

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

: Criminal No. *08-522*
UNITED STATES OF AMERICA :
: Filed:
v. :
: Violations: 15 U.S.C. § 1
JMJ ENVIRONMENTAL, INC. : 18 U.S.C. § 371
and JOHN DRIMAK, JR. : 26 U.S.C. § 7206(1)
Defendants. :

INFORMATION

The United States of America, acting through its attorneys, charges:

1. John Drimak, Jr. ("Drimak") and JMJ Environmental, Inc. ("JMJ") are hereby made defendants on the charges stated below.

COUNT ONE - SHERMAN ACT CONSPIRACY
(15 U.S.C. §1)

I. RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Drimak resided in Laurel Springs, NJ.
3. Drimak was the President of JMJ.
4. JMJ was a New Jersey corporation located in Laurel Springs, NJ.

5. JMJ was a wastewater treatment and chemical supply company that submitted bids for sub-contracts to provide supplies and services to a prime contractor ("P-C") on an environmental remediation project at the Federal Creosote Superfund Site in Manville, New Jersey ("Federal Creosote").

6. "CC-1" was a co-conspirator who was an employee for P-C at Federal Creosote and was influential in the award of sub-contracts.

7. "CC-2" was an Assistant Project Manager/Contracts Administrator ("Contracts Administrator") from approximately January 2002 to approximately October 2003 at Federal Creosote.

8. "CC-3" was a co-conspirator who owned a heating and air conditioning services company that submitted bids for sub-contracts to provide supplies and services to P-C at Federal Creosote.

9. "CC-4" was a co-conspirator who owned a wastewater treatment and supplies manufacturing company that submitted bids for sub-contracts to provide supplies and services to P-C at Federal Creosote.

10. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

11. Various other persons, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. BACKGROUND

12. Federal Creosote is an environmental remediation site in Manville, NJ that is partly funded by the Environmental Protection Agency ("EPA"). Since late 1999, the Army Core of Engineers ("ACOE") has overseen the procurement process for the remediation of the site. Pursuant to an interagency agreement between the EPA and ACOE, prime contractors conducted operations at the site.

13. P-C was the prime contractor that was responsible for managing the remedial action at Federal Creosote. The remedial action was divided into separate phases by geographic boundaries. P-C awarded separate sub-contracts under each phase to various vendors. As a prime contractor, P-C was paid a fixed fee plus the cost of the remedial action by the EPA.

14. P-C was required to award sub-contracts at Federal Creosote subject to a competitive bidding policy under the Federal Acquisition Regulation system ("FAR"). The FAR's bidding policy sought to ensure that P-C obtained supplies and services at competitive, fair market prices. P-C was required to solicit at least three competitive bids before entering into any sub-contract for supplies or services in excess of \$5,000, and

awarded those sub-contracts to the bidder offering the best value, based on cost, quality and timeliness.

15. CC-1 and CC-2 were responsible for soliciting bids from vendors for sub-contracts in excess of \$5,000 and otherwise ensuring that P-C's procurement process was in accordance with the FAR. In addition, CC-1 and CC-2 were responsible for acquiring supplies and services in connection with purchases less than \$5,000, which were not subject to the FAR's competitive bidding policy.

16. The FAR also prohibited employees of P-C, including CC-1 and CC-2, from soliciting or attempting to solicit or accepting any kickback, including any money, fee, commission, credit, gratuity, gift, thing of value or compensation of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a sub-contract relating to a prime contract.

III. TRADE AND COMMERCE

17. From approximately the Spring of 2002 to approximately May 2007, pursuant to sub-contracts that are the subject of this Count, P-C awarded approximately \$242,800 in sub-contracts for wastewater treatment supplies and services to JMJ.

18. During the period covered by this Count, JMJ provided wastewater treatment supplies and services to P-C, including granulated activated carbon obtained from distributors located outside the State of New Jersey pursuant to the sub-contracts that are the subject of this Count, which were shipped across state lines, in a continuous and

uninterrupted flow of interstate commerce. Granulated activated carbon is used in wastewater treatment plants to filter hazardous chemicals.

19. The activities of the defendants and co-conspirators with respect to the sale of wastewater treatment supplies and services to P-C, including the sale of granulated activated carbon pursuant to sub-contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

IV. DESCRIPTION OF THE OFFENSE

20. From approximately the Spring of 2002 to approximately May 2007, the exact dates being unknown to the United States, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

21. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig bids and allocate certain sub-contracts for wastewater treatment supplies and services to P-C at Federal Creosote.

22. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) CC-1 and CC-2 designated in advance whether JMJ would be the low bidder on certain sub-contracts for wastewater treatment supplies and services to P-C;

(b) Drimak, CC-1 and CC-2 discussed and agreed on the prices that would be bid on certain sub-contracts for wastewater treatment supplies and services to P-C;

(c) Drimak, CC-1 and CC-2 agreed to include the kickback amounts in the sub-contract prices;

(d) CC-1 and CC-2 requested that Drimak seek two other, intentionally high, noncompetitive bids to submit on certain sub-contracts for wastewater treatment supplies and services to P-C;

(e) CC-3 and CC-4 agreed with Drimak to submit intentionally high, non-competitive bids to P-C in order to make it appear that there had been competition for the sub-contracts; and

(f) Drimak provided substantial kickbacks to CC-1 and CC-2 for their role in allocating sub-contracts to JMJ.

23. As a result of the aforementioned conspiracy, the EPA paid more for the wastewater treatment supplies and services it purchased pursuant to the sub-contracts that are the subject of this Count than it would have had the sub-contracts been awarded pursuant to truly competitive bidding, or otherwise competitive pricing.

V. JURISDICTION AND VENUE

24. The aforesaid combination and conspiracy was formed and carried out, in part, within the District of New Jersey within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO – KICKBACK and FRAUD CONSPIRACY
(18 U.S.C. §371)

VI. THE RELEVANT PARTIES AND ENTITIES

The United States of America further charges:

25. Paragraphs 1 through 7 and 10 through 16 of Count One of this Information are repeated, recalled and incorporated in Count Two as if fully set forth in this Count.

26. JMJ was a wastewater treatment and chemical supply company that provided supplies and services as a sub-contractor to P-C at Federal Creosote and at the Diamond Alkali Superfund Site in Newark, NJ (“Diamond Alkali”).

27. CC-1 was also an employee of P-C at Diamond Alkali who was influential in the award of sub-contracts. CC-1 owned and operated a company (“Vendor 1”) during his employment with P-C. During the period covered by this Count, Vendor 1 operated out of addresses associated with CC-1’s wife’s flower shop, CC-1’s home and CC-1’s parents’ home.

28. CC-2 was also the Superintendent for P-C on an environmental remediation project at Diamond Alkali from April 2000 to January 2002. In approximately February 2003, CC-2 formed a company, ("Vendor 2"), with an address at CC-1's residence.

VII. BACKGROUND

29. Diamond Alkali is an EPA designated Superfund site in Newark, NJ. The site was divided into three geographic regions: the 80 and 120 Lister Avenue properties, the Lower Passaic River Study Area and the Newark Bay Study Area. The EPA initiated emergency remedial action in 1983 with respect to the Lister Avenue properties. An interim remediation plan was later implemented under a consent decree between Tierra Solutions, Inc. ("Tierra Solutions"), the EPA and the New Jersey Department of Environmental Protection for the Lister Avenue properties whereby, under ACOE oversight, Tierra Solutions would be financially responsible for the remedial action and maintenance of the site. Remedial action began in approximately April 2000 when P-C was selected by Tierra Solutions as the prime contractor for the site.

30. CC-1 and CC-2 were responsible for acquiring supplies and services in connection with purchases less than \$5,000. Sub-contracts above \$5,000 were usually awarded by CC-1 and/or officials in the Niagara Falls, NY office of P-C.

VIII. DESCRIPTION OF THE OFFENSE

31. From approximately January 2002 until approximately May 2007, the exact dates being unknown to the United States, in the District of New Jersey and elsewhere,

Drimak and his co-conspirators, and others known and unknown, unlawfully, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States or an agency thereof, namely the EPA, and to commit offenses against the United States, to wit, to violate Title 41, United States Code, Section 53(1) and (3) and Title 18, United States Code, Section 1341 in violation of Title 18, United States Code, Section 371.

32. It was a part and an object of the conspiracy that Drimak, his co-conspirators, and others known and unknown, unlawfully, willfully, and knowingly would and did conspire, combine, confederate, and agree to defraud the United States of America and the EPA and to commit offenses against the United States by providing and attempting to provide kickbacks to CC-1 and CC-2 at Federal Creosote and by including the amount of the kickbacks in the sub-contract prices charged to P-C, thereby causing P-C to charge those inflated prices to the EPA and the United States, in violation of Title 41, United States Code, Sections 53(1) and (3).

33. It was further a part and an object of the conspiracy that Drimak and his co-conspirators, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud the EPA and Tierra Solutions, including a scheme to obtain money and property from the EPA and Tierra Solutions by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice to defraud, and

attempting to do so, would and did place in post offices and authorized depositories for mail matter, and would and did deposit, and cause to be deposited, matters and things to be sent and delivered by the Postal Service and by private and commercial interstate carriers, and would and did take and receive such matters and things therefrom, and would and did cause such matters and things to be delivered by mail and by such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, in violation of Title 18, United States Code, Section 1341.

**IX. THE MANNER AND MEANS BY WHICH THE
CONSPIRACY WAS CARRIED OUT**

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

34. During some or all of the period between approximately January 2002 until approximately May 2007, it was further part of the conspiracy that Drimak, CC-1 and CC-2 fraudulently inflated the prices of the sub-contracts by approximately \$182,000 at Federal Creosote and approximately \$368,000 at Diamond Alkali. As part of the inflated invoice scheme, CC-1 and CC-2 awarded sub-contracts to JMJ in return for Drimak's payment of kickbacks to CC-1 and CC-2.

35. It was further part of the conspiracy that Drimak, CC-1 and CC-2 fraudulently inflated the prices of the sub-contracts to include the cost of the kickbacks plus amounts Drimak kept for himself, and the caused P-C to include the costs of the kickbacks plus the

amounts Drimak kept for himself in the prices it charged to the EPA at Federal Creosote and to Tierra Solutions at Diamond Alkali. The amounts Drimak fraudulently included in the invoices and kept for himself were in addition to the customary business profits of JMJ.

36. It was further part of the conspiracy that CC-1 and CC-2 awarded sub-contracts to JMJ in return for Drimak's payment of kickbacks to CC-1 and CC-2. Drimak provided at least \$385,000 in kickbacks to CC-1 and provided at least \$26,000 in kickbacks to CC-2. At times, Drimak provided the kickbacks in the form of cash to CC-1 and CC-2 at locations near Diamond Alkali and Federal Creosote. At other times, to conceal their receipt of kickbacks and pre-arranged agreement to award sub-contracts to JMJ, CC-1 and CC-2 requested Drimak to pay kickbacks by issuing JMJ checks to Vendor 1 and Vendor 2 pursuant to false invoices issued by Vendor 1 and Vendor 2 to JMJ. At other times, at the request of CC-1 Drimak provided kickbacks to CC-1 that included, but are not limited to, paid vacations for CC-1 and his wife, performing construction on the homes of CC-1, performing construction on the homes of CC-1's relatives, making credit card payments for CC-1, purchasing two boat trailers for CC-1, and paying certain business expenses of CC-1's wife's flower shop.

37. The kickback payments by Drimak to CC-1 ceased in approximately March 2007.

38. The kickback payments by Drimak to CC-2 ceased approximately six months after CC-2 was terminated by P-C in October 2003.

X. OVERT ACTS

39. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant and others known and unknown, committed the following overt acts, among others, in the District of New Jersey and elsewhere:

(a) On or about March 9, 2003, Drimak issued a JMJ check to Vendor 2 for \$6,000.

(b) On or about July 9, 2003, Drimak and his co-conspirators caused JMJ to issue a fraudulent inflated invoice to P-C pursuant to a purchase order sent through the United States mails. The purchase order was sent through the United States mails from P-C's office in Niagara Falls, NY to Drimak in New Jersey;

(c) On or about August 11, 2004 Drimak and his co-conspirators caused JMJ to issue a fraudulent inflated invoice to P-C pursuant to a purchase order sent through the United States mails. The purchase order was sent through the United States mails from P-C's office in Niagara Falls, NY to Drimak in New Jersey; and

(d) On or about October 4, 2004, Drimak issued a JMJ check to Vendor 1 for \$52,490.15.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

COUNT THREE - FALSE SUBSCRIPTION
(26 U.S.C. § 7206(1))

The United States of America further charges:

40. Paragraphs 1 through 7, 10, and 12 through 16 of Count One and paragraphs 26 through 30 of Count Two of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

41. On or about the dates of August 2002, February 2003, March 2003, November 2004 and January 2005 to further the conspiracy alleged in Count Two, CC-1 created and submitted false Vendor 1 invoices totaling approximately \$122,566 to JMJ for the purpose of concealing the nature of the kickbacks from Drimak to CC-1 and assisting Drimak to falsely and fraudulently deduct payments of those invoices as JMJ's legitimate business expenses for the calendar years 2002, 2003, 2004 and 2005.

42. On or about February 2003, Vendor 2 was incorporated to further the conspiracy alleged in Count Two. Thereafter, CC-2 created and submitted four false Vendor 2 invoices totaling approximately \$21,132 to JMJ for the purpose of concealing the nature of the kickbacks from Drimak to CC-2 and assisting Drimak to falsely and fraudulently deduct payments of those invoices as JMJ's legitimate business expenses for the calendar year of 2003.

43. On or about the dates of April 15, 2003; April 15, 2004; April 15, 2005; and April 15, 2006 near Laurel Springs in the District of New Jersey and elsewhere, Drimak

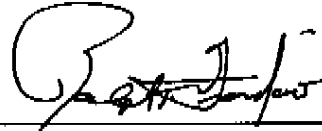
unlawfully, willfully, and knowingly did make and subscribe to a U.S. Income Tax Returns for an S Corporation, Forms 1120S and U.S. Individual Income Tax Returns, Forms 1040, for the tax years 2002, 2003, 2004 and 2005, each of which was verified by a written declaration by Drimak that it was made under penalties of perjury, and which income tax returns he did not believe to be true and correct as to every material matter, insofar as it substantially overstated JMJ's true cost of its business expenses, and thereby substantially understated JMJ's and Drimak's true ordinary business income, in violation of Title 26, United States Code, Section 7206(1).

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)


Dated: 7/23/08



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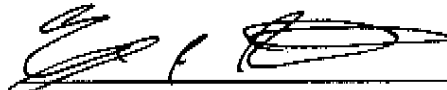
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