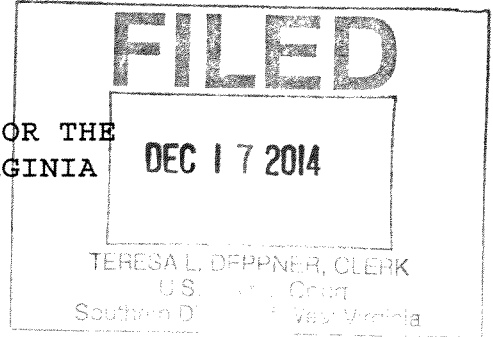


UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON



UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:14-CR-00277

33 U.S.C. § 1319(c)(1)(A)

33 U.S.C. § 1311

18 U.S.C. § 2

ROBERT J. REYNOLDS

I N F O R M A T I O N

The United States Attorney charges:

(Negligent Discharge of a Pollutant)

At all times relevant to this Information:

Background

1. Freedom Industries, Inc. ("Freedom") was a West Virginia corporation located in Charleston, West Virginia, and engaged in the business of storing, selling, and transporting chemicals that were to be used in various industries, including the coal mining industry.

2. Defendant ROBERT J. REYNOLDS ("REYNOLDS") was one of the individuals responsible for regulatory and environmental compliance by Freedom and its affiliated companies. REYNOLDS' duties and responsibilities included developing and maintaining certain plans, including a Storm Water Pollution Prevention Plan ("SWPPP"); preparing safety data sheets for chemical substances;

filing required reports with the State of West Virginia; training Freedom and ERT employees on regulatory and environmental issues; and ensuring that Freedom's owners and management were aware of issues and problems that might affect regulatory and environmental compliance by Freedom and its affiliated companies.

3. One of Freedom's affiliated companies was Etowah River Terminal, LLC ("ERT"), a West Virginia limited liability company, and, at times, a general partnership.

4. ERT was formed by the principal shareholders of Freedom in approximately September 2001, to purchase and then operate an above-ground storage tank facility located at 1015 Barlow Drive, Charleston, West Virginia (the "Etowah Facility"), on the east bank of the Elk River.

5. On December 31, 2013, ERT formally merged into Freedom. Prior to that date, and at all times pertinent to this Information, ERT acted on behalf of and with the intent to benefit Freedom.

6. Freedom and ERT used the Etowah Facility to store and process chemicals and other substances, including a substance that was used in the coal mining industry as a cleansing agent and which consisted primarily of the chemical 4-methylcyclohexane methanol. That substance, both in the form as Freedom originally purchased it and in the form after Freedom

processed it, was commonly referred to (and will be referred to hereinafter) as "MCHM."

The MCHM Spill Into the Elk River

7. In the morning of January 9, 2014, it was discovered that MCHM owned by Freedom had leaked from Tank 396 at the Etowah Facility into a containment area.

8. A significant quantity of the MCHM breached containment, including a containment wall. The leaked MCHM ran down the riverbank and discharged into the Elk River via two discernible, confined, and discrete channels or fissures. The MCHM then flowed downstream.

9. The water treatment and distribution plant of the West Virginia American Water Company ("WVAWC"), and an intake for that plant, were located approximately 1-1½ miles downstream from the Etowah Facility on the Elk River. Through the intake, WVAWC took in water from the Elk River and treated it to supply potable water for thousands of residents in Charleston and surrounding areas.

10. The MCHM from the Etowah Facility flowed into WVAWC's intake and treatment plant on the Elk River on January 9, 2014. As a result, at approximately 6:00 p.m. on January 9, 2014, the State of West Virginia issued a "do not use" advisory, which effectively denied water for drinking, cooking and washing to an estimated 300,000 residents within a nine-county area for

several days.

The Clean Water Act and the NPDES Program

11. The Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), codified at Title 33, United States Code, Sections 1251–1387, was enacted by Congress to restore and maintain the integrity of the Nation's waters and to prevent, reduce, and eliminate water pollution.

12. The CWA prohibited the discharge of any pollutant into waters of the United States by any person, except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES") by the United States Environmental Protection Agency ("EPA") or an authorized state.

13. The CWA defined a "person" as, among other things, an individual, corporation, and responsible corporate officer, 33 U.S.C. §§ 1362(5) and 1319(c)(6); the "discharge of a pollutant" as the addition of any pollutant to navigable waters, from any point source, 33 U.S.C. § 1362(12); a "point source" as any discernible, confined and discrete conveyance from which pollutants are discharged, for example a pipe, ditch, channel, conduit or discrete fissure, 33 U.S.C. § 1362(14); and a "pollutant" as, among other things, solid waste, chemical waste, and industrial waste discharged into water, 33 U.S.C. § 1362(6).

14. At all places relevant to this Information, the Elk River was a navigable water of the United States within the meaning of the CWA. 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

15. The EPA delegated the NPDES program to the State of West Virginia in May 1982, see 47 Fed. Reg. 22,363 (May 24, 1982). Thereafter, and at all relevant times, the NPDES program in West Virginia was administered by the West Virginia Department of Environmental Protection ("WVDEP").

16. Pursuant to the NPDES delegation of authority, the WVDEP issued a "Multi-Sector General Water Pollution Control Permit," No. WV0111457 ("the NPDES Permit"), under which industrial activities could apply for individual registration and authority to operate. The NPDES Permit authorized permit holders to discharge storm water into navigable waters, subject to monitoring and reporting requirements for certain pollutants, but did not allow for the discharge of MCHM.

17. Freedom, directly and through its agent ERT, operated the Etowah Facility pursuant to the NPDES Permit, under General Permit Registration Number WVG610920. Freedom did not have any permit allowing for the discharge of MCHM into the Elk River.

Negligent Operation of the Etowah Facility

18. At all times pertinent to this Information and up through and including January 9, 2014, Freedom and its agents,

including REYNOLDS, failed to exercise reasonable care in several ways and thus failed to satisfy their duties to operate the Etowah Facility in a safe and environmentally sound manner.

19. One manner in which Freedom, REYNOLDS and others failed to exercise reasonable care was by violating the conditions of the NPDES Permit. The violations included:

- The failure to develop and maintain a Storm Water Pollution Prevention Plan ("SWPPP") for the Etowah Facility, and
- The failure to implement reasonable practices at the Etowah Facility to assure compliance with the NPDES Permit.

20. The reasonable practices that should have been but which were never implemented by Freedom and ERT included:

- Properly analyzing the spill potential of all substances, including MCHM, stored at the Etowah Facility;
- Ensuring that the area within the dike containment wall would actually hold the contents of the largest tank, without spillage or leaking;
- Ensuring that periodic inspections were conducted of facility components, including the dike containment wall, which might contribute to a spill or leakage of pollutants if not in good condition; and
- Conducting training of all personnel, including responsible corporate officers, to insure that all hands were well aware of the requirements of the SWPPP and the importance of pollution prevention.

21. The failures by Freedom, REYNOLDS and other agents of Freedom to exercise reasonable care in the operation of the Etowah Facility, and in particular, to develop and maintain an

SWPPP for the Etowah Facility and to implement certain reasonable practices at the Etowah Facility to assure compliance with the NPDES Permit, were proximate causes of the significant leak of MCHM from Tank 396 and the resulting discharge of MCHM into the Elk River on January 9, 2014.

Criminal Violation of the CWA

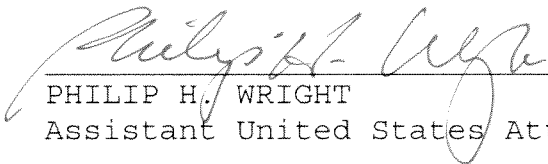
22. From at least in or about the spring of 2009, through on or about January 9, 2014, at or near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendant ROBERT J. REYNOLDS and other persons and entities known to the United States Attorney, negligently discharged a pollutant, that is, MCHM, which discharge occurred on or about January 9, 2014, from point sources into the Elk River, a navigable water of the United States, without a permit issued under Title 33 of the United States Code authorizing such discharge.

In violation of Title 33, United States Code, Sections 1319(c)(1)(A) and 1311.

UNITED STATES OF AMERICA

R. BOOTH GOODWIN II
UNITED STATES ATTORNEY

By:



PHILIP H. WRIGHT
Assistant United States Attorney