

Environmental Crimes Case Bulletin



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

November 2012

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:

- **Martin S. Kimber — Region 2**
- **Professional Mobile Cleaning, Inc. — Region 3**
- **Tennie White — Region 4**
- **William R. “Rusty” Miller — Region 4**
- **Ronald Eugene Kinard, Jack Bard Haney — Region 4**
- **Victor Mercado — Region 5**
- **Cardington Yutaka Technologies, Inc., Muhammed Razavi, James Carroll — Region 5**
- **Pemco Services, Inc. — Region 6**
- **Team Industrial Services, Inc. — Region 6**
- **BP Exploration and Production, Inc., Robert M. Kaluza, Donald J. Vidrine, David I. Rainey — Region 6**
- **Chamness Technology, Inc., Dennis Simmons — Region 7**
- **James L. Christian, Smith Chrome Plating, Inc. — Region 10**

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 2	<u>Martin S. Kimber</u>	CAA/Use of mercury as a chemical weapon
Region 3	<u>Professional Mobile Cleaning, Inc.</u>	The Refuse Act/Failure to prevent and reclaim vehicle wash wastewater effluent
Region 4	<u>Tennie White</u>	CWA/Falsifying industrial wastewater records and obstructing criminal investigation
Region 4	<u>William R. "Rusty" Miller</u>	CWA/Illegal filling of protected wetlands
Region 4	<u>Ronald Eugene Kinard, Jack Bard Haney</u>	CAA/Conducting illegal vehicle emission inspections
Region 5	<u>Victor Mercado</u>	CWA/Conspiracy related to public corruption trial in Detroit

DEFENDANT SUMMARY:

REGION	DEFENDANTS	CASE TYPE/STATUTES
Region 5	<u>Cardington Yutaka Technologies, Inc., Muhammed Razavi, James Carroll</u>	CWA/Making false statements regarding the discharge of industrial wastewater to the village's wastewater treatment system
Region 6	<u>Pemco Services, Inc.</u>	CWA/Illegal application of drilling muds
Region 6	<u>Team Industrial Services, Inc.</u>	CAA/Negligent release of hazardous pollutants
Region 6	<u>BP Exploration and Production, Inc., Robert M. Kaluza, Donald J. Vidrine, David I. Rainey</u>	CWA, Migratory Bird Treaty Act, Manslaughter, Obstruction of Congress, False Statements/All related to the 2010 Deepwater Horizon disaster
Region 7	<u>Chamness Technology, Inc., Dennis Simmons</u>	CWA/Negligent discharge of a pollutant without a permit
Region 10	<u>James L. Christian, Smith Chrome Plating, Inc.</u>	CWA/Improper reporting in monthly discharge monitoring reports

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Texas Company Fined for Illegal Application of Drilling Muds – On November 20, 2012, **PEMCO SERVICES, INC.**, was convicted in Travis County district court of Texas Water Code violations relating to the operation of an oil and gas waste land farming site in Jefferson County, Texas, and was ordered to pay fines totaling \$1,350,000. The company has also agreed to pay \$14,534 in restitution for lab analysis by the Texas Parks and Wildlife Department Laboratory. In addition, the company also spent \$1.1 million to clean up the facility, which is now closed. The charges stemmed from a criminal investigation involving the application of more than 1.3 million barrels of used drilling muds onto the land farm facility in violation of its permit. The drilling wastes contained elevated amounts of drilling mud constituents that threatened to cause and caused pollution in and around the facility.

The conviction is a culmination of the collaborative work of the Texas Environmental Task Force, which includes the Texas Parks and Wildlife Department Environmental Crimes Unit, the Texas Parks and Wildlife Department Laboratory, the Texas Commission on Environmental Quality Environmental Crimes Unit, EPA's Criminal Investigation Division and the Travis County District Attorney's Office's Environmental Protection Unit.

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Washington Man and Chrome Plating Company Sentenced for CWA Violations – On November 14, 2012, **JAMES L. CHRISTIAN**, of Walla Walla, Washington, and **SMITH CHROME PLATING, INC.**, an incorporated business located in Walla Walla, were sentenced in federal district court for the Eastern



Accumulated wastewater at Smith Chrome Plating that was being discharged to the sewer from the hose shown above

District of Washington for criminal violations of the Clean Water Act related to violations of a state waste discharge permit issued by the Washington Department of Ecology under the Clean Water Act to Smith Chrome Plating, Inc. Christian was given a five-year term of probation, subject to a four-month term of home confinement and 200 hours of community service. Smith Chrome Plating, Inc., was given a five-year term of probation and was fined \$15,000 to be paid in installments.

From December 2009 through April 2010, Christian stated on monthly discharge monitoring reports that the company had "zero discharge" at its facility for those months. Christian signed the monthly discharge monitoring reports at issue. He subsequently admitted, however, that the reports during December 2009 through April 2010 where he indicated "zero discharge" were false, that discharges were in fact made during those months, and that Smith Chrome and Christian failed to monitor those discharges, failed to sample, and failed to keep any records or report the discharges, all in violation of Smith Chrome's State Waste Discharge Permit.

Investigation of the case was conducted by EPA's Criminal Investigation Division. The case was prosecuted by James A. Goeke, an Assistant U.S. Attorney for the Eastern District of Washington.

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Two North Carolina Men Sentenced for Conducting Illegal Vehicle Emission Inspections – On November 26, 2012, **RONALD EUGENE KINARD**, of Charlotte, North Carolina, was sentenced in federal district court for the Western District of North Carolina for conspiring to violate the Clean Air Act by conducting false vehicle emission inspections. He was given a six month jail sentence and two years of supervised release, during which he will serve an additional six months of home confinement. He was also ordered to pay a \$10,000 fine and to perform 50 hours of community service. His conspirator, **JACK BARD HANEY**, also of Charlotte, had been sentenced on November 14, 2012, to serve six months in prison and one year of supervised release, during which he will serve an additional six months of home detention. Both Kinard and Haney are also prohibited from conducting vehicle inspections in the future.

According to filed documents and related court proceedings, at the time of their criminal conduct, Kinard was the owner-operator of Autoworks, a Charlotte vehicle repair shop, and Haney was one of his employees. Both were licensed by the state of North Carolina to conduct onboard diagnostic (OBD) inspections to test federally mandate vehicle emissions. Court records show that they used surrogate vehicles to falsely pass vehicles that would have failed emissions inspections, an illegal activity known as “clean scanning.” Court documents indicate that from about January 2010 through August 2011, Kinard conducted more than 1,180 false vehicle inspections, and Haney conducted more than 100 false inspections. In exchange for the false passing results, the two men typically charged more than the standard inspection fee, sometimes as high as \$100 per vehicle.

The case was investigated by EPA’s Criminal Investigation Division, the North Carolina State Bureau of Investigation, with assistance from the North Carolina Division of Air Quality, Mobile Sources Compliance Branch. The prosecution was handled by Assistant U.S. Attorney Steven R. Kaufman of the U.S. Attorney’s office in Charlotte.

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New Jersey Based Commercial Vehicle Cleaning Company Sentenced For Violating Refuse Act–

On November 29, 2012, **PROFESSIONAL MOBILE CLEANING, INC., (PMC)**, a Fairfield, New Jersey-based mobile truck washing business, pleaded guilty in federal court in Pittsburgh and was sentenced to pay \$500,000 in restitution, fines, and community service payments on its conviction of violating The Refuse Act.

According to information presented to the court, PMC worked via contract with the U.S. Postal Service to wash commercial vehicles in western Pennsylvania and to isolate, collect, store, and eliminate all wash water involved in the cleaning process. From June 20, 2007 to June 20, 2010, PMC failed to prevent discharge of and to reclaim wastewater effluent resulting from these vehicle washing services. The wastewater entered into several tributaries that fed the Monongahela River.

Under a plea agreement with the U.S. Attorney's Office, PMC agreed to pay \$300,000 in restitution to the U.S. Postal Service and a \$9,000 criminal fine. The plea agreement also required PMC to pay \$191,000 to the Pennsylvania Fish and Boat Commission (PFBC) for a community service project to address water quality issues such as total dissolved solids in the Monongahela River. This payment will be deposited into a restricted revenue account within the PFBC Fish Fund.

The case was investigated by EPA’s Criminal Investigation Division and the U.S. Postal Inspection Service. It was prosecuted by Assistant U.S. Attorney Nelson P. Cohen.

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Employees of PMC washing a commercial vehicle

Ohio Auto Parts Manufacturer and Two Former Managers Are Sentenced for Environmental Crimes and False Statements

– On November 28, 2012, **CARDINGTON YUTAKA TECHNOLOGIES, INC. (CYT)**, an auto parts manufacturer located in Cardington, Ohio, and a wholly owned subsidiary of Yutaka Giken Company, Limited based in Japan, along with two of its former managers were sentenced in federal district court for the Southern District of Ohio to pay a fine of \$1.2 million, pay restitution in the amount of \$115,000 to the village of Cardington, and make \$400,000 in community service payments, also to the village for making false statements regarding the discharge of industrial wastewater to the village's wastewater treatment system.



Tank containing "SteelGard," the substance dumped into the sanitary sewer

The community service funds will be used to repair, improve and renovate the village's wastewater treatment plant. The company also will serve a term of probation of two years, and make several operational changes to ensure compliance with applicable state and federal water pollution laws.

CYT was indicted on federal charges on June 29, 2011, as were two former managers. CYT's former executive vice president, **MUHAMMED RAZAVI**, pleaded guilty to two counts of negligently violating the Clean Water Act. Consistent with his plea agreement, Razavi was sentenced to 90 days incarceration, followed by a term of one year of supervised release, and 208 hours of community service. Razavi was also ordered to pay a fine of \$25,000. CYT's former maintenance manager, **JAMES CARROLL**, pleaded guilty to one count of negligently violating the Clean Water Act. In accordance with his plea agreement, Carroll was sentenced to two years of probation, including 90 days of home confinement, and is to complete 500 hours of community service. Carroll was also ordered to pay a fine of \$5,000.

According to documents filed with the court, between 1999 and 2008, CYT and its managers made false statements to the Ohio EPA and the village of Cardington regarding the discharge of industrial wastewater in the form of leak test fluid and parts washer water from the CYT facility to the village of Cardington's Publicly Owned Treatment Works.

The case was investigated by EPA's Criminal Investigation Division, the Ohio Environmental Protection Agency-Office of Special Investigations, and the Ohio Bureau of Criminal Identification and Investigation. It is being prosecuted by Richard J. Powers, trial attorney with the Justice Department's Environmental Crimes Section, and Assistant U.S. Attorney J. Michael Marous.

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Cut illicit discharge pipe



Cut illicit discharge pipe entering the floor drain



Bypass piping at CYT

Texas Refinery Admits of Negligently Releasing Hazardous Air Pollutants -- On November 15, 2012, **TEAM INDUSTRIAL SERVICES, INC. (Team)**, which provided leak detection and repair services at a refinery near Borger, Texas, was sentenced in federal district court for the Northern District of Texas to pay a \$200,000 criminal fine and ordered to serve five years probation. They were also mandated to implement and maintain a detailed environmental compliance plan that specifically addresses its leak detection and reporting activities to achieve appropriate compliance with the Clean Air Act's leak detection and repair regulations during their probationary period.



In July 2012, Team admitted that it negligently released hazardous pollutants into the ambient air, placing people in danger of death or serious bodily injury. Team employees at the refinery knowingly failed to follow required protocols while conducting emissions monitoring of certain refinery components. They also manipulated testing data to falsely represent emissions monitoring events that were not performed. A Team supervisor knew the emissions monitoring data was false yet, along with another employee, they altered the emissions monitoring database to falsely represent emissions monitoring events to EPA and the Texas Commission on Environmental Quality.

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New York Man Pleads Guilty to Using Mercury As Chemical Weapon – On November 29, 2012, **MARTIN S. KIMBER**, of Ruby, New York, pled guilty in federal district court for the Northern District of New York to using a toxic chemical, mercury, as a weapon and tampering with consumer products. Kimber admitted that on four occasions he spread mercury, a potentially fatal neurotoxin, throughout various areas of the Albany Medical Center in ways that could lead to inhalation or absorption of the mercury to retaliate for what he thought were unfair hospital bills.

Mercury is a well-documented hazardous substance and Kimber, having been a licensed pharmacist for thirty-six years, well understood its dangers and that the heating of mercury, including the placing of mercury on or in toasters and on or around heated food, greatly increased the likelihood that mercury would vaporize into the air and be inhaled by individuals consuming such food or using or being near such heating devices.

As part of his plea agreement, Kimber agreed to abandon his computer and consented to the entry of an order directing him to pay restitution to the Albany Medical Center in the amount of \$200,451; pay restitution to the United States for any expenses incurred incident to the seizure, storage, handling, transportation, and destruction of any property seized in connection with an investigation of his use of mercury as a chemical weapon; pay restitution to any other victims; forfeit a residence in Ruby, New York; and forfeit his 2007 Pontiac Soltice.

The case was investigated by EPA's Criminal Investigation Division, the FBI, and the Food & Drug Administration's Office of Criminal Investigations. Assistance was provided by the police departments of the towns of Albany and Ulster. It is being prosecuted by Assistant U.S. Attorney Craig Benedict.

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Iowa Company Pleads Guilty to Negligent Pollutant Discharge into U.S. Waters -- On October 26, 2012, **CHAMNESS TECHNOLOGY, INC.**, plead guilty in federal district court for the Southern District



CTI - Eddyville facility

of Iowa to negligent discharge of a pollutant from a point source into a water of the United States without a permit. It faces a maximum sentence of up to five years probation and a \$200,000 fine. An investigation revealed that leachate water and storm water runoff had been discharged from an umbilical hose at the company's compost facility located outside Eddyville, Iowa. Dennis Simmons, an employee of the company caused the discharge by failing to attach the umbilical hose and ensure that it was connected to a spray irrigator at the facility. The leachate water and storm water runoff entered the Palestine Creek and flowed to the Des Moines River, but the discharge was not permitted. On November 7, 2012, **DENNIS SIMMONS** pled guilty to a felony CWA count. The sentencing date for CTI has been scheduled for January 29, 2013 and Simmons is scheduled for February 8, 2013.

The case was investigated by EPA's Criminal Investigation Division and the Iowa Division of Natural Resources. It was prosecuted by the U.S. Attorney's office for the Southern District of Iowa.

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Irrigation hose discharging leachate wastewater

Former Detroit Water Department Director Pleads Guilty in Corruption Trial – On November 5, 2012, **VICTOR MERCADO**, of San Antonio, Texas, former director of the city of Detroit Water and Sewerage Department pleaded guilty in federal district court for the Eastern District of Michigan to a su-



"Baby Creek" combined sewer overflow structure which was required to be re-constructed pursuant to the NPDES permit and the federal consent decree with EPA

perseding information charging him with one count of conspiracy related to the ongoing public corruption trial of former Mayor Kwame Kilpatrick, his father Bernard Kilpatrick, and long time friend Bobby Ferguson. According to the terms of the plea agreement, the sentence will not exceed eighteen months, due to mitigating circumstances. In particular, Mercado took the actions set forth above because of duress, under circumstances not amounting to a complete defense.

According to the superseding information, from June 2002 to June 2008, Mercado served as director of the Detroit Water and Sewerage Department (DWSD). In this capacity, he was responsible for administering over \$2 billion in contracts with private companies and reported directly to the mayor of Detroit, Kwame M. Kilpatrick. From January 2002 to January 2006, Kilpatrick served as special administrator over the DWSD. That designation, arising from a federal consent decree resolving a lawsuit alleging federal environmental violations, gave Kilpatrick authority to award DWSD contracts directly with outside parties, bypassing city procurement procedures, and also gave Kilpatrick responsibility over the operation of DWSD's wastewater treatment plant to ensure compliance with environmental standards.

As stated in the plea documents, Kilpatrick used his position as mayor of Detroit and special administrator of DWSD to pressure city contractors--who submitted proposals to or were awarded contracts by DWSD--to give subcontracts or payments obtained under those contracts to Bobby W. Ferguson, or risk having the contracts delayed, awarded to competitors, or canceled, resulting in economic harm. Invoking and otherwise exploiting his well-known affiliation with former Mayor Kilpatrick, Ferguson pressured city contractors to hire or pay him for DWSD contracts.



Oakwood, another combined sewer authority which was also required by permit and decree. Mercado pled guilty to conspiring to rig the bid for this facility if the prime contractor agreed to hire Bobby Ferguson's company, Ferguson Enterprises Inc.

Mercado--at the direction of Kilpatrick and his associates--took steps to help Ferguson receive a large portion of contracts, subcontracts or payments for DWSD business. These steps included influencing the procurement process to Ferguson's advantage, as well as directing a bidder to include Ferguson on a DWSD contract in order to receive favorable consideration on the bid. Mercado took these steps as a result of regular and consistent pressure from former Mayor Kilpatrick and his staff to help Ferguson obtain DWSD business regardless of procurement policies, rules, and regulations. Mercado tried to avoid this pressure, but from time to time he influenced the process to Ferguson's benefit in order to pacify and placate the former Mayor.

The case was investigated by EPA's Criminal Investigation Division, the Detroit field office of the FBI, and the Internal Revenue Service's Criminal Investigation Division. It was prosecuted by U.S. Attorney Barbara L. McQuade.

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BP Agrees to Pay Record \$4 Billion in Criminal Fines and Penalties; Its Two Highest Ranking Supervisors on Deepwater Horizon Rig Charged with Manslaughter and Former Senior Executive Charged with Obstruction of Congress -- On November 15, 2012, **BP EXPLORATION AND PRODUCTION, INC. (BP)** agreed to plead guilty to felony manslaughter, environmental crimes, and obstruction of Congress and pay a record \$4 billion in criminal fines and penalties for its conduct leading to the 2010 Deepwater Horizon disaster that killed 11 people and caused the largest environmental disaster in U.S. history. The 14-count information, filed in U.S. District Court in the Eastern District of Louisiana, charges BP with 11 counts of felony manslaughter, one count of felony obstruction of Congress, and violations of the Clean Water and Migratory Bird Treaty Acts. The \$4 billion in criminal fines and penalties is the largest criminal resolution in United States history. The plea is subject to the Court's approval.



In addition to the resolution of charges against BP, **ROBERT M. KALUZA** and **DONALD J. VIDRINE** – the highest-ranking BP supervisors onboard the Deepwater Horizon on April 20, 2010 – are alleged to have engaged in negligent and grossly negligent conduct in a 23-count indictment charging violations of the federal involuntary manslaughter and seaman's manslaughter statutes and the Clean Water Act. **DAVID I. RAINEY** – a former BP executive who served as a Deputy Incident Commander and BP's second-highest ranking representative at Unified Command during the spill response – is

charged with obstruction of Congress and making false statements to law enforcement officials. A grand jury in the Eastern District of Louisiana returned the indictments against Kaluza, Vidrine, and Rainey.

On April 20, 2010, while stationed at the Macondo well site in the Gulf of Mexico, the Deepwater Horizon rig experienced an uncontrolled blowout and related explosions. In agreeing to plead guilty, BP has admitted that the two highest-ranking BP supervisors onboard the Deepwater Horizon, known as BP's "Well Site Leaders" or "company men," negligently caused the deaths of 11 men and the resulting oil spill. The information details that, on the evening of April 20, the two supervisors, Kaluza and Vidrine, observed clear indications that the Macondo well was not secure and that oil and gas were flowing into the well. Despite this, BP's well site leaders chose not to take obvious and appropriate steps to prevent the blowout. As a result of their conduct, control of the Macondo well was lost, resulting in catastrophe.

Kaluza and Vidrine each are charged with 11 felony counts of seaman's manslaughter, 11 felony counts of involuntary manslaughter and one violation of the Clean Water Act. If convicted, Kaluza and Vidrine each face a maximum potential penalty of ten years in prison on each seaman's manslaughter count, up to eight years in prison on each involuntary manslaughter count, and up to a year in prison on the Clean Water Act count.

The information charging BP further details that the company, through senior executive Rainey, obstructed an inquiry by the U.S. Congress into the amount of oil being discharged into the Gulf while the spill was ongoing. As part of its plea agreement, BP has admitted that, through Rainey, it withheld documents and provided false and misleading information in response to the U.S. House of Representatives' request for flow-rate information. Among other things, BP admitted that Rainey manipulated internal estimates to understate the amount of oil flowing from the well and withheld data that contradicted BP's public estimate of 5,000 barrels of oil per day. **CONTINUED ON NEXT PAGE**

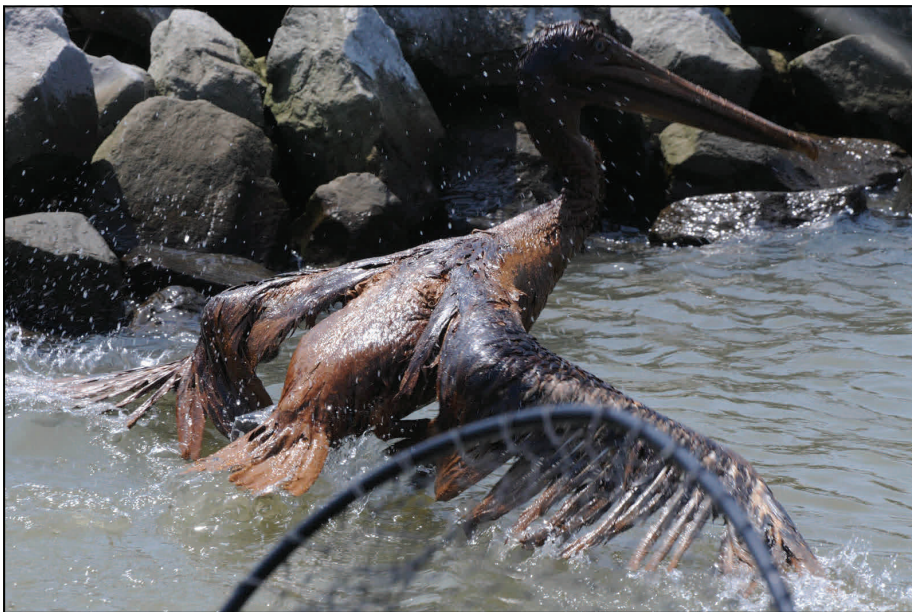
BP Agrees to Pay Record \$4 Billion in Criminal Fines and Penalties; CONTINUED --

BP has also admitted that, at the same time Rainey was preparing his manipulated estimates, BP's internal engineering response teams were using sophisticated methods that generated significantly higher estimates. The Flow Rate Technical Group, consisting of government and independent scientists, later concluded that more than 60,000 barrels per day were leaking into the Gulf during the relevant time, contrary to BP's representations to Congress.

Rainey is charged with one count of obstruction of Congress, and one count of making false statements to law enforcement officials. If convicted, Rainey faces a maximum potential penalty of five years in prison on each count.

The criminal resolution is structured such that more than half of the proceeds will directly benefit the Gulf region. Pursuant to an order presented to the Court, approximately \$2.4 billion of the \$4 billion 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 oil spill. An additional \$350 million will be used to fund improved oil spill prevention and response efforts in the Gulf through research, development, education, and training.

In addition to the historic \$4 billion in criminal fines and penalties, BP has agreed as part of its guilty plea to retain a process safety and risk management monitor and an independent auditor, who will oversee BP's process safety, risk management and drilling equipment maintenance with respect to deepwater drilling in the Gulf of Mexico. BP is also required to retain an ethics monitor to improve BP's code of conduct for the purpose of seeking to ensure BP's future candor with the United States government.



The United States continues to pursue a civil action to recover civil penalties under the Clean Water Act and hold BP and other defendants liable for natural resource damages under the Oil Pollution Act. A trial on liability matters is scheduled to begin in February 2013, during which the United States will seek to establish that the spill was caused by BP's gross negligence. BP could face billions of dollars of additional exposure in the civil lawsuit.

The guilty plea agreement and charges announced on November 15 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 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, Department of Interior, 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.

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Mississippi Laboratory Operator Charged with Falsifying Records on Industrial Wastewater -- On November 7, 2012, **TENNIE WHITE**, owner, operator and manager of Mississippi Environmental Analytical Laboratories, Inc. was charged in federal district court for the Southern District of Mississippi with falsification of records and obstructing a federal criminal investigation. According to the indictment, White was hired to perform laboratory testing of a manufacturer's industrial process wastewater samples and then to use those results to complete monthly discharge monitoring reports for submission to the Mississippi Department of Environmental Quality. The indictment alleges that from February to August 2009 White created three discharge monitoring reports (DMRs) that falsely represented that laboratory testing had been performed on samples when, in fact, such testing had not been done. The indictment further alleges that White created a fictitious laboratory report and presented it to her client for use in preparing another DMR. The indictment further alleges that White made false statements to a federal agent during a subsequent criminal investigation. The false statements charges carry a maximum sentence of five years in prison and a \$250,000 fine per count. The obstructing proceedings charge carries a maximum sentence of twenty years in prison and a \$250,000 fine. An indictment is not a finding of guilt, and a defendant is presumed innocent unless and until proven guilty in a court of law.

The case is being prosecuted by Trial Attorney Richard J. Powers of the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division, and Assistant U.S. Attorney Gaine Cleveland of the U.S. Attorney's Office for the Southern District of Mississippi.

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Alabama Real Estate Developer Charged With Illegally Filling Protected Mississippi Wetlands -- On November 9, 2012, **WILLIAM R. "RUSTY" MILLER**, a real estate developer from Fairhope, Alabama, was indicted by a federal grand jury in Jackson, Mississippi, for the unpermitted filling of wetlands near Bay St. Louis, Mississippi, in violation of the Clean Water Act.

The indictment alleges that during 2007, Miller caused the excavation and filling of wetlands on a 1,710 acre parcel of undeveloped property in Hancock County, west of the intersection of Route 603 and Interstate 10. The indictment states that Miller was a part-owner of corporations that purchased and intended to develop the land. It alleges that in 2001 when Miller and his companies purchased the property, he was informed by a wetland expert that as much as 80 percent of the land was federally protected wetland connected by streams and bayous leading to the Gulf of Mexico and as such could not be developed without a permit from the U.S. Army Corps of Engineers. Such permits typically require that developers protect and preserve other wetlands to compensate for those they are permitted to fill and destroy. In spite of additional notice he had received of the prohibition against filling and draining wetland without authorization, the indictment alleges that Miller hired an excavation contractor to trench, drain, and fill large portions of the property to lower the water table and thus to destroy the wetland that would otherwise be an impediment to commercial development. The indictment charges that Miller knowingly ditched, drained and filled wetland at 10 locations on the Hancock County property without having obtained a permit from the Army Corps of Engineers. It also charges him with the unauthorized discharge of silt, sand, vegetation, debris, and other material into and from canals and ditches on the Hancock County property into tributaries of Bayou Marone, a tributary of the Jourdan River.

It is a felony under the Clean Water Act for any person knowingly to discharge pollutants into waters of the United States without a permit. Any person convicted of this offense is subject to imprisonment of up to three years and a penalty of not more than \$250,000.

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

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