

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA

v.

ECOSOLVE LLC

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DOCKET NO. 3:07-cr-98-W

FACTUAL RESUME

It is hereby stipulated and agreed by defendant Ecosolve LLC ("Ecosolve"), through Ralph Wiley Rogers, who has a majority equity interest in Ecosolve and who is authorized by Ecosolve's Board of Managers to so stipulate and agree, and through counsel, Peter Anderson, Esq., that the following facts are true and accurate, and that Ecosolve agrees, with express consent of its counsel, that this Factual Resume may be used by the Court in determining whether to accept its plea, and by a United States Probation Officer and the Court in recommending and determining an appropriate sentence for the offense to which the defendant is pleading guilty. Ralph Wiley Rogers, on behalf of Ecosolve, stipulates and agrees that at all times relevant to the Bill of Indictment and this Factual Resume:

The Defendant

1. Ecosolve, LLC ("Ecosolve"), is a company in the business of removing fat, oil, grease, and wastewater (collectively, "waste") from the grease interceptors ("grease traps") of restaurants and other establishments, as well as hauling, processing, and disposing of the waste. Ecosolve is regulated by the United States (EPA), North Carolina Department of Environmental Regulation, and by the counties and cities in which it operates, such as by Charlotte-Mecklenburg Utility Department.

Definitions

2. The term "POTW" means "a treatment works . . . which is owned by a State or municipality . . . [and] includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant." 40 CFR 403.3(o); *see also* City of Charlotte Sewer Use Ordinance sec. 23-43 (effective Jan. 1, 1995); sec. 23-77 (effective Jan. 1, 2004). A POTW, then, is basically the government-owned pipe system that takes wastewater to a treatment facility. The POTW is commonly known as the "sewer system."
3. The term "pollutant" has a very broad meaning and would include the waste that Ecosolve was introducing into grease traps. "Pollutant" includes dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes,

biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).

The Grease Trap Servicing Industry

4. Restaurants and other businesses that have the potential to discharge fat, oil, and grease into the POTW maintain outdoor underground grease traps outside their establishments. These grease traps generally hold 1,000 gallons of fat, oil, grease, and wastewater (collectively, "waste") but some may hold as many as 3,000 gallons. Smaller establishments may have under-the-counter grease traps that generally hold only 100 gallons of waste. The grease traps, which are all connected to the POTW, are designed to store waste temporarily, and separate fat, oil, and grease from wastewater so that, in the normal course, only wastewater will flow through to the POTW and eventually be treated at the city's POTW treatment plant.
5. Grease traps, however, become full of waste and, even more, develop a very foul odor. As a result, they require servicing on a quarterly basis, if not monthly, by pumping out all of the contents of the grease traps into vacuum trucks that haul the waste to authorized pretreatment facilities. At pretreatment facilities, the fat, oil, and grease is separated from the wastewater and collected for transport to an authorized dumping site for solid waste. The wastewater is then diverted to the POTW.
6. The grease trap servicing industry serves an important environmental function. If fat, oil, and grease were not regularly pumped from traps and properly disposed of, the result would be serious backups of the entire sewer system, at great cost to taxpayers.

The Law

7. The Federal Water Pollution Control Act, commonly known as the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, regulates discharges of pollutants into waters of the United States.
8. Section 1317(b)(1) of the Clean Water Act requires the EPA to promulgate pretreatment standards for introduction of pollutants into POTWs for those pollutants that are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Section 1317(d) makes it unlawful for any owner or operator of any source to operate any source in violation of any pretreatment standard promulgated under section 1317 after the effective date of the standard.
9. National Pretreatment Standards that were promulgated pursuant to section 1317(b)(1) prohibit persons from introducing into a POTW "any trucked or hauled pollutants, except at discharge points designated by the POTW." 40 CFR § 403.5(b)(8). (Grease traps are not discharge points designated by the City of Charlotte and the POTW.) Section

403.5(a)(1) provides that National Pretreatment Standards apply to any source that introduces pollutants into a POTW, regardless of whether the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

10. Section 1342 authorizes each State to administer its own permit programs “for discharges into navigable waters within its jurisdiction.” 33 U.S.C. § 1342(b). Under that authority, States may issue permits that “apply, and insure compliance with, any applicable requirements of section[] . . . 1317 . . .” and that “insure that any industrial user of any publicly owned treatment works will comply with section[] 1317.” 33 U.S.C. § 1342(b)(1)(A) & (9).
11. The pretreatment program in Charlotte, North Carolina was operated by the Charlotte Mecklenburg Utilities Department (“CMUD”), which is now called CMU. Pursuant to a memorandum of agreement with the State of North Carolina dated August 24, 1982, EPA approved the administration of the pretreatment provisions of the Clean Water Act by the North Carolina Department of Natural Resources and Community Development in accordance with section 1342(b)(8) of the Clean Water Act. That Department, in turn, designated CMUD as its “primary instrument for pretreatment management,” via letter dated February 22, 1985.
12. The City of Charlotte had local Pretreatment Requirements that became effective January 1, 1995, that included a provision that grease traps are not discharge points designated by the City of Charlotte. It stated that no source shall discharge or cause to be discharged into the POTW any pump and haul waste, except at discharge points designated by the CMUD. City of Charlotte Sewer Use Ordinance, Sec. 23-45(b)(12) (effective Jan. 1, 1995).
13. The Pretreatment Requirements also state that no source shall discharge or cause to be discharged into the POTW any removed substances, including but not limited to sludges, screening, or other residues, from the pretreatment of wastewater. City of Charlotte Sewer Use Ordinance, Sec. 23-45(b)(15) (effective Jan. 1, 1995).
14. CMU issued to Ecosolve Permit Number 1013, effective September 1, 2000, authorizing Ecosolve to, among other things, continue operation of its existing pretreatment facility. Many conditions were contained within the permit requiring compliance. Paragraph Z of Part II of the permit required Ecosolve to comply with the general prohibitive discharge standards in 40 CFR 403.5(a) and (b) of the Federal pretreatment regulations.
15. Section 23-80 of the City of Charlotte sewer use ordinance, which became effective January 1, 2004, requires all food service establishments and others that have the potential to discharge fat, oil, and grease into the POTW to properly install, operate, and maintain on its premises at its expense one or more grease interceptors to prevent the

discharge of oil or grease into the POTW. City of Charlotte Sewer Use Ordinance, Sec. 23-80(a) (effective Jan. 1, 2004).

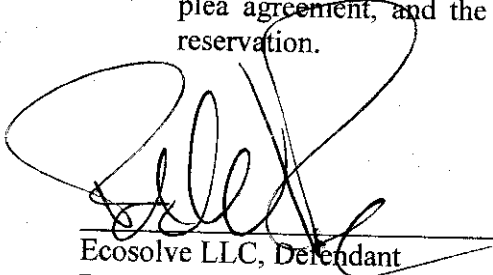
The Crime

16. Ecosolve's president and other managers agreed to train Ecosolve drivers to pump out the contents from customers' grease traps and then re-introduce (or discharge) the waste back into the grease traps and into the POTW without any pretreatment.
17. The entire Bill of Indictment, all of which is "relevant conduct" under the Plea Agreement and the U.S. Sentencing Guidelines, is hereby incorporated by reference into this Factual Resume. Ecosolve committed the crimes alleged in Counts Seven through Ten in the Bill of Indictment. The Bill of Indictment, paragraphs 37, 45, 51, and 42, accurate list the facts supporting Counts Seven through Ten, respectively.
18. Grease traps are not designated discharge points. Thus, when Ecosolve discharged waste into grease traps, it failed to comply with their permit conditions and limitations; violated federal, state, and local regulations and ordinances; and introduced a pollutant into a sewer system and POTW. Specifically, the Defendant's conduct violated Section 1319(c)(2) of the Clean Water Act in that it violated permit conditions and limitations implementing Section 1317 of Title 33 of the United States Code in a permit issued under Section 1342 of Title 33 of the United States Code by the Administrator of the U.S. Environmental Protection Agency and by the State of North Carolina, to wit, CMUD Permit Number 1013; 40 Code of Federal Regulations, Section 403.5(b)(8); and City of Charlotte Sewer Use Ordinance, Sections 23-45(b)(12) and 23-80(d).
19. Ecosolve is bound by the conduct of its employees discussed herein. Said conduct was willful and intentional, and not the result of accident, mistake, or negligence. Ecosolve has no legal justification, excuse, or other defense to the crime.

Authority, Signature, and Acknowledgement of Ecosolve's President

20. I, Ralph Wiley Rogers, hereby state that I am a majority owner, and was a past President, of Ecosolve, and that Ecosolve's Board of Managers has granted me the authority, by express corporate resolution, to act on behalf of Ecosolve with respect to its plea agreement with the United States.
21. Ecosolve's Board of Managers is aware that Peter Anderson, Esq., represents both me and Ecosolve in this criminal case. The Board of Managers is aware of the conflict of interest that Mr. Anderson's dual representation creates, and waives such conflict.
22. I have read this Factual Resume, the Bill of Indictment, and the Environmental Compliance Plan in this case and have discussed them with Ecosolve's attorney.

Through Ecosolve's attorney, the company has investigated the conduct with respect to the Bill of Indictment. The facts outlined herein accurately describe the events and circumstances surrounding Ecosolve's offenses. On behalf of Ecosolve, I certify that I fully understand the contents of this Factual Resume, the Bill of Indictment, Ecosolve's plea agreement, and the Environmental Compliance Plan, and bind Ecosolve without reservation.

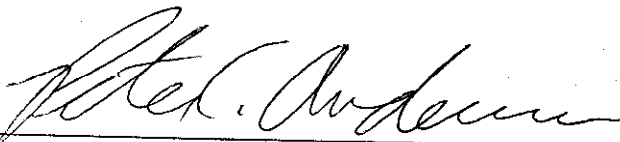


Ecosolve LLC, Defendant
By Ralph Wiley Rogers,
authorized by the Ecosolve Board of Managers

DATED: 11/10/07

Defendant's Counsel's Signature and Acknowledgement

23. I have read this Factual Resume, the Bill of Indictment, Ecosolve's plea agreement, and the Environmental Compliance Plan in this case, and have discussed them with Ecosolve's Board of Managers and with Ecosolve's majority owner and past President, Ralph Wiley Rogers. Based on those discussions, I am satisfied that Ecosolve understands the Bill of Indictment, Ecosolve's plea agreement, and the Environmental Compliance Plan, and has authority to enter into the Factual Resume, plea agreement, and Environmental Compliance Plan. I also discussed the conflict of interest created by my dual representation of Ecosolve and Ralph Wiley Rogers, and am satisfied that my clients knowingly and voluntarily waived such conflict.



Peter C. Anderson, Esq., Attorney for Defendant

DATED: 11/10/07