

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,

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

Defendants.

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

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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 NO_x 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(e).

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.

