



# 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](#) on our publications page. Unless otherwise noted, all photos are provided by EPA-CID.

August—September 2018

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## Mora Development Sentenced To Pay A Fine Of \$3 Million For Violation Of The Clean Water Act

Mora Development was sentenced on August 2, 2018, to pay a fine of \$3 million, serve a five-year term of probation and make restitution to a family whose children were affected by the criminal conduct. Cleofe Rubi-Gonzalez was ordered to personally guarantee payment of all financial obligations imposed on the company.

Mora Development Corporation previously pled guilty to a one-count Information charging a violation of the Clean Water Act, for discharging sewage generated from residences at Las Cascadas II Development in Toa Alta, Puerto Rico from a holding tank through a point source (a by-pass pipe) into the Toa Alta Municipal storm water system and then into Quilan Creek which flows into La Plata River, a water of the United States without a National Pollution Elimination System (NPDES) permit. The La Plata River serves as the drinking water source for approximately 80,000 people in Puerto Rico.

“The U.S. Attorney’s Office will continue to enforce federal laws which protect the environment and the public,” said Rosa E. Rodríguez-Vélez, US Attorney for the District of Puerto Rico. “Today’s sentence should serve as a deterrent to those who consider discharging waste water into our creeks. Our office will continue to work with all law enforcement agencies in order to help prevent release of hazardous material into our creeks, protect workers and the local community.”

“Mora Development Corporation knowingly cut corners to save money by discharging raw sewage into the La Plata River without proper treatment in violation of the Clean Water Act,” said Tyler Amon, Special Agent-in-Charge of Criminal Investigation Division for EPA’s Region 2 Office in New York. “The scheme to hide an illegal sewage system is a short-sighted business decision that put the community’s health and environment at risk. EPA will continue to work directly with our Commonwealth partners to investigate and seek prosecution of environmental crime offenders.”



The government presented evidence that over the course of the time prior to properly connecting with PRA-SA, MORA discharged more than 29,000,000 gallons of sewage into the municipal stormwater system and into Quilan Creek.

The former Project Manager, Jose Merino had also pled guilty previously and was sentenced to 6 months’ probation.

The case was prosecuted by a DOJ litigation team and investigated by EPA’s Criminal Investigation Division.

## Clinton County Man Sentenced for Unlawful Asbestos Removal

On August 16, 2018, Joseph Michael Kehrer was sentenced to five months of imprisonment for failing to notify regulatory authorities before removing asbestos material. Kehrer had previously pled guilty to the charge, which is a felony violation of the federal Clean Air Act. Upon release from imprisonment, Kehrer will be placed on supervised release for one year, with the first five months on home confinement subject to electronic monitoring. The district court also ordered Kehrer to pay a criminal fine of \$50,000.

Kehrer admitted that in February and March of 2015, he was the owner of a building formerly as the Okawville Elementary School in Okawville, Illinois (Washington County). During that time and during a renovation activity, Kehrer caused the removal of a combined amount of material containing asbestos greater than 160 square feet. Under such circumstances, Kehrer was required by law to notify regulatory authorities – in this instance, the Illinois Environmental Protection Agency (IEPA) – at least ten working days prior to removing the asbestos material. Kehrer admitted he knowingly failed to provide the prior notification to IEPA.

At sentencing, the district court considered as aggravating factors Kehrer's role in the offense as a manager or supervisor of the activity, as well as efforts he made to obstruct and impede the administration of justice during the investigation. Specifically, when the Occupational Safety and Health Administration went to inspect the former school, Kehrer told inspectors that the only asbestos present was contained on the pipe insulation. In fact, Kehrer had received an asbestos inspection report in 2014 documenting additional asbestos within the school. Kehrer also denied knowing about the grinding and sanding of the former school floors when, in fact, he was the one who directed the workers to sand and grind.



*Underside of grinder showing asbestos-containing material from grinding floors.*

"This case demonstrates that those who place communities at risk by failing to abide by the law will be held accountable for their actions," said Special Agent in Charge Jeffrey Martinez of EPA's criminal enforcement program in Illinois.

The case was investigated by EPA's Criminal Investigation Division and the U.S. Department of Labor's Office of Inspector General. The case is being prosecuted by a joint DOJ/EPA litigation team.

### Delta Sonic Employee Sentenced In Connection With Oil Discharge Into Cayuga Creek; Company To Pay Civil Penalties

On September 18, 2018, Michael Yount, 47, of Lancaster, NY, who was convicted of making a materially false statement, was sentenced to serve two years probation and to perform 100 hours of community service “that directly contributes to the betterment of this community’s environment.”

On July 18, 2016, the New York State Department of Environmental Conservation (DEC) responded to an alleged oil spill in Cayuga Creek in Niagara Falls, NY. The NYS-DEC Spills Unit found a significant amount of suspected waste oil in the creek along Niagara Falls Boulevard near Tuscarora Road and in a large storm sewer water pipe along Niagara Falls Boulevard.



As part of a subsequent investigation, a DEC Environmental Programs technician began looking into potential sources of the oil discharge—which the technician estimated to be between 300 and 500 gallon oil spill—and whether a violation of the Clean Water Act had occurred. The Technician contacted the defendant, who was the Environmental Compliance Officer for Delta Sonic Car Wash Systems, Inc., which has a location on Niagara Falls Boulevard, approximately a half a mile from Cayuga Creek. During a meeting at the Delta Sonic location on Niagara Falls Boulevard, the technician learned that Delta Sonic was renovating the oil change and lube

shop garage, which involved the removal of concrete floors by a subcontractor. At that time, Yount stated that there had not been any problems except for a minor spill of approximately two gallons of oil which was immediately cleaned up.

The technician returned to Delta Sonic the following day and observed an absorbent boom with oil on it in a storm sewer receiver located in the parking lot outside of the oil change garage. Yount sought to mislead the technician by stating that booms were often left in sewers and that the boom in question may have been in there for some time. However, the defendant knew that booms were not often left in the sewers at Delta Sonic and the boom had been placed in the storm sewer receiver approximately six days earlier. The boom had been placed in the storm sewer receiver as a result of a complaint by another Delta Sonic employee that oily wastewater was being pumped into it as a result of the renovation of the Delta Sonic oil change and lube shop garage.

In addition, U.S. Attorney Kennedy noted that Delta Sonic recently entered into consent agreements with both the DEC and EPA regarding violation of the Clean Water Act. Pursuant to the terms of those consent agreements, Delta Sonic agreed to pay the \$25,363.62 in clean-up costs and an additional \$25,000 as a civil penalty to the DEC. In addition, the company agreed to pay \$30,000 to the EPA as a civil penalty.

“Today’s sentencing together with these consent orders and civil penalties make clear that this Office, together with our federal and state partners, take seriously our obligation to protect our community from all threats,” stated U.S. Attorney Kennedy. “The quality of our environment is inextricably intertwined with the quality of life for our citizens. We will remain vigilant in our efforts to protect and preserve the precious

natural resources with which we here in Western New York have been so richly blessed.”

The case was investigated by EPA’s Criminal Investigation Division, the New York State Department of Environmental Conservation Police, and the Niagara Falls Police Department. The case was prosecuted by a DOJ litigation team.

### Terminix Virgin Islands Branch Manager Pleads Guilty to Four Counts of Illegally Applying Restricted-Use Pesticide to Multiple Residences in the U.S. Virgin Islands

Jose Rivera, 58, former Branch Manager of Terminix International USVI LLC (Terminix USVI), pleaded guilty on September 17, 2018, to four counts of an indictment charging violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for illegally applying fumigants containing methyl bromide in multiple residential locations in the U.S. Virgin Islands, including the condominium resort complex in St. John where a family of four fell seriously ill in 2015, after the unit below them was fumigated, the Department of Justice and the Environmental Protection Agency (EPA) announced today.

According to the plea agreement, defendant Rivera was certified as a pesticide applicator by the Virgin Islands Department of Planning and Natural Resources and received pesticide applicator training from the University of the Virgin Islands. Based on his training, the defendant knew that he was required to read the pesticide label and follow all instructions when using any pesticide. In short, the defendant was instructed that federal law requires applicators to follow the pesticide use instructions on the label. The label on methyl bromide states that its use is restricted to the location and manner on the label, and the label does not authorize application of methyl bromide in a residential unit. Rivera applied methyl bromide, a registered restricted-use pesticide, in a manner inconsistent with the use instructions on the label at the residences named in the counts of conviction.



*"J" units at Sirenusa, St. John. Unit where pesticide was applied is lower—unit where residents were injured is above.*

"Toxic pesticides can have devastating human health consequences, and that's why those who are certified to apply them must do so responsibly and lawfully," said Acting Assistant Attorney General Jeffrey H. Wood for the Justice Department's Environment and Natural Resources Division. "The facts in this case show that the defendant, despite his training and experience, knowingly applied the pesticide methyl bromide in an illegal and unsafe manner, which tragically exposed a family of four to profoundly debilitating injuries."

"This prosecution demonstrates the importance of complying with environmental laws and regulations," said United States Attorney Gretchen C.F. Shappert for the District of the Virgin Islands. "Tragically, the defendant's failure to do what was required of him resulted in catastrophic injuries to the victims and exposed many others to similar harm. Here in the Virgin Islands, the United States Attorney's Office is committed to the enforcement of environmental laws. We will take all necessary steps to hold those who violate these laws criminally accountable and to protect residents and visitors of the Virgin Islands."

"When you break a law that protects public health, there are real victims and real consequences, as this case tragically shows," said Assistant Administrator Susan Bodine for Enforcement and Compliance Assurance at EPA. "This incident illustrates how important it is for EPA to enforce environmental laws and hold violators accountable for endangering human health and the environment. Today's guilty plea should send a clear

message to those entrusted with handling dangerous chemicals to take necessary steps to ensure this can't happen again."

In 1984, EPA banned the indoor use of methyl bromide products. The few remaining uses are severely restricted. Pesticides containing methyl bromide in the U.S. are restricted-use due to their acute toxicity, meaning that they must only be applied by a certified applicator. Health effects of acute exposure to methyl bromide are serious and include central nervous system and respiratory system damage. These pesticides can be very toxic, and it is critically important that they be used only as approved by EPA.

After the government began its investigation, Terminix LP voluntarily ceased its use of methyl bromide in the U.S. and in U.S. territories, except for one remaining supervised government contract.

On March 23, 2017, the companies Terminix LP and Terminix , USVI, Rivera's employer, pleaded guilty and were sentenced on four counts charging violations of FIFRA. The companies paid a total of approximately \$10 million in criminal fines, community service, and restitution payments. In addition, Terminix LP has discontinued using pesticides containing methyl bromide in the United States and U.S. Territories.

EPA worked cooperatively with the Agency for Toxic Substances and Disease Registry and the Department of Justice in its investigation. The case was prosecuted by a joint DOJ/EPA Litigation team.

## Cabool Business Owner Pleads Guilty to Polluting Big Piney River

Brian Dale Fleming, pleaded guilty on August 28, 2018 to one count of knowingly discharging a pollutant (used grease) into the Big Piney River without a permit, a violation of the Clean Water Act.

Fleming is the owner of BF Byproducts, LLC, which is located in Cabool. BF Byproducts (formerly Fleming Recycling) is a grease-recycling business. BF Byproducts uses trucks to collect used grease from hundreds of restaurants in Missouri, Arkansas and elsewhere. The grease is transported to the Cabool facility, where it is recycled for resale and a profit.

Drivers who work for BF Byproducts collect the used grease for further processing at the Cabool facility where it is hosed from the collection trucks to a pit at the facility. From the pit, the grease is pumped to tanks located on the facility for further heating. The heating process separates the used grease; any grease that falls to the bottom of the heat processing tank is considered waste.

Because the waste was not needed, employees were instructed by Fleming to pump the waste grease down the hill from the main plant processing facility. This waste grease that was illegally pumped from BF Byproducts entered an unnamed tributary that leads into the Big Piney River.



On April 2, 2015, EPA's Criminal Investigation Division executed a search warrant at BF Byproducts in conjunction with the Texas County, Missouri Sheriff's Department. The search warrant was issued after numerous residents near and adjacent to the grease processing facility complained of used grease being found in nearby ditches and tributaries leading to the Big Piney River.

Under the terms of the plea agreement, the government and Fleming recommend a fine of \$15,000 and a restitution payment to the state of Missouri of \$3,818. This recommendation is made in light of the fact that Fleming already served a year and a day of incarceration after being convicted in a separate criminal case, in which he participated (with his brother and co-defendant) in a conspiracy to steal spent cooking oil from restaurants and transport the stolen property across state lines to a grease recycling business in Tulsa, Okla. Additionally, there was a Superfund cleanup conducted at BF Byproducts, and today's plea agreement anticipates that there may be costs associated with the cleanup that are separate and apart from this criminal proceeding. A sentencing hearing will be scheduled after the completion of a presentence investigation by the United States Probation Office.

This case was investigated by EPA's Criminal Investigation Division, the U.S. Coast Guard, the Missouri Department of Natural Resources, the Texas County, Mo., Sheriff's Department and the Cabool, Mo., Police Department. The case was prosecuted by DOJ.

### **Corporate Officers for Bozeman-Based USA Brass Company, Inc. Plead Guilty to False Statement and Clean Water Act Offenses Related to Company's Discharges of Lead-Contaminated Waste Water**

Two former corporate officers of USA Brass Company, Inc. a Bozeman-based company that cleaned and polished spent ammunition casings for resale and reuse, pled guilty to separate offenses related to the company's unauthorized discharges of lead-contaminated waste water into the City of Bozeman's sewer system in 2013. U.S. Magistrate Jeremiah Lynch presided over the plea hearings held in Missoula on August 2 and August 9, 2018.

Zachary Daniel Flanagan, a 26-year old resident of Bozeman, Montana and former Chief Executive Officer of USA Brass, pled guilty to a felony false statement offense for making false representations to the pretreatment coordinator for the City of Bozeman's Publicly Owned Treatment Works (POTW) regarding the nature of lead-contaminated industrial waste water generated by USAB to gain permission to discharge the wastewater into the city's sewer system.

Flanagan pled guilty to an information alleging that he falsely stated in a November 2013 email to the pretreatment coordinator that USAB's laboratory analysis of the waste water had been reviewed by an environmental consultant who concluded that the lead-contaminated waste water "would be fine to send down the sewer." Flanagan admitted that the statement was false because the consultant had not reviewed analytical results and had not concluded that the waste water was suitable for discharge to the city sewer. Sentencing for Flanagan is scheduled for November 15, 2018.

Nolan Michael Schimpf, a 26-year old resident of Bozeman, Montana, and former Chief Production Officer of USA Brass, pled guilty to a misdemeanor count under the federal Clean Water Act for negligently discharging the lead-contaminated waste water into the Bozeman POTW without authorization from September 2013 to December 2013, in violation of the City's pretreatment program that regulates industrial discharges of pollutants into the City's Publicly Owned Treatment Works. Schimpf is scheduled to be sentenced on November 16, 2018.

The EPA's criminal investigation into the company's waste water disposal practices followed a 2013 OSHA investigation into lead exposure of workers at the USA Brass facility that resulted in OSHA citations for worker safety violations. USA Brass has since closed the Bozeman business.

"The defendants jeopardized public health and safety by discharging lead contaminated wastewater into public sewage systems, and lied to a local City official to obtain permission for the discharges," said Special Agent in Charge Jeffrey Martinez of EPA's Criminal Investigation Division in Montana. "This case sends a clear signal that EPA will hold accountable those who violate laws designed to protect our communities and the environment."

This case was investigated by EPA's Criminal Investigation Division and prosecuted by a joint DOJ/EPA litigation team.

### Recycling Executive Guilty of Fraud and Tax Offenses in Scheme to Landfill and Re-Sell Potentially Hazardous Waste

The owner of two recycling businesses illegally landfilled potentially hazardous electronic waste as part of a scheme to re-sell the materials and avoid paying income taxes, according to his guilty plea in federal court in Chicago.

Brian Brundage owned Intercon Solutions Inc. and EnviroGreen Processing LLC, which purported to recycle electronic waste on behalf of corporate and governmental clients. Brundage represented to the clients that the materials would be disassembled and recycled in an environmentally sound manner. In reality, from 2005 to 2016, Brundage caused thousands of tons of e-waste and other potentially hazardous materials to be landfilled, stockpiled, or re-sold at a profit to companies who shipped the materials overseas, according to a plea agreement filed Tuesday in U.S. District Court in Chicago. Brundage admitted evading \$743,984 in federal taxes by concealing the income he earned from re-selling the e-waste and from paying himself funds that he falsely recorded as Intercon business expenses. Brundage spent the purported expenses for his own personal benefit, including wages for a nanny and housekeeper, jewelry purchases, and payments to the Horseshoe Casino in Hammond, Ind., the plea agreement states.

Brundage, 46, of Dyer, Ind., pleaded guilty on September 20, 2018, to one count of wire fraud, which is punishable by up to 20 years in prison, and one count of tax evasion, which is punishable by up to five years. Sentencing is scheduled for Feb. 27, 2019, at 2:00 p.m.

The guilty plea was announced by John C. Kocoras, First Assistant United States Attorney for the Northern District of Illinois; Brad Ostendorf, Assistant Special Agent-in-Charge of the U.S. Environmental Protection Agency's Criminal Investigation Division in Chicago; Gabriel L. Grchan, Special Agent-in-Charge of the Chicago office of the Internal Revenue Service Criminal Investigation Division; James M. Gibbons, Special Agent-in-Charge of the Chicago office of the U.S. Immigration and Customs Enforcement's Homeland Security Investigations; and Carol Fortine Ochoa, Inspector General of the U.S. General Services Administration. The government is represented by Assistant U.S. Attorneys Sean J.B. Franzblau and Kelly Greening of the Northern District of Illinois, and Special Assistant U.S. Attorney Crissy Pellegrin of the EPA.

According to the plea agreement, Brundage caused employees of Chicago Heights-based Intercon and Gary, Ind.-based EnviroGreen to sell some of the e-waste and other materials to vendors whom Brundage knew would ship the materials overseas. Some of the materials contained Cathode Ray Tubes, which are glass video display components of computer and television monitors, and which contain potentially hazardous amounts of lead. Brundage admitted causing multiple tons of CRT glass and other potentially hazardous materials to be destroyed in environmentally unsafe ways and later landfilled.

### CEO And CFO Of Utah Biodiesel Company And California Businessman Charged In \$500 Million Fuel Tax Credit Scheme

A federal grand jury sitting in the District of Utah returned an indictment on August 24, 2018, charging the CEO and CFO of Washakie Renewable Energy (WRE), a Utah-based biodiesel company, and a California businessman with laundering proceeds of a mail fraud scheme, which obtained over \$511 million in renewable fuel tax credits from the Internal Revenue Service (IRS), announced Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Justice Department's Tax Division, U.S. Attorney John W. Huber for the District of Utah, Don Fort, Chief of IRS Criminal Investigation and Jessica Taylor, Director of Environmental Protection Agency Criminal Investigation Division.

According to the indictment, Jacob Kingston was Chief Executive Officer and Isaiah Kingston was Chief Financial Officer of WRE and each held a 50% ownership interest in the company. WRE has described itself as the "largest producer of biodiesel and chemicals in the intermountain west."

Jacob Kingston, Isaiah Kingston, and Lev Aslan Dermen (aka Levon Termendzhyan), owner of California-based fuel company NOIL Energy Group, allegedly schemed to file false claims for renewable fuel tax credits, which caused the IRS to issue over \$511 million to WRE. Jacob Kingston is separately charged with filing nine false claims for refund on behalf of WRE in 2013.

The IRS administered tax credits designed to increase the amount of renewable fuel used and produced in the United States.

From 2010 through 2016, as part of their fraud to obtain the fuel tax credits, the defendants allegedly created false production records and other paperwork routinely created in qualifying renewable fuel transactions along with other false documents. To make it falsely appear that qualifying fuel transactions were occurring, the defendants rotated products through places in the United States and through at least one foreign country. The defendants also allegedly used "burner phones" and other covert means to communicate during the scheme.

The indictment further charges that the defendants laundered part of the scheme proceeds through a series of financial transactions related to the purchase of a \$3 million personal residence for Jacob Kingston. Jacob and Isaiah Kingston are separately alleged to have laundered approximately \$1.72 million in scheme proceeds to purchase a 2010 Bugatti Veyron. Jacob Kingston and Lev Aslan Dermen are separately charged with money laundering related to an \$11.2 million loan funded by scheme proceeds.

If convicted, the defendants each face a maximum of 10 years in prison for each money laundering count and Jacob Kingston faces a maximum of 3 years in prison for each false tax return count. They also face a period of supervised release, monetary penalties, and restitution.

The case is being investigated by EPA's Criminal Investigation Division, IRS Criminal Investigations and the Defense Criminal Investigative Service. The case is being prosecuted by a DOJ litigation team.

*An indictment contains allegations that a defendant has committed a crime. Every defendant is presumed to be innocent until and unless proven guilty in court.*



### Colorado Business Owner Pleads Guilty to \$7 Million Biodiesel Tax Credit Fraud Scheme

A Colorado business owner pleaded guilty on August 8, 2018 to conspiracy to impair and impede the Internal Revenue Service (IRS) for his role in a \$7.2 million renewable fuel tax credit scheme, announced Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Justice Department's Tax Division.

According to court documents, Calvin Glover of Parker, Colorado, owned Colorado-based renewable fuel company, Shintan, Inc. Glover conspired with others to file more than \$7 million in false claims for refundable fuel tax credits with the IRS. Glover signed at least 23 false tax returns that claimed over \$7.2 million in bogus refundable biodiesel mixture tax credits. Based on these false claims, the IRS issued over \$7 million in refunds to Shintan Inc. After receiving the refunds checks, Glover deposited the checks into a bank account that he controlled and then transferred the proceeds to his co-conspirators.

In response to two grand jury subpoenas issued during the investigation, Glover provided false documents and information to investigators and met with co-conspirators to concoct a false story, all intended to obstruct the IRS' ongoing criminal investigation.

Glover faces a maximum sentence of 5 years in prison, as well as a period of supervised release, restitution and monetary penalties.

The case is being investigated by EPA's Criminal Investigation and is being prosecuted by a DOJ litigation team.

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### **Omaha Railcar Cleaning Company and Two Owners Charged With Violating Environmental and Worker Safety Laws Related to Workers' 2015 Deaths**

Nebraska Railcar Cleaning Services LLC (NRCS), its president and owner, Steven Michael Braithwaite, and its vice president and co-owner, Adam Thomas Braithwaite, were charged in a 22-count indictment with conspiracy, violating worker safety standards resulting in worker deaths, violating the Resource Conservation and Recovery Act (RCRA) which governs hazardous waste management, and submitting false documents to a federal agency. Adam Braithwaite was also charged with perjury. The indictment was returned by a grand jury in Omaha, Nebraska on August 23, 2018.

According to the indictment, NRCS and Steven and Adam Braithwaite failed to implement worker safety standards and then tried to cover that up during an inspection by the Occupational Safety and Health Administration (OSHA). The defendants also mishandled hazardous wastes removed from rail tanker cars during the cleaning process.

Two of the company's workers were later killed and another injured when the contents of a railcar ignited while being cleaned.

"Protecting the health and safety of American workers at hazardous job sites is of paramount importance," said Acting Assistant Attorney General Wood. "The defendants in this case failed to live up to that responsibility, even falsifying documents to evade worker safety requirements. Tragically, employees at the defendants' facility lost their lives while working in these unsafe conditions. Today's indictment shows that the Department of Justice will prosecute those who knowingly seek to thwart federal laws that protect the safety of American workers."

"Whenever a company or its employees knowingly fail to comply with environmental laws, both the public and the environment are placed at risk" said Assistant Administrator Susan Bodine of EPA's Office of Enforcement and Compliance Assurance. "This case demonstrates the importance of environmental compliance to safeguard public health and safety."

"An important mission of the Office of Inspector General is to investigate allegations of fraud committed against the Department of Labor's regulatory agencies, including the Occupational Safety and Health Administration (OSHA). We will continue to work with our law enforcement partners to defend the missions of those regulatory agencies, which includes assuring safe and healthful working conditions for American workers," said Steven Grell, Special Agent-In-Charge, Dallas Region, U.S. Department of Labor Office of Inspector General.

The indictment alleges that after a 2013 inspection of NRCS, Steve Braithwaite entered into a written agreement where he represented that NRCS had been testing for benzene since July 2014. After OSHA returned to NRCS in March 2015 to conduct a follow-up inspection and was turned away by Steve Braithwaite, Steve and Adam Braithwaite created documents that were submitted to OSHA to falsely show that NRCS had been purchasing equipment to test the contents of railcars for benzene and had taken other required safety precautions. During inspections by the Nebraska Department of Environmental Quality and the U.S. Environmental Protection Agency in 2013 and 2014 respectively, NRCS was informed that it was required to test its wastes to

determine if they were hazardous in order to properly dispose of them, rather than send all untested waste to a landfill not permitted to receive hazardous waste. The indictment alleges that was not done before April 2015.

On April 14, 2015, the contents of a railcar ignited while being cleaned by NRCS employees. Two employees were killed and a third injured. Two days after the explosion, NRCS had three railcars tested to assess whether their contents were hazardous; two were determined to be hazardous.

OSHA regulations under the Occupational Safety and Health Act require that the air in confined spaces such as rail tanker cars be tested for various gases including flammable and explosive ones before workers are allowed to enter, and that workers exposed to certain chemicals wear respirators for which they must be assessed and fit tested. EPA regulations under RCRA require assessments of wastes for whether they are hazardous and that hazardous wastes be treated and disposed of at appropriate facilities. Hazardous wastes include those that are ignitable and those that contain benzene. According to the Centers for Disease Control and Prevention, benzene causes cancer in humans and has other health effects.

The case was investigated by EPA's Criminal Investigation Division and the U.S. Department of Labor Office of Inspector General. The case is being prosecuted by a DOJ litigation team.

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