

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 13 CR 760
) Honorable Robert M. Dow, Jr.
)
vs.)
)
BRAD FOOTE GEAR WORKS, INC.)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant BRAD FOOTE GEAR WORKS, INC., and defendant's attorney, SCOTT R. LASSAR, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The information in this case charges defendant with one count of knowingly violating the Clean Water Act, Title 33, United States Code, Section 1319(c)(2)(A), on at least 300 separate days.

3. Defendant has read the charge against it contained in the information, and that charge has been fully explained to defendant by its attorney.

4. Defendant fully understands the nature and elements of the crime with which it has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with knowingly violating the Clean Water Act, Title 33, United States Code, Section 1319(c)(2)(A).

Factual Basis

6. Defendant will plead guilty because defendant is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish defendant's guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning no later than on or about April 27, 2007, and continuing until on or about February 15, 2011, at Cicero, in the Northern District of Illinois,

BRAD FOOTE GEAR WORKS, INC.,

defendant herein, on at least 300 separate days, knowingly violated the requirements imposed in a pretreatment program approved under the Clean Water Act, Title 33, United States Code, Section 1342(b)(8), by introducing industrial process wastewater into the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") sewer system, namely: (a) spent acid wastewater; (b) spent alkaline wastewater; (c) industrial rinse waters; and (d) acidic solutions, oil and grease, and metal-bearing wastewater; without being in conformance with all terms and conditions of a valid Discharge Authorization permit issued by the MWRDGC; all in violation of Title 33, United States Code, Section 1319(c)(2)(A).

Jurisdictional Facts and Regulatory Background

Since well before November 1985, the MWRDGC operated multiple wastewater treatment plants in and around the City of Chicago that collected and treated wastewater generated by industrial, commercial, and residential sources located in Chicago, Illinois, and several of its surrounding suburbs. One of the seven MWRDGC plants was the Stickney Water Reclamation Plant (“SWRP”), which was located southwest of Chicago. The SWRP received wastewater from, among other places, wastewater sources located within Cicero, Illinois. Wastewater treated by the SWRP was discharged into the Chicago Sanitary and Ship Canal, a navigable water of the United States.

The SWRP’s discharge of wastewater to the Chicago Sanitary and Ship Canal was strictly regulated by the terms of a Clean Water Act permit, known as a National Pollutant Discharge Elimination System (“NPDES”) permit, that, among other things, regulated the type, quantity and concentration of pollutants that the SWRP was authorized to discharge to the Chicago Sanitary and Ship Canal. Both the NPDES permit for the SWRP and United States Environmental Protection Agency regulations at Title 40, Code of Federal Regulations, Part 403, required MWRDGC to develop, and submit to EPA for approval, a “pretreatment program” that regulated, among other things, the type, quantity and concentration of pollutants introduced by industrial facilities into the MWRDGC sewer system. On or about November 18, 1985, EPA approved the MWRDGC Sewer Use Ordinance (hereinafter “Ordinance”) as the MWRDGC’s pretreatment program. From time to time thereafter, the Ordinance was amended and

some of those amendments were approved as part of the MWRDGC's approved pretreatment program.

The designation "pH" is a scientific measurement of the relative acidic or caustic properties of a solution. The pH scale ranges from 0 to 14. A neutral substance has a pH of 7. A pH below 7 reflects an acidic solution and a pH above 7 reflects a caustic (or alkaline) solution. Each change in a whole pH unit represents a 10-times change in acidic or caustic strength. Thus, a pH of 3 is 10 times more acidic than a pH of 4 and 100 times more acidic than a pH of 5.

The approved Ordinance generally prohibited any source, including any industrial source, from introducing into the MWRDGC sewer system any wastewater that contained a pH of less than 5.0 or greater than 10.0, except that, if continuously monitored, discharges with a pH of up to 10.5 were permissible for not more than four hours in any single calendar day. The EPA pretreatment regulations at Title 40, Code of Federal Regulations, Section 403.5(b), independently prohibited any industrial source from introducing wastewater to the MWRDGC sewer system that exhibited a pH of less than 5.0. The approved Ordinance also required any source, including any industrial source, to report to the MWRDGC discharges of any process wastewater that exhibited a pH of less than 2.0 into the sewer systems under the jurisdiction of the MWRDGC, as such discharges were considered hazardous waste.

The approved Ordinance also prohibited any significant industrial user from introducing into the MWRDGC sewer system any industrial process wastewater into the sewer system under the jurisdiction of the MWRDGC unless the significant industrial

user obtained, and remained in conformance with all terms and conditions of, a valid Discharge Authorization permit issued by the MWRDGC. The Ordinance defined a “significant industrial user” to include, among other things, any company operating a nital etch line.

Offense Conduct

BRAD FOOTE was an Illinois corporation that owned and operated a gear manufacturing business located in Cicero, Illinois. Since in or about 1997, BRAD FOOTE’s business consisted of manufacturing precision gear parts for, among other things, wind turbines. As of at least 2004, BRAD FOOTE owned and operated a manufacturing facility located at 1309 South Cicero Avenue, in Cicero, Illinois (the “Brad Foote facility”).

The manufacturing operations at the Brad Foote facility included a nital etch line, in which finished parts were dipped into a series of tanks containing caustic cleaners, rinse waters, and nitric acid and hydrochloric acid solutions. The nitric and hydrochloric acid solutions, each contained in a separate 750 gallon tank, altered the metal surfaces of the gear parts in order to expose flaws such as burns and cracks on the metal surfaces. The caustic cleaner, an alkaline solution, was contained in a 2,400 gallon tank at the beginning of the line and a 750 gallon tank near the end of the line. The alkaline washed the gears before and after they were dipped in the acids. The three 750 gallon rinse tanks removed the acidic or caustic solution from each part before it was dipped into the next tank in the line. The etching acids and caustic cleaners of the nital etch line generally exhibited a pH of less than 2.0 (acid solutions) or greater than 10.5 (alkaline solutions).

Over time, the acidic solutions, alkaline solutions, and rinse waters would become “spent,” meaning that they lost their effectiveness and needed to be replaced.

The manufacturing operations at the Brad Foote facility also included a “Superfinish” process that smoothed and polished gear parts. As part of the Superfinish process, BRAD FOOTE employees inserted gear parts into a large tank resembling a barrel that contained chemicals and an abrasive sand-like material that worked to smooth and polish the parts. When the liquid chemical contents of the Superfinish process were spent, BRAD FOOTE employees pumped the waste chemicals into large 400-gallon totes. These waste chemicals included acidic solutions, oil and grease, and wastewater bearing metals such as aluminum, iron, and zinc.

Under the Ordinance, BRAD FOOTE’s operation of a nital etch line qualified the company as a “significant industrial user.” As a significant industrial user, BRAD FOOTE was required to have a valid Discharge Authorization permit to discharge to the MWRDGC’s sewer system any industrial process wastewater, including waste alkaline solution generated by the nital etch line, waste acid solution generated by the nital etch line, industrial rinse water from the nital etch line, and wastewater consisting of acidic solutions, oil and grease, and metal-bearing wastewater from the Superfinish process.

Beginning in or around 2004, Individual A and Individual B, both acting on behalf of BRAD FOOTE and intending to benefit BRAD FOOTE, established and implemented the procedure for the disposal of wastewater generated by the nital etch line at the Brad Foote facility. Individual A was the Chief Executive Officer of BRAD FOOTE, and Individual B was the manager in charge of the nital etch line. At that time, Individual B

and another employee of BRAD FOOTE, both at the direction of Individual A, constructed a piping system in order to allow BRAD FOOTE to discharge untreated industrial process wastewater, consisting of spent acid solutions, spent alkaline solutions, and rinse waters, from the tanks of the nital etch line into the MWRDGC sewer system. In or around 2007, BRAD FOOTE moved the nital etch line to a different building within the Brad Foote facility, and again constructed a piping system that allowed BRAD FOOTE to discharge its industrial process wastewater from the relocated nital etch line tanks into the MWRDGC sewer system.

After learning the process from Individual B, BRAD FOOTE employees followed the disposal process put in place by Individual B and trained other employees on how to dispose of wastewater. At least approximately once every three months, a BRAD FOOTE employee, acting on behalf of the company and intending to benefit the company, drained the industrial process wastewater from the tanks of the nital etch line, through the piping system, and directly into the MWRDGC sewer system, which in turn led to the SWRP.

During one approximately three month period, after the nital etch line was moved to a new building, BRAD FOOTE employees, acting on behalf of BRAD FOOTE, pumped the acidic and alkaline wastewater from the nital etch line into totes, which they later emptied into a courtyard drain at the Brad Foote facility. During this period, employees acting on behalf of the company also pumped the acidic and alkaline wastewater from the nital etch line directly into the courtyard drain through hoses. That courtyard drain led to the MWRDGC sewer system and ultimately the SWRP. After this

approximately three month period, Individual B, at the direction of Individual A, constructed a new piping system for the relocated nital etch line, and BRAD FOOTE employees, acting at the direction of the company, resumed discharging the line's acidic wastewater, alkaline wastewater, and rinse water directly into the sewer that led to the SWRP.

BRAD FOOTE employees drained the contents of the alkaline and acid tanks into the MWRDGC sewer system until at least October 2008 and May 2010, respectively. The discharged wastewater from these acid and alkaline tanks generally exhibited a pH of less than 2.0 or greater than 10.5. BRAD FOOTE drained untreated rinse water from the nital etch line continuously and on a daily basis from approximately 2004 until at least February 15, 2011, at which time the EPA executed a search warrant at the Brad Foote facility. None of the discharges were authorized by a Discharge Authorization permit issued by the MWRDGC. At no time did BRAD FOOTE apply for a Discharge Authorization permit for any of its industrial process wastewater, nor did anyone at the company notify the MWRDGC that BRAD FOOTE had discharged corrosive hazardous waste from the nital etch acid tanks into the sewer.

Management at BRAD FOOTE, including Individual A and Individual B, were aware that the company's discharges of industrial wastewater from the nital etch line were illegal, but the company continued to drain this wastewater into the sewer anyway. For example, in or around April 2005, a consultant advised Individual B in a written report that the discharges of industrial wastewater from the nital etch line were regulated by the MWRDGC. Neither Individual B nor anyone else at BRAD FOOTE contacted the

MWRDGC regarding these discharges, and BRAD FOOTE continued to discharge nital etch wastewater into the sewer.

In or around 2007, Individual B expressed concern about the illegality of the nital etch discharges to Individual A, and suggested that BRAD FOOTE contact the EPA for advice. In response, Individual A stated words to the effect of, “That’s not done. You don’t invite the EPA into your plant.” BRAD FOOTE continued to introduce nital etch wastewater into the MWRDGC sewer system. In October 2007, Individual A assumed a management position in BRAD FOOTE’s parent company. Individual A remained in that position until December 2010, when he left the company.

In or about August 2008, the plant manager of the Brad Foote facility sent an email to BRAD FOOTE’s Environmental Health and Safety (“EHS”) manager, stating:

Last night, I was watching the operator dump the alkaline rinse tank water into the sewer. He said that is standard practice with all of the NE rinse tanks. Probably should look at stopping this practice until we get a treatment system. Chances are that we have already dissolved most of the sewer system under our building. Maybe that is what was causing the Hofler pit to fill-up with ground water.

The EHS manager understood the plant manager’s reference to “NE” to mean the nital etch line. In a response email message, the EHS manager wrote:

Absolutely - stop this practice!!! NOTHING (but water) should be going into the sewer. . . . What treatment system is proposed? In the meantime, tell the operator to hold the alkaline rinse.

Individual B was copied on this email exchange. Despite this email exchange, BRAD FOOTE did not install any pretreatment system for the nital etch wastewater and continued to discharge that wastewater into the sewer.

On at least approximately 32 separate occasions between in or around 2004 and in or around May 2010, a BRAD FOOTE employee, acting on behalf of BRAD FOOTE and intending to benefit BRAD FOOTE, knowingly drained the waste nitric or hydrochloric acid solution from tanks on the nital etch line directly into the MWRDGC sewer system, which in turn led to the SWRP. At least 16 of those discharges occurred between in or around April 2007 and May 2010, including discharges on or about November 9, 2008; June 10, 2009; January 13, 2010; and May 3, 2010. These acid wastewater discharges, including the discharges on or about November 9, 2008; June 10, 2009; January 13, 2010; and May 3, 2010, exhibited a pH of less than 5.0, in violation of EPA pretreatment regulations and the Ordinance.

On at least approximately 16 separate occasions between in or around 2004 and on or about February 15, 2011, including on or about August 10, 2008, and October 13, 2008, BRAD FOOTE discharged spent alkaline wastewater from the nital etch line and into the MWRDGC sewer system, which led to the SWRP. These alkaline wastewater discharges, including the discharges on or about August 10, 2008, and October 13, 2008, exhibited a pH of more than 10.5, in violation of EPA pretreatment regulations and the Ordinance.

Between in or around 2004 and on or about February 15, 2011, BRAD FOOTE also drained untreated industrial rinse water from the nital etch line into the MWRDGC sewer system, which in turn led to the SWRP. These discharges occurred on at least 288 different days between April 27, 2007, and February 15, 2011.

In or about 2009, on at least two occasions, BRAD FOOTE employees, acting on behalf of BRAD FOOTE and intending to benefit BRAD FOOTE, emptied 400-gallon totes containing Superfinish wastewater into the MWRDGC sewer system, which led to the SWRP.

In total, BRAD FOOTE employees, acting on behalf of BRAD FOOTE and intending to benefit BRAD FOOTE, discharged industrial wastewater into the MWRDGC sewer system on at least 300 separate days.

The BRAD FOOTE employees who discharged the wastewater into the MWRDGC acted within their authority. At the time of each of these discharges from the nital etch line and the Superfinish process, BRAD FOOTE did not have a Discharge Authorization permit allowing discharge of this industrial wastewater. BRAD FOOTE knew that it did not have a valid Discharge Authorization permit and in fact never applied for a Discharge Authorization permit.

After EPA agents executed a search warrant at the Brad Foote facility, BRAD FOOTE began implementing protocols to ensure the proper discharge and disposal of industrial wastewater from the Brad Foote facility. Among other things, BRAD FOOTE hired an environmental consulting firm to assist the company in developing an environmental action plan and created two new managerial positions devoted to Environmental Health and Safety. Subsequently, BRAD FOOTE implemented a comprehensive environmental management work plan, which required its employees to identify and document air, water and waste regulatory requirements and to minimize environmental impact related to all Brad Foote facilities.

Maximum Statutory Penalties

7. Defendant understands that the charge to which it is pleading guilty carries the following statutory penalties:

a. A maximum term of probation of five years and a maximum fine of \$500,000, twice the gross gain or gross loss resulting from the offense, or \$50,000 per violation of the Clean Water Act, whichever is greater.

b. A statutory mandatory minimum fine of \$5,000 per day of violation.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$400 on the charge to which defendant has pled guilty, in addition to any other penalty imposed.

d. Therefore, the total maximum sentence is a term of probation of five years, a maximum fine of \$15,000,000, a minimum fine of \$1,500,000, and a special assessment totaling \$400.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements

regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Fine Amount Calculations.** Pursuant to Guideline §§ 8C2.1 and 8C2.10, the amount of the fine to be imposed is to be based upon the factors set forth at Title 18, United States Code, Sections 3553 and 3572.

c. Defendant and its attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw its plea on the basis of the Court's rejection of these calculations.

d. Both parties expressly acknowledge that this Agreement is not governed by Federal Rule of Criminal Procedure 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such

corrections, and defendant shall not have a right to withdraw its plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. This Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a fine of \$1,500,000. Other than the agreed amount of the fine, the parties agree that the Court remains free to impose the sentence it deems appropriate. The parties will also jointly recommend that such fine should be paid in three installments of \$500,000 within three years of the date of sentencing. If the Court accepts and imposes the agreed fine set forth, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court refuses to impose the agreed fine set forth herein, thereby rejecting this Agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this Agreement.

11. Based on the remedial measures taken by the defendant after February 15, 2011, the government agrees not to seek a court-imposed corporate compliance program as part of the sentence imposed in this case.

12. Defendant agrees to pay the special assessment of \$400 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Cooperation

13. Defendant agrees that it will fully and truthfully cooperate in any matter in which it is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil, or administrative proceeding.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 13 CR 760.

15. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

16. Defendant understands that by pleading guilty defendant surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that defendant has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives defendant's right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that defendant has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against it, and if it does, defendant would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and its attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict defendant unless,

after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and defendant's attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

c. **Appellate rights.** Defendant further understands it is waiving all appellate issues that might have been available if it had exercised its right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal its conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal its conviction, any pre-trial rulings by the Court, and any part of the sentence (or the

manner in which that sentence was determined), including any fine within the maximums provided by law, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives its right to challenge its conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) its attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this agreement or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

d. Defendant understands that by pleading guilty it is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to defendant, and the consequences of its waiver of those rights.

17. Defendant understands that it has the right to have the criminal charges in the information brought within five years of the last of the alleged acts constituting the specified violations. By signing this document, defendant knowingly waives any right to have the charges in the information brought against it within the period established by the statute of limitations. Defendant also knowingly waives any defense or claim based upon

the statute of limitations or upon the timeliness with which the charges in the information were brought.

Presentence Investigation Report/Post-Sentence Supervision

18. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against defendant, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

19. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of defendant's financial circumstances, including defendant's recent corporate income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

20. For the purpose of monitoring defendant's compliance with its obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to

defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

21. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

22. At the time of the entry of this Plea Agreement, defendant shall file with the Court copies of any corporate resolutions adopted by defendant's board of directors authorizing the entry of this Plea Agreement and compliance with its terms.

23. Defendant agrees that its obligations under this Plea Agreement survive any change in its corporate name, form, or status.

Conclusion

23. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

24. Defendant understands that its compliance with each part of this Agreement extends throughout the period of its sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event defendant violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not

subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

25. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

26. Defendant and its attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

27. Defendant acknowledges that it has read this Agreement and carefully reviewed each provision with its attorney. Defendant further acknowledges that it understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

DAVID W. FELL
Secretary and Authorized Representative of
BRAD FOOTE GEAR WORKS, INC.
Defendant

PETER M. FLANAGAN
Assistant U.S. Attorney

SCOTT R. LASSAR
Attorney for Defendant