

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. CR-07-20037-VAR-MKM

Plaintiff,

HONORABLE: VICTORIA A. ROBERTS

v.

MICHAEL G. PANYARD,
BRYAN S.J. MALLINDINE, and
CHARLES D. LONG,

Defendants.

JURY INSTRUCTIONS

Court's Instruction No. ____

COUNT TWO: VIOLATION OF AN APPROVED PRETREATMENT PROGRAM
REQUIREMENT- BYPASS

(33 U.S.C. § 1319(c)(2)(A))

(1) Count Two of the indictment accuses the defendants **MICHAEL G. PANYARD**, **BRYAN S.J. MALLINDINE**, and **CHARLES D. LONG** of violating a requirement imposed in an approved pretreatment program in violation of the Clean Water Act. Specifically, the count alleges that from about January 25, 2002 until about June 2002, the defendants took liquid wastes which had been transported to the facility for treatment and discharge to the Detroit Water and Sewerage Departments (DWSD's) publicly-owned treatment works and, instead, pumped a portion of such wastes directly to the sanitary sewer, bypassing the facility's pretreatment system, which was described in the facility's Discharge Permit as consisting of temperature adjustments, chemical flocculation, pH adjustment, clarification, sludge removal, and biological treatment. For you to find any defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

- (A) On or about the dates charged in the indictment the defendant violated a requirement of a pretreatment program, that is the bypass prohibition of the pretreatment program; and
- (B) The pretreatment program was a program administered by a POTW that had been approved by the U.S. EPA or by a State; and
- (C) The defendant acted knowingly.

Court's Instruction No. _____

**COUNT TWO: LESSER INCLUDED OFFENSE - NEGLIGENT
VIOLATION OF AN APPROVED PRETREATMENT PROGRAM
REQUIREMENT - BYPASS**

If you do not find beyond a reasonable doubt that a defendant *knowingly* violated a requirement imposed in an approved pretreatment program in violation of the Clean Water Act, you may still consider whether the government has proven beyond a reasonable doubt that defendant is guilty of *negligently* violating that Act.

For you to find defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) On or about the dates charged in the indictment the defendant violated a requirement of a pretreatment program, that is the bypass prohibition of the pretreatment program; and

(B) The pretreatment program was a program administered by the POTW that had been approved by the U.S. EPA or by a State; and

(C) The defendant acted negligently.

Court's Instruction No. ____

COUNT TWO: NEGLIGENT CONDUCT

Negligence is the failure to use reasonable care. Reasonable care is that amount of care that a reasonably prudent person would use in similar circumstances. Negligence may consist of doing something which a reasonably prudent person would not do or it may consist of failing to do something which a reasonably prudent would do. A reasonably prudent person is not the exceptionally cautious or skillful individual, but a person of reasonable and ordinary carefulness.

Court's Instruction No. ____

DEFINITIONS

“Pretreatment”

The term "pretreatment" refers to a reduction in the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to discharging, or otherwise introducing, such pollutants into a sewer system that leads to a publicly-owned treatment works (“POTW”).

“Bypass”

A “bypass” is the intentional diversion of wastestreams from a required component of an industrial user’s treatment facility.

Court's Instruction No. ____

**COUNT FOUR: FALSIFYING, TAMPERING WITH, OR RENDERING INACCURATE A
MONITORING DEVICE OR METHOD REQUIRED UNDER THE CLEAN WATER
ACT**
(33 U.S.C. § 1319(c)(4))

Count 4 of the indictment accuses the defendant **MICHAEL G. PANYARD** with the offense of falsifying, tampering with or rendering inaccurate a monitoring device or method required under the Clean Water Act in violation of federal law. Specifically, the count alleges that from about January 25, 2002 to about June 2002, based on the direction and consent of **PANYARD**, facility employees diluted and replaced the facility's wastewater discharge stream with water from one or more tanks when DWSD officials installed a sampler at the facility to determine the facility's compliance with pretreatment requirements, thereby falsifying, tampering with and rendering inaccurate that monitoring device and method.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

- (1) On or about the date charged in the indictment the defendant falsified, tampered with, or rendered inaccurate or aided and abetted in falsifying, tampering with, or rendering inaccurate a monitoring device or method;
- (2) The monitoring device or method was required to be maintained under the Clean Water Act; and
- (3) The defendant acted knowingly.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Court's Instruction ____

MEANING OF "KNOWINGLY"

As to counts two and four of the indictment the term "knowingly" requires proof of knowledge of the facts that constitute the offense.

The government is not required to prove that the defendant knew that his acts or omissions violated the Clean Water Act or were otherwise unlawful. The government must prove, beyond a reasonable doubt, however, that in taking actions or causing actions to be taken he acted voluntarily or intentionally and not by mistake, accident, ignorance of the facts, or for other innocent reason. 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.