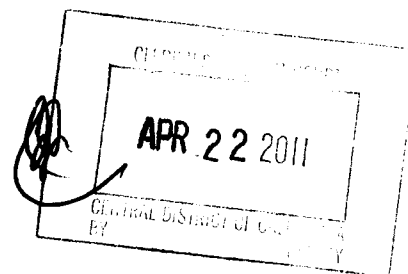


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
HARRY HUMPHRIES,)
)
Defendant.)
_____)

Case No. **CR 10-1106-JFW**
JURY INSTRUCTIONS

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COURT'S INSTRUCTION NO. 1.

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

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COURT'S INSTRUCTION NO. 2.

The Indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 3.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

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COURT'S INSTRUCTION NO. 4.

You are here only to determine whether the defendant is guilty or not guilty of the charge in the Indictment. The defendant is not on trial for any conduct or offense not charged in the Indictment.

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COURT'S INSTRUCTION NO. 5.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

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COURT'S INSTRUCTION NO. 6.

The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

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COURT'S INSTRUCTION NO. 7.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

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COURT'S INSTRUCTION NO. 8.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

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COURT'S INSTRUCTION NO. 9.

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

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COURT'S INSTRUCTION NO. 10.

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

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COURT'S INSTRUCTION NO. 11.

You have heard information regarding notices of violation that may have been issued to defendant or his company. You have also heard evidence regarding violations of California regulations. The notices of violation have been issued by local agencies, not federal agencies.

The notices of violation of California hazardous waste regulations may be considered only for their bearing, if any, on the question of the defendant's intent, motive, opportunity, knowledge, and/or absence of mistake, and for no other purpose.

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COURT'S INSTRUCTION NO. 12.

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

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COURT'S INSTRUCTION NO. 13.

You have heard testimony from John Spicer, a witness who has pleaded guilty to a crime arising out of the same events for which the defendant is on trial and who has entered into a cooperation agreement with the government through which he hopes to obtain a benefit. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability.

For this reason, in evaluating the testimony of John Spicer, you should consider the extent to which or whether his testimony may have been influenced by this factor. in addition, you should examine the testimony of John Spicer with greater caution than that of other witnesses.

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COURT'S INSTRUCTION NO. 14.

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

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COURT'S INSTRUCTION NO. 15.

The Indictment charges that beginning on a date unknown and ending no later than December 6, 2005, the defendant knowingly stored a hazardous waste without a permit in violation of the Resource Conservation and Recovery Act ("RCRA"), Title 42, United States Code, Section 6928(d)(2)(A).

In order to find the defendant guilty of the crime of knowingly storing hazardous waste without a permit, you must find that the government has proven the following elements beyond a reasonable doubt that during the period from on or after September 30, 2005 through December 6, 2005:

1. The defendant knowingly stored a waste material;
2. That the waste material that was stored was a hazardous waste;
3. That the storage was done without a permit; and
4. That the defendant knew the waste material had the substantial potential to be harmful to others or to the environment; in other words, that it was not a harmless substance like uncontaminated water.

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COURT'S INSTRUCTION NO. 16.

In order for the defendant to be guilty of the charge in the Indictment, the government must prove beyond a reasonable doubt that the offense charged was committed on or after September 30, 2005.

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COURT'S INSTRUCTION NO. 17.

An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. In other words, the government does not need to prove that the defendant knew that the material he stored was identified as a hazardous waste under RCRA or that the defendant knew that he was required to obtain a permit before storing the waste. The Government also does not need to prove that the Defendant knew he was violating RCRA. However, the Government must prove that the Defendant knew he was storing material, knew that the material was waste, and knew that the material had the substantial potential to be harmful to others or to the environment.

You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

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COURT'S INSTRUCTION NO. 18.

The term "hazardous waste" means any solid waste, or combination of solid wastes, that is a liquid and has a flash point of less than 60 degrees Celsius.

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COURT'S INSTRUCTION NO. 19.

For a waste material to be classified as a "hazardous waste," it must first qualify as a solid waste. The term "solid waste" under RCRA means any garbage, refuse, or other discarded material, including solids, liquids, or semi-solids, resulting from industrial, commercial, mining, or agricultural operations.

The term "discarded material" means any material that is:

- (1) abandoned; or
- (2) a by-product which is accumulated speculatively; or
- (3) a spent material which is accumulated speculatively.

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COURT'S INSTRUCTION NO. 20.

Materials are solid waste if they are "abandoned" by being:

- (1) disposed of; or
- (2) burned or incinerated; or
- (3) accumulated, stored, or treated (but not recycled)

before or in lieu of being disposed of, burned, or incinerated.

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COURT'S INSTRUCTION NO. 21.

A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

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COURT'S INSTRUCTION NO. 22.

A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

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COURT'S INSTRUCTION NO. 23.

A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if (1) the material is potentially recyclable; (2) the material has a feasible means of being recycled; and (3) during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.

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COURT'S INSTRUCTION NO. 24.

A material is "recycled" if it is used, reused, or reclaimed.

A material is "used or reused" if it is either:

- (i) employed as an ingredient (including use as an intermediate) in an industrial process to make a product; or
- (ii) employed in a particular function or application as an effective substitute for a commercial product.

A material is "reclaimed" if it is processed to recover a usable product, or if it is processed to remove contaminants so the material is usable for its original purpose.

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COURT'S INSTRUCTION NO. 25.

The term "storage," when used in connection with hazardous waste means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

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COURT'S INSTRUCTION NO. 26.

In order to store a hazardous waste lawfully, the defendant must have applied for and received a permit from the California Department of Toxic Substances Control ("DTSC") allowing such storage.

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COURT'S INSTRUCTION NO. 27.

The government is not required to prove that the storage of hazardous wastes caused any damage or harm to the environment in order to prove that the defendant committed the charged offense.

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COURT'S INSTRUCTION NO. 28.

The Indictment alleges that defendant knowingly stored two hazardous wastes without a permit, namely, toluene and methanol hazardous wastes. You must not find the defendant guilty unless you all agree that the government has proven each of the elements beyond a reasonable doubt as to at least one of these alleged hazardous wastes, with all of you agreeing as to which hazardous waste.

COURT'S INSTRUCTION NO. 29.

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When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

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COURT'S INSTRUCTION NO. 30.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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COURT'S INSTRUCTION NO. 31.

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 32.

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

1 COURT'S INSTRUCTION NO. 33.
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3 If it becomes necessary during your deliberations to
4 communicate with me, you may send a note through the bailiff,
5 signed by any one or more of you. No member of the jury
6 should ever attempt to communicate with me except by a signed
7 writing, and I will respond to the jury concerning the case
8 only in writing or here in open court. If you send out a
9 question, I will consult with the lawyers before answering
10 it, which may take some time. You may continue your
11 deliberations while waiting for the answer to any question.
12 Remember that you are not to tell anyone—including me—how the
13 jury stands, numerically or otherwise, on any question
14 submitted to you, including the question of the guilt of the
15 defendant, until after you have reached a unanimous verdict
16 or have been discharged.