

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

:
Criminal No. 08-522

:
Filed:

v.

JMJ ENVIRONMENTAL, INC.
and JOHN DRIMAK, JR.

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

Defendants.

PLEA AGREEMENT

The Antitrust Division of the United States Department of Justice and the defendants, John Drimak, Jr. ("Drimak") and MJM Environmental, Inc. ("MJM") 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. MJM and Drimak 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: (a) each are charged with one count of violating 15 U.S.C. § 1 in connection with a conspiracy to rig bids and allocate certain sub-contracts from

approximately the Spring of 2002 to approximately May 2007 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) Drimak is charged with one count of violating 18 U.S.C. § 371 for conspiring from approximately January 2002 until approximately May 2007, with the objectives of (1) defrauding the EPA and committing offenses against the United States by providing and attempting to provide kickbacks to CC-1 and CC-2 at Federal Creosote 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 41 U.S.C. §§ 53(1) and (3); and (2) executing a scheme to defraud the EPA and Tierra Solutions, Inc. through the use of the United States mails at Federal Creosote and at the Diamond Alkali Superfund Site ("Diamond Alkali"), in violation of 18 U.S.C. § 1341; and (c) Drimak is charged with one count of violating 26 U.S.C. § 7206(1) by subscribing to tax returns for the calendar years 2002, 2003, 2004, and 2005, which income tax returns he did not believe to be true and correct as to every material matter.

DEFENDANT'S COOPERATION

2. JMJ and Drimak 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 Creosote and 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 Drimak shall include, but not be limited to:

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

(b) Drimak agrees to make 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) Drimak agrees to bring 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) Drimak agrees to respond 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) JMJ and Drimak agree to otherwise voluntarily provide to the United States any materials or information, not requested in (a)-(c) of this paragraph, that is related to any Federal Proceeding;

(f) Drimak, when called upon to do so by the United States in connection with any Federal Proceeding, will testify 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) Drimak and JMJ agrees to commit no further crimes whatsoever.

3. Drimak agrees that prior to the date of sentencing, he shall file accurate amended tax returns on behalf of JMJ (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, 2004, 2005, and 2006 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, Drimak 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 JMJ and Drimak 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) providing kickbacks to influence the award of sub-contracts at Federal Creosote; (c) providing kickbacks to influence the award of sub-contracts at Diamond Alkali; and (d) subscribing to tax returns for the calendar years 2002, 2003, 2004, and 2005, which income tax returns Drimak did not believe to be true and correct as to every material matter. 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 JMJ and/or Drimak to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

POSSIBLE MAXIMUM PENALTIES

6. JMJ understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of 15 U.S.C. §1 is a fine in an amount equal to the greatest of:

- (a) \$100 million; or
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 35719 (c) and (d)).

7. In addition, JMJ understands that:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;
- (b) pursuant to U.S.S.G. § 8B1.1, 18 U.S.C. § 3563(b)(2) or § 3663(a)(3),

the Court may order it to pay restitution to the victims of the offense; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order JMJ to pay a \$400 special assessment upon conviction for the charged crime.

8. Drimak 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 ten (10) years;

(b) a fine in an amount equal to the greatest of (1) \$1,000,000, (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 and 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and U.S.S.G. § 5D1.2(a)(2)).

9. In addition, Drimak 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.

10. Drimak 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 (2) years.

9. Drimak 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. Drimak also understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 26 U.S.C. § 7206(1), 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. Drimak 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. JMJ and Drimak understand 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. JMJ and Drimak understand that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. JMJ and Drimak understand 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).

SENTENCING AGREEMENT

13. JMJ and Drimak understand that the sentences to be imposed on them are within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. The defendants acknowledge that the entries of their guilty pleas 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 the defendants will receive. The defendants understand that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the sentencing recommendation of any party, the defendants nevertheless have no right to withdraw their pleas of guilty. The United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendants' activities with respect to this case, and all other activities of the defendants which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of the defendants' cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendants 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 the defendants 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 the defendants, and to supply any other information that the Court may require.

14. If the United States determines that MJM 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. § 8C4.1 to recommend a downward departure for the substantial assistance MJM provided to the United States. The United States and MJM further agree that the fine to be imposed is within the sole discretion of the sentencing judge, but that the Court must consider the factors set forth in U.S.S.G. § 8C3.3(b) in determining MJM's ability to pay a fine. The United States and MJM are free to recommend or argue for any specific sentence to the Court.

15. If the United States determines that Drimak 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 Drimak 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 Drimak are free to recommend or argue for any specific sentence to the Court.

16. JMJ and Drimak understand 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. JMJ and Drimak acknowledge that the decision whether they have 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 the JMJ and/or Drimak have 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. §§ 8C4.1 and 5K1.1, but will not entitle JMJ and/or Drimak to withdraw their respective guilty plea once it has been entered. JMJ and Drimak further understand that whether or not the United States files its motions pursuant to U.S.S.G. §§ 8C4.1 and 5K1.1, the sentence to be imposed on them remains within the sole discretion of the sentencing judge.

REPRESENTATION BY COUNSEL

18. The defendants have reviewed all legal and factual aspects of this case with their attorney and are fully satisfied with their attorney's legal representation. The defendants have thoroughly reviewed this Agreement with their attorney, and have received satisfactory explanations from their attorney concerning each paragraph of this Agreement and alternatives available to them other than entering into this Agreement.

After conferring with their attorney and considering all available alternatives, the defendants have made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

19. The defendants' decisions to enter into this Agreement and to tender pleas of guilty are freely and voluntarily made and are 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 the defendants as to whether the Court will accept or reject the recommendations contained within this Agreement.

VIOLATION OF PLEA AGREEMENT

20. JMJ and Drimak agree that should the United States determine in good faith that JMJ and/or Drimak have given false, misleading, or incomplete information or testimony, or that JMJ and/or Drimak have otherwise failed to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for JMJ and Drimak 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 JMJ and/or Drimak 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. JMJ and Drimak understand and agree that in any further prosecution of them resulting from the release of the United States from its obligations under this Agreement based on the defendants' violation of the Agreement, any documents, statements, information, testimony, or evidence provided by them to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against them in any such further prosecution. In addition, the defendants unconditionally waive their right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

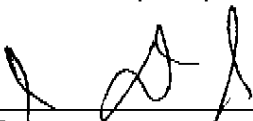
ENTIRETY OF AGREEMENT

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


23. The undersigned is authorized to enter this Agreement as evidenced by the Resolution of the Board of Directors of JMJ attached to, and incorporated by reference in, this Agreement.


24. 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




JOHN DRIMAK, JR.
for himself and
for JMJ ENVIRONMENTAL, INC.




JEFFREY D. MARTINO


ELIZABETH PREWITT



JOSEPH MURE, ESQ.
Counsel for
JOHN DRIMAK, JR.
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