief executive officer in April 2003, Faria soon learned through his own employees that Sheffield was discharging pollutants considered toxic under federal environmental law in its industrial wastewater without the required permit. Faria also learned that in order to obtain a permit from CT DEEP, the company would have to install, at significant expense, a wastewater pretreatment system that would pretreat its industrial wastewater prior to discharging it to the New London POTW. Although Faria’s own employees urged him to make the financial investment to bring the company into compliance, Faria chose not to do so.

On April 20, 2011, the CT DEEP conducted an unannounced inspection of Sheffield. After finding that the company had no wastewater discharge permits, the CT DEEP inspector issued a Notice of Violation and cited the company for discharging manufacturing and laboratory wastewater without a permit. On or about May 27, 2011, Faria Limited, LLC submitted a permit application to CT DEEP so that the company could legally discharge industrial wastewater from its New London facility into the New London POTW. By July 2011, the company had installed a wastewater pretreatment system at its factory to pretreat the pollutants contained in its industrial wastewater prior to its discharge to the New London POTW.

On July 8, 2014, Faria waived his right to indictment and pleaded guilty to one count of knowingly violating, or causing to be violated, the Clean Water Act. As a condition of his guilty plea, Faria resigned from the company on March 7, 2014, and shall have no role in the operations or management of Faria Limited. He now resides in Portland, Oregon.

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

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Hazardous Waste Dumper in Washington State Sentenced to Serve Jail Time, Pay \$127,000 -- On February 18, 2015, **RORY WESTMORELAND**, formerly of Seattle, Washington, was sentenced in federal district court to 60-days in jail and ordered to repay cleanup costs of more than \$127,000 for violating the Hazardous Waste Management Act and unlawful dumping of solid waste. Westmoreland pleaded guilty on February 18 as well.

As part of its investigation, EPA learned Westmoreland had three earlier enforcement cases for violations ranging from construction without permits to accumulation of assorted rubbish, salvage and debris on the property. The defendant was also recently convicted of abandoning a derelict vessel that sank and caused a temporary closure of a mussel farm in 2012.

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

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Site where Rory Westmoreland abandoned hazardous and solid wastes. The EPA determined that the containers posed a potential imminent and substantial threat to human health and the environment if the containers were to remain unsecured in the out-of-doors and an uncontrolled release of the container contents were to occur. The emergency response and removal action was subsequently completed by EPA's Superfund program.

Three Michigan Residents Plead Guilty to CAA Criminal Violations at Shuttered Energy Plant -- On February 11, 2015, **LUANNE LABRIE** of Kalamazoo, Michigan, formerly known as LuAnne McClain, pleaded guilty in federal district court to the felony offense of failing to notify authorities that asbestos material would be stripped and removed at a former power generation facility in Comstock Township, Michigan. **CORY HAMMOND**, of Hastings, and **ROBERT “MIKE” WHITE**, of Kalamazoo, each pleaded guilty to failing to adequately wet asbestos material while stripping and removing asbestos inside the facility, also a felony violation. They face a maximum of five years in prison and a \$250,000 fine for the offense. Environmental investigators believe the asbestos release at the center of this case may be the largest in Michigan since the substance was declared a hazardous air pollutant in 1971. LaBrie will be sentenced in April 2015; Hammond and White will be sentenced in July 2015.



The Morrow Power Plant was the former power generation facility in which asbestos material was illegally stripped and removed

The major release of asbestos resulted in a \$1 million cleanup by EPA’s Superfund Division. The defendants agreed to pay restitution to EPA for remediation costs. In 2011, LaBrie, Hammond, and White began salvaging equipment and scrap from the old power station. Even though all three knew that asbestos was present, they failed to notify federal officials and failed to remove it properly.

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

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Texas Man Pleads Guilty to Making Criminal False Statements – On February 11, 2015, Houston resident **RACE ADDINGTON**, of Houston, Texas, pleaded guilty in federal district court for the Southern District of Texas to two counts of making false statements to agencies or departments of the United States in relation to the veracity of offshore oil and gas platform testing in the Gulf of Mexico. Addington faces a maximum term of imprisonment of five years per count and a maximum fine of \$250,000 per count. Sentencing is scheduled for May 20, 2015.

A blowout preventer system is designed to prevent the release of oil and gas and possible loss of well control. According to court documents, a blowout preventer system was tested on or about November 27, 2012, but was incomplete and was not signed nor dated by anyone on the platform. Well site supervisor Addington later directed his workers to create a false blowout preventer test which he then presented to state inspectors as the factual record.

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

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Former Massachusetts Power Plant Employees Charged with CAA Violations -- On February 3, 2015, **FRED BAKER**, of Southamptton, Mass., the former operations and maintenance manager at Berkshire Power Plant in Agawam, Mass., and **SCOTT PATERSON**, of Manchester, Conn., the plant's former instrument and control technician, were charged in federal district court for the District of Massachusetts in Informations with conspiracy to violate the Clean Air Act and other criminal violations of that statute, specifically with tampering with environmental monitors. Both Baker and Paterson have agreed to plead guilty to the charges.

According to the Informations, from 2008 until March 2011, Baker instructed Paterson and other operators at Berkshire Power Plant to tamper with the plant's Continuous Emissions Monitoring System (CEMS). The CEMS is an environmental monitoring system, required by federal law, which continuously samples, measures and records the concentration of regulated pollutants. Baker, Paterson and others at Berkshire Power Plant, tampered with the CEMS to save money, delay repairs and to avoid reporting to federal and state regulators that the plant, at times, was releasing pollutants – in this case, nitrogen oxides -- in excess of regulatory limits.

Initially, the defendants lowered the CEMS monitors by approximately .5 parts per million (ppm). In the summers of 2009 and 2010, when the plant underwent required independent audits of the pollution monitoring equipment, Baker instructed Paterson to take out the fraudulent adjustments in the monitors prior to the audit and re-introduce them after the auditors had left. Paterson made the fraudulent adjustments prior to, and after, each independent audit. Berkshire Power Plant was required to and did report the results of these audits to the Massachusetts Department of Environmental Protection (MassDEP) and the United States EPA.

In 2010, the .5 ppm adjustment was not sufficient to allow the plant to run at full power and comply with the facility's Clean Air Act permit. Rather than doing the necessary repairs to the plant and its environmental pollution control equipment, or running the plant at lower power levels, Baker instructed staff, including Paterson, to lower the CEMS readings even more to avoid reporting pollution emissions.

The statutory maximum penalties for the conspiracy charge are five years in prison and three years of supervised release. The statutory maximum penalties for each of the Clean Air Act charges are two years in prison and one year of supervised release. Both statutes provide for a maximum fine of \$250,000 or twice the gross loss or gain per count, whichever is greater. Actual sentences for federal crimes are typically less than the maximum penalties. Sentences are imposed by a federal district court judge based upon the U.S. Sentencing Guidelines and other statutory factors.

The case was investigated by EPA's Criminal Investigation Division with the assistance of the Massachusetts Attorney General's Environmental Crimes Strike Force, the Massachusetts Environmental Police and the Massachusetts Department of Environmental Protection. It is being prosecuted by Sara Miron Bloom of Massachusetts attorney general's Economic Crimes Unit and Daniel Licata, Assistant Attorney General with the Massachusetts Attorney General's Office working as a Special Assistant U.S. Attorney.

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Duke Subsidiaries Charged with CWA Violations -- On February 20, 2015, the United States Attorney's Offices for the Eastern, Middle, and Western Districts of North Carolina, along with the Department of Justice – Environmental Crimes Section, filed criminal charges against three subsidiaries of Duke Energy Corporation: **DUKE ENERGY BUSINESS SERVICES LLC, DUKE ENERGY CAROLINAS LLC, and DUKE ENERGY PROGRESS, INC.**, for multiple violations of the Clean Water Act.

The three U.S. Attorney's Offices filed separate criminal bills of information in their respective federal courts, alleging violations of the Clean Water Act at the following Duke facilities: Dan River Steam Station (Rockingham County); Cape Fear Steam Electric Plant (Chatham County); Asheville Steam Electric Generating Plant (Buncombe County); H.F. Lee Steam Electric Plant (Wayne County); and Riverbend Steam Station (Gaston County). The alleged violations include unlawfully failing to maintain equipment at the Dan River and Cape Fear facilities and unlawfully discharging coal ash and/or coal ash wastewater from impoundments at the Dan River, Asheville, Lee, and Riverbend facilities.

The U.S. Attorney's Offices for Middle and Western Districts also filed papers asking their courts to transfer the cases to be heard in the Eastern District of North Carolina.

The defendants face a maximum penalty on each charged count of five years probation; a fine in an amount of the greater of not less than \$2,500 nor more than \$25,000 per day of violation; \$200,000.00; or twice the gross gain or loss; restitution; and a special assessment of \$125.00.

Persons directly and proximately harmed as a result of the conduct charged in this matter may have rights under the Crime Victims' Rights Act. A criminal information is not a finding of guilt. A corporation charged by criminal information is presumed innocent unless and until proven guilty in a court of law.

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