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FILED
U.S. DISTRICT COURT

2008 OCT -1 P 12:00

DISTRICT OF UTAH

BY: DEBORA BLEEK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No.
	:	
Plaintiff,	:	INDICTMENT
	:	
v.	:	42 U.S.C. § 300h-2 (Violation of State
	:	Underground Injection Control Program); 42
JAY BERT ATWATER, and	:	U.S.C. § 6928(d)(2)(A) (Disposing of
HERITAGE RESTORATION, INC.,	:	Hazardous Waste Without a Permit); 33
	:	U.S.C. § 1319(c)(2)(A) (Operating a Source
Defendants.	:	in Violation of a Prohibition)
	:	

Case: 1:08-cr-00114
Assigned To : Campbell, Tena
Assign. Date : 10/1/2008
Description: USA v.

The Grand Jury charges:

At all times material to the Indictment:

1. Defendant, Jay Bert ATWATER, was a resident of Davis County, Utah.

Defendant ATWATER owned and operated "Heritage Restoration, Inc.," a company engaged in office furniture restoration with its business address at 341 North Street, Suite B, Kaysville, Utah 84037.

2. As part of its business, customers brought furniture to HRI for repair and/or refinish services.

3. When refinishing the furniture, Defendant ATWATER, or others acting under

Defendant ATWATER's direction or control, used a solution containing 70-76% methylene chloride ("MC solution") to strip the existing paint off of the furniture.

4. The United States Environmental Protection Agency ("EPA") has identified solutions containing 10% or more methylene chloride before use as a F-002 hazardous waste once discarded. The label for the MC solution that Defendant ATWATER used at his facility indicated that the solution could not be made non-poisonous.

5. After stripping the furniture with the MC solution, Defendant ATWATER, or others acting under Defendant ATWATER's direction or control, moved the stripped furniture over to the washing station and washed the stripped furniture with water. During this process, the MC solution that remained on the stripped furniture mixed with the rinse water ("rinse solution") and ran into a depression on the shop floor. Defendant ATWATER, or others acting under Defendant ATWATER's direction or control, pumped the rinse solution into a series of buckets, which emptied into a hole attached to a pipe. Defendant ATWATER installed, operated, and maintained this pipe, which ran approximately eighteen inches under the ground of the west side of Defendant ATWATER's facility and emptied into the sub-surface soil. Defendant ATWATER used this pipe to dispose of the rinse solution from 2000 until on or about April 2007.

6. In or about April 2007, Defendant ATWATER changed the process for disposing of the rinse solution. From this date on, Defendant ATWATER, or others acting under Defendant ATWATER's direction or control, collected the rinse solution into a bucket and poured it into a tray on which a fan would blow to evaporate the rinse solution out a hole in the facility's wall. When the evaporation tray became full, Defendant ATWATER, or others acting

under Defendant ATWATER's direction or control, would discharge the excess rinse solution down the sink that led to the Central Davis Sewer District's ("CDS") facilities.

COUNT I
42 U.S.C. § 300h-2(b)
(Violation of State Underground Injection Control Program)

7. The Grand Jury incorporates paragraphs 1-6 herein.

8. Under the Safe Drinking Water Act, Congress mandated a state-administered regulatory scheme to protect drinking water and potential sources for drinking water. As part of this regulatory scheme, Congress required the EPA to establish minimum requirements for control of underground injection processes in order to protect sources of drinking water. Once EPA had established the minimum requirements for underground injection, a state could obtain primary enforcement authority of the underground injection program ("UICP") from EPA if the state's requirements were at least as stringent as the EPA's. On February 10, 1983, the EPA approved Utah's UICP. Even though the state of Utah has primary enforcement authority, the United States retains enforcement authority of Utah's UICP.

9. On at least one occasion or more around January 2001 to around April 2007, in the Northern Division of the District of Utah,

JAY BERT ATWATER,

defendant herein, willfully violated a requirement of the applicable UICP from the state of Utah by making numerous underground injections without a permit from the state of Utah;

All in violation of 42 U.S.C. § 300h-2(b) and 18 U.S.C. § 2(b).

COUNT II
42 U.S.C. § 6928(d)(2)(A)
(Disposing of Hazardous Waste Without a Permit)

10. The Grand Jury incorporates paragraphs 1-6 herein.

11. In 1976, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act ("RCRA") was enacted to create a "cradle to grave" regulatory scheme to govern and track hazardous wastes from the point of generation to final disposition. On or about October 24, 1984, the EPA authorized the state of Utah to implement the core RCRA program which includes the authority to issue permits to treat and dispose of hazardous waste. Even though the state of Utah has permitting authority, the United States retains enforcement authority of RCRA.

12. On at least one occasion or more around January 2001 to around April 2007, in the Northern Division of the District of Utah,

JAY BERT ATWATER,

defendant herein, knowingly disposed of and caused to be disposed of a listed hazardous waste without a permit from the state of Utah in that Defendant ATWATER knowingly disposed and caused to be disposed of a solution containing more than ten percent methylene chloride before use; All in violation of 42 U.S.C. § 6928(d)(2)(A) and 18 U.S.C. § 2(b).

COUNT III
33 U.S.C. § 1319(c)(2)(A)
(Operating a Source in Violation of a Prohibition)

13. The Grand Jury incorporates herein paragraphs 1-6.

14. The Federal Water Pollution Control Act, Title 33, United States Code, § 1251 et seq., more commonly known as the Clean Water Act, was enacted by Congress to restore and maintain the chemical, physical, and biological quality of the Nation's waters. In addition, the Clean

Water Act was enacted to prevent, reduce and eliminate water pollution in the United States and to conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, for recreational purposes, and for the use of such waters for public drinking water, agricultural, and industrial purposes. To further these goals, Congress also authorized EPA to set pretreatment standards and prohibitions for local publicly owned treatment works, including municipal sewer districts. These pretreatment standards and prohibitions regulate, among other things, the types of pollutants that a person may discharge into a public sewer system. EPA promulgated these prohibitions and pretreatment standards under 33 U.S.C. § 1317 in 1981.

15. On at least one occasion or more on or about April 2007 to on or about August 31, 2007, in the Northern Division of the District of Utah,

JAY BERT ATWATER AND HRI,

defendants herein, knowingly operated a source in violation of a specific prohibition after its effective date that EPA promulgated under 33 U.S.C. § 1317, in that Defendants ATWATER and HRI discharged pollutants into a publicly owned treatment works (i.e., CDS) that resulted in the presence of toxic gases, vapors, or fumes in a quantity that may cause acute worker health of safety problems;

All in violation of 33 U.S.C. §§ 1319(c)(2)(A), 33 U.S.C. § 1317(d); 40 C.F.R. § 403.5(b)(7), and 18 U.S.C. § 2(b).

A TRUE BILL:



FOREPERSON OF THE GRAND JURY

BRETT L. TOLMAN
United States Attorney



~~JARED C. BENNETT~~
Assistant United States Attorney