

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Criminal No. 08-521

v.

Filed:

NORMAN STOERR,

Violations: 15 U.S.C. § 1  
18 U.S.C. § 371  
26 U.S.C. § 7206(2)

Defendant.

**PLEA AGREEMENT**

The United States of America and the defendant, Norman Stoerr, hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

**AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

1. Norman Stoerr ("Stoerr") will waive indictment pursuant to Fed. R. Crim. P. 7(b) and plead guilty in the United States District Court of New Jersey to a three-count Information, in the form attached, in which he is charged with: (a) one count of violating 15 U.S.C. § 1 in connection with a conspiracy to rig bids and allocate certain sub-contracts from approximately October 2002 to approximately October 2003 to provide wastewater treatment supplies and services to a prime contractor ("P-C") of the United States Environmental Protection Agency ("EPA") at the Federal Creosote Superfund Site ("Federal Creosote") in Manville, New Jersey; (b) one count of violating 18 U.S.C. § 371

for conspiring from approximately the Fall of 2000 until approximately the Spring of 2004, with the objectives of (1) defrauding the EPA and committing offenses against the United States by soliciting and attempting to solicit kickbacks and accepting and attempting to accept kickbacks from certain sub-contractors of P-C at Federal Crocote, and causing certain sub-contractors to include the amount of the kickbacks in the sub-contract prices charged by the prime contractor to the United States, in violation of 41 U.S.C. §§ 53(2) and (3); and (2) defrauding the EPA and Tierra Solutions, Inc. through the use of the United States mails at Federal Crocote and at the Diamond Alkali Superfund Site ("Diamond Alkali") in Newark, New Jersey, in violation of 18 U.S.C. § 1341; and (c) one count of violating 26 U.S.C. § 7206(2) by aiding and assisting in, and procuring, counseling, and advising the preparation and presentation to the Internal Revenue Service of an Income Tax Return of another for the calendar year 2003 which was false and fraudulent as to a material matter, in that the return falsely claimed kickback payments made to Stoerr as legitimate business expenses.

#### **DEFENDANT'S COOPERATION**

2. Stoerr will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the award of sub-contracts to provide environmental services at Federal Crocote and the purchase of supplies and services at Diamond Alkali, as well as any other federal investigation resulting therefrom, and any

litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of Stoerr shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, including claimed personal documents, in the possession, custody, or control of Stoerr that may be requested by the United States in connection with any Federal Proceeding;

(b) making himself available for interviews with the attorneys and agents of the United States, not at the expense of the United States, at the New York Office of the Antitrust Division, or at other mutually-agreed upon locations, upon the request of attorneys and/or agents of the United States;

(c) bringing to the attention of the United States all crimes which he has committed, and all administrative, civil, and/or criminal proceedings, investigations, or prosecutions in which he, to his knowledge, is or has been a subject, target, party, or witness;

(d) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(e) otherwise voluntarily providing to the United States any materials or information, not requested in (a)-(c) of this paragraph, that he may have that is related to any Federal Proceeding;

(f) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and

(g) agreeing to commit no further crimes whatsoever.

3. Stoerr agrees that prior to the date of sentencing, he shall file accurate amended tax returns on behalf of Environmental Consulting Services, Inc. (United States Income Tax Returns for a Subchapter S Corporation, Forms 1120S), and himself (United States Individual Tax Returns, Forms 1040), for the tax years 2002, 2003, and 2004 and will pay, or will enter into an agreement to pay, past taxes due and owing by him to the Internal Revenue Service, including interest and applicable civil fraud penalties, on such terms and conditions as will be agreed on by the Internal Revenue Service and him. In addition, Stoerr will not contest the applicability of civil fraud penalties and agrees not to file any claims for refund of taxes, penalties or interest for amounts attributable to the returns filed incident to this Agreement.

**GOVERNMENT'S AGREEMENT**

4. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 2 of this Agreement and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the Antitrust Division and Tax Division will not bring further criminal charges against Stoerr for any act or offense committed prior to the date of this Agreement that was in furtherance of: (a) any agreement to rig bids or allocate certain sub-contracts for wastewater treatment supplies and services at Federal Creosote; (b) soliciting and accepting kickbacks from certain vendors awarded sub-contracts at Federal Creosote and at Diamond Alkali; and (c) aiding and assisting another in the preparation and presentation to the Internal Revenue Service a false Income Tax Return of another for the calendar year 2003. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal securities laws, or to any crime of violence.

5. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice and, to the extent set forth above, the Tax Division of the Department of Justice. However, if requested, the Antitrust Division will bring the fact, manner and extent of the cooperation of Stoerr to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

**POSSIBLE MAXIMUM PENALTIES**

6. Stoerr understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 15 U.S.C. § 1 is:

(a) a term of imprisonment for three (3) years;

(b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for the entire period of the supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. §5D1.2(a)(3)).

7. In addition, Stoerr understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3583(d), the Court may impose an order of restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

8. Stoerr understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or

(c) both such sentences; and

(d) a term of supervised release of no more than three (3) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2). Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two years.

9. Stocrr also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

10. Stocrr also understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 26 U.S.C. § 7206(2), is:

(a) a term of imprisonment of not more than three (3) years; or

(b) a fine of not more than \$100,000;

(c) or both such sentences; together with

(d) the costs of prosecution.

11. Stoerr also understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3583(d), the Court may impose an order of restitution to the victim of the offense;

(b) the Court may also impose a term of supervised release of no more than one year, pursuant to 18 U.S.C. § 3583(b)(3) and U.S.S.G. § 5D1.2(a)(3). If the defendant violates any condition of supervised release, the defendant could be imprisoned for the entire period of the supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3)); and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

#### **SENTENCING GUIDELINES**

12. Stoerr understands that the United States Sentencing Guidelines (“Sentencing Guidelines”) are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing a sentence. Stoerr understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Stoerr understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information



that the defendant provides to the United States pursuant to this Plea Agreement will not be used in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

13. The United States and Stoerr agree and stipulate that pursuant to U.S.S.G. § 1B.11(b)(1), the November 2003 Guidelines, the version in effect at the time of the offense, should be applied because the application of a later version (now the November 2007 edition) would lead to a higher adjusted offense level.

#### **SENTENCING AGREEMENT**

14. Stoerr understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. Stoerr acknowledges that his entry of the guilty plea to the charged offenses authorizes the sentencing court to impose any sentence up to and including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence Stoerr will receive. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with either party's sentencing recommendation, the defendant nevertheless has no right to withdraw his plea of guilty. The United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of Stoerr's activities with respect to this case, and all other activities of Stoerr which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of Stoerr's

cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by Stoerr both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the offenses charged in the attached Information, the participation of Stoerr therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of Stoerr, and to supply any other information that the Court may require.

15. If the United States determines that Stoerr has provided substantial assistance in any Federal Proceeding, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Stoerr in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5), and thus impose, in the Court's discretion, a sentence below the applicable Sentencing Guidelines ranges for incarceration and fine. The United States and Stoerr are free to recommend or argue for any specific sentence to the Court.

16. Stoerr understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

17. Stoerr acknowledges that the decision whether he has provided substantial assistance in any Federal Proceeding is within the sole discretion of the United States. It is understood that should the United States determine that Stoerr has not provided substantial assistance in any Federal Proceeding, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle Stoerr to withdraw his guilty plea once it has been entered. Stoerr further understands that whether or not the United States files its motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

**REPRESENTATION BY COUNSEL**

18. Stoerr has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Stoerr has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to Stoerr other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, Stoerr has made a knowing and voluntary decision to enter into this Agreement.

**VOLUNTARY PLEA**

19. Stoerr's decision to enter into this Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Agreement. The United

States has made no promises or representations to Stoerr as to whether the Court will accept or reject the recommendations contained within this Agreement.

### VIOLATION OF PLEA AGREEMENT

20. Stoerr agrees that should the United States determine in good faith that he has given false, misleading, or incomplete information or testimony, or that Stoerr has otherwise failed to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for Stoerr in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Agreement (except its obligations under this paragraph), and Stoerr will be subject to prosecution for any federal criminal violation of which the United States has knowledge, including but not limited to the substantive offenses relating to the investigation resulting in this Agreement. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

21. Stoerr understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Agreement based on the defendant's violation of the Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of

the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

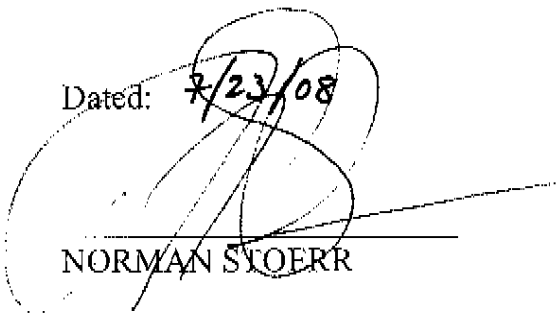
**ENTIRETY OF AGREEMENT**

22. This Agreement constitutes the entire agreement between the United States and Stoerr concerning the disposition of the criminal charges contained in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and Stoerr.

23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Agreement on behalf of the United States.

Dated:


7/23/08



NORMAN STOERR



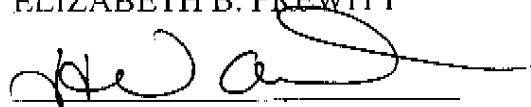
DANIEL J. HENRY, JR. ESQ.  
Counsel for NORMAN STOERR



JEFFREY D. MARTINO



ELIZABETH B. PREWITT



HELEN CHRISTODOULOU  
Attorneys, Antitrust Division  
U.S. Department of Justice  
26 Federal Plaza, Room 3630  
New York, New York 10278