

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 14 - _____
v.	:	DATE FILED: April 1, 2014
ANTHONY BIELLO II	:	VIOLATIONS:
a/k/a "Tony"	:	42 U.S.C. § 7413(c)(1) (violation of
		the Clean Air Act- 1 count)
		18 U.S.C. § 2 (aiding and abetting)

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

BACKGROUND

1. The defendant, ANTHONY BIELLO II, a/k/a "Tony," was an experienced asbestos abatement and demolition contractor who owned and operated various asbestos abatement and demolition companies, one of which, D&E Solutions, LLC, was licensed in the City of Philadelphia to perform asbestos abatement work.
2. In 2006, Siloam Industries, Inc. (Siloam), a non-profit corporation which delivered services to individuals suffering from HIV/AIDS, purchased a former Roman Catholic Church and associated buildings (the Spring Garden facility) located at 1133 Spring Garden St., Philadelphia, Pennsylvania. Siloam planned to demolish the actual Church and use other buildings to offer AIDS services. The Church building contained asbestos-containing material (ACM) of various kinds, including insulation covering a boiler and piping in the basement, which had to be removed prior to demolition.

3. Defendant BIELLO and D&E Solutions LLC were hired via a written contract on February 24, 2009, by Siloam's demolition and salvage contractor to remove ACM from the Church for \$ 45,000. Defendant BIELLO had previously been provided a copy of a written report that described the types, locations and amounts of ACM present in the facility. The report showed that the Spring Garden facility contained sufficient ACM to be regulated by the federal Clean Air Act.

4. In the contract, defendant BIELLO agreed to complete and file all required paperwork connected with asbestos abatement at the Spring Garden facility (the Facility) and to remove ACM from the Facility. As a result, defendant BIELLO became the "operator" of a demolition activity. 40 C.F.R. § 61.142.

The Clean Air Act

5. The Clean Air Act (CAA) was enacted by Congress to protect and enhance the quality of the Nation's resources so as to promote the public health and welfare. 42 U.S.C. §§ 7401 et seq.

6. The Clean Air Act authorizes the United States Environmental Protection Agency (EPA) to identify hazardous air pollutants and to establish standards to prevent or limit the emission of hazardous air pollutants into the atmosphere. Those standards established by EPA are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). 42 U.S.C. § 7412.

7. Where it is not feasible to prescribe and enforce emission standards for a hazardous air pollutant, as is the case with asbestos, EPA may publish work practice standards requiring that certain procedures be followed when dealing with those substances. 42 U.S.C. § 7412(h).

8. Pursuant to the Clean Air Act, asbestos has been designated as a hazardous air pollutant since 1971. 42 U.S.C. §§ 7412(a)(6) and (b), 40 C.F.R. § 61.01(a).

9. EPA regulates the removal and disposal of "regulated asbestos containing material" above certain threshold quantities from commercial, industrial, public, institutional, and certain multi-unit residential facilities. EPA has authorized the City of Philadelphia's Air Management Services (AMS) Asbestos Control Unit to regulate and enforce the federal CAA asbestos regulations within the city limits. In addition to enforcing the federal regulations, AMS also enforces independent municipal asbestos control regulations, such as requiring that only licensed contractors be used for asbestos removal.

10. Asbestos is “friable” when it can be crumbled by hand pressure. Asbestos fibers from friable asbestos material can become airborne and can be inhaled into the lungs. “Friable asbestos material” is defined in the regulations at 40 C.F.R. § 141.

11. “Regulated asbestos containing material” (RACM) means friable asbestos material and also other kinds of nonfriable asbestos material that has become or is likely to become friable in the course of a demolition or renovation. 40 C.F.R. § 61.141.

12. Asbestos work practice standards apply to any owner or operator of a facility who conducts a renovation operation, when the combined amount of RACM stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 260 linear feet on pipes, 160 square feet on facility components, or 35 cubic feet off facility components where the length or area of the RACM could not be previously measured. 40 C.F.R. § 61.145(a)(4). The Spring Garden facility contained RACM in excess of the threshold limits, making the asbestos abatement undertaken prior to demolition subject to EPA regulation.

13. The asbestos NESHAP regulations require that the owner or operator of a regulated site ensure the removal of asbestos in accordance with work practice standards that are set out in federal regulations. 40 C.F.R., Subpart M, § 61.140 et seq. Among other things, under the work practice standards, the owner and operator of a site where asbestos is being removed must notify the EPA (or AMS in the City of Philadelphia) at least ten working days before beginning the removal project, and update the notice if the amount of asbestos affected changes by at least 20%.

14. The Clean Air Act makes it a criminal offense to knowingly violate work practice standards set by EPA pursuant to Title 42, United States Code, Section 7413(c)(1),

including the requirement to notify EPA or, in the City of Philadelphia, Air Management Services, at least 10 days prior to commencement of asbestos abatement activities.

15. In early March 2009, defendant BIELLO faxed to Siloam's demolition contractor what defendant BIELLO represented to be the 10-day asbestos notification required to be submitted to EPA and AMS by the CAA asbestos NESHAP regulations. The document bore defendant BIELLO's signature and a signature date of Feb. 25, 2009. Among other things, the document described the location and types of ACM present in the Spring Garden Facility; stated that asbestos removal would begin that day and end by April 30, 2009; and identified the waste hauler and landfill where the asbestos waste would be taken. The purported 10-day notification submitted to Siloam's demolition contractor bore a date stamp on the top of page 1 that said:

"RECEIVED

FEB 25 REC'D

By _____"

16. The purported 10-day notification dated-stamped "Feb. 25 REC'D" was, in fact, never received by AMS, and the date stamp on the document was not the date stamp used by AMS in February, 2009.

17. On or about May 5, 2009, defendant BIELLO signed a 10-day notification of Asbestos Abatement and Demolition/Renovation Form which AMS received May 11, 2009. In that document, defendant BIELLO stated that the asbestos abatement removal would commence April 2, 2009 at the Facility and be completed by May 31, 2009.

COUNT ONE

(The Clean Air Act)

THE GRAND JURY CHARGES THAT:

Paragraphs 1 through 17 of this Indictment are incorporated here.

On or about April 2, 2009, in the Eastern District of Pennsylvania and elsewhere, the defendant,

**ANTHONY BIELLO II,
a/k/a "Tony,"**

knowingly violated, and aided and abetted and knowingly caused the violation of, applicable work practice standards enacted pursuant to the Clean Air Act governing removal of regulated asbestos containing materials, by being an operator of a demolition activity that was subject to federal regulation at 1133 Spring Garden Street, Philadelphia, Pennsylvania (the Spring Garden Facility) and by failing to provide EPA or the City of Philadelphia's Air Management Services with written notice of intent to demolish the Spring Garden facility as required by 40 C.F.R. § 61.145(b) and the Clean Air Act, Title 42, United States Code, Sections 7413(c)(1) and 7412.

In violation of Title 42, United States Code, Section 7413(c)(1) and 18 U.S.C. § 2.

A TRUE BILL:


ZANE DAVID MEMEGER
United States Attorney

GRAND JURY FOREPERSON