

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON GRAND JURY 2009  
OCTOBER 14, 2009 SESSION

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

3:09-cr-00231  
33 U.S.C. § 1319(c)(1)  
42 U.S.C. § 6928(d)(2)(A)  
18 U.S.C. § 2

JAMES R. HOLT

I N D I C T M E N T

The Grand Jury Charges:

COUNT ONE

(Introduction of Hazardous Pollutant into Sewer System)

At all relevant times:

1. Defendant JAMES R. HOLT, was the President and operator of a chemical company, Techsol Chemical Company, Inc. ("Techsol") located at 4711 Piedmont Road in Huntington, Wayne County, West Virginia.

2. Techsol principally transferred (a/k/a/ transloaded) chemicals from rail cars to tanker trucks for shipment to industrial customers.

3. Defendant JAMES R. HOLT's duties included supervising the transfer of liquid chemicals from rail cars to tanker trucks for delivery to their final destination.

4. Among other chemicals, Techsol handled Coal Tar Light Oil ("CTLO"), a chemical that is generated during the production of coke from coal and consists mostly of benzene, toluene and xylene. All three chemical constituents are listed "hazardous substances" under the Clean Water Act, 33 U.S.C. §§ 1321(a)(14), 1321(b)(2)(A),

40 C.F.R. Parts 116 and 117; "hazardous air pollutants" under the Clean Air Act, 42 U.S.C. § 7412; and "hazardous materials" under the Hazardous Material Transportation Statute, 49 U.S.C. § 5101 et seq., and 49 C.F.R. Parts 171-180.

5. Techsol entered into a contract with a petroleum refinery company in Ashland, Kentucky, to transload CTLO from rail cars to trucks for shipment to the refinery.

6. During the morning of October 28, 2004, Techsol employees were transloading CTLO from a rail car to a tanker truck and, as a result of their improper training and handling of the transloading operation, caused a massive spill.

7. As a result of the spill, the contents of the rail car went into:

(a) a sewer manhole, near Piedmont Road, leading to the Huntington sewage treatment plant, also known as a Publicly Owned Treatment Works ("POTW"); and

(b) a drainage ditch, adjacent to the rail tracks, which led into a storm sewer that flowed into Kraut's Creek, which flowed into Twelvepole Creek, a tributary of the Ohio River.

8. Among other things, defendant JAMES R. HOLT was familiar with the dangers involving the handling of hazardous chemicals, including the possibility of spills.

9. Defendant JAMES R. HOLT failed to have his employees properly trained to adequately handle the transloading operation of a rail car containing hazardous materials such as CTLO.

10. Defendant JAMES R. HOLT also failed to have secondary containment for the rail car during the transloading operation.

CLEAN WATER ACT VIOLATION

11. On or about October 28, 2004, at a location on Piedmont Road in Huntington, Wayne County, within the Southern District of West Virginia, defendant JAMES R. HOLT negligently introduced and caused the introduction of a pollutant and hazardous substance (Coal Tar Light Oil) into a sewer system (the Huntington sewage treatment plant which is a Publicly Owned Treatment Works), in violation of the Clean Water Act and its pretreatment regulations, 40 C.F.R. §§ 403.5(a), (b)(1), and (b)(7).

In violation of Title 33, United States Code, Section 1319(c)(1).

COUNT TWO

(Storage of Hazardous Waste without a Permit)

1. Paragraphs 1 through 10 of Count One are incorporated here as if fully set forth.

2. Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"), the United States Environmental Protection Agency ("EPA") and the states regulated various types of solid wastes classified as hazardous wastes.

3. RCRA regulated the handling of hazardous wastes from "cradle to grave"- that is, from the generation of a waste through its disposal.

4. Under RCRA, 42 U.S.C. §§ 6921-6939, individuals involved in the handling of hazardous waste were required to notify the Environmental Protection Agency ("EPA") and obtain a "Hazardous Waste Generator Identification Number, that was unique to the particular facility.

5. RCRA made it a crime for a person to knowingly treat, store or dispose of hazardous waste without a permit. 42 U.S.C. §§ 6925, 6928(d)(2).

6. In order for a material to be designated a "hazardous waste" under RCRA, a material first had to be a "solid waste" and then meet certain regulatory definitions regarding what was hazardous.

7. A "solid waste" under RCRA was any "discarded material." Discarded material included abandoned, recycled, or inherently waste-like substances or compounds.

8. Included in the general categories of hazardous wastes were "characteristic wastes," which were those which were hazardous because they exhibited one or more of the following characteristics: ignitability, corrosivity, reactivity or toxicity.

9. In the course of his chemical transferring business, defendant JAMES R. HOLT generated hazardous wastes, that is, CTLO-contaminated water from the bottom of rail cars, at his chemical company located at 4711 Piedmont Road in Huntington, Wayne County, West Virginia.

10. The CTLO-contaminated water constituted a hazardous waste because it was ignitable and was toxic for benzene. 40 C.F.R. §§ 261.21, 261.24.

11. Defendant JAMES R. HOLT did not obtain a permit from the West Virginia Department of Environmental Protection to store hazardous waste at this location.


#### RCRA VIOLATION

12. From on or about April, 2004 through on or about November 4, 2004, at a location on Piedmont Road in Huntington, Wayne County, within the Southern District of West Virginia, defendant JAMES R. HOLT knowingly stored and caused the storage of, listed or identified characteristic hazardous waste, including Coal Tar Light Oil-contaminated water, without a permit as required by RCRA.

In violation of Title 42, United States Code, Sections  
6928(d)(2)(A) and 2.

CHARLES T. MILLER  
United States Attorney

By:

  
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DAVID LASTRA  
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