

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
v. : Criminal No. 15 -
MIGUEL CASTILLO : 42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. §§ 1001(a)(2) and
(a)(3)
: 18 U.S.C. § 2

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

Count One
(Violation of the Resource Conservation and Recovery Act)

1. At all times relevant to this Indictment unless otherwise indicated:

The Resource Conservation and Recovery Act

a. The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.* (hereinafter, "RCRA"), was enacted in 1976 to address a growing nationwide problem with industrial and municipal waste. RCRA was designed to protect human health and the environment and provided controls on the management and disposal of hazardous waste.

b. RCRA, and the regulations promulgated thereunder, prohibited the treatment, storage or disposal of any identified or listed hazardous waste without a permit issued under 42 U.S.C. §§ 6925 or 6926 by the United States Environmental Protection Agency ("EPA") or by an authorized state.

c. Pursuant to 42 U.S.C. § 6926, the EPA could authorize states to administer and enforce their own hazardous waste management program in lieu of the federal program. The EPA authorized the State of New Jersey to conduct a hazardous waste program, which was administered by the New Jersey Department of Environmental Protection ("NJDEP"). The EPA, however, retained its enforcement authority over the State of New Jersey's authorized hazardous waste program.

d. RCRA regulations defined what constituted "hazardous waste." See 40 C.F.R. §§ 261.3 *et seq.* Those regulations were incorporated by reference in the New Jersey Administrative Code. N.J.A.C. 7:26G-5.1. Both federal and state regulations provided that waste was hazardous if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity, as defined in 40 C.F.R. §§ 261.21-24 and incorporated by reference in N.J.A.C. 7:26G-5.1.

Comprehensive Environmental Response, Compensation, and Liability Act

e. The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 (hereinafter, "CERCLA"), authorized the EPA, among other things, to remove hazardous waste at industrial sites that may pose a threat to human health or the environment (hereinafter, a "CERCLA removal action"). CERCLA also authorized the EPA to hold potentially responsible parties connected to those sites financially liable for the costs of such removal actions.

2. At all times relevant to this Indictment unless otherwise stated:

Concord Chemical Co., Inc.

a. Concord Chemical Co., Inc. ("Concord") was a New Jersey corporation located in Camden, New Jersey (hereinafter, the "Camden Facility"). At various times relevant to this Indictment, Concord was in the business of manufacturing, repackaging and distributing a variety of chemical products, including cresylic acid, soaps, waxes, pipe lubricants and emulsions. Certain of Concord's products and the raw materials used in its operations were hazardous as that term is defined in Paragraph 1(d) above. At no time relevant to this Indictment did Concord have a permit issued by the EPA or NJDEP to store hazardous waste at the Camden Facility.

KW, Inc.

b. From in or about June 2008 through at least in or about Fall 2009, a New Jersey corporation referred to herein as "KW, Inc." manufactured, repackaged and distributed a variety of commercial laundry products from the Camden Facility, as a lessee of Concord. Like Concord, KW, Inc. did not have a permit issued by the EPA or NJDEP to store hazardous waste at the Camden Facility.

Defendant

c. From in or about December 2003 through in or about August 2011, defendant MIGUEL CASTILLO was a resident of Hilton Head, South Carolina, and was President or Chief Executive Officer of Concord. From in or

about May 2008 through at least in or about Fall 2010, defendant MIGUEL CASTILLO was a Director and President of KW, Inc. While President or Chief Executive Officer of Concord, defendant MIGUEL CASTILLO was Concord's principal contact with NJDEP on environmental compliance.

Basement Drums

3. During the time defendant MIGUEL CASTILLO was President or Chief Executive Officer of Concord, the basement of the Camden Facility stored drums, certain of which contained hazardous substances. In 2004, and again in 2005, employees of Concord undertook efforts to remove drums containing waste from the basement of the Camden Facility. Both efforts were discontinued before completion, however, because defendant MIGUEL CASTILLO claimed that Concord could not afford to remove additional drums.

The Removal Action

4. By at least March 2010, the business operations of Concord and KW, Inc. had ceased at the Camden Facility. In or about August 2010, the EPA conducted a site visit at the Camden Facility and observed that it was devoid of employees, in a deteriorated condition, and filled with drums bearing labels such as "Flammable" and "Corrosive."

5. From in or about October 2010 through in or about March 2011, the EPA conducted a CERCLA removal action at the Camden Facility to remove containers of hazardous substances from the Camden Facility. On or about December 2, 2010, samples taken by the EPA from drums at the Camden Facility

revealed that the Camden Facility contained hazardous waste bearing RCRA characteristics for corrosivity and ignitability.

6. From in or about 2004 through at least in or about October 2010, in Camden County, in the District of New Jersey, and elsewhere, defendant

MIGUEL CASTILLO

did knowingly store and cause to be stored at the Camden Facility hazardous waste, namely corrosive and ignitable waste, without a permit issued by the EPA or NJDEP to store hazardous waste at the Camden Facility.

In violation of Title 42, United States Code, Section 6928(d)(2)(A) and Title 18, United States Code, Section 2.

COUNT TWO
(False Statements and Writings)

1. The allegations set forth in Paragraphs 1 through 5 of Count One of this Indictment are re-alleged and incorporated herein.

2. Pursuant to Section 104(e) of CERCLA, the EPA was authorized to request information from individuals concerning sites containing hazardous waste. The information could be used to assist EPA in identifying potentially responsible parties for costs incurred by EPA to conduct removal actions at such sites.

3. On or about September 1, 2011, the EPA issued a Request for Information, pursuant to Section 104(e) of CERCLA (hereinafter, the "104(e) Request") to defendant MIGUEL CASTILLO. The 104(e) Request called for defendant MIGUEL CASTILLO to provide information regarding his position with Concord and KW, Inc. and regarding transactions conducted by those companies.

4. Defendant MIGUEL CASTILLO submitted a response to the 104(e) Request on or about September 30, 2011, which included a Certification of Answers to Request for Information signed by defendant MIGUEL CASTILLO, and notarized, stating that the information submitted in the response was true, accurate, and complete.

5. On or about September 30, 2011, in Middlesex County, in the District of New Jersey, and elsewhere, defendant

MIGUEL CASTILLO

in a matter within the jurisdiction of the EPA, an agency within the executive branch of the United States, did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, and made and used false writings and documents, knowing them to contain materially false, fictitious, and fraudulent statements and entries, as set forth below:

Request Number of Attachment B to Section 104(e) Request.	Description of False Statement
1c.	Defendant MIGUEL CASTILLO failed to identify himself as President of Concord.
1c.	Defendant MIGUEL CASTILLO failed to identify himself as Chief Executive Officer of Concord.
1c.	Defendant MIGUEL CASTILLO failed to identify himself as an officer of Concord.
1c.	Defendant MIGUEL CASTILLO failed to identify himself as a Director of KW, Inc.
1c.	Defendant MIGUEL CASTILLO failed to identify himself as President of KW, Inc.
12	Defendant MIGUEL CASTILLO failed to disclose a lease agreement between Concord and KW, Inc.
14	Defendant MIGUEL CASTILLO failed to identify himself as President of Concord
14	Defendant MIGUEL CASTILLO failed to identify himself as President of KW, Inc.
14	Defendant MIGUEL CASTILLO failed to identify himself a Director of KW, Inc.

In violation of Title 18, United States Code, Sections 1001(a)(2) and (a)(3).

COUNT THREE
(False Statements and Writings)

1. The allegations set forth in Paragraphs 1 through 5 of Count One and in Paragraphs 1 through 4 of Count Two of this Indictment are re-alleged and incorporated herein.

2. The EPA enclosed with the 104(e) Request, a Financial Statement of Corporate Debtor Form (hereinafter, the "Financial Form"), which called for financial information regarding Concord. Defendant MIGUEL CASTILLO submitted the Financial Form to the EPA on or about September 30, 2011, with a signed Verification and Affidavit, stating that the Financial Form was a true and complete statement of all organization income and assets, real and personal, whether held in the company name or otherwise.

3. On or about September 30, 2011, in Middlesex County, in the District of New Jersey, and elsewhere, defendant

MIGUEL CASTILLO

in a matter within the jurisdiction of the EPA, an agency within the executive branch of the United States, did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, and made and used false writings and documents, knowing them to contain materially false, fictitious, and fraudulent statements and entries, for the purpose of concealing his role at Concord, in that he failed to identify himself as President or Chief Executive Officer of Concord, in response to Item 9 of the Financial Form, which called for the names of current (and for the previous five years) officers of Concord.

In violation of Title 18, United States Code, Sections 1001(a)(2) and (a)(3).

A TRUE BILL


FOREPERSON



PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: _____

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District of New Jersey**

UNITED STATES OF AMERICA

v.

MIGUEL CASTILLO

INDICTMENT FOR

**42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. §§ 1001(a)(2) and (a)(3)
[REDACTED] C. § 2**

PAUL J. FISHMAN

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