

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

Eastern District of Kentucky

FILED

OCT 12 2017

AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

INDICTMENT NO. 17-121-KKC

KENNETH GRAVITT

* * * * *

THE GRAND JURY CHARGES:

BACKGROUND

1. The Resource Conservation and Recovery Act (“RCRA”) is a Federal law governing the handling of solid waste, including hazardous waste, in the United States.

The United States Environmental Protection Agency (“EPA”) has the ultimate implementation and enforcement authority for RCRA. The RCRA regulations, codified at 40 C.F.R. § 260 *et. seq.*, cover the generation, storage, transportation, treatment and disposal of hazardous waste from “cradle to grave”.

2. Pursuant to federal law, the EPA may delegate primary oversight of hazardous waste to a state, where a state plan for such regulation is submitted to and approved by EPA as being consistent with RCRA and its goal of protecting the environment. The state of Kentucky has such an approved regulatory plan, which is implemented by the Division of Waste Management of the Kentucky Department of Environmental Protection. The Kentucky plan is codified at Ky. Rev. Stat. § 224.46 *et.*

seq., (“KRS”) and 401 Ky. Admin. Reg. 30-39 (“KAR”). The Kentucky plan largely adopted by reference the federal RCRA regulations that were in effect at the time of the delegation. Despite the delegation of RCRA oversight to the states, the federal government, at all times, retains the authority and jurisdiction to prosecute criminal violations of the RCRA statutes.

3. Pursuant to RCRA and the corresponding state regulations, any material determined to be a hazardous waste, as defined by the applicable KAR/CFR section, must be managed and disposed of in a manner prescribed by those regulations. A permit is required for the transportation, storage or disposal of any hazardous waste. In addition, a manifest is required for any vehicle transporting hazardous waste, and such waste must only be transported to a facility with a permit to handle hazardous material. A person or entity in the business of recycling materials or products that may contain hazardous components is generally exempt from RCRA requirements, provided those components are handled in a manner that protects the environment from contamination. If the recycler handles the components in a manner that constitutes disposal, it must determine whether they are hazardous, using a method prescribed by regulation. If determined to be hazardous, those components are subject to all RCRA requirements for storage, transportation and disposal.

4. A Cathode Ray Tube (“CRT”) is defined by EPA regulation as a vacuum tube which is a visual and video display component of electronic devices, most commonly used in the body and screen of older televisions and computer monitors. CRTs generally contain high enough concentrations of lead, an environmentally toxic

element, to qualify as a hazardous material when disposed. In recent years, as flat screen devices have replaced the larger televisions and computer monitors that contain CRTs, a demand has arisen in the national economy for the recycling of CRTs in a manner that separates the environmentally hazardous components from the non-hazardous components so that the hazardous components can be recycled in an environmentally safe manner. A CRT recycling businesses can make substantial profits by taking large quantities of CRT-containing devices from companies and entities, such as universities, hospitals and government agencies, that have upgraded their information technology.

5. At all relevant times, Global Environmental Services, LLC (“GES”) was a Kentucky corporation involved in the business of recycling electronic devices. In or about 2013, GES became more involved in the recycling of CRTs. It established and maintained facilities in Georgetown, Cynthiana and Winchester, Kentucky. It was the stated business model of GES to receive shipments of old televisions and computer monitors from entities and businesses, to separate the lead based components for shipment to a lead smelter or other approved recycler, to crush into sand non-lead glass components for potential use as golf course sand, and to recycle the metal, plastic and other such components.

6. At all relevant times, GES did not have a permit for the storage, transportation or disposal of hazardous waste.

7. Beginning in the middle to late 2013, GES began to receive many more loads of televisions and monitors in a given time period than it could physically process for recycling in that period. As a result, unprocessed electronic devices containing CRTs

began to rapidly accumulate at the GES facilities. In addition, GES was unable to sell or recycle the “sand” it produced and, instead, stored it in outdoor piles at GES facilities. In addition, in an effort to expedite the recycling process, GES began to use a glass crushing procedure that failed to keep large concentrations of lead out of the sand being produced. This manner of accumulation of toxic “sand” and CRTs slated for recycling constituted disposal of the materials, and thus, subjected them to all RCRA requirements, including the obligation to test to determine whether the materials constituted hazardous waste. Subsequent tests have shown that the materials were in fact hazardous under RCRA standards.

8. As the accumulation of unprocessed CRTs and “sand” continued, GES began to transport and dispose of them in ways and manners that violated RCRA. Such methods included piling the “sand” in a large, uncovered pile in an outdoor space; placing CRTs in dumpsters for transport to an unpermitted landfill; renting large panel trucks to fill with pallets of televisions and monitors and taking them to an unpermitted landfill; and digging a large hole with a backhoe and dumping “sand” and CRTs into the hole and covering it with dirt.

9. At all relevant times, **KENNETH GRAVITT** was the primary owner and operator of GES and directed and approved the activities mentioned above. Dewayne Davis was a manager at GES and implemented many of the above described practices on

behalf of **KENNETH GRAVITT**.

COUNT 1
18 U.S.C. § 371

10. From on or about a day in April 2013, until on or about late October 2015, in Scott, Harrison, and Clark Counties, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT

conspired and agreed with Dewayne Davis and others, known and unknown, to violate laws of the United State, to wit: components of RCRA (42 U.S.C. §§ 6928(d)(1),(d)(2) and (d)(5)), by illegally storing, transporting and disposing of CRTs and crushed glass containing excessive levels of lead, and, in furtherance of the conspiracy, one or more of the conspirators committed the overt acts set out in Counts 2 through 8 below, the contents of which are incorporated herein by reference, all in violation of 18 U.S.C. § 371.

COUNT 2
42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. § 2

11. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

12. From on or about April 1, 2013, until on or about October 13, 2015, in Scott County, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly stored and caused to be stored hazardous waste,

to wit: ground up CRT glass containing excessive amounts of lead, sacks and boxes of devices containing used and intact CRTs, and broken CRTs, at an unpermitted facility, to wit, the GES Georgetown facility, all in violation of 42 U.S.C. § 6928(d)(2)(A).

COUNT 3
42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. § 2

13. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

14. From on or about a date in March 2015, until on or about a date in late October 2015, in Clark County, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly stored and caused to be stored hazardous waste, to wit: sacks and boxes of devices containing used, intact CRTs, at an unpermitted facility, to wit: the GES Winchester warehouse, all in violation of 42 U.S.C. § 6928(d)(2)(A).

COUNT 4
42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. § 2

15. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

16. From on or about a date in October 2014, until on or about a date in late October 2015, in Harrison County, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly stored and caused to be stored hazardous waste,

to wit: sacks and boxes of devices containing intact CRTs, broken CRTs, and crushed CRT glass containing excessive levels of lead at an unpermitted facility, to wit, the GES Cynthiana facility, all in violation of 42 U.S.C. § 6928(d)(2)(A).

COUNT 5
42 U.S.C. § 6928(d)(1) and(d)(2)(A)
18 U.S.C. § 2

17. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

18. From on or about a date in April 2013, until on or about a date in late October 2015, in Scott and Harrison Counties, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly disposed of and caused to be disposed of, hazardous waste, to wit: CRTs containing excessive amounts of lead, by transporting them from GES facilities to a landfill in Scott County, Kentucky, that did not have a permit to dispose of hazardous waste, all in violation of 42 U.S.C. § 6928(d)(1) and (d)(2)(A).

COUNT 6
42 U.S.C. § 6928(d)(2)(A)
18 U.S.C. § 2

19. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

20. From on or about October 7, 2015, until on or about October 13, 2015, in

Scott and Harrison Counties, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly disposed of and caused to be disposed of, hazardous waste, to wit: crushed glass and CRTs containing excessive amounts of lead, by burying them in a large hole in the ground behind the GES Georgetown facility, a facility which did not have a RCRA permit to handle hazardous waste, all in violation of 42 U.S.C. § 6928(d)(2)(A).

COUNT 7

42 U.S.C. § 6928(d)(5)

18 U.S.C. § 2

21. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

22. From on or about a date in April 2013, until on or about late October 2015, in Scott and Harrison Counties, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT

knowingly transported and caused to be transported, without a manifest, hazardous waste, to wit: CRTs containing excessive amounts of lead, from the GES Georgetown and Cynthiana facilities to an unpermitted landfill in Scott County, Kentucky, all in violation of 42 U.S.C. § 6928(d)(5).

COUNT 8

42 U.S.C. § 6928(d)(5)

18 U.S.C. § 2

23. The allegations contained in paragraphs 1-9 above are restated and incorporated herein by reference.

24. From on or about October 9, 2015, until on or about October 10, 2015, in Scott and Harrison Counties, in the Eastern District of Kentucky, and elsewhere,

KENNETH GRAVITT,

aided and abetted by others, knowingly transported and caused to be transported, without a manifest, hazardous waste, to wit: CRTs containing excessive amounts of lead, from the GES Cynthiana facility to the GES Georgetown facility, all in violation of 42 U.S.C. § 6928(d)(5).

FORFEITURE ALLEGATION

18 U.S.C. § 981(a)(1)(C)

28 U.S.C. § 2461(c)

1. The allegations contained in Counts 1 through 6 of this Indictment are hereby realleged and incorporated by reference for the purpose of proposing the forfeiture allegations pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offenses of this Indictment, the defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses. The property to be forfeited includes, but is not limited to, the following:

MONEY JUDGMENT:

A money judgment in the amount equal to the proceeds obtained as a result of the violations.

3. If any of the property described above, as a result of any act or omission

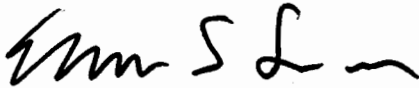
of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 28 U.S.C. § 2461(c).

A TRUE BILL



CARLTON S. SHIER, IV
ACTING UNITED STATES ATTORNEY

PENALTIES

COUNT 1: Not more than 5 years imprisonment, \$250,000 fine, and 3 years supervised release.

COUNTS 2-8: Not more than 5 years imprisonment, \$250,000 fine, and 3 years supervised release.

PLUS: Mandatory special assessment of \$100 per count.

PLUS: Forfeiture, as alleged.

PLUS: Restitution, if applicable.