

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION | 5:11-cr-00031
JUDGE STAGG
MAGISTRATE JUDGE HORNSBY

UNITED STATES OF AMERICA

CRIMINAL NO. _____

v.

JUDGE _____
MAGISTRATE JUDGE HORNSBY

JOHN EMERSON TUMA &
CODY MONTGOMERY TUMA

18 U.S.C. §§ 2, 371 & 1505
33 U.S.C. §§ 1311 (a) & 1319(c)(2)(A)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE
18 U.S.C. § 371
Conspiracy

I. At All Times Relevant Herein:

A. Parties

1. Defendant JOHN EMERSON TUMA was president of Arkla Disposal Services, Inc., and was general manager supervising the daily operation of Arkla Disposal Services, Inc. ("Arkla"), since it began operations in 2003. The Arkla facility was located at 10845 Highway 1 South, Shreveport, Louisiana. Arkla was a centralized wastewater treatment facility that received wastewater from industrial processes and oilfield exploration and production facilities. Arkla contracted to treat the wastewater through

an on-site treatment process and then discharge the treated wastewater to either the City of Shreveport publicly owned treatment works or the Red River.

2. Defendant CODY MONTGOMERY TUMA was night shift supervisor at the Arkla facility from on or before January 2005 until January 2007. Starting in January 2007, CODY MONTGOMERY TUMA worked day shifts at the Arkla facility as plant operator.

B. Relevant Law - the Clean Water Act

3. The Federal Water Pollution Control Act, Title 33, United States Code (hereafter "U.S.C.") Sections 1251 through 1387, referred to as the Clean Water Act ("CWA"), regulates the discharge of pollutants to waters of the United States.

4. The CWA prohibits the discharge of pollutants into the waters of the United States from any point source without a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). 33 U.S.C. § 1311(a). Under the CWA, the U.S. Environmental Protection Agency ("EPA") may delegate its authority to states to implement and enforce NPDES permits. The State of Louisiana was authorized to administer its CWA NPDES program on or about August 27, 1996. The United States has concurrent authority under 33 U.S.C. § 1342(i) to enforce those portions of

the CWA NPDES program that the State of Louisiana has been authorized to enforce. The Louisiana Department of Environmental Quality (“LDEQ”) required facilities that discharged effluent from wastewater treatment plants to obtain permits, known as Louisiana Pollutant Discharge Elimination System (“LPDES”) permits.

5. ~~The CWA also regulates the discharge of pollutants into sewer~~ systems that discharge into sewage treatment plants operated by municipal governments, known as publicly owned treatment works (“POTWs”), which discharge into waters of the United States.

6. Under the NPDES, POTWs are required to establish pretreatment programs setting out requirements that must be met by industrial users discharging pollutants into the POTWs. 33 U.S.C. § 1342(b)(8); 40 C.F.R. § 403.3(q).

7. A pretreatment requirement imposed on an industrial user includes any substantive or procedural requirement, other than a national pretreatment standard, which relates to discharges from an industrial user to a POTW. 33 U.S.C. §1342(b)(8); 40 C.F.R. § 403.3(r).

8. The Clean Water Act, specifically 33 U.S.C. § 1319(c)(2)(A), makes it a felony to knowingly violate any requirement imposed in an approved pretreatment program.

C. City of Shreveport Publicly Owned Treatment Works

9. The City of Shreveport ("Shreveport") Wastewater Treatment Plant was a POTW located at 11301 East Kings Highway, Shreveport, Louisiana, and was owned and operated by the City of Shreveport. Pursuant to LPDES Permit LA0041394, Shreveport was authorized to discharge treated wastewater from the Shreveport POTW to the Red River.

10. Pursuant to the Clean Water Act, Shreveport, as the owner and operator of a permitted POTW, was required to establish an industrial pretreatment program in accordance with the General Pretreatment Regulations found at 40 C.F.R. Part 403 and 33 U.S.C. § 1342(b). The Shreveport Industrial Pretreatment Program incorporated, *inter alia*, a Sewer Use Ordinance and Industrial User ("IU") Pretreatment Permit, issued to industrial users, and was approved by EPA on or about January 11, 1985, and by LDEQ in 1986.

11. On or about March 3, 2003, Shreveport issued Industrial User Permit No. CIU-013 ("the Permit") to Arkla, to discharge industrial wastewater from Arkla's facility to the Shreveport POTW, subject to limitations on specified parameters, including pH, oil and grease, biochemical oxygen demand, and total suspended solids. Arkla operated a

series of tanks for storage of effluent and for treatment purposes. The Permit was modified periodically, including on or about June 13, 2006.

12. The Permit, as modified June 13, 2006, authorized Arkla to discharge process wastewater to Shreveport's sanitary sewer system from Outfall 001 - the discharge valve from Tank B1. Permit, Para. I.B.1.

13. The Permit, as modified June 13, 2006, specifically provided as follows: "The term 'Batch' shall be defined as the contents of Tank B-1 at the time of sampling. No additional water shall be introduced into Tank B-1 once samples have been collected and the sample shall be representative of the entire contents of Tank B-1." Permit, Para. I.B.8.

14. The Permit, as modified June 13, 2006, specified that all discharges were to be by batch only, and no discharge could commence until appropriate notice was provided to the Pretreatment Office. The rate of discharge could not exceed 600 gallons per minute. Permit, Para. I.B.7.

II. The Conspiracy

15. Beginning on or before July 2006 and continuing until at least October 2007, in the Western District of Louisiana and elsewhere, Defendants JOHN EMERSON TUMA and CODY MONTGOMERY TUMA and others both known and unknown to the Grand Jury did knowingly and

willfully combine, conspire, confederate and agree together to commit the following offenses against the United States:

Objects of the Conspiracy

- a. To discharge untreated wastewater to the Red River without a permit, in violation of 33 U.S.C. § 1319(c)(2)(A);
- ~~b. To discharge untreated wastewater to Shreveport's POTW, in violation of a requirement of Shreveport's approved pretreatment program and in violation of 33 U.S.C. § 1319(c)(2)(A); and~~
- c. To corruptly influence, obstruct, impede, and endeavor to influence, obstruct, and impede a proceeding before a department or agency of the United States, in violation of 18 U.S.C. § 1505.

16. The primary purposes of the conspiracy were:

- a. To obtain revenue from customers by accepting liquid industrial wastes for the purported purpose of treating and disposing of those wastes;
- b. To make space available for incoming liquid wastes by removing previously stored liquid wastes as quickly and cheaply as possible; and
- c. To conceal from regulators, investigators, and customers the facility's failure to properly treat, store, and dispose of liquid wastes so that the facility would continue to operate and accept more wastes.

Manner and Means

17. The manner and means by which the defendants and their co-conspirators carried out, and attempted to carry out, the conspiracy included the following:

a. The defendants and their co-conspirators accepted truckloads of ~~industrial wastewater from customers purportedly for treatment and~~ disposal of the liquid wastes and wastewater;

b. The defendants and their co-conspirators minimized or avoided treatment and disposal costs by discharging liquid wastes and wastewater directly to the Red River and to the sewer system leading to the City's POTW without properly treating the wastes and wastewater.

Overt Acts in Furtherance of the Conspiracy

18. In furtherance of the conspiracy and to effect the objects thereof, the defendants and others performed and caused to be performed the following overt acts, among others, in the Western District of Louisiana and elsewhere:

19. On numerous occasions in 2006 and 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA directed an Arkla employee to inspect the pipeline leading from the Arkla facility to the Red River to see if any kind of monitoring device had been placed on the line.

20. In 2006 and 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA and CODY MONTGOMERY TUMA directed an Arkla employee to watch the road in front of the facility and to shut down operations related to any discharges going to the Shreveport sanitary sewer system or to the river if the employee saw any Shreveport trucks pull up in front of the facility.

21. Beginning in or about July 2006 and continuing until in or about October 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA personally and through others turned off and tampered with the composite sampler installed by Shreveport prior to discharging to the POTW. Shreveport had installed the composite sampler inside Arkla's fenceline in order to collect effluent samples from the facility prior to its discharge into the POTW. The purpose of the composite sampler was to ensure that effluent being discharged from the facility was in compliance with the limitations set forth in the facility's IU permit.

22. In or about July and August 2006, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA opened the composite sampler and poured out the effluent it had collected, and then poured fresh water into the collection basin. JOHN EMERSON TUMA showed CODY MONTGOMERY

TUMA and another Arkla employee how to clean the sampler and to switch effluent samples.

23. In or about October 2007, the exact date being unknown to the Grand Jury, JOHN EMERSON TUMA hired and ordered a contractor to graft a three-inch pipeline onto the top of an existing six-inch line in order to allow waste water to bypass the facility's effluent flow meter and compositor installed by Shreveport. This piping was constructed in a manner which concealed the existence and purpose of the three-inch pipe by grafting it on top of an overhead existing pipe that was high enough off the ground so that the grafted pipe was not visible from the ground.

24. On or about October 29, 2007, JOHN EMERSON TUMA hired a contractor to come to the Arkla facility, cut the discharge line to the Red River at the point where the line was above ground, and plug both ends of the line in order to conceal Arkla's discharges to the Red River.

25. Beginning no later than July 2006 and continuing until October 2007, JOHN EMERSON TUMA caused Arkla to lease four offsite storage tanks to store wastewater. The offsite tanks were connected to the Arkla facility via a single pipeline. JOHN EMERSON TUMA configured, and caused to be configured, the piping to give the appearance that samples from each of the four tanks could be collected. JOHN EMERSON TUMA connected, and caused

to be connected, fresh water lines to each of the pipes dedicated to the four offsite storage tanks so that when effluent samples were collected from the offsite tanks, the samples would meet permit limits.

26. Beginning in or about 2006 and continuing through in or about 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA told an Arkla employee to inspect the surface of the Red River and then spray the river's surface with Dawn dish detergent if the employee saw oil sheens on the river caused by discharges from Arkla's outfall.

27. From at least June 2006 through at least October 2007, Defendant JOHN EMERSON TUMA accepted in excess of 29 million gallons of industrial wastewater and wastewater generated from oilfield exploration and production.

Untreated Discharges to the POTW

28. In 2006 and 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA and CODY MONTGOMERY TUMA instructed Arkla employees to mix well water and fresh water with waste water from the plant in Tank B1 in order to dilute the waste water prior to its discharge to the Shreveport POTW.

29. In 2006 and 2007, JOHN EMERSON TUMA and CODY MONTGOMERY TUMA discharged and caused to be discharged to the City

POTW untreated wastewater other than the contents of Tank B-1 at the time of sampling. These discharges occurred after a representative from a laboratory contracted by Arkla collected a grab sample from Tank B1. The sampling was done at the request of JOHN EMERSON TUMA and in accordance with Arkla's IU permit. After the laboratory completed its testing, the results were provided to an Arkla employee who reviewed the results and then notified Shreveport of the results and the intended discharge from B1. The sampling, testing, and notification were done to mislead Shreveport as to what was, in fact, being discharged.

30. In 2006 and 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA installed and caused to be installed several bypasses into the system that circumvented the Arkla flow meter and allowed for untreated wastewater to be discharged directly to the sanitary sewer system that flowed to the City POTW, without any record of that flow.

Unpermitted Discharges to the Red River

31. Between July and December 2006, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA and CODY MONTGOMERY TUMA discharged and caused to be discharged at least 200,000 gallons of untreated wastewater from a pipe to the Red River on a daily basis. Arkla

did not have a permit from LDEQ to discharge to the Red River during this time.

32. Between July and October 2007, the exact dates being unknown to the Grand Jury, JOHN EMERSON TUMA and CODY MONTGOMERY TUMA discharged and caused to be discharged at least 200,000 gallons of untreated wastewater from a pipe to the Red River on a daily basis. Arkla did not have a permit from LDEQ to discharge to the Red River during this time.

33. On or about September 10, 2007, in order for untreated wastewater to be discharged undetected directly from a pipe into the Red River, JOHN EMERSON TUMA ordered a contractor to install and extend the pipe to Arkla's river outfall line. The pipe extended several feet out into the river, underwater, so as to conceal the discharges.

Obstruction of EPA Inspection

34. During a June 2007 inspection of the Arkla facility by EPA, JOHN EMERSON TUMA directed an Arkla employee to stage a pump failure to prevent pumping of untreated wastewater from the offsite storage tanks to the facility while the EPA inspector was present. The Arkla employee manipulated a series of valves so that a pump would malfunction when turned on. The Arkla employee then showed the EPA inspector the

malfunctioning pump and explained that without the pump, it was not possible to pump the effluent from the offsite storage tanks to the facility, and thus it was not possible for the EPA inspector to collect effluent samples from the offsite storage tanks.

35. Also during the June 2007 inspection, when the EPA inspector attempted to collect effluent samples, JOHN EMERSON TUMA told an Arkla employee and CODY MONTGOMERY TUMA to make it look like a valve had been left open, causing untreated wastewater to contaminate the offsite storage tanks. This was done to prevent the EPA inspector from collecting an effluent sample from the offsite storage tanks.

All in violation of Title 18, United States Code Section 371 [18 U.S.C. § 371].

COUNT TWO

33 U.S.C. § 1319(c)(2)(A) & 18 U.S.C. § 2
Discharging to the POTW in Violation of a Requirement
of the Approved Pretreatment Program

36. Paragraphs 1 through 14 and 28 through 30 are realleged and incorporated herein by reference.

37. Between or on about June 13, 2006, and continuing until on or about December 20, 2006, in the Western District of Louisiana, defendants JOHN EMERSON TUMA and CODY MONTGOMERY TUMA knowingly violated and caused to be violated a requirement of Shreveport's approved

pretreatment program under 33 U.S.C. § 1342(b)(8), namely the requirement that the discharges from the Arkla facility to the Shreveport sanitary sewer system be by batch only with batch defined as the contents of Tank B-1 at the time of sampling, by discharging to the Shreveport sanitary sewer system untreated wastewater other than the contents of Tank B-1 at the time of sampling.

All in violation of Title 33, United States Code, Section 1319(c)(2)(A), and Title 18, United States Code, Section 2 [33 U.S.C. § 1319(c)(2)(A) & 18 U.S.C. § 2].

COUNT THREE

33 U.S.C. §§ 1311(a) & 1319(c)(2)(A) & 18 U.S.C. § 2
Discharging to the Red River Without a Permit

38. Paragraphs 1 through 14 and 31 are realleged and incorporated herein by reference.

39. Beginning on or about July 2006 and continuing until on or about December 6, 2006, in the Western District of Louisiana, defendants JOHN EMERSON TUMA and CODY MONTGOMERY TUMA knowingly discharged and caused to be discharged a pollutant from a point source into a water of the United States without a permit issued under 33 U.S.C. § 1342, namely, discharging untreated wastewater from a pipe known as Outfall 002 to the Red River without a permit.

All in violation of Title 33, United States Code, sections 1311(a) and 1319(c)(2)(A) and Title 18, United States Code, section 2 [33 U.S.C. §§ 1311(a) & 1319(c)(2)(A) & 18 U.S.C. § 2].

COUNT FOUR

33 U.S.C. §§ 1311(a) & 1319(c)(2)(A) & 18 U.S.C. § 2
Discharging to the Red River Without a Permit

~~40. Paragraphs 1 through 14 and 32 through 33 are realleged and incorporated herein by reference.~~

41. Beginning on or about July 1, 2007, and continuing until on or about October 19, 2007, in the Western District of Louisiana, defendants JOHN EMERSON TUMA and CODY MONTGOMERY TUMA knowingly discharged and caused to be discharged a pollutant from a point source into a water of the United States without a permit issued under 33 U.S.C. § 1342, namely, discharging untreated wastewater from a pipe known as Outfall 002 to the Red River without a permit.

All in violation of Title 33, United States Code, sections 1311(a) and 1319(c)(2)(A) and Title 18, United States Code, section 2 [33 U.S.C. §§ 1311(a) & 1319(c)(2)(A) & 18 U.S.C. § 2].

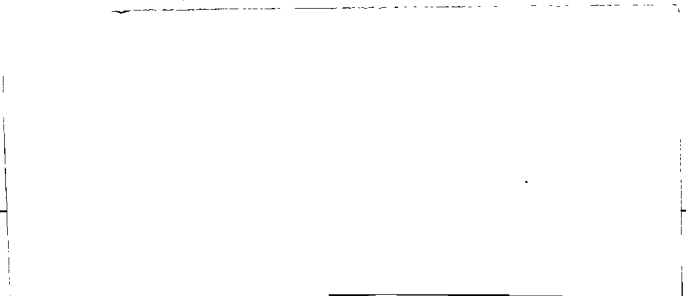
COUNT FIVE
18 U.S.C. §§ 1505 & 2
Obstruction

42. Paragraphs 1 through 14 and 34 through 35 are realleged and incorporated herein by reference.

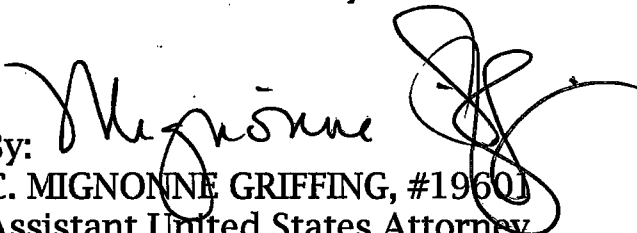
43. Beginning on or about June 11, 2007, and continuing until on or about June 20, 2007, at the Arkla facility, in the Western District of Louisiana, defendants JOHN EMERSON TUMA and CODY MONTGOMERY TUMA did corruptly influence, obstruct, impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under which a pending proceeding, namely a Clean Water Act NPDES Follow-Up / Process Diagnostic Evaluation Inspection that was being conducted by EPA at the Arkla facility, by: (1) staging a pump failure to prevent the pumping of untreated wastewater from offsite storage tanks to the Arkla facility in order to prevent the EPA inspector from collecting effluent samples; and (2) manipulating a valve to make it appear that the valve had been left open and had caused untreated wastewater to contaminate the offsite storage tanks, thereby preventing the EPA inspector from collecting effluent samples.


All in violation of Title 18, United States Code, Section 1505, and Title 18, United States Code, Section 2 [18 U.S.C. §§ 1505 & 2].

A TRUE BILL



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