Environmental Crimes Case Bulletin

U.S. Environmental Protection Agency
Office of Criminal Enforcement, Forensics and Training

This bulletin summarizes publicized investigative activity and adjudicated cases conducted by OCEFT Criminal Investigation Division special agents, forensic specialists, and legal support staff. To subscribe to this monthly bulletin you may sign up for email alerts at http://www2.epa.gov/enforcement/criminal-enforcement-policy-guidance-and-publications.

December 2015

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EXHIBIT 3

United States Environmental Protection Agency

EPA Pub. 310-N-15-012

Defendant Summary

Region	Defendants	Case Type/Status
Region 2	David L. Frisby	Wire fraud to illegally dispose of metal waste
Region 2	David Dunham, Ralph Tommaso, William Barnes	Renewable Energy Program/Providing false statements to the government, wire fraud, tax fraud, and obstruction of an IRS audit and a U.S. Department of Agriculture examination
Region 3	MAB Environmental Services, Inc., Matthew Brozena, and others	CWA/Knowingly violating permit conditions, tampering with required monitoring devices and methods, false reporting, conspiracy
Region 3	Chem-Solv Inc.	RCRA/Illegal storage and transportation of hazardous waste
Region 6	Cherry Way, Inc., Elaine Chiu	CAA/Knowingly failed to notify and report demolition of a riverboat
Region 7	JACAM Manufacturing, LLC	SWDA, RCRA/Unlawful disposal of hazardous waste into a salt water disposal well

Former New York Resident Pleads Guilty to Fraud Scheme -- On December 11, 2015, **DAVID L. FRISBY**, of Kiln, Mississippi, pled guilty in federal district court for the Northern District of New York to one count of conspiracy to commit wire fraud in connection with a scheme to defraud scrap metal brokerage firms. The guilty plea included his admission to soliciting contracts for the disposal of batteries and other metal waste under false pretenses.

Frisby, formerly of Fultonville, New York, admitted that he and his co-conspirators falsely held themselves out to be representatives of a scrap metal recycling firm that was authorized by EPA to dispose of metal waste by shipping it to Korea, and that they defrauded business and individuals by charging them for recycling services that were never provided. In reality, Frisby and his co-conspirators were not authorized by EPA to provide scrap metal recycling services and never intended to provide such services to the victims.

To further the scheme, Frisby, who formerly served as chief executive officer of D & L Heritage Enterprises, Inc., a New York State domestic business corporation, until its dissolution in 2009, provided his co-conspirators with D & L Heritage incorporation documents that were fraudulently altered and e-mailed to victims during the solicitation process. Victims of the fraud scheme transferred at least $154,206 in fraud proceeds to bank accounts maintained by Frisby, who retained a portion of the funds for his personal benefit and transferred the remainder to his co-conspirators.

At sentencing on April 27, 2016 at 10:00 a.m. in Syracuse, Frisby faces a maximum term of incarceration of 20 years and a maximum fine of $250,000. Additionally, the plea agreement requires Frisby to pay $144,216 in restitution to victims of the fraud scheme, if approved by the Judge.

The case was investigated by EPA's Criminal Investigations Division. It is being prosecuted by Assistant United States Attorney Sean O'Dowd.

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Structure in which Frisby was conducting his illegal operations.

Kansas Chemical Manufacturer Pleads Guilty to SWDA and RCRA Violations -- On December 22, 2015, **JACAM MANUFACTURING, LLC**, of Sterling, Kan., a chemical manufacturing company, pleaded guilty in federal district court for the District of Kansas to unlawfully disposing of hazardous waste into a salt water disposal well and paid a $1 million fine.

The company pleaded guilty to one count of violating the federal Safe Water Drinking Act and one count of violating the Resource Conservation Recovery Act. In the plea, the company admitted to disposing of hazardous wastes in an injection well permitted only for the disposal of salt water. JACAM admitted it was unlawfully disposing of acetone, benzene and other hazardous chemicals into a salt water disposal well.

The case was investigated by EPA's Criminal Investigation Division and the Kansas Department of Health and Environment. It was prosecuted by Assistant U.S. Attorney Alan Metzger.

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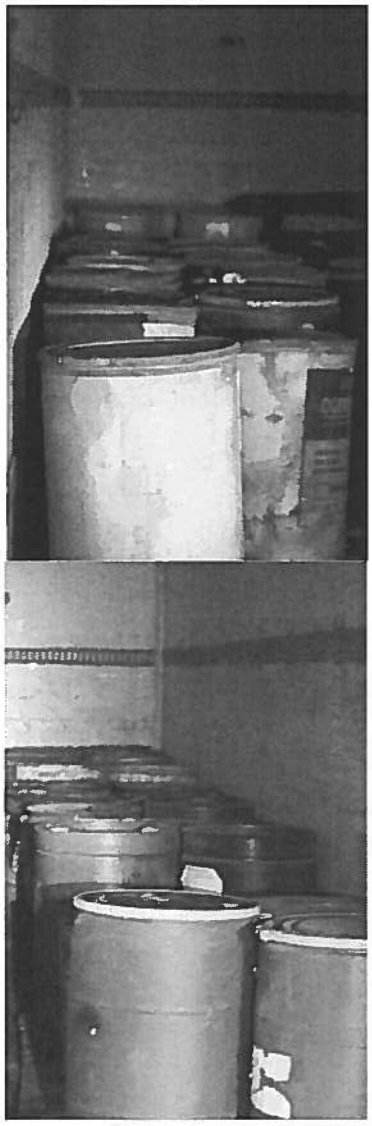
The JACAM Manufacturing truck at the injection well unlawfully disposing of hazardous waste when the search warrant was served.

Virginia Chemical Distributor Pleads Guilty to Illegally Storing and Transporting Hazardous Waste -- On December 22, 2015, **CHEM-SOLV INC.** (Chem-Solv), formerly known as Chemicals & Solvents Inc., pleaded guilty in federal district court for the Western District of Virginia to illegally storing hazardous waste at its facility in Roanoke, Virginia, and to illegally transporting hazardous waste from that facility to another location.



Drums with chemical waste found inside a trailer on Chem-Solv's property. The trailer was found to have hazardous waste that Chem-Solv did not have a permit to store.

As a part of the plea agreement, Chem-Solv has agreed to pay a $1 million criminal fine for these violations, as well as an additional $250,000 to fund environmental community service projects. Chem-Solv has agreed to serve five years' probation, during which time it must develop and implement an environmental compliance plan and be subjected to yearly independent environmental audits. In conjunction with the criminal settlement, the U.S. Environmental Protection Agency has reached a civil settlement with Chem-Solv that requires the company to pay a $250,000 penalty to settle alleged violations of improper hazardous waste storage at Chem-Solv's Roanoke facility.

Chem-Solv operates a chemical blending and distribution facility in Roanoke as well as distribution facilities in Colonial Heights, Virginia, Rock Hill, South Carolina, and Piney Flats, Tennessee. Chem-Solv is in the business of purchasing chemicals and then reselling them to customers, either directly or after repackaging. As part of its ordinary business practices, Chem-Solv generated hazardous waste. A hazardous waste is waste which, because of its designation, quantity, concentration, or characteristics, poses a substantial present or potential hazard to human health or the environment.

Count one of the information is based on a spill of several hundred gallons of ferric chloride – a hazardous substance – on the Chem-Solv facility in Roanoke in June 2012. Although most of the waste was cleaned up using vacuum trucks, some of the ferric chloride flowed from the Chem-Solv facility onto an adjoining property both before, and during, the cleanup. The pleadings allege that the adjoining property owner was not notified that ferric chloride had leaked onto their property. Chem-Solv then employed a waste transportation company to transport the waste to a disposal facility. Hazardous waste may only be transported by permitted carriers, and it must be properly placarded and be accompanied by a hazardous waste manifest identifying the waste and its characteristics. The pleadings allege that, although Chem-Solv was aware of the hazardous nature of ferric chloride, it did not properly test the waste and instructed the transporter to transport the waste as non-hazardous, without the proper placards and manifests.

Count two of the information charges Chem-Solv with the improper storage of hazardous waste. Chem-Solv was given advance notice of an EPA inspection in December 2013. At the time the

advance notice was given, Chem-Solv was storing numerous containers of chemical waste on its facility that should have been disposed of properly. The pleadings allege that Chem-Solv directed its employees to load three trailers with the chemical waste in an attempt to prevent EPA inspectors from discovering it. Two of the three trailers were taken offsite. The third trailer, which was not road worthy, was stored on the Chem-Solv property for almost a year and its contents were discovered by law enforcement officers on Nov. 19, 2014, while executing a search warrant. That trailer was found to contain hazardous waste that Chem-Solv did not have a permit to store on its facility.

The case was investigated by EPA's Criminal Investigation Division and the U.S. Department of Transportation's Office of Inspector General. Assistance in the investigation was provided by the Virginia Department of Environmental Quality, Roanoke City Police Department and the Roanoke Fire-EMS Department and the Blue Ridge Environmental Task Force. The prosecution was handled by Assistant U.S. Attorney Jennie L. M. Waering, Senior Trial Attorney James B. Nelson of the Department of Justice's Environmental Crimes Section, and EPA Regional Criminal Enforcement Counsel David Lastra.

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Additional photographs of what was found and sampled inside the trailer on Chem-Solv property.

California Woman and Company Charged with Clean Air Act Violation -- On December 10, 2015, **CHERRY WAY, INC.,** and its president, **ELAINE CHIU**, were indicted in federal district court for the Eastern District of Louisiana with each violating knowing failure to notify and report as required by the Clean Air Act the demolition of the Mississippi Queen Riverboat, which contained regulated asbestos containing materials.

According to the Bill of Information, on or about April 2, 2011, Cherry Way and Chiu knowingly failed to notify and report to the Louisiana Department of Environmental Quality the demolition of the Mississippi Queen Riverboat, a facility, which contained regulated asbestos containing material, to wit: wall and ceiling tiles, at least ten days prior to the start of the demolition as required by the Clean Air Act.

If convicted, Chery Way faces a maximum term of probation of five years and a fine of $500,000. If convicted, Chiu faces a maximum term of imprisonment of two years, a maximum fine of $250,000, a maximum term of supervised release of one year, and a mandatory $100 special assessment.

Note that a Bill of Information is merely a charge and that the guilt of the defendant must be proven beyond a reasonable doubt.

The case was investigated by EPA's Criminal Investigation Division and the Louisiana Department of Environmental Quality-Criminal Investigation Division. Assistant United States Attorney Emily K. Greenfield is in charge of the prosecution.

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Pennsylvania Company Charged with Clean Water Act Violations -- On December 16, 2015, **MATTHEW BROZENA**, of Telford, Pennsylvania, and his company, **MAB ENVIRONMENTAL SERVICES, INC.,** were charged in federal district court for the Eastern District of Pennsylvania by indictment with conspiracy to violate the Clean Water Act and other offenses. The indictment also charges the defendants with knowingly violating permit conditions, tampering with required monitoring devices and methods, and false reporting. Separate criminal informations have been filed charging James Wetzel, of Harrisburg, Pennsylvania, James Crafton, of Upper Black Eddy, Pennsylvania, and Stephen Fritz, of in Harleysville, Pennsylvania, with related environmental violations.

The indictment alleges that Brozena and his company, MAB Environmental Services, Inc., contracted to operate wastewater treatment plants for its customers BC Natural Chicken and Buckingham Valley Nursing Center, in compliance with permits issued by the Pennsylvania Department of Environmental Protection to those facilities. The permits allowed BC Natural and Buckingham to discharge from their wastewater treatment plants into nearby waters under specified conditions. The permit conditions included that the operators of the wastewater treatment plants properly operate and maintain the wastewater treatment plants. The permits also required that the operators test samples of the discharge from the plants for certain pollutants and report the samples and test results to the PADEP. The permits set limits for the amount of each pollutant that each facility was allowed to discharge. The charging documents allege that Brozena directed his employees at MAB, including Wetzel and Fritz, to discard samples when Brozena believed that the pollutants in the samples would exceed the permit limits. The charges also allege that, at Brozena's direction, Wetzel, Crafton, Fritz, and other MAB employees falsely reported samples and test results.

If convicted of all charges, MAB Environmental Services, Inc., faces probation and fines; Brozena faces a significant term of imprisonment, fines, and supervised release; Crafton and Fritz face prison terms and fines and supervised release; and Wetzel faces a maximum sentence of one year in prison, a fine, and supervised release. Indictments and Informations are accusations. A defendant is presumed innocent unless and until proven guilty.

The case was investigated by EPA's Criminal Investigation Division with the assistance of the Pennsylvania Department of Environmental Protection. It is being prosecuted by Assistant United States Attorney Sarah L. Grieb and Special Assistant United States Attorney Patricia Miller.

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Owners of Lehigh Valley Companies and Their Engineer Charged In Green Energy Fraud Scheme -- On December 21, 2015, **DAVID DUNHAM**, of Bethlehem, PA, and **RALPH TOMMASO**, of Warren, NJ, were charged in federal district court for the Eastern District of New York by indictment, unsealed, with engaging in a multi-million dollar conspiracy to defraud individuals and the United States in a green energy scam involving used cooking oil. They are charged with conspiracy, providing false statements to the government, wire fraud, tax fraud, and obstruction of an IRS audit and a U.S. Department of Agriculture examination.

From 2010 through 2012, in Wind Gap, Allentown, Bethlehem, and elsewhere, Dunham and Tommaso operated, respectively, the companies Smarter Fuel, Inc. (Smarter Fuel) and Environmental Energy Recycling Corporation, LLC (EERC), coordinating the activities of these companies, and then formally merging under the umbrella of Greenworks Holdings, LLC (Greenworks). According to the 101-count indictment, the defendants falsely claimed to have produced and sold renewable fuel for which they misappropriated approximately $50 million in payments, subsidies, and other benefits. Dunham and Tommaso allegedly defrauded government programs intended to encourage the production of renewable fuel as an alternative to traditional fossil fuel. By claiming credits for renewable fuel they never produced, and that otherwise did not qualify, Duhnam and Tommaso stole tens of millions of dollars from the United States government. It is further alleged that Dunham and Tommaso stole millions more by fraudulently claiming and generating tradable credits that they sold to unsuspecting purchasers who believed these credits satisfied their legal obligation to introduce a certain quantity of renewable fuel per year.

The defendants, through their companies, collected used cooking oil from restaurants and other food service locations, sometimes processing it to remove hard particles, water, and other waste. They then sold this cleaned cooking oil primarily to renewable fuel producers that used it as a "feedstock" ingredient in their production process.

Dunham and Tommaso did not sell their cleaned used cooking oil as a final fuel, but allegedly fraudulently claimed otherwise, applying for and receiving government subsidies for every gallon of cleaned used cooking oil that they produced, plus more. Their claims vastly exceeded their actual production. In 2010, Dunham and Tommaso allegedly claimed subsidies and other payments on more than 917.5 million gallons of product, when they produced less than six million gallons. In 2011, Dunham and Tommaso allegedly claimed subsidies and other payments of more than 18 million gallons, when they only produced about 7.5 million gallons. Of the cleaned used cooking oil they did produce, the vast majority did not qualify for credit or subsidy. The defendants' allegedly fraudulent claims included more than one million gallons of the wastewater that was the byproduct of their processes to clean debris and pollutants from used cooking oil, the non-fuel sales of their product as a feedstock ingredient to be used by biofuel producers in buyers' production of biofuel, and transactions that existed on paper only, where the defendants did not produce or even possess the product for which they generated subsidies.

The indictment alleges that Dunham and Tommaso provided false information and altered and forged documents and records to government and private auditors in an effort to conceal their fraud. They allegedly directed employees to alter the documentation of obviously unqualified sales and change them to show sales that qualified for subsidies and other payments.

Dunham is also charged with underreporting his taxable income for the tax years 2009 and 2010. In his filings for these years, Dunham allegedly altered the dates on sales invoices, and delayed generating

invoices on other sales, in order to avoid paying taxes on these sales until a subsequent tax year. He also allegedly obstructed an IRS audit of Smarter Fuel.

In a related matter, William Barnes, a professional engineer, was charged by information, unsealed, with two counts of conspiring to provide false statements to the U.S. EPA. Barnes was allegedly hired to help the companies in Wind Gap and in Allentown register for the EPA's program as renewable fuel producers and allegedly conspired with the company owners to provide false Engineering Reports to the EPA.

If convicted, Dunham and Tommaso each face a substantial prison term, supervised release, a possible fine, and potential criminal forfeiture of up to $50 million. Dunham faces a $8,700 special assessment; Tommaso faces a $8,400 special assessment. Barnes faces a statutory maximum possible sentence of ten years in prison, supervised release, a possible fine, and a $200 special assessment.

The case was investigated by EPA's Criminal Investigation Division, IRS Criminal Investigations, Department of Agriculture–Office of Inspector General, U.S. Postal Inspector Service, and the Federal Bureau of Investigation Allentown Resident Agency. It is being prosecuted by Assistant United States Attorneys Nancy E. Potts and John Gallagher.

An Indictment is an accusation. A defendant is presumed innocent unless and until proven guilty.

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