



*United States Department of Justice*

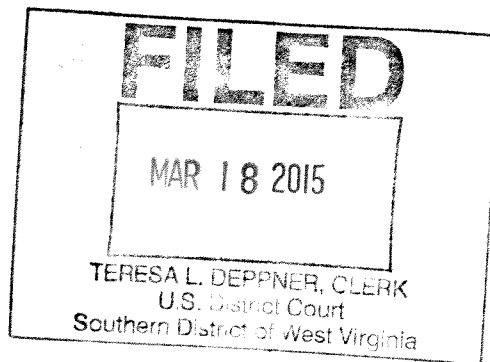
*United States Attorney  
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse  
300 Virginia Street, East  
Suite 4000  
Charleston, WV 25301  
1-800-659-8726*

*Mailing Address  
Post Office Box 1713  
Charleston, WV 25326  
304-345-2200  
FAX: 304-347-5104*

July 22, 2014

R. Brandon Johnson, Esquire  
Stroebel & Johnson, PLLC  
106 North Jefferson Street  
Lewisburg, WV 24901



Re: United States v. Robert J. Reynolds

Dear Mr. Johnson:

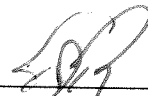
This will confirm our conversations with regard to your client, Robert J. Reynolds (hereinafter "Mr. Reynolds"). As a result of these conversations, it is agreed by and between the United States and Mr. Reynolds as follows:

1. **CHARGING AGREEMENT.** Mr. Reynolds agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Reynolds will plead guilty to a violation of 33 U.S.C. § 1319(c)(1)(A) and 1311 (negligent discharge of a pollutant) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Reynolds will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of one year;

  
\_\_\_\_\_  
Defendant's  
Initials

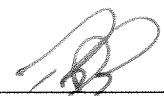
R. Brandon Johnson, Esquire  
July 22, 2014  
Page 2

Re: Robert J. Reynolds

- (b) A fine of not less than \$2,500 nor more than \$25,000 per day of violation. Alternatively, and pursuant to 18 U.S.C. § 3571, a fine of \$100,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater, may be imposed;
- (c) A term of supervised release of one year;
- (d) A mandatory special assessment of \$25 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to USSG §5E1.1(a)(2).

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Reynolds will tender a check or money order to the Clerk of the United States District Court for \$25, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Reynolds will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Reynolds fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Reynolds.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Reynolds agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Reynolds further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of



---

Defendant's  
Initials

R. Brandon Johnson, Esquire  
July 22, 2014  
Page 3

Re: Robert J. Reynolds

payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

6. **COOPERATION.** Mr. Reynolds will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Reynolds may have counsel present except when appearing before a grand jury.

7. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Reynolds and except as expressly provided for in paragraph nine below, nothing contained in any statement or testimony provided by Mr. Reynolds pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

8. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Reynolds for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Reynolds for perjury or false statement if such a situation should occur pursuant to this agreement.

9. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Reynolds stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."



---

Defendant's  
Initials

R. Brandon Johnson, Esquire  
July 22, 2014  
Page 4

Re: Robert J. Reynolds

Mr. Reynolds agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Reynolds or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Mr. Reynolds knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Reynolds understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

10. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Reynolds agree that the following provisions of the United States Sentencing Guidelines apply to this case.

USSG §2Q1.3

Base offense level	6
Ongoing, continuous discharge	+ 6
Disruption of public utility or substantial expenditure in cleanup	+ 4
Discharge in violation of a permit	+ 4
Adjusted offense level	20



Defendant's  
Initials

R. Brandon Johnson, Esquire  
July 22, 2014  
Page 5

Re: Robert J. Reynolds

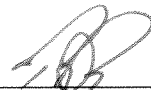
The United States and Mr. Reynolds acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

11. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Reynolds knowingly and voluntarily waives his right to seek appellate review of his conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742(a), except that the defendant may appeal any sentence that exceeds the maximum penalty prescribed by statute. The United States also agrees to waive its right to appeal any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever, including any ground set forth in 18 U.S.C. § 3742(b), except that the United States may appeal any sentence that is below the minimum penalty, if any, prescribed by statute.

Mr. Reynolds also knowingly and voluntarily waives the right to challenge his guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

12. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Reynolds knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act



---

Defendant's  
Initials

R. Brandon Johnson, Esquire  
July 22, 2014  
Page 6

Re: Robert J. Reynolds

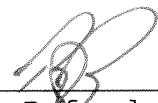
(FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

13. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Reynolds;
- (f) Advise the Court concerning the nature and extent of Mr. Reynolds' cooperation; and
- (g) Address the Court regarding the issue of Mr. Reynolds' acceptance of responsibility.

14. **VOIDING OF AGREEMENT.** If either the United States or Mr. Reynolds violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

15. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Reynolds in this matter. There are no agreements, understandings



Defendant's  
Initials

R. Brandon Johnson, Esquire  
July 22, 2014  
Page 7


Re: Robert J. Reynolds

or recommendations as to any other pending or future charges against Mr. Reynolds in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:


R. BOOTH GOODWIN II  
United States Attorney

By:

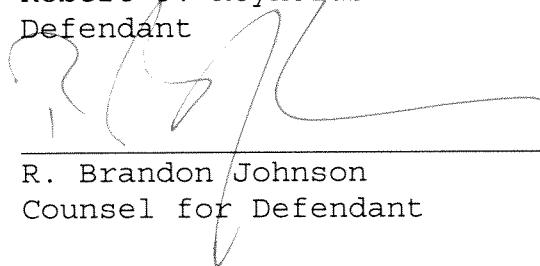
  
PHILIP H. WRIGHT  
Assistant United States Attorney

PHW/vld

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this seven-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

  
\_\_\_\_\_  
Robert J. Reynolds  
Defendant

7/23/14  
\_\_\_\_\_  
Date Signed

  
\_\_\_\_\_  
R. Brandon Johnson  
Counsel for Defendant

7.23.2014  
\_\_\_\_\_  
Date Signed

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA

v.	CRIMINAL NO.	
		33 U.S.C. § 1319 (c) (1) (A)
		33 U.S.C. § 1311
ROBERT J. REYNOLDS		18 U.S.C. § 2

I N F O R M A T I O N

The United States Attorney charges:

(Negligent Discharge of a Pollutant)

At all times relevant to this Information:

Background

1. Freedom Industries, Inc. ("Freedom") was a West Virginia corporation located in Charleston, West Virginia, and engaged in the business of storing, selling, and transporting chemicals that were to be used in various industries, including the coal mining industry.

2. Defendant ROBERT J. REYNOLDS ("REYNOLDS") was one of the individuals responsible for regulatory and environmental compliance by Freedom and its affiliated companies. REYNOLDS' duties and responsibilities included developing and maintaining certain plans, including a Storm Water Pollution Prevention Plan ("SWPPP"); preparing safety data sheets for chemical substances;



filing required reports with the State of West Virginia; training Freedom and ERT employees on regulatory and environmental issues; and ensuring that Freedom's owners and management were aware of issues and problems that might affect regulatory and environmental compliance by Freedom and its affiliated companies.

3. One of Freedom's affiliated companies was Etowah River Terminal, LLC ("ERT"), a West Virginia limited liability company, and, at times, a general partnership.

4. ERT was formed by the principal shareholders of Freedom in approximately September 2001, to purchase and then operate an above-ground storage tank facility located at 1015 Barlow Drive, Charleston, West Virginia (the "Etowah Facility"), on the east bank of the Elk River.

5. On December 31, 2013, ERT formally merged into Freedom. Prior to that date, and at all times pertinent to this Information, ERT acted on behalf of and with the intent to benefit Freedom.

6. Freedom and ERT used the Etowah Facility to store and process chemicals and other substances, including a substance that was used in the coal mining industry as a cleansing agent and which consisted primarily of the chemical 4-methylcyclohexane methanol. That substance, both in the form as Freedom originally purchased it and in the form after Freedom

processed it, was commonly referred to (and will be referred to hereinafter) as "MCHM."

The MCHM Spill Into the Elk River

7. In the morning of January 9, 2014, it was discovered that MCHM owned by Freedom had leaked from Tank 396 at the Etowah Facility into a containment area.

8. A significant quantity of the MCHM breached the containment area by flowing under a dike wall. The leaked MCHM ran down the riverbank and discharged into the Elk River via two discernible, confined, and discrete channels or fissures. The MCHM then flowed downstream.

9. The water treatment and distribution plant of the West Virginia American Water Company ("WVAWC"), and an intake for that plant, were located approximately 1-1½ miles downstream from the Etowah Facility on the Elk River. Through the intake, WVAWC took in water from the Elk River and treated it to supply potable water for thousands of residents in Charleston and surrounding areas.

10. The MCHM from the Etowah Facility flowed into WVAWC's intake and treatment plant on the Elk River on January 9, 2014. As a result, at approximately 6:00 p.m. on January 9, 2014, the State of West Virginia issued a "do not use" advisory, which effectively denied water for drinking, cooking and washing to an estimated 300,000 residents within a nine-county area for

several days.

The Clean Water Act and the NPDES Program

11. The Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), codified at Title 33, United States Code, Sections 1251-1387, was enacted by Congress to restore and maintain the integrity of the Nation's waters and to prevent, reduce, and eliminate water pollution.

12. The CWA prohibited the discharge of any pollutant into waters of the United States by any person, except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES") by the United States Environmental Protection Agency ("EPA") or an authorized state.

13. The CWA defined a "person" as, among other things, an individual, corporation, and responsible corporate officer, 33 U.S.C. §§ 1362(5) and 1319(c)(6); the "discharge of a pollutant" as the addition of any pollutant to navigable waters, from any point source, 33 U.S.C. § 1362(12); a "point source" as any discernible, confined and discrete conveyance from which pollutants are discharged, for example a pipe, ditch, channel, conduit or discrete fissure, 33 U.S.C. § 1362(14); and a "pollutant" as, among other things, solid waste, chemical waste, and industrial waste discharged into water, 33 U.S.C. § 1362(6).

14. At all places relevant to this Information, the Elk River was a navigable water of the United States within the meaning of the CWA. 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

15. The EPA delegated the NPDES program to the State of West Virginia in May 1982, see 47 Fed. Reg. 22,363 (May 24, 1982). Thereafter, and at all relevant times, the NPDES program in West Virginia was administered by the West Virginia Department of Environmental Protection ("WVDEP").

16. Pursuant to the NPDES delegation of authority, the WVDEP issued a "Multi-Sector General Water Pollution Control Permit," No. WV0111457 ("the NPDES Permit"), under which industrial activities could apply for individual registration and authority to operate. The NPDES Permit authorized permit holders to discharge storm water into navigable waters, subject to monitoring and reporting requirements for certain pollutants, but did not allow for the discharge of MCHM.

17. Freedom, directly and through its agent ERT, operated the Etowah Facility pursuant to the NPDES Permit, under General Permit Registration Number WVG610920. Freedom did not have any permit allowing for the discharge of MCHM into the Elk River.

Negligent Operation of the Etowah Facility

18. At all times pertinent to this Information and up through and including January 9, 2014, Freedom and its agents,

including REYNOLDS, failed to exercise reasonable care in several ways and thus failed to satisfy their duties to operate the Etowah Facility in a safe and environmentally sound manner.

19. One manner in which Freedom, REYNOLDS and others failed to exercise reasonable care was by violating the conditions of the NPDES Permit. The violations included:

- The failure to develop and maintain a Storm Water Pollution Prevention Plan ("SWPPP") for the Etowah Facility, and
- The failure to implement reasonable practices at the Etowah Facility to assure compliance with the NPDES Permit.

20. The reasonable practices that should have been but which were never implemented by Freedom and ERT included:

- Properly analyzing the spill potential of all substances, including MCHM, stored at the Etowah Facility;
- Ensuring that the area within the dike containment wall would actually hold the contents of the largest tank, without spillage or leaking;
- Ensuring that periodic inspections were conducted of facility components, including the dike containment wall, which might contribute to a spill or leakage of pollutants if not in good condition; and
- Conducting training of all personnel, including responsible corporate officers, to insure that all hands were well aware of the requirements of the SWPPP and the importance of pollution prevention.

21. The failures by Freedom, REYNOLDS and other agents of Freedom to exercise reasonable care in the operation of the Etowah Facility, and in particular, to develop and maintain an

SWPPP for the Etowah Facility and to implement certain reasonable practices at the Etowah Facility to assure compliance with the NPDES Permit, were proximate causes of the significant leak of MCHM from Tank 396 and the resulting discharge of MCHM into the Elk River on January 9, 2014.

Criminal Violation of the CWA

22. From at least in or about the spring of 2009, through on or about January 9, 2014, at or near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendant ROBERT J. REYNOLDS and other persons and entities known to the United States Attorney, negligently caused the discharge of a pollutant, that is, MCHM, which discharge occurred on or about January 9, 2014, from point sources into the Elk River, a navigable water of the United States, without a permit issued under Title 33 of the United States Code authorizing such discharge.

In violation of Title 33, United States Code, Sections 1319(c)(1)(A) and 1311, and Title 18, United States Code, Section 2.

UNITED STATES OF AMERICA

R. BOOTH GOODWIN II  
UNITED STATES ATTORNEY

By: \_\_\_\_\_  
PHILIP H. WRIGHT  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. \_\_\_\_\_

ROBERT J. REYNOLDS

STIPULATION OF FACTS


The United States and Robert J. Reynolds stipulate and agree that the facts comprising the offense of conviction in the Information include the following:

1. The Chemical Spill of January 9, 2014

On January 9, 2014, a major chemical leak was discovered at an above-ground storage tank farm located on the east bank of the Elk River, on Barlow Drive in Charleston, West Virginia, within the Southern District of West Virginia. The tank farm, known as the Etowah River Terminal ("Etowah Facility"), was owned by Freedom Industries, Inc. ("Freedom"), a West Virginia corporation.

Freedom used the Etowah Facility to store and process chemicals and other substances, including a substance that was used in the coal mining industry as a cleansing agent and which consisted primarily of the chemical 4-methylcyclohexane methanol. That substance, both in the form as FREEDOM originally purchased it and in the form after FREEDOM processed it, was commonly referred to (and will be referred to hereinafter) as "MCHM."

The major chemical leak that occurred on January 9, 2014, consisted of MCHM, which leaked from Tank 396 at the Etowah

  
\_\_\_\_\_  
Defendant's  
Initials

PLEA AGREEMENT EXHIBIT B

Facility. A significant amount of the leaked MCHM breached containment, including a containment wall, ran down the riverbank and discharged into the Elk River at one or more discernible, confined and discrete channels or fissures. The MCHM was a pollutant as defined in the CWA. The Elk River was, and is, a navigable water of the United States. Freedom did not have a permit issued pursuant to the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, to discharge MCHM into the Elk River. The leaked MCHM eventually flowed into a water treatment and distribution plant and resulted in the denial of potable water to thousands of residents of Charleston and the surrounding area for several days.

2. Freedom and Robert J. Reynolds

For many years, and all times pertinent to the Information, Freedom and its affiliated companies, including Etowah River Terminal, LLC ("ERT"), and Poca Blending, LLC, were engaged in the business of storing and selling chemicals and other substances used in various industries such as the coal mining industry. ERT was formed in 2001 to purchase and then operate the Etowah Facility. (Poca Blending operated a chemical processing site in Nitro, West Virginia.) At all times pertinent to this Information, ERT acted on behalf of and with the intent to benefit Freedom.

Beginning no later than 2002 and at all relevant times thereafter, defendant Robert J. Reynolds was one of the individuals responsible for regulatory and environmental compliance by Freedom and its affiliated companies, ERT and Poca Blending. Reynolds described himself as Freedom's "Regulatory and Environmental Mgr." Freedom maintained a "Corporate Contact Sheet" that listed Reynolds as Freedom's "Director of Environmental and Safety." Reynolds spoke for Freedom and acted as Freedom's agent for regulatory and environmental issues on a regular basis.

In his capacity as Freedom's Regulatory and Environmental Manager, Reynolds was responsible for advising Freedom and its affiliates on environmental issues. He was responsible for developing and maintaining certain plans to prevent pollution; preparing safety data sheets for chemical substances that

  
\_\_\_\_\_  
Defendant's  
Initials

PLEA AGREEMENT EXHIBIT B



Freedom sold and which were stored at the Etowah Facility; and preparing and filing required reports known as "Tier 2 Reports" with the West Virginia Department of Homeland Security and Emergency Management, which listed chemical substances stored at Freedom's facilities. Reynolds also was responsible for training Freedom and ERT personnel on regulatory and environmental issues and ensuring that Freedom's owners and management were aware of issues and problems that might affect Freedom's regulatory and environmental compliance.

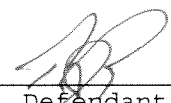
3. The NPDES Permit and SWPPP

Freedom, directly and through its agent ERT, operated the Etowah Facility pursuant to a "Multi-Sector General Water Pollution Control Permit," No. WV0111457, Registration No. WVG610920 ("The Permit"), that was issued by the State of West Virginia, Department of Environmental Protection, pursuant to the National Pollutant Discharge Elimination System ("NPDES"). The Permit authorized permit holders such as Freedom (and ERT) to discharge storm water into navigable waters, subject to monitoring and reporting requirements for certain pollutants, but it did not allow for the discharge of MCHM into any navigable waters. Freedom did not have any permit allowing for the discharge of MCHM into the Elk River.

The Permit required permit-holders such as Freedom/ERT to develop and maintain a Storm Water Pollution Prevention Plan ("SWPPP") in accordance with "good engineering practices." The Permit further required that a SWPPP (i) identify potential sources of pollution that might reasonably be expected to pollute storm water discharges from the Etowah Facility; and (ii) describe and implement "Stormwater Management Controls" that would be used to reduce pollutants and to assure compliance with the Permit terms and conditions. The Permit also required that the storm water pollution prevention practices be reviewed annually and that the SWPPP be revised as necessary.

4. Negligence - Failure to Have and Implement an SWPPP

As part of his duties in assisting in Freedom's regulatory and environmental compliance efforts, Reynolds should have developed and maintained an SWPPP for the Etowah Facility, and

  
\_\_\_\_\_  
Defendant's  
Initials

PLEA AGREEMENT EXHIBIT B

he should have ensured that certain practices were implemented to assure compliance with the Permit.

Reynolds and others, however, failed to exercise due care to ensure that an SWPPP was developed and maintained for the Etowah Facility. That Reynolds and others should have known of the requirement to develop and maintain an SWPPP is evidenced by the following:

- a) Reynolds was hired to assist in Freedom's regulatory and environmental efforts. In that capacity, Reynolds had authority to act and did in fact act for and on behalf of Freedom and ERT on environmental issues, particularly in dealing with the West Virginia Department of Environmental Protection (WVDEP);
- b) Freedom/ERT hired an engineering firm in 2002 to develop an SWPPP. A draft SWPPP, dated February 14, 2002, was developed but never approved and signed by anyone with Freedom/ERT and was never updated or revised.
- c) In 2004 and in 2009, Freedom/ERT applied to the WVDEP to renew the Permit. Reynolds prepared the 2009 application for renewal. He stated in that application that Freedom/ERT had an SWPPP. Reynolds, however, never verified whether Freedom/ERT did in fact have an SWPPP.
- d) In May 2013, Freedom undertook a review of the 2009 storm water permit documents. The review was conducted by three employees, including Reynolds, and the review process included a "Stormwater/Groundwater PPP Review." Thus, by no later than the conclusion of the review, the absence of an SWPPP for the Etowah Facility should have and would have been very obvious to Reynolds, as well as others at Freedom. It should be noted that an SWPPP had been developed by that time for the Poca Blending site.
- e) Reynolds also provided training to employees at Poca Blending, which emphasized the need for environmental



Defendant's  
Initials

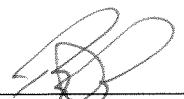
**PLEA AGREEMENT EXHIBIT B**

compliance, and specifically included training on a "Pollution Prevention Plan." The training stated that its purposes were to "Maintain environment {sic}; Regulatory compliance; Keep [one of Freedom's owners] out of jail."

Reynolds and others also failed in their duties to ensure that Freedom and ERT implemented certain reasonable practices at the Etowah Facility that would assure compliance with the permit. Those practices that should have been implemented as set forth in an SWPPP would have included:

- a) Properly analyzing the spill potential of all substances, including MCHM, stored at the Etowah Facility;
- b) Ensuring that the area within the dike containment wall would actually hold the contents of the largest tank, without spillage or leaking;
- c) Ensuring that periodic inspections were conducted of facility components, including the dike containment wall, which might contribute to a spill or leakage of pollutants if not in good condition; and
- d) Conducting training of all personnel, including responsible corporate officers, to insure that all hands were well aware of the requirements of the SWPPP and the importance of pollution prevention.

That these practices would have been a part of an SWPPP for the Etowah Facility, had there been an SWPPP, is demonstrated by the fact the practices are commonly applied at above-ground storage tank facilities, are commonly included in SWPPPs, and are found in regulations and guidance issued by West Virginia. The practices that Reynolds and Freedom failed to implement, and which would have assured compliance with the Permit, were largely a matter of common sense that any good corporate citizen would have put in place for all employees, management and labor, to follow.

  
Defendant's  
Initials

PLEA AGREEMENT EXHIBIT B

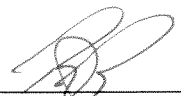
With respect to the practices that should have been but were not implemented by Freedom, Reynolds was particularly responsible for conducting training for Freedom and ERT owners, managers and employees on the Permit and an SWPPP (had one been developed).

Moreover, Reynolds and others knew of and should have appreciated the hazards associated with MCHM and the need to take reasonable steps to ensure that MCHM did not spill and leak into the Elk River. For example, the material safety data sheet (MSDS) for MCHM that was prepared by its manufacturer and which FREEDOM kept on hand, stated: "WARNING! HARMFUL IF SWALLOWED[,] CAUSES SKIN AND EYE IRRITATION[.]" The MCHM safety data sheet also stated: "Avoid release to the environment. . . . Prevent runoff from entering drains, sewers, or streams. Dike for later disposal."

In addition, Reynolds prepared a separate MSDS for the MCHM for Freedom, under the product name ShurFlot 944. This MSDS stated that "[t]he material can cause skin and eye irritation," and further cautioned that "[t]his product is considered hazardous under the OSHA HazCom Standard (29 CFR 1910.1200)." Under a section entitled "Accidental Release Measures," Reynolds's MSDS stated, "Dike area of spill to prevent spreading and pump liquid to salvage tank."

Reynolds also indicated, on the required Tier 2 Reports submitted to the West Virginia Department of Homeland Security and Emergency Management, that the physical and health hazards associated with MCHM were "Immediate (acute)."

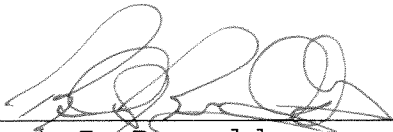
All of the facts noted above establish that Reynolds and others acted negligently in carrying out their duties for regulatory and environmental compliance for Freedom and its affiliates, including ERT, by failing to develop and maintain an SWPPP, and by failing to ensure that Freedom and ERT implemented certain practices to assure compliance with the Permit. The failures of Reynolds and others to act and to carry out their duties were a proximate cause, albeit not the only proximate cause, of the discharge of MCHM into the Elk River from the Etowah Facility on January 9, 2014.

  
\_\_\_\_\_  
Defendant's  
Initials


PLEA AGREEMENT EXHIBIT B

This Stipulation of Facts does not contain each and every fact known to Reynolds and to the United States concerning his involvement and the involvement of others in the charge set forth in the Information, and is set forth for the limited purpose of establishing a factual basis for the Reynolds's guilty plea.


Stipulated and agreed to:

  
\_\_\_\_\_  
Robert J. Reynolds  
Defendant

8/18/14  
Date

  
\_\_\_\_\_  
R. Brandon Johnson  
Counsel for Defendant

8-18-2014  
Date

  
\_\_\_\_\_  
Philip H. Wright  
Assistant United States Attorney

8.18.2014  
Date

  
\_\_\_\_\_  
Defendant's  
Initials

PLEA AGREEMENT EXHIBIT B