

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED - GR
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TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: EC /

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT TUCKER and
JALINE TUCKER,

Defendants.

No.

Hon.

1:09-cr-57

Janet T. Neff
U.S. District Judge

INDICTMENT

The Grand Jury Charges:

THE DEFENDANTS

At all times material hereto:

1. **SCOTT TUCKER** was the President and owner of H & M Demolition Companies, Inc. (“H & M Demolition”). H & M Demolition was engaged in the business of demolishing industrial buildings, and was headquartered in Holland, Michigan (the “H & M Demolition facility”).

2. **JALINE TUCKER**, the spouse of defendant **SCOTT TUCKER**, worked for H & M Demolition, and gave directions to H & M Demolition employees while they worked at demolition sites.

THE ASBESTOS ROOF PANEL PROJECT

3. In or about January 2005, H & M Demolition was hired to demolish a kiln-drying building at VKW Hardwoods, located at 395 54th Street, Wyoming, Michigan. **SCOTT TUCKER** knew that the roof panels in the kiln-drying building contained asbestos.

4. In or about January 2005, **SCOTT TUCKER** directed his employees to use an excavator to tear down the asbestos-containing roof panels in the kiln-drying building, and shove the debris into piles. As a result, the asbestos-containing roof panels were smashed into small pieces. No water was used to wet the piles of asbestos-containing debris.

5. On or about February 2, 2005, state inspectors notified **JALINE TUCKER** that violations of the asbestos regulations had occurred at the VKW Hardwoods facility, and that substantial portions of the debris at the site had become contaminated with asbestos. **JALINE TUCKER** told the inspectors that no further work would occur; however, **JALINE TUCKER** told an employee to remove as much asbestos debris as possible.

6. On or about February 2, 2005, on orders of **SCOTT TUCKER** and **JALINE TUCKER**, after regular work hours, H & M Demolition employees transported numerous truckloads of asbestos-contaminated debris to a cement recycling facility, which was not authorized to accept asbestos-containing waste.

THE ELECTRIC TRANSFORMER PROJECT

7. In or about April 2005, **SCOTT TUCKER**, as owner and president of H & M Demolition, entered into a contract to demolish a General Electric plant located in Holland, Michigan. As a part of that contract, **SCOTT TUCKER** agreed to properly dispose of a number of electric transformers at the facility. Oil inside the transformers and capacitors at the Holland industrial facility contained more than 500 parts per million of polychlorinated biphenyls ("PCBs").

8. During the demolition project, employees of H & M Demolition transported the electric transformers and capacitors from the Holland industrial facility to the H & M Demolition

facility. There, employees drained the transformers, and stored the PCB oil in plastic totes. The plastic totes and the capacitors were placed in a semi-truck trailer at the H & M Demolition facility.

9. In or about 2007, **SCOTT TUCKER** had the trailer containing the PCB oil and capacitors moved to another location.

ASBESTOS REGULATIONS

10. In 1971, asbestos, a widely-used insulation material, was declared to be a hazardous air pollutant by the U.S. Environmental Protection Agency ("EPA") under the federal Clean Air Act. 42 U.S.C. § 7412. EPA thereafter adopted regulations applicable to renovations and demolitions of buildings which contain asbestos, which are currently published at 40 CFR Part 61 ("the asbestos regulations").

11. The asbestos regulations apply to demolitions in which at least the following amount of regulated asbestos-containing material is to be removed: 260 linear feet on pipes; 160 square feet on other facility components; or 35 cubic feet of material once removed from any facility components. 40 CFR 61.145(a). At least these amounts were present in the roof panels at the kiln-drying building at the VKW Hardwoods site.

12. Regulated asbestos-containing material includes "non-friable" material, which is material that has a high probability of becoming, or has become, crumbled, pulverized or reduced to powder by the forces expected to act on the material in the course of demolition operations (known as Category II non-friable asbestos). 40 CFR 61.141. Category II non-friable asbestos was present in the roof panels at the kiln-drying building.

13. Owners or operators of a regulated demolition activity include persons who own, operate, control or supervise the demolition operation. 40 CFR § 61.141.

14. Owners and operators of a regulated demolition operation must comply with the following requirements, among others:

a. Carefully lower all regulated asbestos-containing material to the ground and floor, not dropping, throwing, sliding or otherwise damaging or disturbing the material. 40 CFR 61.145(c)(6)(ii).

b. Adequately wet all regulated asbestos-containing material and ensure that it remains wet until collected and contained or treated in preparation for disposal. 40 CFR 61.145(c)(6)(i).

c. Discharge no visible emissions to the outside air during the collection, transportation or handling operations of any regulated asbestos-containing waste material. 40 CFR 61.150(a).

d. Deposit all regulated asbestos-containing waste material as soon as is practical at an asbestos waste disposal or processing site operated in accordance with the asbestos regulations. 40 CFR 61.150(b).

PCB REGULATIONS

15. The chemical substances known as polychlorinated biphenyls (“PCBs”) were used for many years as thermal insulation in electric transformers and capacitors, among other industrial uses. In 1976, Congress found that PCBs present an unreasonable risk of injury to health or the environment, and required PCBs to be regulated under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601, 2605(e). The U.S. Environmental Protection Agency

(“EPA”) promulgated regulations at 40 CFR Part 761 which are designed to ensure the proper disposal of PCBs and minimize the risks to human health or the environment during use, handling and storage (“the PCB regulations”).

16. The PCB regulations apply generally to any substance, mixture, or item containing at least 50 parts per million (“ppm”) of PCBs.

17. PCB waste must be disposed of in accordance with the PCB regulations within one year from the time the material was removed from service. 40 CFR 761.65(a)(1). PCBs and PCB items equal to or greater than 500 ppm must be disposed of in a high-temperature incinerator operated according to the PCB regulations. 40 CFR 761.60(a).

18. PCBs in storage containers must be marked with a label noting that the container holds PCBs, and that PCBs are a toxic environmental contaminant requiring special handling and disposal in accordance with U.S. EPA regulations. 40 CFR 761.40.

19. Shipments of PCB waste must be accompanied by a shipping document identified as a manifest. 40 CFR 761.207-208.

COUNT 1

1. Paragraphs 1 through 6 and 10 through 13 of this Indictment are re-alleged as if fully set forth.

2. Beginning in or about January 2005, and continuing to in or about February 2005, in Kent County, in the Western District of Michigan, Southern Division,

SCOTT TUCKER,

who was the owner and operator of a demolition operation subject to the asbestos regulations, knowingly failed to carefully lower all regulated asbestos-containing material at the VKW Hardwoods facility to the ground and floor, without dropping, throwing, sliding or otherwise damaging or disturbing the material, in violation of 40 CFR 61.145(c)(6)(ii), in that **SCOTT TUCKER** instructed his employees to use an excavator to tear down the kiln-drying building, resulting in the asbestos-containing roof panels becoming crumbled, pulverized and reduced to powder.

42 U.S.C. § 7413(c)(1)

COUNT 2

1. Paragraphs 1 through 6 and 10 through 13 of this Indictment are re-alleged as if fully set forth.

2. Beginning in or about January 2005, and continuing to in or about February 2005, in Kent County, in the Western District of Michigan, Southern Division,

SCOTT TUCKER,

who was the owner and operator of a demolition operation subject to the asbestos regulations, knowingly failed to adequately wet regulated asbestos-containing material and to ensure that it remained wet until collected and contained or treated in preparation for disposal, in violation of 40 CFR 61.145(c)(6)(i), in that no water was used to wet the asbestos-containing debris resulting from the demolition of the kiln-drying building until days after the building was demolished, when told to do so by state inspectors.

42 U.S.C. § 7413(c)(1)

COUNT 3

1. Paragraphs 1 through 6 and 10 through 13 of this Indictment are re-alleged as if fully set forth.

2. On or about February 2, 2005, in Kent County, in the Western District of Michigan, Southern Division,

**SCOTT TUCKER and
JALINE TUCKER,**

who were owners and operators of a demolition operation subject to the asbestos regulations, knowingly caused the discharge of visible emissions to the outside air during the collection, transportation and handling operations of regulated asbestos-containing waste material at the VKW Hardwoods facility, in violation of 40 CFR 61.150(a), in that, after state inspectors informed defendant **JALINE TUCKER** that much of the debris at the VKW Hardwoods facility was contaminated with asbestos and would need to be handled properly, **SCOTT TUCKER** and **JALINE TUCKER** ordered workers to load large quantities of the asbestos debris into trucks and transport the debris to a cement recycling facility, causing clouds of asbestos-containing dust to be emitted.

42 U.S.C. § 7413(c)(1)
18 U.S.C. § 2

COUNT 4

1. Paragraphs 1 through 6 and 10 through 13 of this Indictment are re-alleged as if fully set forth.

2. Beginning on or about February 2 and continuing through on or about February 3, 2005, in Kent County, in the Western District of Michigan, Southern Division,

**SCOTT TUCKER and
JALINE TUCKER,**

who were owners and operators of a demolition operation subject to the asbestos regulations, knowingly failed to deposit all regulated asbestos-containing waste material from the VKW Hardwoods site as soon as was practical at an asbestos waste processing or disposal site operated in accordance with the asbestos regulations, in violation of 40 CFR 61.150(b), in that **SCOTT TUCKER and JALINE TUCKER** instructed employees of H & M Demolition to load asbestos-containing debris from the kiln-drying building at VKW Hardwoods into trucks and to transport it to a cement-recycling facility.

42 U.S.C. § 7413(c)(1)
18 U.S.C § 2

COUNT 5

1. Paragraphs 1 and 2, 7 through 9, and 14 through 18 of this Indictment are re-alleged as if fully set forth.

2. From in or about November 2006 through in or about August 2008, in Ottawa County, in the Western District of Michigan, Southern Division,

SCOTT TUCKER

knowingly and willfully caused the violation of PCB regulations at 40 CFR 761.65(a)(1) by failing to dispose of PCBs in a manner authorized by the PCB regulations within one year from the date the PCBs were removed from service.

15 U.S.C. § 2614(1)

15 U.S.C. § 2615(b)

COUNT 6

1. Paragraphs 1 and 2, 7 through 9, and 14 through 18 of this Indictment are re-alleged as if fully set forth.

2. From in or about November 2005 through in or about August 2008, in Ottawa County, in the Western District of Michigan, Southern Division,

SCOTT TUCKER

knowingly and willfully caused the violation of PCB regulations at 40 CFR 761.40, by failing to mark containers holding PCBs with a label noting that the container held PCBs, and that PCBs are a toxic environmental contaminant requiring special handling and disposal.

15 U.S.C. § 2614(1)

15 U.S.C. § 2615(b)

COUNT 7

1. Paragraphs 1 and 2, 7 through 9, and 14 through 18 of this Indictment are re-alleged as if fully set forth.

2. In or about 2007, in Ottawa County, in the Western District of Michigan, Southern Division,

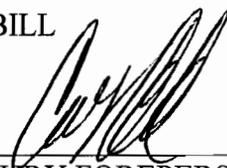
SCOTT TUCKER

knowingly and willfully caused the violation of PCB regulations at 40 CFR 761.207-208, by causing the transportation of PCB wastes without a manifest.

15 U.S.C. § 2614(1)

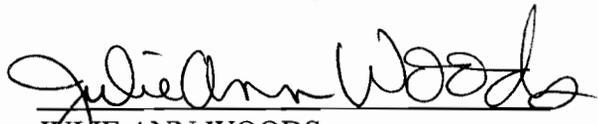
15 U.S.C. § 2615(b)

A TRUE BILL



GRAND JURY FOREPERSON

DONALD A. DAVIS
United States Attorney



JULIE ANN WOODS
Assistant United States Attorney