

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 2:10 CR 217
UNITED WATER ENVIRONMENTAL	)	
SERVICES, INC., DWAIN L. BOWIE,	)	
and GREGORY A. CIACCIO,	)	
	)	
Defendants.	)	

**FINAL JURY INSTRUCTIONS**

Dated: November 8, 2012

s/ Philip P. Simon  
PHILIP P. SIMON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. I will also give you two copies of these instructions to use in the jury room. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved the defendants guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you. In addition, do not let any person's race, color, religion, national ancestry, or gender influence you.

You must give United Water Environmental Services, Inc. the same fair consideration that you would give to an individual.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

INSTRUCTION NO. 2

The charges against the defendants are in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment in this case charges that the defendants committed the crimes of tampering with a monitoring method required under the Clean Water Act and conspiracy to tamper with a monitoring method required under the Clean Water Act and to defraud the United States Government by hampering, hindering, impeding, impairing, and obstructing, by deceit and dishonest means, the lawful and legitimate functions of the EPA in administering and enforcing federal environmental laws and regulations. The defendants have pled not guilty to the charges.

The indictment is simply the formal way of telling the defendants what crimes they are accused of committing. It is not evidence that the defendants are guilty. It does not even raise a suspicion of guilt.

INSTRUCTION NO. 3

Each defendant is presumed innocent of each and every one of the charges. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that the particular defendant you are considering is guilty as charged.

The government has the burden of proving each defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

A defendant is never required to prove his innocence. He is not required to produce any evidence at all.

INSTRUCTION NO. 4

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

INSTRUCTION NO. 5

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

INSTRUCTION NO. 6

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

INSTRUCTION NO. 7

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.



INSTRUCTION NO. 8

A defendant has an absolute right not to testify or present evidence. You may not consider in any way the fact that a defendant did not testify or present evidence. You should not even discuss it in your deliberations.

INSTRUCTION NO. 9

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the age of the witness;
- the intelligence of the witness;
- the witness' ability and opportunity to see, hear, or know the things the witness testified about;
- the witness' memory;
- the witness' demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- inconsistent or consistent statements or conduct by the witness.

INSTRUCTION NO. 10

It is proper for an attorney to interview any witness in preparation for trial.

INSTRUCTION NO. 11

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. You may consider an inconsistent statement made before the trial only to help you decide how believable a witness' testimony was here in court.

INSTRUCTION NO. 12

You have heard testimony about the defendant, Dwain Bowie's good character. You should consider this testimony together with and in the same way you consider the other evidence.

INSTRUCTION NO. 13

You have heard evidence that United Water had four *E. coli* permit exceedances prior to June 2003. Before using this evidence, you must decide whether it is more likely than not that the defendants did these acts that are not charged in the indictment. If you decide that they did, then you may consider this evidence to help you decide the question of motive. You may not consider it for any other purpose. Keep in mind that the defendants are on trial here for tampering with a monitoring method required to be maintained under the Clean Water Act and for conspiring to tamper with a monitoring method required to be maintained under the Clean Water Act. They are not on trial for permit exceedances.

INSTRUCTION NO. 14

You have heard witnesses, namely, Trent Rainey, Charles Hurst, and George Tchobanoglous, who gave opinions and testimony about *E. coli* disinfection practices. You do not have to accept these witnesses' opinions and testimony. You should judge these witnesses' opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and testimony, you should consider each witness' qualifications, how he reached his opinions and conclusions, and the factors I have described for determining the believability of testimony.

INSTRUCTION NO. 15

Certain summaries and charts were admitted in evidence. You may use those summaries and charts as evidence even though for some of those charts, the underlying documents are not here.

It is up to you to decide how much weight to give to the summaries.



INSTRUCTION NO. 16

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

INSTRUCTION NO. 17

The Clean Water Act is a federal law administered by the United States Environmental Protection Agency ("EPA"). The EPA can delegate authority to administer the Clean Water Act to states. In this case, the EPA delegated that authority to the Indiana Department of Environmental Management ("IDEM").

The Clean Water Act prohibits discharges of pollutants into the waters of the United States, except in accordance with a permit. Under the Clean Water Act, state agencies like IDEM issue permits to water treatment facilities, including the GSD plant, which is at issue in this case. Those permits, referred to as NPDES permits, allow the discharge of pollutants into the waters of the United States, but provide limits on the quantity of those pollutants that may be discharged into the environment.

The Clean Water Act and its regulations require individuals and companies that have been issued permits to monitor their discharges to determine whether they comply with the pollution limits set forth in their permits. Individuals and companies that have been issued permits must regularly collect discharge samples, test those samples for pollutants that are covered by the permits, and report the results of their testing to the relevant regulating agency, in this case IDEM. The samples must be representative of the volume and nature of the monitored discharge flow. These provisions of a NPDES permit are called monitoring requirements.

INSTRUCTION NO. 18

The law provides that any person who knowingly tampers with a monitoring method required to be maintained under the Clean Water Act commits a crime.

INSTRUCTION NO. 19

Count One of the Indictment charges defendants Gregory A. Ciaccio, Dwain L. Bowie and United Water Environmental Services, Inc., with conspiracy to 1) knowingly tamper with a monitoring method required to be maintained by the Clean Water Act, and 2) to defraud the United States Government by hampering, hindering, impeding, impairing, and obstructing, by deceit and dishonest means, the lawful and legitimate functions of the EPA in administering and enforcing federal environmental laws and regulations. In order for you to find a defendant guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt:

1. The conspiracy as charged in Count One existed;
2. The defendant knowingly became a member of the conspiracy with an intent to advance the conspiracy; and
3. One of the conspirators committed an overt act in an effort to advance a goal of the conspiracy.

An overt act is any act done to carry out a goal of the conspiracy. The government is not required to prove all of the overt acts charged in the indictment. The overt act may itself be a lawful act.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

INSTRUCTION NO. 20

A conspiracy is an express or implied agreement between two or more persons to commit a crime. A conspiracy may be proven even if its goals were not accomplished.

In deciding whether the charged conspiracy existed, you may consider all of the circumstances, including the words and acts of each of the alleged participants.

INSTRUCTION NO. 21

To be a member of a conspiracy, a defendant does not need to join it at the beginning, and he does not need to know all of the other members or all of the means by which the illegal goals of the conspiracy were to be accomplished. The government must prove beyond a reasonable doubt that the defendant you are considering was aware of the illegal goals of the conspiracy and knowingly joined the conspiracy.

A defendant is not a member of a conspiracy just because he knew and/or associated with people who were involved in a conspiracy, knew there was a conspiracy, and/or was present during conspiratorial discussions.

In deciding whether a particular defendant joined the charged conspiracy, you must base your decision only on what that defendant did or said. To determine what that defendant did or said, you may consider that defendant's own words or acts. You may also use the words or acts of other persons to help you decide what the defendant did or said.

INSTRUCTION NO. 22

A conspirator is responsible for offenses committed by his fellow conspirators if he was a member of the conspiracy when the offense was committed and if the offense was committed in furtherance of and as a foreseeable consequence of the conspiracy.

Therefore, if you find a defendant guilty of the conspiracy charged in Count One and if you find beyond a reasonable doubt that while he was a member of the conspiracy, his fellow conspirator(s) committed one or more of the offenses charged in Counts Two through Twenty-Five of the indictment in furtherance of and as a foreseeable consequence of that conspiracy, then you should find him guilty of those one or more offenses as well.

INSTRUCTION NO. 23

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

The knowledge of an employee of a corporation is considered also to be the knowledge of the corporation.



INSTRUCTION NO. 24

Count One of the indictment alleges that the defendants and other co-conspirators committed certain overt acts. The government is not required to prove that each and every alleged overt act was committed by a defendant or a co-conspirator. However, the government is required to prove that a defendant or a co-conspirator committed at least one of the overt acts that are alleged in Count One. To find that the government has proven this, you must agree unanimously on which particular overt act a defendant or a co-conspirator did, as well as all of the other elements of the crime charged.

For example, if some of you were to find that the Government has proved beyond a reasonable doubt that a defendant or a co-conspirator committed overt act 11 charged in Count One and the rest of you find that the Government has proved beyond a reasonable doubt that a defendant or a co-conspirator committed overt act 50, then there would be no unanimous agreement on which overt act the Government has proved. On the other hand, if all of you were to find that a defendant or a co-conspirator committed overt act 50, then there would be a unanimous agreement on which overt act the government proved.

INSTRUCTION NO. 25

Count One of the indictment charges a conspiracy having two objects: (1) to knowingly tamper with a monitoring method required to be maintained by the Clean Water Act; and (2) to defraud the United States Government by hampering, hindering, impeding, impairing, and obstructing, by deceit and dishonest means, the lawful and legitimate functions of the EPA in administering and enforcing federal environmental laws and regulations.

The Government is not required to prove each and every alleged object of the conspiracy. However, the Government is required to prove at least one of the objects of the conspiracy that are alleged in Count One. To find that the Government has proven this, you must agree unanimously on which particular object(s) of the conspiracy that the Government has proven, as well as all of the other elements of the crime charged.

For example, if some of you were to find that the Government has proved beyond a reasonable doubt that the object of the conspiracy was to knowingly tamper with a monitoring method and the rest of you were to find that the government has proved beyond a reasonable doubt that the object of the conspiracy was to defraud the United States Government, then there would be no unanimous agreement on which object the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the object of the conspiracy was to knowingly tamper with a monitoring method, then there would be a unanimous agreement on which object of the conspiracy the government proved.

INSTRUCTION NO. 26

Counts Two through Ten, Counts Twelve through Sixteen, and Counts Eighteen through Twenty-Five of the indictment charge two or more of the defendants with knowingly tampering with a monitoring method required to be maintained under the Clean Water Act.

Specifically, Count Two of the indictment alleges that United Water and Dwain Bowie violated the Clean Water Act by tampering with the monitoring method for *E. coli*, and the subsequent remaining counts of the indictment allege that all three Defendants - United Water, Dwain Bowie, and Gregory Ciaccio - tampered with the monitoring method for *E. coli*.

In order for you to find a defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. That a Defendant knowingly tampered with;
2. A monitoring method; and
3. That the monitoring method was required by the Clean Water Act.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charges of tampering with a monitoring method, then you should find the defendant guilty of those charges.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charges of tampering with a monitoring method, then you should find the defendant not guilty of those charges.

INSTRUCTION NO. 27

To establish that a Defendant engaged in "tampering," the government must prove, beyond a reasonable doubt, that the Defendant knowingly meddled so as to alter a required monitoring method in an improper, corrupting manner.

Here, the government has alleged that the Defendants tampered with the monitoring method for E. coli, which is the monitoring method at issue in this case.

INSTRUCTION NO. 28

To prove that a Defendant knowingly tampered with a monitoring method as charged in the indictment, the Government must prove, beyond a reasonable doubt, that the Defendant acted with consciousness of wrongdoing. The Government need not prove that a Defendant knew that the conduct was illegal. But because one cannot innocently tamper, the government must prove beyond a reasonable doubt that the Defendant was conscious that the conduct was wrongful; specifically, the Government must prove, beyond a reasonable doubt, that the Defendant knew that his or its actions altered or made changes to the monitoring method in a corrupting, improper manner.

INSTRUCTION NO. 29

The phrase "monitoring method" in this case means a procedure or process for checking, observing, or measuring the content of the plant's discharged effluent. A monitoring method is "required to be maintained" under the Clean Water Act if it is included in a NPDES permit validly issued under the Clean Water Act.

Here, the monitoring method at issue was set forth in the Gary Sanitary District's NPDES permits - which, among other things, required that the facility:

1. take a daily, representative, grab sample and test that sample for the amount of E. coli it contained;
2. record the results of the test; and
3. provide the recorded results on a routine basis to IDEM.

INSTRUCTION NO. 30

The GSD's NPDES permits required that the samples taken be "representative." When I use the term "representative," this is what I mean: that the *E. coli* grab samples were to be taken at a time which reflects the full range and concentration of *E. coli* expected to be present in the plant's discharge at other times of the day. The term "representative" does not refer to chlorine residual concentrations. It refers only to the *E. coli* concentration in the daily grab samples.

INSTRUCTION NO. 31

A person who acts on behalf of a corporation also is personally responsible for what he does or causes someone else to do. However, a person is not responsible for the conduct of others performed on behalf of a corporation merely because that person is an officer, employee, or other agent of a corporation.



INSTRUCTION NO. 32

United Water Environmental Services, Inc. is a corporation. A corporation may be found guilty of an offense. A corporation acts only through its agents and employees, that is, people authorized or employed to act for the corporation.

The indictment charges United Water with conspiracy and tampering with a monitoring method. In order for you to find United Water guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

First, the offense charged was committed by an employee of United Water; and

Second, in committing the offenses, the employee intended, at least in part, to benefit United Water; and

Third, the employee acted within his authority.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find United Water guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any of these elements beyond a reasonable doubt, then you should find United Water not guilty.

An act is within the authority of an employee if it concerns a matter that United Water generally entrusted to that employee. United Water need not have actually authorized or directed the particular act.

If an employee was acting within his authority, then United Water is not relieved of its responsibility just because the act was illegal, or was contrary to its instructions, or was against its general policies. However, you may consider the fact that United Water had policies and instructions and how carefully it tried to enforce them when you determine whether United Water's employees were acting with the intent to benefit United Water or was acting within his authority.

INSTRUCTION NO. 33

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

INSTRUCTION NO. 34

- (a) Any person who knowingly aids, counsels, commands, induces, or procures the commission of an offense may be found guilty of that offense if he knowingly participated in the criminal activity and tried to make it succeed.
  
- (b) If a defendant knowingly causes the acts of another, then the defendant is responsible for those acts as though he personally committed them.

INSTRUCTION NO. 35

The defendants have been accused of more than one crime. The number of charges is not evidence of guilt and should not influence your decision.

You must consider each charge and the evidence concerning each charge separately. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any other charge.

INSTRUCTION NO. 36

Even though the defendants are being tried together, you must consider each defendant and the evidence concerning that defendant separately. Your decision concerning one defendant, whether it is guilty or not guilty, should not influence your decision concerning any other defendant.

INSTRUCTION NO. 37

Once you are all in the jury room, the first thing you should do is choose a foreperson . The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as by telephone, cell phone, smart phone, computer, text messaging, instant messaging, the internet, chat rooms, blogs, websites, or services like Facebook, or Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6–6, or 8–4, or whatever your vote happens to be.

INSTRUCTION NO. 38

A verdict form has been prepared for you. You will take this form with you to the jury room.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict forms, and then each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdicts aloud.

INSTRUCTION NO. 39

The verdict must represent the considered judgment of each juror. Your verdict, whether it is guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.