

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Hon. Mary L. Cooper

v.

Criminal No. 03-852 (MLC)

ATLANTIC STATES CAST IRON PIPE
COMPANY, a Division of McWane, Inc.,
JOHN PRISQUE,
SCOTT FAUBERT,
JEFFREY MAURY,
DANIEL YADZINSKI, and
CRAIG DAVIDSON,

Defendants.

Title 18, United States Code, Section 371
Title 18, United States Code, Section 1001
Title 18, United States Code, Section 1505
Title 18, United States Code, Section 1519
Title 33, United States Code, Section 1311
Title 33, United States Code, Section 1319
Title 42, United States Code, Section 7413
Title 42, United States Code, Section 9603
Title 18, United States Code, Section 2

SUPERSEDING INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Trenton, charges:

COUNT 1

(Conspiracy to Violate Federal Criminal Statutes and
to Defraud Agencies of the United States)

INTRODUCTION

A. Background

At all times relevant to this Indictment:

1. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY was a division of McWane, Inc. ("McWane"), an Alabama corporation. McWane operated iron foundries that manufactured cast iron pipe, fittings, valves, and hydrants in each of the country's major market areas.

2. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY manufactured ductile cast iron pipe at its facility in Phillipsburg, New Jersey ("the Phillipsburg facility"). The manufacturing process utilized by defendant ATLANTIC STATES CAST IRON PIPE

COMPANY involved melting approximately 50 tons of scrap metal per hour in a cupola, a multistory furnace that reached temperatures approaching 3,000 degrees. Every two and one-half minutes, or approximately two hundred times each production day, 5,500 to 6,000 pounds of scrap metal was loaded into the cupola. A typical charge might consist of roughly 3,000 to 3,500 pounds of shredded steel primarily consisting of scrap automobiles; 2,000 pounds of denser foundry steel; 500 pounds of returned pipe; 600 pounds of coke, a solid fuel derived from coal that enabled the cupola to reach such high temperatures; 150 pounds of silica blocks; and 100 pounds of limestone.

3. After the scrap metal was melted, the molten iron was removed from the cupola, and mineral impurities, or slag, were removed. After sulfur was removed, the molten iron then passed through several additional steps before it was transferred by crane to the casting area. There, it was poured into spinning cylindrical casting machines to form pipes 6" to 24" in diameter. During this process, defendant ATLANTIC STATES CAST IRON PIPE COMPANY used Solvac, a petroleum-based water soluble metal cutting fluid. The newly-formed pipes were then transferred to an annealing oven, in which the pipes were heated to become less brittle. Next, after the ends of the pipes were formed, the interior of the pipes were lined with cement. The final step involved coating the inside and outside of the pipe with an asphalt-based paint. The equipment used at all stages of the manufacturing process primarily operated on hydraulic cylinders that used petroleum-based hydraulic fluid.

4. Defendant JOHN PRISQUE was the Plant Manager at the Phillipsburg facility, beginning in or about January 1998, with overall responsibility for day-to-day operations of the facility. Prior to that, from in or about October 1995 through in or about 1996, defendant JOHN

PRISQUE was the Production Superintendent. In or about 1997, defendant JOHN PRISQUE was promoted to Production Manager.

5. Defendant SCOTT FAUBERT was the Human Resource Manager at the Phillipsburg facility, responsible for, among other things, supervision of the health and safety program, from late 1996 through September 8, 2000, when his employment was terminated. As part of his responsibilities, defendant SCOTT FAUBERT supervised the facility's safety director, a position that defendant SCOTT FAUBERT held himself from not later than July 1995 until late 1996. As Human Resource Manager, defendant SCOTT FAUBERT reported directly to defendant JOHN PRISQUE, the Plant Manager.

6. Defendant JEFFREY MAURY was the Maintenance Superintendent at the Phillipsburg facility, beginning in February 1998, responsible for maintenance activities in the casting and finishing departments, among other areas of the plant, and the supervision of the facility's maintenance foremen. As part of his duties, defendant JEFFREY MAURY was responsible for maintaining the facility's forklifts. During 2000 and 2001, defendant JEFFREY MAURY reported directly to defendant JOHN PRISQUE, the Plant Manager. From 1995 through 1997, defendant JEFFREY MAURY was a Maintenance Foreman.

7. Defendant DANIEL YADZINSKI was the Engineering Manager at the Phillipsburg facility, beginning at a time unknown to the Grand Jury but no later than 1990, responsible for supervising the facility's engineers. Beginning at a time unknown to the Grand Jury but no later than September 2002, defendant DANIEL YADZINSKI was the Environmental Manager at the Phillipsburg facility responsible for among other things, compliance with environmental regulations. As both Engineering Manager and Environmental Manager, defendant DANIEL YADZINSKI reported directly to defendant JOHN PRISQUE, the Plant Manager.

8. Defendant CRAIG DAVIDSON was the Finishing Superintendent at the Phillipsburg facility, beginning in March 1998, responsible for the operations in the finishing department, including the cement and paint operations, and the supervision of the facility's finishing line, cement line, and paint line foremen. As Finishing Superintendent, defendant CRAIG DAVIDSON reported directly to defendant JOHN PRISQUE, the Plant Manager. Prior to that, beginning not later than 1995, defendant CRAIG DAVIDSON was a Utility Foreman. Defendant CRAIG DAVIDSON resigned from defendant ATLANTIC STATES CAST IRON PIPE COMPANY in October 1997 and was rehired in March 1998.

B. Occupational Safety and Health Act

9. The United States Department of Labor ("DOL") was a department and agency of the executive branch of the United States Government, and was responsible for the enforcement of the laws of the United States in the area of labor and employment conditions.

10. The Occupational Safety & Health Administration ("OSHA") was an agency of the DOL, and was responsible for the promulgation and enforcement of safety and health regulations covering federal and private sector workers throughout the United States.

11. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY, as an entity engaged in the production of ductile cast iron pipe, was subject to the Occupational Safety and Health Act of 1970 (as amended), 29 U.S.C. § 651 *et seq.* ("the OSH Act"), and was obligated to comply with all relevant safety and health regulations promulgated by OSHA.

12. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY was an "employer" under the OSH Act.

13. Defendant SCOTT FAUBERT, as Human Resource Manager, had responsibility for supervising health and safety matters at the Phillipsburg facility.

14. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY was required by the OSH Act and regulations promulgated thereunder (1) to furnish places of employment that were free from recognized hazards that were likely to cause death or serious physical harm to employees (29 U.S.C. § 654(a)(1)); (2) to take a powered industrial truck out of service if it was found to be in need of repair, defective, or in any way unsafe until it was restored to a safe operating condition (29 C.F.R. § 1910.178(p)(1)); and (3) to ensure that each powered industrial truck operator was competent to operate a powered industrial truck safely (29 C.F.R. § 1901.178(l)).

15. As an employer, defendant ATLANTIC STATES CAST IRON PIPE COMPANY was required to enter each "recordable" occupational injury on an OSHA 200 log within six working days after learning of the injury. A recordable injury includes, among other things, those that result in death; one or more lost workdays; restriction of work or motion; and medical treatment other than first aid. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY was required to have available for inspection at all times a complete copy of the OSHA 200 log current to within 45 days.

16. Section 11(c) of the OSH Act prohibits an employer from discriminating or retaliating against employees who file complaints or institute proceedings against the employer or exercise any rights afforded under the OSH Act. 29 U.S.C. § 660(c)(1).

C. Clean Water Act

17. The Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, was enacted by Congress to restore and maintain the chemical, physical, and biological quality of the Nation's waters. 33 U.S.C. § 1251(a). In addition, the CWA was enacted to prevent, reduce, and eliminate water pollution in the United

States and to conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the use of such waters for public drinking water, agricultural, and industrial use. 33 U.S.C. § 1252(a).

18. The CWA prohibits the discharge of any pollutant into waters of the United States, except in compliance with a permit issued pursuant to the CWA under the National Pollution Discharge Elimination System ("NPDES") by the United States Environmental Protection Agency ("EPA") or an authorized state. 33 U.S.C. §§ 1311(a) and 1342. The Delaware River is a water of the United States within the meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

19. The term "discharge of a pollutant" is defined as the addition of any pollutant to navigable waters, meaning the waters of the United States, from any point source. 33 U.S.C. § 1362(12). A point source is defined by the CWA as any discernible, confined and discrete conveyance from which pollutants are discharged, for example a pipe, ditch, or channel. 33 U.S.C. § 1362(14).

20. The term "pollutant" is defined as, among other things, solid waste, chemical waste, and industrial waste discharged into water. "Petroleum-contaminated wastewater," which is wastewater containing petroleum-based substances, such as hydraulic fluid and Solvac, is a pollutant under the CWA. 33 U.S.C. § 1362(6).

21. New Jersey's NPDES program, which is administered by the New Jersey Department of Environmental Protection ("NJDEP"), was approved by EPA on April 13, 1982. *See* 47 Fed. Reg. 17331 (April 22, 1982).

D. Clean Air Act

22. 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); *see also* 42 U.S.C. § 7470. The CAA directs 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).

23. EPA has identified and set standards for six "criteria pollutants" in the ambient air. 40 C.F.R. Part 50. Two such criteria pollutants are carbon monoxide ("CO") and nitrogen oxides ("NOx"). Another criteria pollutant is ozone, controlled through its precursor, volatile organic compounds ("VOCs").

24. 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).

25. 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 EPA. The SIP relating to non-attainment areas in New Jersey is set forth in N.J. Admin. Code 7:27-18. The most recent version of this SIP became enforceable by the NJDEP on March 15, 1993 and was approved by EPA on July 25, 1996. 40 C.F.R. § 52.1605 (table).

1. Preconstruction Permit Requirements

26. States that have non-attainment areas must include requirements in their SIPs for permits concerning the construction and operation of new or modified "major stationary sources." 42 U.S.C. § 7502(c)(5). A major stationary source is any air pollution source that emits or has the potential to emit certain established quantities of the criteria pollutants, such as carbon monoxide. 42 U.S.C. § 7602(j); 40 C.F.R. § 52.24(f)(4)(i); N.J. Admin. Code 7:27-8. The permits are called preconstruction permits, which are required before major stationary sources can be built, and operating certificates, which are required for their operation. N.J. Admin. Code 7:27-8.3(a) and (b). The NJDEP jointly issued the permits as one document which is commonly known, and hereafter jointly referred to, as a "preconstruction permit." A single facility can have several different preconstruction permits at any given time.

27. During the relevant time periods, defendant ATLANTIC STATES CAST IRON PIPE COMPANY was subject to the requirements and prohibitions of preconstruction permits issued by the NJDEP, including at least five that were in effect as of February 2003. N.J. Admin. Code 7:27-8.2(c). The preconstruction permits, among other things, did not allow defendant ATLANTIC STATES CAST IRON PIPE COMPANY to burn any tires in the cupola. In addition, the preconstruction permit issued in or about May 2001 prohibited defendant ATLANTIC STATES CAST IRON PIPE COMPANY from burning in the cupola more than 55 gallons per day of hazardous waste paint.

2. Title V Operating Permit Requirements

28. Title V of the 1990 amendments to the CAA, 42 U.S.C. § 7661 *et seq.*, created an operating permit program which put affected major stationary sources on notice, via the permits, of the emissions limits and compliance methods they are required to follow. Title V also

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required sources to monitor and report whether they are operating in compliance with their permits. Title V was designed to put into a single operating permit all requirements that apply to a particular facility.

29. Pursuant to 42 U.S.C. §§ 7661(1) and (2) and 7661a(a), any major stationary source required to obtain a preconstruction permit for operation in non-attainment areas, 42 U.S.C. §§ 7501-7515, must apply for and comply with the provisions of a Title V operating permit.

30. Each Title V permit must include, among other things, enforceable emissions limits and standards; a schedule of compliance; the permittee's consent to inspection and monitoring; and periodic submission of necessary monitoring data (at least once every six months). 42 U.S.C. § 7661c; 40 C.F.R. § 70.6(a).

31. State operating permit programs under Title V must be approved by EPA. 40 C.F.R. Part 70, Appendix A. The State of New Jersey received interim approval of its program effective June 17, 1996, and an interim program revision approval took effect on July 6, 1999. New Jersey was granted final full approval of its program effective November 30, 2001. The New Jersey regulations pertaining to Title V operating permits are set forth in N.J. Admin. Code 7:27-22. New Jersey elected to integrate its preconstruction permits with Title V operating permits instead of issuing separate permits. Consequently, existing preconstruction permit provisions that had been previously approved were consolidated into Title V operating permits.

32. N.J. Admin. Code 7:27-22.2 requires any facility with the potential to emit 100 or more tons per year of carbon monoxide, 25 or more tons per year of VOCs, or 25 or more tons per year of NOx to obtain and comply with the requirements of a Title V operating permit.

33. Defendant ATLANTIC STATES CAST IRON PIPE COMPANY was issued a Title V operating permit by the NJDEP on February 20, 2003. The Title V permit, like the May 2001

preconstruction permit previously issued to it, prohibited defendant ATLANTIC STATES CAST IRON PIPE COMPANY from burning in the cupola more than 55 gallons per day of waste paint. In addition, as with the preconstruction permits previously issued to it, the Title V operating permit did not allow defendant ATLANTIC STATES CAST IRON PIPE COMPANY to burn any tires in the cupola.

3. Testing/Monitoring Requirements and Criminal Provisions

34. Pursuant to the terms of the preconstruction and Title V operating permits, certain emissions tests were required at the Phillipsburg facility. For example, defendant ATLANTIC STATES CAST IRON PIPE COMPANY was required to test the scrubber stack and afterburner, two pollution control devices associated with the cupola, as well as the "melt center baghouse," a device used to capture the emissions generated during pipe production. Under the terms of the Title V operating permit, these tests had to be conducted when operations were within 5% of the maximum load.

35. For the cupola scrubber system, defendant ATLANTIC STATES CAST IRON PIPE COMPANY was also required by the preconstruction and Title V operating permits to maintain equipment to continuously monitor its CO emissions. This equipment was known as the continuous emissions monitor, or "CEM." The maximum hourly average concentration for CO could not exceed 2,500 parts per million ("ppm"). The permits allowed up to three days per quarter with hourly average concentration for CO over 2,500 ppm, but never more than 4,000 ppm.

36. N.J. Admin. Code 7:27-19 imposed additional testing and monitoring requirements. Specifically, defendant ATLANTIC STATES CAST IRON PIPE COMPANY was required to conduct tests "to determine the nature and quantity of VOC, NOx, or CO being emitted into the

outdoor atmosphere." N.J. Admin. Code 7:27-19.17(a)1. During such tests, "the equipment or source operation, and all components connected to, attached to, or serving the equipment, shall be used and operated under normal routine operating conditions, under maximum capacity operating conditions, or under such other conditions within the capacity of the equipment as NJDEP or EPA requests." N.J. Admin. Code 7:27-19.17(c).

37. N.J. Admin. Code 7:27-8.4(f) required that all testing and monitoring be conducted according to standard testing procedure or a testing protocol approved by the NJDEP. On December 3, 2001, a test protocol was submitted on behalf of defendant ATLANTIC STATES CAST IRON PIPE COMPANY for the cupola scrubber stack. The protocol states that "[a]ll operations listed in the permit/certificate for this source will be operated at maximum capacity (+/- 5%) during the emissions testing."

38. The knowing failure to apply for a permit, the falsification of information in a permit application, the knowing operation of an affected source in violation of permit requirements, and the knowing falsification of, tampering with, or rendering inaccurate of any monitoring equipment, all carry criminal penalties. 42 U.S.C. §§ 7413(c)(1)-(3); 7661a(a).

E. CERCLA

39. The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") makes it a criminal offense for a person or persons in charge of a facility, such as the Phillipsburg facility, to fail to notify immediately the National Response Center as soon as they have knowledge of an unpermitted release into the environment of a hazardous substance in excess of a reportable quantity. 42 U.S.C. § 9603(b)(3).

40. The term "environment" is defined to mean any surface water, ground water, drinking water supply, land surface or subsurface strata or ambient air within the United States or under the jurisdiction of the United States. 42 U.S.C. § 9601(8).

41. The term "facility" includes, among other things, any building, structure, installation, or equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located. 42 U.S.C. § 9601(9).

42. The term "hazardous substance" means any substance designated under section 101(14) of the CERCLA, 42 U.S.C. § 9601(14), and includes any hazardous waste having the characteristics identified under section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921 (see 40 C.F.R. Part 261). One of those characteristics is ignitability. 40 C.F.R. § 261.21. A hazardous waste exhibits the characteristic of ignitability if it is a liquid and has a flash point less than 140 degrees Fahrenheit. 40 C.F.R. § 261.21(a)(1). A hazardous waste that exhibits the characteristic of ignitability qualifies as a hazardous substance. See 40 C.F.R. § 302.4(b).

43. The asphalt-based paints used by defendant ATLANTIC STATES CAST IRON PIPE COMPANY to coat its pipes had flashpoints less than 140 degrees Fahrenheit.

44. The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. 42 U.S.C. § 9601(22).

45. The term "reportable quantity" means that amount of a hazardous substance which, if it is released from a facility into the environment within a 24-hour period, requires immediate notification to the National Response Center. The reportable quantity for an ignitable hazardous waste is 100 pounds. 40 C.F.R. §§ 302.3; 302.4 (table); 302.6.

46. Under the CERCLA, a "person-in-charge" means both individuals and corporations responsible for a facility. An individual may be a person in charge even if he or she is not the only controller of the facility or the highest ranking individual on site. 42 U.S.C. § 9601(21).

47. The appropriate agency of the United States Government that must be notified of a release of a hazardous substance in a quantity equal to or greater than a reportable quantity is the National Response Center, which is operated by the United States Coast Guard. 40 C.F.R. §§ 110.6 and 117.21; 33 C.F.R. § 153.203.

The Conspiracy

48. Beginning at a time unknown to the Grand Jury but no later than October 31, 1995, and continuing thereafter until a time unknown to the Grand Jury but no earlier than August 2003, in the District of New Jersey and elsewhere, the defendants

ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN PRISQUE,
SCOTT FAUBERT,
JEFFREY MAURY,
DANIEL YADZINSKI, and
CRAIG DAVIDSON,

did knowingly and willfully conspire and agree with each other and others to commit the following offenses against the United States, that is:

A. To knowingly discharge and cause the discharge of a pollutant from a point source into the waters of the United States, without and in violation of a permit, in violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A);

B. To knowingly violate a requirement and prohibition of a preconstruction permit and Title V permit, in violation of Title 42, United States Code, Section 7413(c);

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 DOL and its agency, OSHA, in enforcing the federal safety and health regulations covering certain workers throughout the United States, and EPA in enforcing the federal environmental regulations;

D. To knowingly and willfully make materially false, fictitious and fraudulent statements and representations and make and use a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry, in matters within the jurisdiction of OSHA, EPA, and the Federal Bureau of Investigation ("FBI"), agencies of the executive branch of the Government of the United States, in violation of Title 18, United States Code, Section 1001; and

E. To corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due and proper administration of law under which a pending proceeding is being had before OSHA, an agency of the United States, in violation of Title 18, United States Code, Sections 1505 and 1515(b).

49. The purpose of the conspiracy was to enrich defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators by maximizing the production of cast iron pipe at the Phillipsburg facility, without concern to environmental pollution and worker safety risks.

Means and Methods of the Conspiracy

50. Among the means and methods employed by defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators to carry out the conspiracy and effect its unlawful objects were those set forth in Paragraphs 51 through 56 below.

51. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators caused wastewater contaminated with petroleum and paint to be discharged onto the ground and into storm drains that led to the Delaware River.

52. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators took steps to conceal the discharges referred to in Paragraph 51 from government regulators.

53. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators used the cupola for illegal and unpermitted purposes.

54. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators took steps to conceal violations of the facility's air permits from government regulators.

55. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG

DAVIDSON, and their co-conspirators repeatedly exposed workers to unsafe and dangerous conditions, resulting in deaths and serious injuries to workers.

56. Defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators systematically altered accident scenes and existing conditions at the Phillipsburg facility in order to conceal the unsafe working practices from OSHA.

57. In order to permit continuation and prevent detection of the conduct referred to in Paragraphs 51 through 56, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators regularly lied to and obstructed government officials conducting investigations into activities at the Phillipsburg facility.

58. In order to coerce defendant ATLANTIC STATES CAST IRON PIPE COMPANY's employees into committing, and to prevent these employees from revealing, certain conduct referred to in Paragraphs 51 through 56, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators utilized tactics involving intimidation and retaliation.

Overt Acts

59. In furtherance of the conspiracy and in order to effect the objects thereof, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, CRAIG DAVIDSON, and their co-conspirators committed and caused to be committed the following overt acts in the District of New Jersey and elsewhere:

I. Wastewater Sent to the Delaware River

Overt Act Number 1: Beginning at a time unknown to the Grand Jury but no later than July 1996 and continuing through in or about September 2002, at least once every week, at the direction of defendant CRAIG DAVIDSON, employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY pumped 50 to 100 gallons or more of petroleum-contaminated wastewater from a cement pit into a storm drain that led to the Delaware River.

Overt Act Number 2: On or about March 19, 1998, defendant ATLANTIC STATES CAST IRON PIPE COMPANY caused a discharge of petroleum-contaminated wastewater through a storm sewer into the Delaware River that caused an oily sheen on the river.

Overt Act Number 3: On or about December 4 and 5, 1999, defendants JOHN PRISQUE, JEFFREY MAURY, and CRAIG DAVIDSON caused petroleum-contaminated wastewater to be pumped from a cement pit through a hose into a storm drain that led to the Delaware River, causing an 8.5 mile oily sheen on the Delaware River.

Overt Act Number 4: Beginning at a time unknown to the Grand Jury but no later than May 1999 and continuing through in or about October 1999, on a routine and regular basis, at the direction of defendant JEFFREY MAURY, employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY pumped thousands of gallons of petroleum-contaminated wastewater from a pit under casting machine # 4 at night into a storm sewer that led to the Delaware River.

Overt Act Number 5: In or about October 1999, Co-Conspirator "X," the highest ranking official of defendant ATLANTIC STATES CAST IRON PIPE COMPANY, authorized the plant to continue to operate without any modification in the procedures for the management

of petroleum-contaminated wastewater at the plant, despite being specifically advised by an employee of defendant ATLANTIC STATES CAST IRON PIPE COMPANY that untreated petroleum-contaminated wastewater was being pumped directly into a storm drain that led to the Delaware River.

Overt Act Number 6: On or about April 16, 2000, defendant ATLANTIC STATES CAST IRON PIPE COMPANY caused a discharge of petroleum-contaminated wastewater through a storm sewer into the Delaware River that caused an oily sheen on the river.

Overt Act Number 7: On or about December 12, 2000, following a fire in the paint room that caused approximately 150 gallons of asphalt-based waste paint to be discharged from the Phillipsburg facility onto the ground and through a storm sewer into the Delaware River, defendant ATLANTIC STATES CAST IRON PIPE COMPANY failed to contact the appropriate authorities to advise them of such discharge.

Overt Act Number 8: On or about December 12, 2000, following the discharge of asphalt-based waste paint into a storm sewer described in Overt Act Number 7, defendant JEFFREY MAURY falsely stated to local officials that no waste paint had entered into the storm sewer.

Overt Act Number 9: From in or about August 2000 to in or about December 2001, including in or about October 2001, after learning that asphalt-based waste paint had been discharged from the Phillipsburg facility onto the ground and through a storm sewer into the Delaware River, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, and JEFFREY MAURY and their co-conspirators took affirmative steps to conceal such discharge from federal and state authorities.

ii. Efforts to Obstruct and Deceive During the February 2000 Search Warrant

Overt Act Number 10: On or about February 24, 2000, in an effort to obstruct and delay execution of a duly authorized search warrant at defendant ATLANTIC STATES CAST IRON PIPE COMPANY's facility by federal, state, and local law enforcement officials, defendant SCOTT FAUBERT attempted to interfere with execution of the warrant.

Overt Act Number 11: On or about February 24, 2000, defendant JEFFREY MAURY falsely told law enforcement officials that: (a) he believed the December 4-5, 1999 spill originated from an hydraulic line on a truck; (b) hydraulic oil is the only type of oil used at the Phillipsburg facility; and (c) no oil is used during production.

Overt Act Number 12: On or about February 24, 2000, defendants JOHN PRISQUE and SCOTT FAUBERT falsely told law enforcement officials that no employees were at defendant ATLANTIC STATES CAST IRON PIPE COMPANY's facility on either December 4 or 5, 1999.

Overt Act Number 13: On or about February 24, 2000, defendant JOHN PRISQUE falsely told law enforcement officials that the discharge on December 4 and 5, 1999, was caused when a hole blew in the hose leading from a sump pump.

Overt Act Number 14: On or about February 24, 2000, defendant CRAIG DAVIDSON falsely told law enforcement officials that the discharge on December 4 and 5, 1999, occurred because the outlet hose leading from the sump pump had a hole in the middle of it.

iii. Illegal Use and Manipulation of the Cupola

Overt Act Number 15: In or about 2000, in an effort to deceive state and federal environmental officials, defendant JOHN PRISQUE directed an employee of defendant

ATLANTIC STATES CAST IRON PIPE COMPANY to disconnect certain equipment associated with the cupola.

Overt Act Number 16: From in or about May 2001 to in or about August 2003, on a routine and regular basis, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, DANIEL YADZINSKI, and CRAIG DAVIDSON directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to burn greater than 55 gallons per day of waste paint in the cupola, which caused an increase in CO emissions and which violated the Phillipsburg facility's preconstruction permit and Title V permit.

Overt Act Number 17: From in or about 1999 to in or about 2003, on a routine and regular basis, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, and DANIEL YADZINSKI directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to burn used tires in the cupola, which caused an increase in CO emissions and which violated the Phillipsburg facility's preconstruction permit and Title V permit.

Overt Act Number 18: In or about March 2002, defendant JOHN PRISQUE directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to melt plate and structural steel, instead of scrap iron, in the cupola during stack tests in an effort to deceive state and federal environmental officials by fraudulently lowering the concentrations of one or more pollutants.

Overt Act Number 19: In or about June 2002, defendant JOHN PRISQUE directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to melt plate and structural steel, instead of scrap iron, in the cupola during stack tests in an effort to deceive state

and federal environmental officials by fraudulently lowering the concentrations of one or more pollutants.

Overt Act Number 20: In or about March 2003, defendant ATLANTIC STATES CAST IRON PIPE COMPANY directed its employees to melt pig iron, also known as "chills," in the cupola during an accuracy test audit in an effort to deceive state and federal environmental officials by fraudulently lowering the concentrations of one or more pollutants.

Overt Act Number 21: In or about April 2003, in an effort to conceal evidence from the NJDEP, defendant JOHN PRISQUE directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to dispose of approximately forty 55-gallon drums of waste paint by burning the drums and their contents in the cupola.

Overt Act Number 22: In or about August 2003, in an effort to conceal evidence from the NJDEP, defendant JOHN PRISQUE directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to dispose of between forty and one hundred 55-gallon drums of waste paint by burning the drums and their contents in the cupola.

Overt Act Number 23: In or about 2003, on a routine and regular basis, defendant JOHN PRISQUE directed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to operate the cupola with no scrap iron in an effort to falsely reduce readings, that is, to lower the average hourly carbon monoxide readings below the 2,500 ppm maximum, in order to deceive state and federal environmental officials.

iv. Other Efforts to Deceive and Mislead the NJDEP

Overt Act Number 24: On or about October 31, 1995, in a meeting with the NJDEP officials, defendant DANIEL YADZINSKI falsely denied: (a) that unpermitted discharges of

cooling water took place several times per month; and (b) that he had admitted to the NJDEP officials in or about June 1994 that these unpermitted discharges had occurred.

Overt Act Number 25: On or about December 18, 1997, in a meeting with the NJDEP officials, defendant DANIEL YADZINSKI falsely stated that the reason a storm water sample had not been taken between September 12, 1997 and October 31, 1997 was because it did not rain during that time period.

Overt Act Number 26: In or about March 1999, defendant DANIEL YADZINSKI submitted a false and misleading Daily Monitoring Report to the NJDEP by failing to include in the report a sample taken on January 18, 1999, that would have caused defendant ATLANTIC STATES CAST IRON PIPE COMPANY to be out of compliance with its NJPDES permit.

Overt Act Number 27: On or about May 4, 2000, in an effort to convince the NJDEP that certain test results obtained by defendant ATLANTIC STATES CAST IRON PIPE COMPANY from its laboratory were not valid, defendant DANIEL YADZINSKI sent correspondence by facsimile to the NJDEP which stated "Atlantic States has sent a letter to the analytical laboratory requesting that it revise its SOP for TSS to include all provisions of Standard Method 2540D. A copy of that letter is also enclosed." when in actuality such letter had never been sent to defendant ATLANTIC STATES CAST IRON PIPE COMPANY's laboratory.

Overt Act Number 28: On or about May 4, 2000, in an effort to convince the NJDEP that certain test results obtained by defendant ATLANTIC STATES CAST IRON PIPE COMPANY from its laboratory were not valid, defendant DANIEL YADZINSKI sent correspondence by United States certified mail to the NJDEP which stated "Atlantic States has sent a letter to the analytical laboratory requesting that it revise its SOP for TSS to include all

provisions of Standard Method 2540D. A copy of that letter is also enclosed." when in actuality such letter had never been sent to defendant ATLANTIC STATES CAST IRON PIPE COMPANY's laboratory.

v. The Coxse Forklift Death

Overt Act Number 29: From in or about 1999 through in or about 2000, on a routine and regular basis, including on or about March 23, 2000, employees were forced by defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, and CRAIG DAVIDSON to drive faulty and unsafe forklifts.

Overt Act Number 30: From in or about 1999 through in or about 2000, on a routine and regular basis, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, and JEFFREY MAURY failed to obtain parts required to fix forklifts they knew were unsafe and faulty.

Overt Act Number 31: Between in or about March 1998 and in or about March 1999, defendant CRAIG DAVIDSON instructed an employee of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to teach a fellow employee how to drive a forklift with inoperable brakes.

Overt Act Number 32: From in or about 1999 through in or about 2000, on a routine and regular basis, including on or about March 23, 2000, employees were forced by defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, and CRAIG DAVIDSON to drive forklifts without receiving proper training in their operation.

Overt Act Number 33: On or about March 24, 2000, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, and CRAIG DAVIDSON permitted a forklift with faulty brakes to be used by inadequately trained and uncertified employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY, which contributed to the death of Alfred Coxe, an employee of defendant ATLANTIC STATES CAST IRON PIPE COMPANY.

Overt Act Number 34: On or about March 24, 2000, defendants JOHN PRISQUE, SCOTT FAUBERT, and JEFFREY MAURY took steps to conceal facts regarding the forklift fatality earlier that day from law enforcement officials and an OSHA inspector by causing the forklift's brakes, which were known to leak brake fluid, to be repaired before the OSHA inspector inspected it.

Overt Act Number 35: On or about March 24, 2000, defendants JOHN PRISQUE, SCOTT FAUBERT, and JEFFREY MAURY performed a misleading demonstration of the forklift involved in the fatality earlier that day in order to deceive an OSHA inspector into believing that the brakes were fully operational.

Overt Act Number 36: On or about March 24, 2000, defendant JOHN PRISQUE instructed an employee to provide a misleading account of the fatality in order to hide from OSHA inspectors that the forklifts were faulty.

Overt Act Number 37: On or about March 25, 2000, defendant JEFFREY MAURY prepared a misleading report that indicated the forklift involved in the fatality the day before was inspected and found to be in "perfect operating condition."

Overt Act Number 38: On or about July 24, 2000, defendant JEFFREY MAURY made a misleading statement to OSHA inspectors when, after being asked why the forklifts were being used despite numerous inspection sheets showing, among other things, problems with the brakes, steering, and horn, he stated that just because an employee turns in an inspection sheet for a forklift does not mean that the forklift was used by that employee.

Overt Act Number 39: On or about February 13, 2003, at a deposition in a civil case brought by the Estate of Alfred Cox, defendant SCOTT FAUBERT falsely testified under oath, in substance, that the company did not repair the forklift prior to OSHA's arrival on the day of the fatality.

Overt Act Number 40: On or about February 13, 2003, at a deposition in a civil case brought by the Estate of Alfred Cox, defendant JEFFREY MAURY falsely testified under oath, in substance, that the company did not add brake fluid to the forklift prior to OSHA's arrival on the day of the fatality.

vi. Other Efforts to Deceive and Mislead OSHA

a. Altering Existing Conditions to Prepare for OSHA Inspections

Overt Act Number 41: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by connecting a chain underneath the charger to create the impression that employees did not work in that location during production.

Overt Act Number 42: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by disconnecting equipment used on the casting machines to maximize pipe production.

Overt Act Number 43: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by reinstalling the safety guard belts on equipment.

Overt Act Number 44: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by reinstalling safety doors on the chop saws.

Overt Act Number 45: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of

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defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by instructing employees who were using forklifts with known defects to take them out of service.

Overt Act Number 46: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by putting guards back on various equipment, including the cement line hopper car, the ladle drives, the paint machine, and the transfer cars.

Overt Act Number 47: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by concealing drums containing waste paint in the scrap yard area underneath shredded metal, removing drums containing waste paint from the scrap yard area, and locking up drums of waste paint in the containment area.

Overt Act Number 48: From in or about January 1999 to in or about December 2002, on a routine and regular basis, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators, in preparation for inspections by OSHA, caused employees of

defendant ATLANTIC STATES CAST IRON PIPE COMPANY to alter existing conditions at the Phillipsburg facility by artificially slowing down production.

Overt Act Number 49: From in or about January 1999 to in or about December 2002, in order to facilitate the conduct described in Overt Act Numbers 41 through 48, the defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and their co-conspirators instructed employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY how to stall OSHA inspectors upon their arrival at the Phillipsburg facility.

b. March 1996 Cupola Incident

Overt Act Number 50: Between on or about February 26, 1996, and on or about March 1, 1996, defendant SCOTT FAUBERT falsely told OSHA inspectors that the plant was closed down for the week and that there were no work activities taking place, when in fact certain work-related activities were occurring, including maintenance of the cupola during which an employee fell off a rope ladder and broke bones in his back, pelvis, and ankle.

Overt Act Number 51: On or about March 4, 1996, defendant SCOTT FAUBERT falsely told OSHA inspectors that the rope ladder involved in the incident described in Overt Act Number 50 had been discarded into a dumpster after the incident because a particular employee of defendant ATLANTIC STATES CAST IRON PIPE COMPANY had issued an order to do so, when in fact no such order had been given by this employee.

Overt Act Number 52: On or about March 27, 1996, defendant SCOTT FAUBERT falsely told OSHA inspectors that the rope ladder involved in the incident described in Overt Act Number 50 was torn after it had been discarded into a dumpster following the incident, when in fact the ladder was torn during the incident itself.

c. April 1999 Forklift Incident

Overt Act Number 53: In or about May 1999, defendant SCOTT FAUBERT and his co-conspirators caused defendant ATLANTIC STATES CAST IRON PIPE COMPANY to maintain a false OSHA 200 log by failing to include complete and accurate entries regarding an incident on April 27, 1999, in which employee "A" had sustained a broken leg after being struck by a forklift.

Overt Act Number 54: On or about April 7, 2000, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, SCOTT FAUBERT, and their co-conspirators presented OSHA with a false OSHA 200 log, in which complete and accurate entries regarding the April 27, 1999 incident described in Overt Act Number 53, were omitted.

Overt Act Number 55: On or about May 11, 2000, defendant SCOTT FAUBERT falsely told OSHA inspectors that the reason that there was no entry on the OSHA 200 log concerning the April 27, 1999 incident was because the employee's leg had not been broken.

Overt Act Number 56: On or about July 24, 2000, under instructions from defendants JOHN PRISQUE and SCOTT FAUBERT, employee "A" falsely told OSHA inspectors that his leg had not been broken when he had been struck by a forklift on April 27, 1999.

d. June 1999 Fractured Skull and Lost Eye

Overt Act Number 57: In or about July 1999, defendant SCOTT FAUBERT falsely told an OSHA inspector, who was investigating a June 25, 1999 incident in which an employee sustained a fractured skull and lost an eye when a saw blade broke apart, that the saw safety shield had not been changed since the incident, when in fact a steel wire screen had been added to the shield after the incident.

Overt Act Number 58: In or about July 1999, under instructions from defendant JOHN PRISQUE, employee "B" falsely told an OSHA inspector, in substance, that the saw safety shield had not been changed since the incident described in Overt Act Number 57, when in fact a steel wire screen had been added to the shield after the incident.

e. August 1999 Excavation Collapse

Overt Act Number 59: On or about August 6, 1999, defendant SCOTT FAUBERT falsely told OSHA inspectors that he was unaware of a pit excavated in the casting department that had collapsed onto an employee's leg.

f. May 2000 Burned Leg

Overt Act Number 60: In or about May 2000, defendant SCOTT FAUBERT and his co-conspirators caused defendant ATLANTIC STATES CAST IRON PIPE COMPANY to maintain a false OSHA 200 log by failing to include complete and accurate entries regarding an incident on May 10, 2000, in which an employee had burned his leg and missed six weeks of work.

Overt Act Number 61: On or about July 13, 2000, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, SCOTT FAUBERT, and their co-conspirators presented OSHA with a false OSHA 200 log which failed to include complete and accurate entries regarding the May 10, 2000 incident described in Overt Act Number 60.

Overt Act Number 62: On or about July 24, 2000, defendant SCOTT FAUBERT falsely told OSHA inspectors that the reason that there was no entry on the OSHA 200 log concerning the May 10, 2000 incident was because he thought that the employee had quit.

Overt Act Number 63: On or about August 22, 2000, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, SCOTT FAUBERT, and their co-conspirators presented OSHA

with a false OSHA 200 log by modifying its earlier entry concerning the May 10, 2000 incident but still failing to include complete and accurate entries regarding that incident.

g. Additional July 2000 False Statements

Overt Act Number 64: On or about July 13, 2000, defendant SCOTT FAUBERT falsely told OSHA inspectors that silica sampling had never been conducted in the socket grinding area in the plant's finishing department.

Overt Act Number 65: On or about July 24, 2000, in an effort to avoid defendant ATLANTIC STATES CAST IRON PIPE COMPANY from being cited for a repeat violation if OSHA found out that it was a division of McWane, defendant SCOTT FAUBERT falsely told OSHA inspectors, referring to the Phillipsburg facility, "We have nothing to do with McWane," even though defendant ATLANTIC STATES CAST IRON PIPE COMPANY was in fact a division of McWane.

h. December 2000 Partially Amputated Finger

Overt Act Number 66: On or about December 7, 2000, defendant JOHN PRISQUE directed an employee of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to falsely report that an injury to that employee, in which the employee had a finger partially cut off and sewed back on, took place at the home of that employee when, in fact, it occurred at the Phillipsburg facility.

i. December 2002 Cement Mixer Amputation

Overt Act Number 67: In or about May 2002, defendants JOHN PRISQUE and CRAIG DAVIDSON caused the bypass of a manufacturer-installed safety device on a new cement mixer because they believed the device would slow down the production of pipes by stopping the mixer when its doors were opened.

Overt Act Number 68: Between December 7, 2002, when an employee had three fingers amputated inside the cement mixer because the mixer's safety device had been bypassed, and December 18, 2002, when OSHA first inspected the mixer as a result of the amputation, defendant JOHN PRISQUE and Co-Conspirator "Y" directed that the safety device be concealed from OSHA.

Overt Act Number 69: On or about December 18, 2002, during OSHA's initial inspection of the cement mixer, defendant ATLANTIC STATES CAST IRON PIPE COMPANY and Co-Conspirator "Y" falsely informed OSHA that the mixer had originally arrived from the manufacturer without a safety device for its doors, but told OSHA that such a device could be installed on the mixer.

Overt Act Number 70: Between December 18, 2002, when OSHA was falsely informed that the mixer did not originally have a safety device for its doors but that one could be put on the mixer, and January 2, 2003, the date of OSHA's follow-up inspection, defendants JOHN PRISQUE, JEFFREY MAURY and Co-Conspirator "Y" directed the installation of a safety device similar to the one originally installed by the manufacturer.

Overt Act Number 71: On or about March 20, 2003, after admitting to OSHA that the cement mixer had actually arrived from the manufacturer with the safety device referred to in Overt Act Number 67 installed on it, defendant ATLANTIC STATES CAST IRON PIPE COMPANY and Co-Conspirator "Y" falsely informed OSHA that they believed the safety device was removed by an unnamed employee who had quit.

j. 2002-03 Lead Sampling

Overt Act Number 72: From in or about December 2002 through in or about March 2003, defendant JOHN PRISQUE and Co-Conspirator "Z" attempted to conceal from OSHA the actual concentration of lead near the cupola by directing employees who were wearing air sampling monitors and were assigned to work at the cupola to instead stay in the melting laboratory office or by an open door with a fan where the concentration was lower.

k. 2003-04 Silica and Lime Dust

Overt Act Number 73: In or about February 2003, Co-Conspirator "Y" attempted to conceal from OSHA the actual concentration of silica dust in the core floor and "up and over" areas of the plant by directing employees of defendant ATLANTIC STATES CAST IRON PIPE COMPANY to artificially slow down shoveling operations in those areas.

Overt Act Number 74: In or about February 2004, defendant ATLANTIC STATES CAST IRON PIPE COMPANY attempted to conceal from OSHA the actual concentration of lime dust in the lime pit area of the plant by directing its employees to artificially slow down shoveling operations in that area.

vii. Atmosphere of Fear, Intimidation, and Retaliation

Overt Act Number 75: From in or about 1999 through in or about 2003, on a routine and regular basis, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and Co-Conspirator "Z" took steps to deter employees from telling OSHA inspectors about the unsafe conditions at the plant.

Overt Act Number 76: From in or about 1999 through in or about 2003, on a routine and regular basis, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, and SCOTT FAUBERT instructed employees to provide misleading descriptions and accounts to OSHA inspectors in order to conceal the unsafe conditions at the Phillipsburg facility.

Overt Act Number 77: In or about June 2003, defendant ATLANTIC STATES CAST IRON PIPE COMPANY, Co-Conspirator "Y," and their co-conspirators took steps to coerce union employees into voting not to strike two days after the union had voted in favor of striking.

Overt Act Number 78: From in or about 1999 through in or about 2003, on a routine and regular basis, defendant JOHN PRISQUE retaliated and threatened to retaliate against employees if they filed a grievance with the union concerning conditions of their employment, including the unsafe conditions at the Phillipsburg facility.

Overt Act Number 79: Beginning at a time unknown to the Grand Jury but no later than 1997 and ending at a time unknown to the Grand Jury but not earlier than 1999, defendant JOHN PRISQUE threatened to fire employees if they pursued workers' compensation claims against defendant ATLANTIC STATES CAST IRON PIPE COMPANY following injuries suffered at the Phillipsburg facility.

Overt Act Number 80: From in or about 1999 through in or about 2003, in order to intimidate employees into committing, and to prevent them from revealing, the conduct referred to in Paragraphs 51 to 56, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and Co-

Conspirator "Z" instructed mid-level supervisors to instill fear in the employees by using retaliation tactics.

Overt Act Number 81: From in or about 1999 through in or about 2003, in order to intimidate employees into committing, and to prevent them from revealing, the conduct referred to in Paragraphs 51 to 56, defendants ATLANTIC STATES CAST IRON PIPE COMPANY, JOHN PRISQUE, SCOTT FAUBERT, JEFFREY MAURY, CRAIG DAVIDSON, and Co-Conspirator "Z" utilized coercive measures, which included: (a) assigning employees to work on casting machine #3, the hottest machine at the plant, as a punishment; (b) assigning Spanish-speaking employees to work in the most dangerous parts of the plant; and (c) forcing employees to douse themselves with water and realign pipes in a 2,000 degree Fahrenheit annealing oven.

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

COUNT 2

(Making A Materially False Statement to OSHA)

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.
2. On or about August 6, 1999, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
SCOTT FAUBERT,**

in a matter within the jurisdiction of the United States Occupational Safety and Health Administration, an agency of the executive branch of the Government of the United States, did knowingly and willfully make a false and fictitious statement and representation, that is, defendant SCOTT FAUBERT stated to the Occupational Safety and Health Administration inspectors:

That he was unaware of a pit excavated in the casting department that had collapsed onto an employee's leg;

When in truth and in fact, as defendant SCOTT FAUBERT then well knew and believed, a large pit had recently been excavated in the casting department.

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

COUNT 3**(Making A Materially False Statement to
New Jersey Department of Law and Public Safety and the FBI)**

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

2. On or about February 24, 2000, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
JEFFREY MAURY,**

in a matter within the jurisdiction of the United States Environmental Protection Agency and the Federal Bureau of Investigation, agencies of the executive branch of the Government of the United States, did knowingly and willfully make a false and fictitious statement and representation, that is, defendant JEFFREY MAURY stated to a Special Investigator from New Jersey's Department of Law and Public Safety, Division of Criminal Justice, and a Special Agent from the Federal Bureau of Investigation:

That he believed the December 4-5, 1999 spill originated from an hydraulic line on a truck;

When in truth and in fact, as defendant JEFFREY MAURY then well knew and believed, the December 4 and 5 spill originated from the cement pit.

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

COUNT 4

(Making A Materially False Statement to New Jersey
Department of Law and Public Safety and a NJDEP Emergency Responder)

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. On or about February 24, 2000, in the District of New Jersey, and elsewhere,
defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
CRAIG DAVIDSON,**

in a matter within the jurisdiction of the United States Environmental Protection Agency, an agency of the executive branch of the Government of the United States, did knowingly and willfully make a false and fictitious statement and representation, that is, defendant CRAIG DAVIDSON stated to a Special Investigator from New Jersey's Department of Law and Public Safety, Division of Criminal Justice and a NJDEP emergency responder:

That the discharge on December 4 and 5, 1999, occurred because the outlet hose leading from the sump pump had a hole in the middle of it;

When in truth and in fact, as defendant CRAIG DAVIDSON then well knew and believed, the December 4 and 5 discharge occurred as a result of the end of the hose being used to direct liquid out of the cement pit.

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

COUNT 5

(Making A Materially False Statement to OSHA)

1. Paragraphs 1 through 16 of Count 1 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. On or about March 25, 2000, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
JEFFREY MAURY,**

in a matter within the jurisdiction of the United States Occupational Safety and Health Administration, an agency of the executive branch of the Government of the United States, knowingly and willfully did make a materially false, fictitious, and fraudulent statement and representation and did make and use a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry, that is, defendant JEFFREY MAURY prepared a report that indicated:

The forklift involved in the fatality the day before was inspected and found to be in "perfect operating condition;"

When in truth and in fact, as defendant JEFFREY MAURY then well knew and believed, such forklift had several defects, including faulty brakes.

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

COUNT 6**(Making A Materially False Statement to
the New Jersey Department of Environmental Protection)**

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. On or about May 4, 2000, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
DANIEL YADZINSKI,**

in a matter within the jurisdiction of the United States Environmental Protection Agency, an agency of the executive branch of the Government of the United States, knowingly and willfully did make a materially false, fictitious, and fraudulent statement and representation and did make and use a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry, that is, in an effort to convince the NJDEP that certain test results obtained by defendant ATLANTIC STATES CAST IRON PIPE COMPANY from its laboratory were not valid, defendant DANIEL YADZINSKI sent correspondence by United States certified mail to the New Jersey Department of Environmental Protection which stated:

Atlantic States has sent a letter to the analytical laboratory requesting that it revise its SOP for TSS to include all provisions of Standard Method 2540D. A copy of that letter is also enclosed.

When in truth and in fact, as defendant DANIEL YADZINSKI then well knew and believed, such letter had never been sent to defendant ATLANTIC STATES CAST IRON PIPE COMPANY's laboratory.

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

COUNT 7**(Making A Materially False Statement to OSHA)**

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.
2. On or about May 11, 2000, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
SCOTT FAUBERT,**

in a matter within the jurisdiction of the United States Occupational Safety and Health Administration, an agency of the executive branch of the Government of the United States, did knowingly and willfully make a false and fictitious statement and representation, that is, defendant SCOTT FAUBERT stated to Occupational Safety and Health Administration inspectors:

That the reason why there was no entry on the OSHA 200 log concerning a April 27, 1999 incident was because employee "A" did not break his leg,

When in truth and in fact, as defendant SCOTT FAUBERT then well knew and believed, employee "A" sustained a fractured bone in his leg on April 27, 1999, after being struck by a forklift.

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

COUNT 8**(Obstruction of OSHA)**

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. In or about July 1999, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
JOHN PRISQUE,**

did corruptly obstruct, impede, and endeavor to obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before the Occupational Safety and Health Administration, an agency of the United States, by instructing employee "B" to falsely inform the Occupational Safety and Health Administration inspectors that the saw safety shield had not been changed since the June 25, 1999 incident in which an employee sustained a fractured skull and lost an eye when a saw blade broke apart, when, in fact, a steel wire screen had been added to the shield after the incident.

In violation of Title 18, United States Code, Sections 1505 and 2.

COUNT 2**(Obstruction of OSHA)**

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.
2. Between on or about March 24, 2000, and on or about March 25, 2000, in the District of New Jersey, and elsewhere, defendants

ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN PRISQUE,
SCOTT FAUBERT, and
JEFFREY MAURY,

did corruptly obstruct, impede, and endeavor to obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before the Occupational Safety and Health Administration, an agency of the United States, by taking steps to conceal facts regarding the forklift fatality on March 24, 2000 from Occupational Safety and Health Administration inspectors.

In violation of Title 18, United States Code, Sections 1505 and 2.

COUNT 10**(Obstruction of OSHA)**

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.
2. On or about July 24, 2000, in the District of New Jersey, and elsewhere, defendants
**ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN FRISQUE, and
SCOTT FAUBERT,**
did corruptly obstruct, impede, and endeavor to obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before the Occupational Safety and Health Administration, an agency of the United States, by instructing employee "A" to falsely inform the Occupational Safety and Health Administration inspectors that his leg had not been broken when he had been struck by a forklift on April 27, 1999.
In violation of Title 18, United States Code, Sections 1505 and 2.

COUNT 11**(Obstruction of OSHA)**

1. Paragraphs 1 through 16 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.
2. In or about December 2002, in the District of New Jersey, and elsewhere, defendants
**ATLANTIC STATES CAST IRON PIPE COMPANY and
JOHN PRISQUE,**
did knowingly alter, conceal, and cover up a tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within jurisdiction of the Occupational Safety and Health Administration, an agency of the United States, by altering the condition of a cement mixer and concealing from the Occupational Safety and Health Administration inspectors that they had bypassed a safety device designed to shut down the cement mixer when its doors were opened, which led to the amputation of three of an employee's fingers.

In violation of Title 18, United States Code, Sections 1519 and 2.

COUNTS 12-26**(Violations of the Clean Water Act)**

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. In or about the months listed below, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
CRAIG DAVIDSON,**

did knowingly discharge and cause the discharge of a pollutant from a point source into the waters of the United States, by causing petroleum-contaminated wastewater to be pumped from a cement pit into a storm sewer that led to the Delaware River, without a permit issued under Title 33 of the United States Code authorizing such discharge:

Count Number	Month
12	December 1998
13	January 1999
14	February 1999
15	March 1999
16	April 1999
17	May 1999
18	June 1999
19	July 1999
20	August 1999
21	September 1999
22	October 1999
23	November 1999

Count Number	Month
24	December 1999
25	January 2000
26	February 2000

In violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A), and
Title 18, United States Code, Section 2.

COUNT 27**(Violation of the Clean Water Act)**

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. Between on or about December 4, 1999, to on or about December 5, 1999, in the District of New Jersey, and elsewhere, defendants

ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN PRISQUE,
JEFFREY MAURY, and
CRAIG DAVIDSON,

did knowingly discharge and cause the discharge of a pollutant from a point source into the waters of the United States, by causing petroleum-contaminated wastewater to be pumped from a cement pit through a hose into a storm drain that led to the Delaware River, resulting in an 8.5 mile oil sheen on the Delaware River, without a permit issued under Title 33 of the United States Code authorizing such discharge.

In violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A), and Title 18, United States Code, Section 2.

COUNTS 28-33**(Violations of the Clean Water Act)**

1. Paragraphs 1 through 8 and 17 through 21 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. In or about the months listed below, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY and
JEFFREY MAURY,**

did knowingly discharge and cause the discharge of a pollutant from a point source into the waters of the United States, by causing petroleum-contaminated wastewater to be pumped at night from a pit under casting machine #4 into a storm sewer that led to the Delaware River, without a permit issued under Title 33 of the United States Code authorizing such discharge:

Count Number	Month
28	May 1999
29	June 1999
30	July 1999
31	August 1999
32	September 1999
33	October 1999

In violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A), and Title 18, United States Code, Section 2.

COUNT 34**(Violation of CERCLA)**

1. Paragraphs 1 through 8 and 39 through 47 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. In or about October 2001, in the District of New Jersey, and elsewhere, defendants

**ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN PRISQUE, and
JEFFREY MAURY,**

persons in charge of a facility, having learned that more than 100 pounds of black asphalt-based paint, which constituted a hazardous waste exhibiting the characteristic of ignitability, had been discharged from the Phillipsburg facility onto the ground and through a storm sewer into the Delaware River, failed to notify immediately the National Response Center as soon as they had knowledge of an unpermitted release into the environment of a hazardous substance in excess of a reportable quantity.

In violation of Title 42, United States Code, Section 9603(b)(3), and Title 18, United States Code, Section 2.

COUNT 35**(Violation of the Clean Air Act)**

1. Paragraphs 1 through 8 and 22 through 38 of Count 1 of this Indictment are hereby realleged and incorporated as if fully set forth herein.

2. From in or about February 2003 to in or about August 2003, in the District of New Jersey, and elsewhere, defendants

ATLANTIC STATES CAST IRON PIPE COMPANY,
JOHN PRISQUE, and
DANIEL YADZINSKI,

owners and operators of a major stationary source, knowingly operated such major stationary source in violation of its Title V permit requirements by causing more than 55 gallons per day of waste paint to be burned in the cupola.

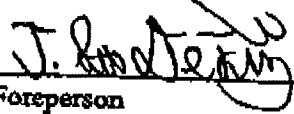
In violation of Title 42, United States Code, Section 7413(c)(1), and Title 18, United States Code, Section 2.

SUPPLEMENTAL ALLEGATIONS

1. With respect to each count of the Superseding Indictment with which they are charged:
 - A. Defendant JOHN PRISQUE was a leader and organizer of a criminal activity that involved five or more participants and was otherwise extensive; and
 - B. Defendants SCOTT FAUBERT, JEFFREY MAURY, DANIEL YADZINSKI, and CRAIG DAVIDSON were each managers and supervisors of a criminal activity that involved five or more participants and was otherwise extensive.
2. With respect to Counts 1, 3 through 4, 6, 12 through 35, the offenses involved the mishandling of toxic and hazardous substances.
3. With respect to Counts 1, 12 through 33, and 35, the offenses involved ongoing, continuous, and repetitive discharges, releases, and emissions of toxic and hazardous substances into the environment.
4. With respect to Counts 1 and 12 through 35, the offenses involved disposal without a permit and violations of a permit.
5. With respect to Counts 1, 3 through 4, and 6, the offenses involved the willfully obstruction or impediment, or attempt to obstruct or impede, the administration of justice during the course of the investigation and prosecution of the environment-related offenses, and the obstructive conduct related to (i) the offenses and any relevant conduct and (ii) closely related offenses.
6. With respect to Counts 1, 6, and 35, defendant DANIEL YADZINSKI used a special skill in a manner that significantly facilitated the commission and concealment of the offenses.
7. With respect to Counts 1, 2, 5, and 7, the offenses involved the reckless risk of death and serious bodily injury.

8. With respect to Counts 1 and 8 through 11, the offenses resulted in substantial interference with the administration of justice.

A TRUE BILL


Foreperson


CHRISTOPHER J. CHRISTIE
United States Attorney

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

**ATLANTIC STATES CAST IRON PIPE
COMPANY, a Division of McWane, Inc.**

JOHN PRISQUE

SCOTT FAURET

JERRY MAURE

DANIEL KADZINSKI, and

CRAIG DAVIDSON

SUPERSEDING INDICTMENT FOR

18 U.S.C. §§ 374, 1001, 1505, 1519 and 2

33 U.S.C. §§ 1311, 1319

42 U.S.C. §§ 7413, 9603

A True Bill.

Foreperson

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U.S. ATTORNEY

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