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FILED
U.S. DISTRICT COURT

2005 NOV -3 P 3:53

DISTRICT OF UTAH

BY: _____
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ATTORNEYS FOR THE UNITED STATES

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH

UNITED STATES OF AMERICA

v.

MCWANE, INC.; CHARLES MATLOCK;
and CHARLES "BARRY" ROBISON;

Defendants.

: Count 1:
Title 18, United States Code, Section 371
: Counts 2:
Title 42, United States Code 7413(c)(2)(C);
Title 18, United States Code, Section 2
: Count 3:
Title 42, United States Code 7413(c)(2)(A);
Title 18, United States Code, Section 2
: Counts 4, 5, 6:
Title 18, United States Code, Section 1001;
Title 18, United States Code, Section 2

Judge Tena Campbell

DECK TYPE: Criminal

DATE STAMP: 11/03/2005 @ 12:34:54

CASE NUMBER: 2:05CR00811 TC

INDICTMENT

The United States Grand Jury in and for the District of Utah, sitting in Salt Lake City,
charges as follows:

INTRODUCTION

A. Background

At all times material to this Indictment:

1. Defendant MCWANE, INC. (MCWANE) is a Delaware corporation headquartered in Birmingham, Alabama. Defendant MCWANE operated iron foundries that manufactured cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas.
2. Defendant MCWANE, by and through a division called Pacific States Cast Iron Pipe Company, manufactured ductile cast iron pipe for the water and sewer industry at its facility in Provo, Utah County, Utah ("the Provo facility"). The manufacturing process utilized by defendant MCWANE involved melting ferrous scrap metal in a cupola furnace. Molten metal was centrifugally cast into pipe, which was then annealed, cleaned, tested, cement lined, painted, and bundled for shipment.
3. Defendant CHARLES MATLOCK was the Vice President-General Manager of the Provo facility.
4. Defendant CHARLES "BARRY" ROBISON was the Vice President of Environmental Affairs for defendant MCWANE, located in Birmingham beginning at a time unknown to the Grand Jury but no later than 1993, and was responsible for, among other things, compliance with environmental regulations. As Vice President of Environmental Affairs, defendant CHARLES "BARRY" ROBISON was responsible for environmental matters for defendant MCWANE, at all its facilities including the Provo facility.

B. Clean Air Act

5. The Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, is the Nation's comprehensive air pollution control statute. The purpose of the CAA is "to protect and enhance the quality of

the Nation's air resources." 42 U.S.C. § 7401(b)(1); 42 U.S.C. § 7470. The CAA directs the EPA to identify and set National Ambient Air Quality Standards for the most common air pollutants. 42 U.S.C. § 7409. "Ambient air" is the portion of the outdoor atmosphere that is accessible to the public. 40 C.F.R. § 50.1(e).

6. The United States Environmental Protection Agency ("EPA") has identified and set standards for six "criteria pollutants" in the ambient air. 40 C.F.R. Part 50. One of those criteria pollutants is "PM10." 40 C.F.R. § 50.6.

7. PM10 is particulate matter with an aerodynamic diameter of 10 microns or less. Particles of this size settle very slowly and stay suspended in the air. PM10 is a "fine fraction" of particulate matter and can become deeply embedded in human lung tissue and cause respiratory problems and exacerbate other cardiovascular diseases. In addition to negative health effects, particulate matter reduces visibility and speeds the deterioration of buildings.

8. The National Ambient Air Quality Standard for PM10 is measured in mass concentration units per unit volume, and the standard is 150 micrograms per cubic meter, 24 hour average concentration. 40 C.F.R. § 50.6.

9. A geographic area where the ambient air quality meets or exceeds the standard for a criteria pollutant is designated as an "attainment" area for that pollutant. 42 U.S.C. § 7407(d)(1)(A)(ii). Conversely, an area where the ambient air quality does not meet the standard for a criteria pollutant is designated as a "non-attainment" area for that pollutant. 42 U.S.C. § 7407(d)(1)(A)(I).

10. The CAA delegates to the states the primary responsibility for attaining and maintaining ambient air quality standards by requiring states to develop State Implementation Plans ("SIPs") to implement, maintain, and enforce national ambient air quality standards. 42

U.S.C. § 7410. SIPs must be approved by the EPA. Utah submitted its first SIP to EPA on January 25, 1972. 40 C.F.R. § 52.2320(b). Since that time, the SIP has undergone various revisions. On November 15, 1991, Utah submitted to EPA a SIP for PM10 in Salt Lake and Utah Counties, which was approved in its entirety on July 8, 1994, and became effective on August 8, 1994. 40 C.F.R. § 52.2320(c)(25); 59 Fed. Reg. 35036 (July 8, 1994) ("1994 SIP"). The 1994 SIP governed MCWANE during the compliance stack tests at issue in this Indictment, and mandated that the PM10 emissions from the cupola venturi scrubber stack shall not exceed 6.90 lbs/hr.

11. SIPs are required by federal law to contain legally enforceable procedures requiring owners and operators of stationary sources to: (1) report information on the nature and amount of emissions; and (2) provide other information to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy. 40 C.F.R. § 51.211. SIPs must also show that the State has legal authority to require owners and operators of stationary sources to make periodic reports to the State on the nature and amounts of emissions from such stationary sources. 40 C.F.R. § 51.230(f). Pursuant to this authority, the 1994 SIP required that MCWANE conduct a cupola scrubber stack test every three years to show compliance with the applicable PM10 emission limitations.

12. A stack test measures the amount of a specific pollutant or pollutants being emitted through a stack at the facility. During a compliance stack test, a facility is required to conduct normal operations. In this regard, the Utah Administrative Regulation R307-165-3 (previously 307-1-3.4.3) provides:

All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and

maintain process conditions representative of normal operations, and shall operate under such other relevant conditions as the [State of Utah] shall specify.

13. The State of Utah requires certain owners and operators of stationary sources to submit Emission Inventory Reports, describing the nature and amounts of pollutants emitted from those sources. Utah Administrative Regulation R307-150 *et. seq.* Emission Inventory Reports are an integral part of SIPs and are used by Utah to assist in assessing the level of pollutants released into the air from various sources. In addition, owners and operators of stationary sources are subject to fees based upon the amount of pollutants emitted by the source as reflected in the Emission Inventory Reports. Utah Code Section 19-2-109.1(4)(a); Utah Administrative Regulation R307-150. The emissions reported on the Emission Inventory Reports "shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period." Utah Administrative Regulation R307-150-5(3).

14. The knowing falsification of, tampering with, or rendering inaccurate of any monitoring equipment, carries criminal penalties. 42 U.S.C. § 7413(c)(2)(C). In addition, any person who knowingly makes any false material statement, representation in, or omits material information from any document required pursuant to the Clean Air Act, commits a criminal offense. 42 U.S.C. § 7413(c)(2)(A).

C. Process at McWane

15. The ferrous scrap metal melted in the cupola furnace at MCWANE contains significant quantities of shredded scrap metal, which includes scrap automobiles, which sometimes contain rust, chrome-plated parts, plastic, tires and car seats. The melting of shredded automobiles in the cupola furnace results in the emission of pollutants from the stack at

MCWANE, including PM10. Further, some automobile parts are zinc-coated during production, and as a result zinc oxide is released during the melting process, which also contributes to PM10.

16. Using a constricted gas flow section ("venturi") and water sprayers, a venturi scrubber removes certain pollutants, including PM10, from a flow of polluted gaseous emissions. The venturi on the scrubber at MCWANE was adjustable. The smaller the venturi, the higher the pressure drop across the venturi, and the cleaner the emissions passing through the scrubber and out to the ambient air.

17. Merchant pig iron ("pig iron") is a manufactured melting stock produced in a blast furnace under carefully-controlled conditions using only selected, high quality raw materials. Pig iron is a commodity purchased in ingots for melting. Pig iron is clean and essentially free from impurities. Pig iron contains very low levels of all of the common "tramp" (undesirable) elements commonly found in shredded automobiles, and thus results in a "cleaner melt" when introduced into the cupola furnace. Pig iron generates substantially no furnace dust, *i.e.*, particulate matter. At MCWANE, pig iron was not normally melted in the cupola furnace during the period at issue in this Indictment.

COUNT 1:
Conspiracy
[18 U.S.C. § 371]

18. The allegations of Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

Objects of the Conspiracy

19. Beginning at a time unknown to the Grand Jury, but no later than in or about 1997, and continuing thereafter until in or about 2003, in the District of Utah and elsewhere,

MCWANE, INC.,

CHARLES MATLOCK, and
CHARLES "BARRY" ROBISON

the defendants, did knowingly and willfully combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury:

A. To knowingly render inaccurate any monitoring device and method required to be maintained or followed under the Clean Air Act, in violation of Title 42, United States Code, Section 7413(c)(2)(C) and Title 18, United States Code, Section 2; and

B. To knowingly make a false material statement, representation, or certification in, or omit material information from, a report or document required pursuant to the Clean Air Act, in violation of Title 42, United States Code, Section 7413(c)(2)(A) and Title 18, United States Code, Section 2; and

C. To defraud the United States, that is, to hamper, hinder, impede, impair, and obstruct by craft, trickery, deceit, and dishonest means, the lawful and legitimate functions of the EPA in enforcing federal environmental laws and regulations, in violation of Title 18, United States Code, Sections 371 and 2; and

D. To knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in matters within the jurisdiction of the EPA, an agency of the executive branch of the Government of the United States, in violation of Title 18, United States Code, Sections 1001 and 2.

20. The purpose of the conspiracy was to increase the production of ductile cast iron pipe at the Provo facility and to mislead regulatory officials into believing that the Provo facility was in compliance with its air pollution limitations when it was not. By falsifying pollution emissions tests and reports, the defendants MCWANE, CHARLES MATLOCK, and CHARLES "BARRY"

ROBISON, and their co-conspirators, sought to avoid the cost of upgrading pollution control equipment and taking other measures that would have been necessary to reduce the emission of a dangerous air pollutant from the Provo facility and comply with environmental regulations.

Means and Methods of the Conspiracy

21. Among the means and methods employed by defendants MCWANE, CHARLES MATLOCK, CHARLES "BARRY" ROBISON, and their co-conspirators to carry out the conspiracy, and effect its unlawful objects, were those set forth in Paragraphs 22 through 24 below.

22. Defendants MCWANE, CHARLES MATLOCK, CHARLES "BARRY" ROBISON, and their co-conspirators failed to maintain process conditions representative of normal operations during stack tests for PM10 by melting pig iron instead of shredded scrap metal in the cupola in order to misrepresent the amount of PM10 emitted from the cupola stack during normal operations.

23. Defendants MCWANE, CHARLES MATLOCK, CHARLES "BARRY" ROBISON, and their co-conspirators failed to maintain process conditions representative of normal operations during stack tests for PM10 in that the venturi scrubber was operated at a pressure drop significantly higher than during normal operations in order to misrepresent the amount of PM10 emitted from the cupola stack during normal operations.

24. Defendants MCWANE, CHARLES MATLOCK, CHARLES "BARRY" ROBISON, and their co-conspirators submitted to the State of Utah Emission Inventory Reports and other correspondence that intentionally misrepresented the amount of PM10 emitted by the cupola scrubber stack.

Overt Acts

25. In furtherance of the conspiracy and in order to effect the objects thereof, defendants MCWANE, CHARLES MATLOCK, CHARLES "BARRY" ROBISON, and their co-conspirators committed the following overt acts, among others, in the District of Utah and elsewhere:

i. The September 30, 1997 Stack Test

Overt Act Number 1: During a PM10 test at the cupola scrubber stack on September 30, 1997, at the direction of defendant MATLOCK, pig iron was melted in the cupola furnace.

ii. The September 18, 2000 Stack Test

Overt Act Number 2: In or about March 2000, MCWANE ordered approximately 3,000 tons of pig iron, which was delivered in or about May 2000.

Overt Act Number 3: During the course of the conspiracy, the exact dates being unknown to the Grand Jury, in anticipation of and preparation for a September 18, 2000 stack test, at the direction of defendant MATLOCK, MCWANE employees conducted "pre-tests" or "trial runs" of pig iron in the cupola furnace.

Overt Act Number 4: During a PM10 test at the cupola scrubber stack on September 18, 2000, at the direction of defendant MATLOCK, pig iron was melted in the cupola furnace.

Overt Act Number 5: During a stack test on September 18, 2000, the venturi scrubber was operated at a pressure drop significantly higher than during normal operations.

Overt Act Number 6: On or about October 18, 2000, MCWANE submitted to the State of Utah the results of the stack test conducted on September 18, 2000.

iii. **Emissions Reporting**

Overt Act Number 7: On April 9, 2001, Defendant ROBISON formulated an "emission rate" for PM10, which included the average of four MCWANE PM10 stack tests, including the September 30, 1997 and September 18, 2000 stack tests, and: (1) defendant ROBISON knew that the stack test(s) included in formulating the emission rate included stack tests where pig iron was melted in the cupola furnace; and (2) the emission rate formulated by defendant ROBISON was subsequently used in an Emission Inventory Report submitted by defendant MCWANE to the State of Utah on or about April 16, 2001.

Overt Act Number 8: On or about April 16, 2001, defendant MCWANE submitted an Emission Inventory Report to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE in 2000.

Overt Act Number 9: On or about July 31, 2001, defendant MCWANE submitted a letter to the State of Utah which contained false emissions data.

Overt Act Number 10: On or about April 18, 2002, defendant MCWANE submitted an Emission Inventory Declaration to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE in 2001.

Overt Act Number 11: On or about November 6, 2002, defendant MCWANE submitted a letter to the State of Utah which contained false emissions data.

Overt Act Number 12: On or about April 11, 2003, defendant MCWANE submitted an Emission Inventory Report to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE in 2002.

iv. **Inadequate Air Pollution Control**

Overt Act Number 13: On numerous occasions between in or about 1997 and in or about 2002, defendant MCWANE operated the cupola furnace when it was aware that the air pollution control device was insufficient to remove pollutants to the extent required by law.

In violation of Title 18, United States Code, Section 371.

COUNT 2:

Clean Air Act

[42 U.S.C. § 7413(c)(2)(C); 18 U.S.C. § 2]

26. Paragraphs 1 through 17 and 25, are incorporated by reference as if fully set forth herein.

27. On or about September 18, 2000, in the District of Utah,

MCWANE, INC., and

CHARLES MATLOCK,

the defendants, did knowingly render, and cause to be rendered, inaccurate a monitoring device and method required to be maintained or followed under the Clean Air Act, namely a compliance stack test, by melting pig iron in the cupola furnace and not maintaining process conditions representative of normal operations during the stack test.

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

COUNT 3:

Clean Air Act

[42 U.S.C. § 7413(c)(2)(A); 18 U.S.C. § 2]

28. Paragraphs 1 through 17, 25, and 27 are incorporated by reference as if fully set forth herein.

29. On or about October 18, 2000, in the District of Utah,

MCWANE, INC.

the defendant, did knowingly make, and cause to be made, a false material statement, representation, certification in, and omitted material information from, a report or document required to be filed or maintained pursuant to the Clean Air Act, namely a stack test report received by the State of Utah, by falsely stating that "The process was operated according to standard procedures" and omitting material information, namely that pig iron was melted in the cupola furnace and process conditions were not maintained that were representative of normal operations, during the September 18, 2000 stack test.

In violation of Title 42, United States Code, Section 7413(c)(2)(A) and Title 18, United States Code, Section 2.

COUNT 4:
False Statement
[18 U.S.C. §§ 1001 and 2]

30. Paragraphs 1 through 17, 25, 27, and 29, are incorporated by reference as if fully set forth herein.

31. On or about April 16, 2001 in the District of Utah,

MCWANE, INC., and

CHARLES "BARRY" ROBISON,

the defendants, in a matter within the jurisdiction of the United States Environmental Protection Agency ("EPA"), an agency of the executive branch of the Government of the United States, did knowingly and willfully make and caused to be made a materially false, fictitious, and fraudulent statement and representation; that is, the defendants submitted an Emission Inventory Report to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE when in truth and in fact, as defendants MCWANE and CHARLES "BARRY"

ROBISON then well knew and believed, the amount of PM10 as reflected on the Emission Inventory Report was false.

In violation of Title 18, United States Code, Section 1001 and Title 18, United States Code, Section 2.

COUNT 5:
False Statement
[18 U.S.C. §§ 1001 and 2]

32. Paragraphs 1 through 17, 25, 27, 29, and 31 are incorporated by reference as if fully set forth herein.

33. On April 18, 2002 in the District of Utah,

MCWANE, INC.,

the defendant, in a matter within the jurisdiction of the United States Environmental Protection Agency ("EPA"), an agency of the executive branch of the Government of the United States, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation; that is, the defendant submitted an Emission Inventory Declaration to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE when in truth and in fact, as defendant MCWANE then well knew and believed, the amount of PM10 as reflected on the Emission Inventory Declaration was false.

In violation of Title 18, United States Code, Section 1001 and Title 18, United States Code, Section 2.

COUNT 6:
False Statement
[18 U.S.C. §§ 1001 and 2]

34. Paragraphs 1 through 17, 25, 27, 29, 31, and 33 are incorporated by reference as if fully set forth herein.

35. On or about April 11, 2003 in the District of Utah,

MCWANE, INC.,

the defendant, in a matter within the jurisdiction of the United States Environmental Protection Agency ("EPA"), an agency of the executive branch of the Government of the United States, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation; that is, the defendant submitted an Emission Inventory Report to the State of Utah which falsely represented the amount of PM10 emitted into the air by MCWANE when in truth and in fact, as defendant MCWANE then well knew and believed, the amount of PM10 as reflected on the Emission Inventory Report was false.

In violation of Title 18, United States Code, Section 1001 and Title 18, United States Code, Section 2.

A TRUE BILL.

SI
Foreperson

PAUL M. WARNER
United States Attorney
District of Utah

BY:

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