

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO: <u>15-602</u>
v.	:	DATE FILED: <u>12-17-2015</u>
DAVID M. DUNHAM, JR.	:	VIOLATIONS:
RALPH TOMMASO	:	18 U.S.C. § 371 (conspiracy - 1 count)
	:	18 U.S.C. § 1001 (false statements – 2 counts)
	:	18 U.S.C. § 1343 (wire fraud – 68 counts)
	:	26 U.S.C. § 7206(1) (false tax filings – 28 counts)
	:	26 U.S.C. § 7212 (a) (obstruction of due administration of IRS – 1 count)
	:	18 U.S.C. § 1519 (obstruction of federal investigation – 1 count)
	:	Notice of Forfeiture

INDICTMENT

COUNT ONE

**18 U.S.C. § 371
Conspiracy**

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant DAVID M. DUNHAM, JR. was the owner and President of Smarter Fuel, Inc. (“Smarter Fuel”), a business located in Wind Gap, Pennsylvania. Part of Smarter Fuel’s business was to collect used cooking oil from restaurants and other food service locations and sometimes process it to remove hard particles, water, and other waste.

2. Defendant RALPH TOMMASO was the owner and Chief Executive Officer and President of Environmental Energy Recycling Corporation, LLC (“EERC”), a

business located in Allentown, Pennsylvania, which also collected used cooking oil from sources similar to Smarter Fuel's sources, and sometimes processed it to remove hard particles, water, and other waste.

3. The product that Smarter Fuel and EERC made was a cleaned used cooking oil. As defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO knew, except in a few limited circumstances, they did not sell their cleaned used cooking oil for use as a final fuel.

4. No later than 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO began coordinating the business activities of Smarter Fuel and EERC. In 2011, defendants DUNHAM and TOMMASO merged Smarter Fuel and EERC under the umbrella of a new organization, Greenworks Holdings, LLC. ("Greenworks"), which established an office in Bethlehem, Pennsylvania. After the merger, while the names Smarter Fuel and EERC still existed, defendants DUNHAM and TOMMASO coordinated and jointly oversaw and controlled their operations.

THE EPA'S RFS-2 PROGRAM & RINs (RENEWABLE IDENTIFICATION NUMBERS)

5. The Energy Independence and Security Act of 2007 (the Act) required the U.S. Environmental Protection Agency (EPA) and the U.S. Internal Revenue Service (IRS) to encourage the production and use of renewable (non-fossil) fuel in the United States. Specifically, the Act directed these agencies to write regulations and administer tax credits to ensure an increase in the amount of such fuel through a taxpayer-funded incentive program and a mandate that applied to petroleum refiners and importers.

6. The Act made the EPA responsible for implementing regulations to ensure that the fuel supply sold in the United States during a given year contained the mandated volume of renewable fuels. In order to carry out the Act's mandates, the EPA established a program, the

Renewable Fuels Standard program or RFS-2, which took effect on approximately July 1, 2010. The RFS-2 program was created to encourage petroleum refiners and importers to introduce renewable fuels into the national fuel mix.

7. Under the RFS-2 program, petroleum refiners and importers had responsibility to ensure that a specified volume of renewable fuel was used as a fuel in the United States each year. Petroleum refiners and importers, who were known as “obligated parties,” had a Renewable Volume Obligation (RVO) which represented an amount of renewable fuel that they were required to introduce into the non-renewable (fossil) fuel supply each year. The RVO for an obligated party was based on its annual production and/or imports of gasoline and diesel fuel. Obligated parties and renewable fuel producers were required to register with the EPA.

8. In order to track and boost renewable fuel production and obligated parties’ compliance with the RFS-2 program, the EPA created a system of credits known as “Renewable Identification Numbers” or “RINs.” A RIN was based on the volume of renewable fuel produced, and at the time of registration, EPA informed the renewable fuel producer how many RINs it could generate per gallon of qualified fuel.

9. Under the RFS-2 program, RINs were the tools used by those who were obligated to introduce more renewable fuel into the U.S. market, that is, obligated parties, to show the EPA that they had met their obligations. In order to demonstrate to the EPA that they had met their annual RVO, obligated parties were required to acquire and then “retire,” or use by reporting them to the EPA and taking them off the market, a designated number of RINs that they had acquired or generated each year.

10. Obligated parties obtained RINs in a number of ways, including by: (1) producing renewable fuel themselves (which generated RINs), (2) importing renewable fuel

produced by approved foreign producers (which generated RINs), (3) purchasing renewable fuel (with associated RINs) from approved domestic producers, or (4) purchasing RINs without the underlying renewable fuel.

11. The annual RIN retirement obligation caused a market to develop for RINs. Thousands of RIN transactions were electronically recorded with EPA every week. Hundreds of millions of dollars' worth of RINs were exchanged every year. There were different classifications of RINs, based on the type of renewable fuel produced, and the value of each RIN type varied. For the type of RIN the defendants in this case generated, called the D5 RIN, the price of a single RIN varied between approximately \$.50 and \$1.27 per RIN.

12. An obligated party that did not demonstrate its compliance with the RFS-2 requirements by retiring and reporting to the EPA a specified number of RINs each year could face substantial civil financial penalties.

13. Under the RFS-2 program, qualified producers and importers of renewable fuels could generate RINs based on the amount of renewable fuel they produced.

14. The validity of a RIN was based on whether it had been generated and separated from its corresponding volume of renewable fuel in a manner that was in compliance with the RFS-2 program rules.

15. Renewable fuel producers could not validly generate RINs for fuel that was not designated and intended for use as a transportation fuel, heating oil, or jet fuel.

16. Before a business was able to generate RINs, it was required to apply to EPA as a RIN generator. An applicant was required to submit to the EPA, among other information and documentation, an independent third-party Engineering Review, which was a written report and verification of information such as the description of the renewable fuel that the

facility intended to produce, the description of the facility's renewable fuel production process, all feedstocks (raw materials) the facility was capable of using, the waste collection plan, and the facility's actual peak production capacity. "Actual peak capacity" was defined as "105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis" or, "[f]or facilities that commenced construction prior to December 19, 2007, the actual peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation."

17. The Engineering Review was required to be based upon a site visit and review of relevant documents, and was to describe how the independent third-party engineer evaluated and verified the accuracy of the information provided, state whether the independent third party agreed with the information provided, and identify any exceptions between the independent third-party engineer's findings and the information provided.

18. Information regarding actual peak production capacity, and whether it had been properly verified by an independent third-party engineer, was important to both the EPA and to potential RIN purchasers because it was relevant to determining RIN validity. For example, if a business was registered with the EPA as having the capacity to generate 2 million gallons of renewable fuel in a year, but it later claimed to have produced 6 million gallons of renewable fuel in a year, and it generated RINs on those purported 6 million gallons, then this information could raise suspicions at the EPA and among RIN purchasers that the business was generating fraudulent RINs.

19. Businesses buying and selling RINs were required to use the EPA Moderated Transaction System (EMTS). In ETMS, all RIN generation events and all RIN

transactions were recorded electronically, using an on-line database. Each RIN generating facility was assigned a unique production facility identification number. In order to generate RINs, an individual was required to use the business's EMTS log-in and enter details about the type of product produced, including volume, and the date and location of production.

20. Once RINs were generated on a volume of renewable fuel, they remained "attached" to that fuel, and thus if the fuel was sold to another business, the RINs were to go to the purchaser of the fuel. Under certain limited circumstances, the RINs could be "separated" from the volume of renewable fuel for which they had been generated, and the fuel and the RINs could be bought and sold separately. One way that a business could validly separate RINs from fuel was if the business blended the end product with diesel to produce a transportation fuel, heating oil, or jet fuel. Another way that a business could validly separate RINs was if it produced a volume of "neat" renewable fuel, it designated the neat renewable fuel as transportation fuel, heating oil, or jet fuel, and the neat renewable fuel was used without further blending, in its designated form, as a transportation fuel, heating oil, or jet fuel. Neat renewable fuel is a renewable fuel to which 1% or less of gasoline or diesel fuel has been added.

21. The sale of RINs, whether sold attached to a volume of fuel, or separated, was required to be entered into EMTS each time the RINs were transferred. When an obligated party used a batch of RINs to meet its annual RVO, it recorded the RIN retirement in EMTS. The EPA was therefore able to use the EMTS system to trace the entire "lifecycle" of a batch of RINs, from generation to retirement.

22. For a renewable fuel producer to validly generate and separate RINs, the RFS-2 program rules required the following:

- a. The producer had to be registered as a RIN generator with the EPA;

b. Any end product on which RINs were generated had to be made from the ingredients described in the producer's EPA registration materials, had to go through the processing that was described in the producer's EPA registration materials, and the processing had to take place at the specific facility location that the producer had registered with the EPA;

c. The end product on which RINs were generated must have been designated and intended for use, without any further blending, as a transportation fuel, heating oil, or jet fuel in the domestic market. No other intended use qualified for RIN generation.

23. The RFS-2 program had specific recordkeeping requirements. One of the reasons for the recordkeeping requirements was so that parties with an RVO could adequately demonstrate their compliance with the program. Another reason was to avoid "double RINning," where more than one RIN was claimed to have been generated based on the same volume of material. Each volume of qualifying renewable fuel could only be used to generate RINs once.

24. The RFS-2 program was a "buyer beware" program. The EPA did not validate or vouch for the validity of RINs. The obligation to determine RIN validity was on the buyer. If an obligated party used particular RINs to satisfy its annual RIN retirement obligation, and those RINs were later deemed invalid for any reason, such as having been fraudulently generated, the obligated party bore the financial consequences, even if the obligated party had purchased the RINs with no knowledge of their invalidity. The obligated party could not use the invalid RINs to meet its RVO. The obligated party was required to purchase and retire additional valid RINs to replace the invalid RINs, often at a much higher price because the supply of comparable RINs was more limited as time passed.

25. In 2010, defendant DAVID M. DUNHAM, JR. applied for Smarter Fuel to be admitted to the RFS-2 program, claiming that Smarter Fuel made heating oil and transportation

fuel; in or about July 2010, based on defendant DUNHAM's application, EPA admitted Smarter Fuel to the RFS-2 program, registering Smarter Fuel as a RIN generator.

26. In 2010, defendant RALPH TOMMASO applied for EERC to be admitted to the RFS-2 program, claiming that EERC made heating oil and transportation fuel; in or about August 2010, based on defendant TOMMASO's application, EPA admitted EERC to the RFS-2 program, registering EERC as a RIN generator.

THE U.S. TREASURY DEPARTMENT TAX CREDIT PROGRAM

27. The Energy Independence and Security Act of 2007 also required the U.S. Internal Revenue Service (IRS) to encourage the production and use of renewable fuel in the United States. Specifically, this Act directed the IRS to write regulations and administer tax credits to ensure an increase in the amount of such fuel through a taxpayer-funded incentive program and a mandate that applied to petroleum refiners and importers.

28. In 2009, retroactively in 2010, and in 2011, blenders could apply for fully refundable biodiesel mixture tax credits if they blended renewable fuel with petroleum-based diesel and then sold the resulting mixture for use as a fuel. If blenders complied with IRS rules and submitted appropriate "Certificates for Biodiesel," they could receive a one dollar per gallon tax credit, if the resulting mixture met the ASTM (American Society for Testing and Materials) standards required by IRS regulations, or 50 cents per gallon, if the resulting mixture did not meet the ASTM standards but otherwise met the requirements of the program. These credits were paid by the U.S. Department of Treasury. In the biodiesel industry, this program was known as the "blending credit" and "excise tax credit." Thus, some biodiesel buyers were willing to pay a premium for the renewable fuel, because they could earn the one dollar per gallon credit by blending it with petroleum diesel.

29. Under IRS rules, blenders could qualify for the excise tax credit by mixing a very small amount of petroleum diesel with renewable fuel. After this minimal blending was done, the resulting product was known as “B99.9” or “B99,” which meant that it was 99.9% biodiesel and 0.1% petroleum diesel.

30. It was illegal to claim a blender’s tax credit for biodiesel unless the fuel was actually produced, blended and sold in compliance with IRS rules. In particular, it was illegal to claim the credit without a true and accurate Certificate for Biodiesel and it was illegal to claim the credit more than once for any given volume of renewable fuel.

31. In or about 2006 and 2007, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASSO each applied for, and received, qualification as a producer in the IRS fuel excise tax program which enabled each to claim excise tax credits based on the gallons of qualified fuel produced and sold.

32. On or about September 6, 2006, defendant DAVID M. DUNHAM, JR. informed his accountant, by e-mail, “For the purpose of qualifying for the fuel tax credit I kept my fuel sales very simple. I told IRS that anything I sold was directly to the end user. I told them that I wasn’t getting into any wholesale or nontaxed sales. The inspector seemed to buy it and although I haven’t gotten my registration number yet, she said I would be getting it soon.”

33. In or about 2009, defendant DAVID M. DUNHAM Jr. falsely claimed the one dollar per gallon excise tax credit and was paid a total of approximately \$1.8 million from the U.S. Treasury on these claims.

34. In or about 2010 and 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASSO falsely claimed the 50 cents per gallon excise tax credit and were paid a combined total of \$18 million from the U.S. Treasury on these claims.

THE U.S. DEPARTMENT OF AGRICULTURE ADVANCED BIOFUEL PAYMENT PROGRAM

35. Section 9005 of the Food, Conservation, and Energy Act of 2008 authorized the establishment of the U.S. Department of Agriculture (USDA) Advanced Biofuel Payment Program. The purpose of the Advanced Biofuel Payment Program was to support and expand production of advanced biofuels by providing payments to eligible producers. To accomplish that goal, the program provided payments to producers of advanced biofuels based on the amount of fuel they produced and sold.

36. In order to be eligible for payments under the Advanced Biofuel Payment Program, producers had to apply and be accepted into the program. A producer could only apply for payments for advanced biofuel that the company both produced and sold. These requirements were stated on the payment request form that producers completed. The “sale” requirement meant that any gallons of advanced biofuels that were in the producer’s storage or used internally by the producer itself, and not sold, did not qualify for payments under the program.

37. The Advanced Biofuel Payment Program required that the advanced biofuel be a final product that had been sold as an advanced biofuel through an arm’s length transaction to a third party. Sales of product to buyers who further processed the product, such as feedstock sales to biodiesel producers, did not qualify for program payments because the product was not sold as a final product.

38. Eligible advanced biofuels included biofuel derived from waste material such as vegetative waste material. They also included diesel-equivalent fuel derived from renewable biomass.

39. The Advanced Biofuel Payment Program operated on a fiscal year basis, from October 1 to September 30 of the following year. Applications for payments under the program were due on a quarterly basis.

40. The Advanced Biofuel Payment Program had a set amount of funding for each fiscal year. The amount of payments to eligible producers depended on a number of factors: (a) the number of eligible participating producers who submitted payment requests; (b) the amount of advanced biofuels being produced; and (c) the amount of funds available.

41. The Advanced Biofuel Payment Program provided for two tiers of payments to participants. First, there was a base payment. The base payment was made to participants on a quarterly basis. The amount of the base payment depended on the total amount of funds available and the total amount of eligible fuel being produced and sold by all program participants.

42. Second, there were incremental payments. The incremental payments were calculated at the end of the fiscal year, based upon documentation of increased production of eligible advanced biofuel production over the previous fiscal year. In order to receive an incremental payment, a company had meet all of the following criteria: (a) the facility must have produced an eligible advanced biofuel in the year preceding the fiscal year in which payment was sought; (b) the facility must have had fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels in the preceding year; and (c) the quantity of eligible advanced biofuels in the fiscal year in which payment is sought must be greater than the actual quantity of eligible advanced biofuel produced in the preceding year.

43. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO, through Smarter Fuel and EERC, applied for and received millions of dollars in payments from the Advanced Biofuel Payment Program for the years 2010 through 2012.

THE CONSPIRACY

44. From in or about July 2010 to in or about July 2012, at Wind Gap, Allentown, and Bethlehem, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendants

DAVID M. DUNHAM, JR. and RALPH TOMMASO

conspired and agreed, together and with others known and unknown to the grand jury:

a. to commit an offense against the United States, that is, having devised and intended to devise a scheme to defraud RIN purchasers, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce, a writing, sign, signal, picture, and sound for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343;

b. to defraud the United States by impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment and payment of excise tax credits;

c. to defraud the United States by requesting USDA Advanced Biofuel Payment Program payments for product and sales that they knew did not qualify, and then interfering with the USDA's administration of the program by concealing and covering up their non-qualified product and sales.

MANNER AND MEANS

45. It was part of the conspiracy that defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO stole tens of millions of dollars by making false and inflated claims for government subsidies and credits, and did so by:

a. generating and selling fraudulent RINs that were created in connection with material they did not produce, material that was not intended for use as a fuel, and material that was not intended to be used as a fuel without further blending, and through these means they defrauded the purchasers of the bogus RINs out of tens of millions of dollars;

b. claiming bogus tax credits for sales of non-qualified material such as material they did not produce or even possess, water waste, material that had not been blended with diesel, and material that was not sold as a final fuel, and through these means they defrauded the Internal Revenue Service out of nearly \$20 million dollars;

c. making false claims for payments from the USDA based on non-qualified sales such as sales of material that was not intended and sold for use as a final fuel, and through such means defrauded the USDA out of millions of dollars.

It was further a part of the conspiracy that:

46. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO, knowing that they did not sell their cleaned used cooking oil as a final fuel, fraudulently applied for and received government subsidies for every gallon of cleaned used cooking oil that they produced, plus more.

47. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO received tens of millions of dollars in fraudulently generated government subsidies each year and became completely reliant on the income from those fraudulently generated subsidies to support

their business and their lifestyles. Defendants DUNHAM and TOMMASO lied to and compartmentalized their employees, to keep them from gaining a full and complete understanding of their business and the true reasons for the actions the defendants directed them to take. The defendants also lied to their accountants, consultants, and others concerning the nature of their business, their product, and their customers, all in an effort to cover up their scheme to fraudulently obtain government subsidies.

Defendants fraudulently claimed subsidies for material they did not produce

48. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO made and caused to be made claims for government subsidies based on vastly inflated claims of production. The following table with approximate/rounded figures illustrates the extent of the inflation for 2010:

	Smarter Fuel	EERC
Actual gallons of product produced and sold for the entire calendar year 2010	3 million gallons	2.5 million gallons
IRS PROGRAM		
Gallons claimed to have been produced and sold and for what time period	9.1 million gallons in entire calendar year	8.5 million gallons in entire calendar year
Funds received	\$4.5 million	\$4.2 million
EPA PROGRAM		
Gallons claimed to have been produced and sold for what time period	4.6 million gallons in 6 months	4.5 million gallons in 5 months
Value of RINs (average)	\$4.2 million	\$4.2 million
USDA PROGRAM		
Gallons claimed to have been produced and sold	5.5 million gallons in FY 2010	3 million gallons in FY 2010
Funds received	\$4.8 million	\$1.5 million
TOTAL VALUE OF 2010 SUBSIDIES	\$13.7 million	\$10 million

49. While the defendants' facilities had never produced close to 8 million gallons of product in one year prior to 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO each claimed, when registering for the RFS-2 program in the summer of 2010, that

their facilities' actual peak production capacity was over 8 million gallons per year. In fact, the defendants produced only approximately 2.5 to 3 million gallons of material each in 2010. The defendants made these false claims to the EPA so that they would not be limited to their true actual peak production capacities when they later generated fraudulent RINs based on what they would claim they had produced.

50. At around the same time that they registered for the RFS-2 program to generate RINs, defendants DAVID M. DUNHAM and RALPH TOMMASO engaged in paper transactions with Person No. 1 and his company, Company No. 1, whose identities are known to the grand jury, for approximately 8 million gallons of a glycerin material that Company No. 1 had brokered between a Canadian supplier and a buyer in Washington state. Defendants DUNHAM and TOMMASO arranged with Person No. 1 to "purchase" the material from Company No. 1 so that they could then use the Company No. 1 invoices as a basis to generate fraudulent RINs. The defendants did not expect to produce, or even take actual possession of, the material, and they did not do so.

51. Knowing that the generation of RINs on millions of gallons of product they falsely claimed to produce in a short period of time was out of line with even their inflated annual production capacity as set forth in their RFS-2 registration materials, and because the defendants did not want to raise alarms at the EPA by generating RINs on the millions of gallons involved in the transactions with Company No. 1 all at once, they asked Person No. 1 to break the transactions down and invoice them in smaller amounts, which Person No. 1 then did.

52. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO had Person No. 1 divide the transactions between their two companies, Smarter Fuel and EERC.

53. Beginning in approximately September 2010, at the defendants' direction,

Person No. 1 e-mailed to defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO numerous invoices for their purchase of the Company No. 1 “ghost product.”

54. Beginning in approximately September 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO generated millions of fraudulent RINs based on the Company No. 1 “ghost product,” which they never took possession of, and did not produce.

55. The batches of fraudulent RINs that defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO generated on the “ghost product” transactions with Company No. 1 were ultimately unwittingly purchased by obligated parties and retired to satisfy those obligated parties’ annual RVOs.

56. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO falsely claimed excise tax credits for the Company No. 1 “ghost product” when, as they knew, this product was never in their possession, and their sole connection to this product was their generation of fraudulent paperwork intended to falsely represent that defendants DUNHAM and TOMMASO were entitled to claim government subsidies.

Defendants fraudulently generated tax credits on their waste water

57. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed excise tax credits for the wastewater that was the byproduct of their processes to clean debris and pollutants from used cooking oil, when they knew wastewater did not qualify for such credits.

Defendants fraudulently claimed subsidies on product that was not qualified

58. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO also made fraudulent claims for government subsidies on the product they did produce. The product that the defendants produced was a cleaned used cooking oil, and was not sold as a final fuel. Nonetheless, the defendants claimed subsidies under each of the three government programs even

though they did not sell their product as a qualified fuel under any of those programs.

59. Smarter Fuel and EERC sold millions of gallons of their products as a feedstock, or ingredient, in their buyers' own product. For example, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO sold millions of gallons of their product to biodiesel producers, who used their cleaned cooking oil in the process of making biodiesel. Knowing that such feedstock sales did not qualify for RINs, tax credits, or USDA payments, defendants DUNHAM and TOMMASO fraudulently generated, separated, and sold RINs for their feedstock sales, and fraudulently claimed tax credits and USDA payments for such sales.

60. The feedstock sales upon which defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO fraudulently generated RINs and claimed tax credits and USDA payments included their sales to Companies No. 2 and 3, whose identities are known to the grand jury, among others.

61. From 2010 through 2012, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO generated and separated over 5 million fraudulent RINs based on their feedstock sales to customers who made biodiesel and other renewable fuels.

62. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed government subsidies for numerous other sales of material that did not qualify for the subsidies because they did not sell the product for use as a final fuel product. For example, the defendants claimed subsidies on sales of their product to other feedstock suppliers and many of the purchasers of their product blended the product with other materials before using it, and therefore the defendants could not claim the subsidies on it.

63. The purchasers of the Smarter Fuel and EERC product that blended it with other materials, or sold it to other buyers that blended it with other materials, before using it or

selling it to others, included Companies Nos. 4 and 5, whose identities are known to the grand jury. Beginning in approximately September 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO generated hundreds of thousands of fraudulent RINs on behalf of both Smarter Fuel and EERC that were based on the non-qualified sales to Companies Nos. 4 and 5.

64. With many of defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO's non-qualified sales, the defendants either claimed two sets of the same government subsidies on the same material (with RINs this is sometimes called "double-RINning"), or knew that their buyers were also claiming the same government subsidies on the same material. In some instances, the defendants even arranged with their customer to split the income from the duplicate subsidies claimed by that customer.

65. In July 2011, the EPA clarified in an announcement called an "Enviroflash" that the type of product that defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed to produce no longer qualified for the generation of RINs as a heating oil. Because the defendants did not sell their product as a jet fuel, the EPA's announcement meant that the only basis for which the defendants could generate valid RINs was if they sold their product as a transportation fuel. However, as they then knew, few to none of their buyers purchased their product as a transportation fuel.

66. Knowing that they did not qualify for RINs for sales of their product as a heating oil after the publication of the Enviroflash, and rather than retiring all RINs they possessed that had been generated on the basis of purported heating oil sales, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO continued to separate their RINS by claiming, in the EMTS system, that the basis for separation was that they had designated the product for use without further blending as a heating oil, and that the product was used in that manner.

67. The batches of fraudulent RINs that defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO generated on non-qualified sales of their product were ultimately unwittingly purchased by obligated parties and retired to satisfy those obligated parties' annual RVOs.

68. Defendants DAVID M. DUNHAM and RALPH TOMMASO claimed excise tax credits for product that they pumped from one truck or rail car to another, without any processing, when they knew this product did not qualify for such credits.

69. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed excise tax credits for product that they falsely claimed to have blended with diesel, when they knew this product did not qualify for such credits.

70. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed excise tax credits for product that they falsely claimed to have sold to end users of such fuel, when they knew this product did not qualify for such credits.

Defendants concealed and covered up their fraudulently generated government subsidies

71. Knowing that they had fraudulently generated RINs, tax credits, and USDA payments for their feedstock sales and other unqualified transactions, and claimed tax credits for waste water, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO concealed and attempted to conceal the true nature of their sales and transactions from RIN purchasers, RIN reviewers, IRS examiners and agents, and USDA employees.

72. Toward the end of 2011, the RIN market froze as RIN buyers and obligated parties learned about criminal investigations of RIN producers. RIN buyers and obligated parties became more intensely concerned about the validity of RINs they had already purchased, and RINs they might purchase in the future. Because of these concerns, buyers temporarily slowed or

stopped purchasing RINs. It became very difficult for defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO, and many others, to sell RINs. Because of the public exposure of the criminal RIN fraud cases, and because obligated parties understood that they might have to pay civil fines and buy replacement RINs if they purchased fraudulent RINs, RIN purchasers took stock of their procedures to determine RIN validity.

73. In December 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO arranged for Company No. 6, whose identity is known to the grand jury, to purchase 1 million RINs for approximately \$780,000. Included among the 1 million RINs were tens of thousands of fraudulently generated RINs. When Company No. 6 conducted due diligence into the validity of the defendants' RINs, defendant TOMMASO provided and caused to be provided to Company No. 6 false, altered, and redacted documents to conceal his fraudulently generated RINs.

74. While Company No. 6 was not aware of the full extent of defendant RALPH TOMMASO's deceptions, it did cancel the entire RIN transaction after defendant TOMMASO failed to provide adequate documentation of a single qualified fuel sale. Company No. 6 expressed dissatisfaction with the product description on EERC's invoices, bills of lading, and weigh tickets, where the product was described as merely "UCO" or used cooking oil, and did not indicate any sale as a fuel. This cancelled RIN sale became a very "expensive lesson" for defendant TOMMASO and defendant DAVID M. DUNHAM, JR.

75. At around the same time as the cancelled RIN sale, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO orchestrated an effort to have their employees go back through the documentation of their past transactions to falsely add product descriptions indicating that the product at issue in those prior transactions had been sold as a final fuel, even though it had not. In most instances, these altered and fraudulent invoices and bills of lading were not then

re-sent to the customers. Instead, defendants DUNHAM and TOMMASO kept the altered records on hand to show third party reviewers in the future.

76. In subsequent RIN reviews by third parties, as well as during an IRS examination and a USDA review, defendants DAVID M. DUNHAM JR. and RALPH TOMMASO provided and caused to be provided to the examiners and reviewers false information about their product and customers, and altered records, such as records in which their biofuel customers' names had been redacted or falsely changed to other customer names to conceal that the defendants' product had been sold as a feedstock and altered records in which the product descriptions had been falsified to describe their product as a final fuel. The defendants did so in order to conceal the fact that they had made government subsidy claims on unqualified product.

77. In at least one instance, defendant RALPH TOMMASO directed an employee to go off and alter customer names while examiners were on site conducting their review, and once the employee did as directed, defendant TOMMASO then caused the doctored records to be provided to the on-site examiners.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its objects, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. In or around August 2010, when he submitted his Engineering Review to EPA to finalize his RFS-2 registration and entry into the program in August 2010, defendant RALPH TOMMASO falsely claimed to the EPA that EERC's actual peak production capacity was 8.803 million gallons per year, when as he then knew, EERC had not actually produced anything close to 8.803 million gallons of product in a year.

2. In or around November 2010, when he submitted his Engineering Review to EPA to finalize his RFS-2 registration and entry into the program in July 2010, defendant DAVID M. DUNHAM, JR. falsely claimed to the EPA that Smarter Fuel’s actual peak production capacity was 10 million gallons per year, when as he then knew, Smarter Fuel had not actually produced anything close to 10 million gallons of product in a year.

EMTS Entries

On or about the following dates, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO made, and caused to be made, the following entries in the EPA’s EMTS system to generate, and separate, fraudulent RINs, all of which they sold and were ultimately retired by an obligated party to meet its RVO:

Overt Act No.	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
3.	9/27/2010	Smarter Fuel	RIN generation	HGE015PO	80,000
4.	9/27/2010	Smarter Fuel	RIN separation	HGE015PO	80,000
5.	9/27/2010	Smarter Fuel	RIN generation	HGE016PO	80,000
6.	9/27/2010	Smarter Fuel	RIN separation	HGE016PO	80,000
7.	11/4/2010	Smarter Fuel	RIN generation	INV1445	280,000
8.	11/4/2010	Smarter Fuel	RIN separation	INV1445	280,000
9.	11/12/2010	Smarter Fuel	RIN generation	INV1453	280,000
10.	11/12/2010	Smarter Fuel	RIN separation	INV1453	280,000
11.	9/22/2010	EERC	RIN generation	130	148,176
12.	9/22/2010	EERC	RIN separation	130	148,176
13.	9/27/2010	EERC	RIN generation	134	293,600

Overt Act No.	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
14.	9/27/2010	EERC	RIN separation	134	220,200
15.	9/27/2010	EERC	RIN separation	134	73,400
16.	10/5/2010	EERC	RIN generation	136	294,400
17.	10/5/2010	EERC	RIN separation	136	294,400
18.	10/18/2010	EERC	RIN generation	137	294,000
19.	10/18/2010	EERC	RIN separation	137	29,400
20.	10/18/2010	EERC	RIN separation	137	264,600
21.	8/12/2011	Smarter Fuel	RIN generation	INV1653	28,946
22.	8/16/2011	Smarter Fuel	RIN separation	INV1653	28,946
23.	10/25/2011	Smarter Fuel	RIN generation	INV1672	47,688
24.	12/9/2011	Smarter Fuel	RIN separation	INV1672	47,688
25.	11/3/2011	Smarter Fuel	RIN generation	INV1678	50,133
26.	12/9/2011	Smarter Fuel	RIN separation	INV1678	50,133
27.	10/13/2011	EERC	RIN generation	SF1668	20,450
28.	12/2/2011	EERC	RIN separation	SF1668	20,450
29.	10/13/2011	Smarter Fuel	RIN generation	INV1668	98,846
30.	12/9/2011	Smarter Fuel	RIN separation	INV1668	98,846
31.	10/25/2011	EERC	RIN generation	SF INV 1673	18,517
32.	12/2/2011	EERC	RIN separation	SF INV 1673	18,517
33.	10/25/2011	Smarter Fuel	RIN generation	INV1673	39,598
34.	12/9/2011	Smarter Fuel	RIN separation	INV1673	39,598
35.	2/15/2012	EERC	RIN generation	EERC0053	101,886
36.	6/22/2012	EERC	RIN separation	EERC0053	101,886

Overt Act No.	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
37.	11/3/2011	Smarter Fuel	RIN generation	INV1677	237,050
38.	12/9/2011	Smarter Fuel	RIN separation	INV1677	237,050
39.	12/5/2011	Smarter Fuel	RIN generation	INV1683	58,496
40.	12/9/2011	Smarter Fuel	RIN separation	INV1683	58,496

Company No. 1 and RINs

41. In or about September 2010, defendant DAVID M. DUNHAM, JR. and RALPH TOMMASO agreed to engage in paper sales transactions with Person No. 1 on behalf of Company No. 1 for approximately 8 million gallons of a glycerin product supplied by a Canadian company and being shipped to a buyer in Washington state, and not ever going to the Smarter Fuel or EERC facility, with the intent of generating RINs on those paper sales. As part of the agreement, defendants DUNHAM and TOMMASO would split the proceeds of the fraudulent RINs they generated on these transactions with Person No. 1.

42. Beginning in approximately September 2010, Person No. 1 e-mailed, and caused to be e-mailed, numerous invoices for the “ghost product” (Canadian glycerin) to defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO.

43. Beginning in approximately September 2010, defendants DAVID M. DUNHAM and RALPH TOMMASO generated, separated, and sold hundreds of thousands of RINs based on the paper transactions they had engaged in with Person No. 1 for the “ghost product.”

44. On or about September 27, 2010, defendant RALPH TOMMASO e-mailed defendant DAVID M. DUNHAM, JR. stating, “When can [Person No. 1] send us the p.o. for the canadian feedstock?”

45. On or about October 1, 2010, defendant RALPH TOMMASO attempted to increase EERC’s annual production capacity as reported to the EPA from an already inflated 8 million gallons to 20 million gallons, so that when he generated RINs on the paper transactions with Company No. 1 for the “ghost product” (that is, when he generated fraudulent RINs on a large volume of product that EERC did not produce), he would not exceed his stated production capacity or raise alarms with EPA or RIN purchasers.

46. On or about October 1, 2010, defendant RALPH TOMMASO sent an e-mail to defendant DAVID M. DUNHAM, JR. stating, “capacity doubled,” and forwarding an e-mail from the EPA and an attachment showing defendant TOMMASO’s attempt to increase his registered maximum production capacity to 20 million gallons per year.

47. On or about October 1, 2010, DAVID M. DUNHAM, JR. e-mailed defendant RALPH TOMMASO in response to the “capacity doubled” e-mail, stating, “F[---]ing right let’s sell some runs [sic]. I’ll fill you in on the most recent sale in a bit.”

48. On or about October 1, 2010, defendant RALPH TOMMASO e-mailed DAVID M. DUNHAM, JR. “it takes a week. so a week from monday, we will be selling 615k rins per week. I need a po from [Person No. 1].”

49. On or about October 5, 2010, defendant DAVID M. DUNHAM, JR. e-mailed his bookkeeper stating, “This is another big one that we’re going to have to break up so we don’t go over our production ability,” and forwarding invoice 23 from Company No. 1 for a total of \$315,000.

50. On or about October 29, 2010, defendant DAVID M. DUNHAM, JR. e-mailed Person No. 1 about the accounting between them, including money defendants DUNHAM and RALPH TOMMASO owed Person No. 1 for RINs generated on the “ghost product.” Defendant DUNHAM stated, “I don’t want to talk about this while other people are in the office. I’ll get you a recap of what I’ve got going on and we’ll total it and figure out how to flow the money. [. . .] I have to go through my RIN folder and recap what we’ve been generating for you [. . ..]”

51. On or about November 4, 2010, defendant DAVID M. DUNHAM, JR. e-mailed Person No. 1 stating, “holy sh[--], I just realized I’ve got over 2 million gallons of tolling that hasn’t gotten RINs generated on it yet. I’ll get on that...”

52. On or about November 4, 2010, Person No. 1 responded to defendant DAVID M. DUNHAM, JR.’s November 4th e-mail stating, “Yeah... I’ve been sending you 2 million gallons a month for a while:-)”

53. On or about November 9, 2010, Person No. 1 e-mailed defendant RALPH TOMMASO and copied defendant DAVID M. DUNHAM, JR. stating, “Ralph, Dave wanted me to send our tolling gallons for this week to you for generation and processing. Let me know if you have any questions.”

54. On or about November 10, 2010, Person No. 1 e-mailed defendant DAVID M. DUNHAM, JR. about “plan” stating, “Dave, It sounds like you and Ralph have a lot going on up north and business is growing. This Norway thing isnt going as planned, but I think we can still pull it off with some profit. Almost 2 months ago I started buying a sh[--] ton of material (\$2 million worth) to move and help finance this Norway project through RINS with the understanding we were going to split the rin money once the Norway thing cleared + split up the profit from the

Norway deal (if any left). Now everything looks a little off. Whats the plan for the RIN money if the Norway thing doesnt work out? Am I stuck holding the sh[--] bag? Shoot me straight... I have bought, sold, moved, and documented over 6 million gallons worth of material to file with you guys for the rest of the year entitling you to 50% of the rin proceeds at 500,000 gallon increments until year end. Will I ever see any of that cash or did I make the most expensive mistake of my life. Make me feel better... Please...”

55. On or about November 10, 2010, defendant DAVID M. DUNHAM, JR. responded to Person No. 1’s November 10th “plan” e-mail stating, “calm down, we’ll work it out. I only have \$40,000 left to ACH, but that will hit your account tomorrow. Let me clean all the sh[--] that fell apart today and I’ll call you later.”

56. On or about December 11, 2010, defendant DAVID M. DUNHAM, JR. e-mailed Person No. 1 stating, “So your invoice 28 got generated today. 29 has the wrong price on it. 31, 32, 34, and 36 are left. I will only be able to generate on 29 this year and depending on what happens with the RIN market I might be be [sic] able to sell any of them until either the very end of the year or next year....”

57. Between about November 12, 2010, and December 31, 2010, defendant DAVID M. DUNHAM, JR. generated and caused to be generated 400,000 RINs per nine non-qualified transactions with Company No. 1, for a total of 3.6 million RINs, the last of which were generated based on Company No. 1 invoice 29.

58. Between about October 25, 2010, and December 28, 2010, defendant RALPH TOMMASO generated and caused to be generated eleven batches of RINs, each of which included between approximately 336,000 and 594,000 RINs, for a total of approximately 4.5 million RINs, based on non-qualified transactions with Company No. 1.

59. On or about December 21, 2010, at a time when defendant RALPH TOMMASO owed Person No. 1 money for the RINs defendant TOMMASO had fraudulently generated on the Company No. 1 “ghost product,” defendant TOMMASO e-mailed Person No. 1 stating, “my bookkeeper will be here tomorrow. we will get everything straightened out. i am freaking out because i bought a house that i am closing on jan 28th, and i need the cash to buy it. i know its not your problem, but dave can tell you, that i am not going to f[---] you, even a little bit. [the Greenworks bookkeeper] will be here tomorrow. she now does all my rin stuff as well.”

60. On or about May 3, 2011, Person No. 1 e-mailed defendant DAVID M. DUNHAM, JR. concerning “money,” stating, “Hey, Im going to be busy later and may not be able to talk, but heres the basis of what I want to get covered. Ralph owes me nearly \$1,000,000 and has since October. He told me he would make it right before year end, and then it was when the credit came back, then it was when the tank sold... I havent needed the money any of these times and I truly trust he will pay, but I need it now. With all the money I have bled out [. . .] I need to collect something. I dont think anybody could perceive this as unreasonable seeing that I made Ralph over \$2,000,000 last year with the credit coming back. I’m just asking for my share. You have atleast [sic] made an effort to pay us and even though there is still around \$400k outstanding I dont push it because I know you guys are tight for cashflow. [. . .] Just give me an idea on how we can clean up some of the receivables so I’m not so tight on money down here and can concentrate on growing an make ALL of us more money.”

Company No. 6 RIN Review

61. On or about December 13, 2011, defendant RALPH TOMMASO arranged to sell 1 million EERC RINs to Company No. 6, subject to Company No. 6’s satisfactory review of

the validity of EERC's RINs. Included among the 1 million RINs were at least 98,000 fraudulent RINs that had been generated by Smarter Fuel based on feedstock sales to a biodiesel producer.

62. On or about December 14, 2011, after Company No. 6 asked for documentation of EERC's fuel sales, defendant RALPH TOMMASO e-mailed to Person No. 2, a Company No. 6 employee whose identity is known to the grand jury, and copied defendant DAVID M. DUNHAM, JR. stating, "Here is a copy of the logs at IMTT, where our fuel is stored for distribution. Our controller is putting together invoices, BOL's and bank statements."

63. On or about December 15, 2011, responding to an e-mail from Person No. 2 in which Person No. 2 expressed concerns about the references provided by defendant RALPH TOMMASO and the inadequacy of records defendant TOMMASO provided to show RIN validity, defendant TOMMASO e-mailed Person No. 2 stating, "Sorry it took so long to get back to you. We take this very serious and wanted to make sure we weren't making any mistakes. Take a look at the attached doc. [Person No. 3]'s (our Rin Compliance Expert) contact info is listed below if you have further questions. Please let me know if there are any concerns over the trade[...]," where Person No. 3 was a consultant whose identity is known to the grand jury. On the attached document it was falsely represented that the EERC product was sold as a transportation fuel and that EERC blended its used cooking oil with .1% diesel to make a transportation fuel.

64. On or about December 16, 2011, defendant RALPH TOMMASO e-mailed Person No. 2 a document titled, "RIN Proof 12.16.11.pdf," which included an invoice from EERC numbered 0003 and dated 11/11/2011, a copy of a check purportedly from the customer, a Smarter Fuel bill of lading indicating "TRT-206," and a weigh ticket indicating "TRT-206." The customer name on each of these records had been concealed, and while the invoice described the

product as “Advanced Biofuel; No associated RINs attached; for domestic fuel use only,” both the bill of lading and the weigh ticket described the product as Used Cooking Oil and/or Recycled Vegetable Oil. The original invoice 0003 dated 11/11/2011 and sent to the customer was actually an invoice from Middlesex Biofuel, a business that was closely affiliated with EERC and Smarter Fuel, and eventually acquired by them, but the name of the seller on invoice 0003 that was provided to Company No. 6 had been changed to EERC. Moreover, there was no actual product description on the original invoice 003 sent to the customer. The invoice 003 provided to Company No. 6 had been altered to change the product description to “Advanced Biofuel; No associated RINs attached; for domestic fuel use only.” The sales at issue in invoice 0003 were also not qualified to generate RINs because the customer was not using the product as a transportation fuel, which was the only basis on which Smarter Fuel and EERC could generate RINs at the time of the transactions.

65. On or about December 16, 2011, after defendant RALPH TOMMASO received an e-mail from Person No. 2 telling him that the documentation he sent was inadequate, at the direction of defendant TOMMASO, a Greenworks employee whose identity is known to the grand jury, identified here as Employee No. 1, e-mailed Person No. 2 and defendant TOMMASO, stating, “Please see the attached BOL that has the revisions needed.” The attached records included the same invoice 003, the same customer check, the same weigh ticket, and now a Smarter Fuel bill of lading dated 11/1/11 that had been altered so that the product description no longer said “Used Cooking Oil/Recycled Vegetable Oil” but now said “Advanced Biofuel – No Rins Attached; Recycled Vegetable Oil Based; For Domestic Fuel Use Only.”

66. On or about December 21, 2011, after Company No. 6 had expressed more concerns about the documentation supplied by EERC and forwarded sample documents,

Employee No. 1 e-mailed Person No. 2 and his colleague, whose identity is known to the grand jury and who is identified here as Person No. 4, and copied defendant RALPH TOMMASO, stating, “Thank you for your patience while we obtained the necessary documentation for [Company No. 6]’s purchase of RINs. Please find a pdf file [. . .]” and attached was a document that included the same invoice 0003, the same check, the same Smarter Fuel bill of lading as on December 16th except that the shipper’s name had been changed from Smarter Fuel to EERC, and the same weigh ticket describing the product as Recycled Vegetable Oil.

67. On or about December 22, 2011, after receiving notice from Company No. 6 that it was exercising its contractual right to refuse the 1 million EERC RINs and cancel the transaction due to inadequate documentation demonstrating valid and lawful creation and separation of RINs by EERC and Smarter Fuel, defendant RALPH TOMMASO sent an e-mail to defendant DAVID M. DUNHAM, JR., Employee No. 1, and Greenworks’ bookkeeper, whose identity is known to the grand jury and who is identified here as Employee No. 2, with the attached Company No. 6 notice of cancellation stating, “Let’s learn an expensive lesson from this and change all practices immediately. I will need to go over procedures in detail on monday.”

68. Beginning in or around December 2011, defendants RALPH TOMMASO and DAVID M. DUNHAM, JR. then orchestrated a large-scale project requiring their employees to pull invoices and bills of lading for historic transactions and alter them, to add product descriptions that listed the sales as fuel sales, and not sales of mere used cooking oil. At the defendants’ direction, Greenworks employees located records for past transactions, added the product description supplied by the defendants, and collected the altered records. The altered records were not provided to the customers.

Company No. 7 RIN Review

69. On or about January 11, 2012, after defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO were notified by Company No. 7, whose identity is known to the grand jury, that it had been hired by a RIN purchaser who had bought hundreds of thousands of Smarter Fuel and EERC RINs to investigate the validity of Smarter Fuel and EERC RINs, and after defendants DUNHAM and TOMMASO decided to have a new employee whose identity is known to the grand jury, identified here as Employee No. 3, handle the due diligence review, Employee No. 3 forwarded to defendants DUNHAM and TOMMASO the document request list from Company No. 7, which included a request for a “recent biodiesel (renewable diesel) product transfer document, invoice and laboratory analysis (all the paperwork passed on to the customer),” and a number of questions about the plant, their ingredients, and their product.

70. On or about January 20, 2012, Employee No. 3 circulated by e-mail to defendant DAVID M. DUNHAM, JR., Person No. 3, and Employee No. 4, a Greenworks employee whose identity is known to the grand jury, a draft of a Power Point presentation that was to be given to the Company No. 7 representatives on January 23, which draft falsely stated that the Smarter Fuel and EERC product was sold as a transportation fuel, in order to generate RINs.

71. On or about January 21, 2012, after being asked by Person No. 3 if he could point to one or two customers that used the EERC or Smarter Fuel product without further blending in vehicle or engine applications, defendant DAVID M. DUNHAM, JR. claimed that they could point to some smaller users “explaining that the smaller users are comfortable sharing their experience, but our larger users don’t want to get involved,” when as the defendant then knew, neither EERC nor Smarter Fuel had any large customers that used those companies’ product as a transportation fuel.

72. After receiving comments and edits to the draft Power Point, on or about January 22, 2012, Employee No. 3 circulated to defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO, and others, a revised and final Power Point presentation for the meeting the next day, which falsely stated that the Smarter Fuel and EERC product was sold as a transportation fuel for on-road and off-road use, in order to generate RINs.

73. On or about January 23, 2012, Company No. 7 representatives visited the EERC and Smarter Fuel facilities and were provided with false information about Smarter Fuel and EERC products, sales, and customers. Defendant DAVID M. DUNHAM, JR. provided and caused to be provided to the Company No. 7 employees the following false information: the companies' product was never sold to a biodiesel company as feedstock; EERC's and Smarter Fuel's product was sold to users for on-road and off-road transportation use; and the companies sold their product to truck fleets.

74. On or about January 24, 2012, after having reviewed the Power Point presentation with the Company No. 7 employees during the January 23 site visit, and after receiving a version of the Power Point presentation that had been revised by defendant DAVID M. DUNHAM, JR. after it had been presented on January 23, Employee No. 3 sent to an employee of Company No. 7 whose identity is known to the grand jury, identified here as Person No. 5, the DUNHAM-revised version of the Power Point slides, stating, "Please find attached the presentation we went through yesterday." The report had been revised since January 23 so that rather than falsely stating that EERC and Smarter Fuel sold their product for use in both an on-road and off-road transportation use, it now falsely stated that Smarter Fuel and EERC sold their product only for off-road transportation use.

75. On or about January 25, 2012, during a telephone call with Company No. 7 representatives, defendant DAVID M. DUNHAM, JR. falsely claimed that Smarter Fuel and EERC had turned from on-road to off-road sales in 2008 and falsely explained that the sudden jump in the production figures in the last quarter of 2010 was due to stockpiling product earlier in the year, rather than admitting that the sudden jump in 2010 production figures was due to the bogus paper transactions with Person No. 1 for the “ghost product” Smarter Fuel and EERC never saw.

76. On or about January 26, 2012, Employee No. 3 sent Person No. 5 an e-mail with “the information you asked for” attached. Attached was a listing of 3rd Quarter 2011 RINS and a Smarter Fuel invoice 1653 dated 7/26/2011 that had the customer’s name blacked out, referenced a shipment numbered 66061, and contained language stating “Off-Road Transportation Fuel/Non-ester renewable; No Associated RINS attached; This volume of fuel is used in its designated form without further blending.” There was also a bill of lading with shipper number HBX66061 dated 7/15/11 that had the customer’s name blacked out, and lacked any product description. There was also a weigh ticket referencing shipment 66061 that had the customer’s name blacked out and described the product as “UCO.” The customer on invoice 1653 was Company No. 2, a biodiesel producer, and the sale of Smarter Fuel’s used cooking oil was as a feedstock, not a fuel. The original invoice 1653 contained no actual product description, and did not contain the language “Off-Road Transportation Fuel/Non-ester renewable; No Associated RINS attached; This volume of fuel is used in its designated form without further blending.” The original bill of lading for HBX 66061 contained only the product description “Used Cooking Oil – Non Hazardous,” which had been removed from the version provided to Company No. 7.

77. On or about January 26, 2012, Employee No. 3 sent an e-mail to defendant DAVID M. DUNHAM, JR., forwarding a message from Person No. 5 which stated, "I highlighted 3 renewable diesel sales. Please provide all the paperwork that went to the customer associated with those 3 invoice. [sic]." Employee No. 3 wrote, "See attached she did select one of the [Company No. 2] she must have our invoice from there to cross check."

78. On or about January 26, 2012, defendant DAVID M. DUNHAM, JR. responded to Employee No. 3's January 26 e-mail stating, "crap..... are you in tomorrow?"

79. On or about January 30, 2012, Employee No. 4 forwarded to Person No. 5 by e-mail the paperwork that Person No. 5 had requested on January 26. In the documents attached to his e-mail, all of the customer names, including Company No. 2, had been blacked out, the invoices had been altered so that they now included the language, "Off-Road Transportation Fuel/Non-ester renewable; No Associated RINS attached; This volume of fuel is used in its designated form without further blending," and original product descriptions had been removed.

80. On or about January 30, 2012, after Person No. 5 had sent him some questions about the documents he e-mailed to her earlier in the day, Employee No. 4 e-mailed Person No. 5 answers. To Person No. 5's question "Why on page 13 of the PDF is the ship from customer blacked off? Who would that be if not you?" Employee No. 4 falsely stated, "That would be us. It was just a mistake when I had the intern black out the invoice," when in fact the ship from customer was not Smarter Fuel or EERC, but was Company No. 1. To Person No. 5's question "Why is the weight tickets/bills of lading marked with 'uco, used cooking oil, and brown grease' when it is supposed to be renewable diesel for off-road transportation fuel?" Employee No. 4 did not admit that these were feedstock sales, but rather falsely stated, "Personnel filing out the weight tickets are not fully informed/trained on the proper terminology of the product as they often deal in

various products.” To Person No. 5’s request for customer names, Employee No. 4 said he would speak to defendant DAVID M. DUNHAM, JR. about the request. However, the customer information was not provided to Company No. 7.

Company No. 8 RIN Review

81. On or about February 10, 2012, after being asked to fill out a RIN validation questionnaire and to provide information so that Company No. 8, whose identity is known to the grand jury, could evaluate the validity of RINs already transferred to it, and those it might purchase in the future, defendant RALPH TOMMASO signed a “Verification Letter for RIN Generation and Separation” on which he falsely verified that the RINs transferred to Company No. 8 were “legitimately and validly generated and then separated and transferred downstream” in accordance with the appropriate regulations and RFS-2.

82. On or about February 10, 2012, Employee No. 3 e-mailed the false “Verification Letter for RIN Generation and Separation” signed by defendant RALPH TOMMASO to an employee at Company No. 8, whose identity is known to the grand jury, identified here as Person No. 6, to defendant TOMMASO, and copied defendant DAVID M. DUNHAM, JR. Also attached to the e-mail was a completed questionnaire for EERC in which it was falsely stated that EERC’s RINs had been generated based on sales of its product as a transportation fuel, and an EERC invoice for a non-qualified sale with the customer’s name whited out.

83. On or about February 10, 2012, after being asked to fill out a RIN validation questionnaire and to provide information so that Company No. 8 could evaluate the validity of RINs already transferred to it, and those it might purchase in the future, defendant DAVID M. DUNHAM, JR. signed a “Verification Letter for RIN Generation and Separation” on which he

falsely verified that the RINs transferred to Company No. 8 were “legitimately and validly generated and then separated and transferred downstream” in accordance with the appropriate regulations and RFS-2.

84. On or about February 10, 2012, Employee No. 3 e-mailed the false “Verification Letter for RIN Generation and Separation” signed by defendant DAVID M. DUNHAM, JR. to Person No. 6 at Company No. 8 and copied defendant DUNHAM. Also attached to the e-mail was a completed questionnaire for Smarter Fuel which falsely stated that Smarter Fuel’s RINs had been generated based on sales of its product as a transportation fuel, and an invoice in which the customer’s name had been whited out and the invoice altered from its original version to include language stating that the sales were off-road transportation fuel sales and that the product would be used in its designated form without further blending, all of which was not true.

85. On or about March 9, 2012, Employee No. 3 e-mailed to Person No. 6 at Company No. 8 several sample EERC invoices for purposes of Company No. 8’s RIN validation review, and on the invoices the customers’ names had been whited out; on two invoices that were actually from Smarter Fuel, not EERC, the seller’s name had been whited out; and the invoices had been altered so that they now contained language stating that the sales were off-road transportation fuel sales and that the product would be used in its designated form without further blending, all of which was not true, and the invoices included non-qualified sales on which fraudulent RINs had been generated.

86. On or about March 9, 2012, Employee No. 3 e-mailed to Person No. 6 at Company No. 8 several sample Smarter Fuel invoices for purposes of Company No. 8’s RIN validation review, and on the invoices the customers’ names had been whited out; the invoices had

been altered so that they now contained language stating that the sales were off-road transportation fuel sales and that the product would be used in its designated form without further blending, all of which was not true; and the invoices included non-qualified sales on which fraudulent RINs had been generated.

87. On or about March 13, 2012, Person No. 6 e-mailed the altered Smarter Fuel and EERC invoices she had received on or about March 9 to an obligated party which had purchased numerous RINs from Company No. 8 that had been generated by Smarter Fuel and EERC and was attempting to examine the validity of the RINs.

88. In or about June 2012, in preparation for a site visit to Smarter Fuel and EERC by examiners hired by Company No. 8 to evaluate the companies' RIN validity, defendant RALPH TOMMASO directed a Greenworks employee whose identity is known to the grand jury, identified here as Employee No. 5, to alter several bills of lading to remove the names of biodiesel manufacturer buyers and to change the names to different buyers, in order to conceal the fact that the sales were feedstock sales that were not qualified for RIN generation. Employee No. 5 made the changes as directed.

89. In or about June 2012, while the examiners hired by Company No. 8 were on-site, defendant RALPH TOMMASO directed Employee No. 5 to alter additional bills of lading, to change customer names on them in order to conceal the fact that the sales were not qualified for RIN generation. Employee No. 5 made the changes as instructed by defendant TOMMASO and made the altered records available to the reviewers.

Excise Tax Credits

90. In and around July 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO employed the services of Company No. 9, a business consulting and

acquisitions company that was retained to help maximize the value of Smarter Fuel and EERC, and two other companies, for potential sale as a single entity.

91. In or about 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO reported to Company No. 9 that when their product was sold to a producer of alternative fuel, that producer was entitled to the excise tax credit, not Smarter Fuel or EERC.

92. In or around July 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO reported to Company No. 9 that each of their companies produced between 2.5 million and 3 million gallons of product annually.

93. On or about December 9, 2010, when the excise tax credit was reinstated, for 2011 and retroactively to include qualified production in 2010, defendant RALPH TOMMASO stated in an e-mail to Company No. 9, “That’s two more years on the gravy train.”

94. On or about the following dates, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO made, and caused to be made, the following false claims for alternative fuel excise tax credits to the IRS about the amount of qualified fuel their companies had produced and sold during the following time periods:

Overt Act	Date Filed	Filer	Period Covered	Gallons	Amount
95.	3/10/2011	TOMASSO	Jan. – Dec. 2010	8,576,236	\$4,288,118
96.	4/19/2011	DUNHAM	Jan.– Dec. 2010	9,143,092	\$4,571,546
97.	3/21/2011	TOMASSO	Jan. 2011	296,347	\$148,173.50
98.	3/22/2011	DUNHAM	Jan. 2011	477,972	\$238,986
99.	3/21/2011	TOMASSO	Feb. 2011	539,986	\$269,993

Overt Act	Date Filed	Filer	Period Covered	Gallons	Amount
100.	3/22/2011	DUNHAM	Feb. 2011	348,861	\$174,430.50
101.	4/13/2011	TOMASSO	Mar. 2011	553,783	\$276,891.50
102.	4/13/2011	DUNHAM	Mar. 2011	567,802	\$283,901
103.	5/11/2011	TOMASSO	Apr. 2011	405,125	\$202,562.50
104.	5/11/2011	DUNHAM	Apr. 2011	382,344	\$191,172
105.	6/10/2011	TOMASSO	May 2011	450,686	\$225,343
106.	6/10/2011	DUNHAM	May 2011	425,765	\$212,882.50
107.	7/13/2011	TOMASSO	June 2011	818,990	\$409,495
108.	7/13/2011	DUNHAM	June 2011	732,497	\$366,248.50
109.	8/10/2011	TOMASSO	July 2011	573,236	\$286,618
110.	8/10/2011	DUNHAM	July 2011	574,941	\$287,470.50
111.	9/09/2011	TOMASSO	Aug. 2011	671,611	\$355,805.50
112.	9/09/2011	DUNHAM	Aug. 2011	598,613	\$299,306.50
113.	10/11/2011	TOMASSO	Sept. 2011	878,131	\$439,065.50
114.	10/11/2011	DUNHAM	Sept. 2011	853,704	\$426,852
115.	11/11/2011	TOMASSO	Oct. 2011	868,859	\$434,429.50
116.	11/11/2011	DUNHAM	Oct. 2011	782,861	\$391,430.50
117.	12/14/2011	TOMASSO	Nov. 2011	1,409,666	\$704,833
118.	12/14/2011	DUNHAM	Nov. 2011	1,608,568	\$804,284
119.	01/20/2012	TOMASSO	Dec. 2011	1,512,423	\$756,211.50
120.	01/20/2012	DUNHAM	Dec. 2011	1,794,220	\$897,110

121. On or about March 10, 2011, defendant RALPH TOMMASO prepared and caused to be filed, in total, an alternative fuel excise tax credit claim for approximately 8,576,236 gallons he claimed to have produced and sold in 2010. Defendant TOMMASO claimed, and was paid, a 50 cent credit on each gallon, resulting in a payment of \$4,288,118 from the IRS to defendant TOMMASO when, as defendant TOMMASO knew, a total of only approximately 2.5 million gallons of product had been produced and sold by EERC in 2010.

122. On or about March 14, 2011, defendant RALPH TOMMASO stated in an e-mail to defendant DAVID M. DUNHAM, JR., “We are running out of money asap. Plus the potential of this deal, we are going to be under water faster than Tokyo!”

123. On or about April 19, 2011, defendant DAVID M. DUNHAM, JR. prepared and caused to be filed, in total, an alternative fuel excise tax credit claim for approximately 9,143,092 gallons he claimed that Smarter Fuel had produced and sold in 2010. Defendant DUNHAM claimed, and was paid, a 50 cent credit on each gallon, resulting in a payment of \$4,571,546 from IRS to defendant DUNHAM when, as defendant DUNHAM knew, a total of only approximately 3 million gallons of product had been produced and sold by Smarter Fuel in 2010.

Company No. 2 and Excise Tax Credit

124. Between in or about May to in or about December 2010, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO sold approximately 1.15 million gallons of used cooking oil to Company No. 2, a biofuel producer. Defendants DUNHAM and TOMMASO knew, when they made these sales, that Company No. 2 would be using it as feedstock in its own production of biofuel.

125. On or about June 30, 2010, defendant DAVID M. DUNHAM, JR. executed the Company No. 2 feedstock representation form, acknowledging that Smarter Fuel's sales to Company No. 2 in June 2010 were feedstock, further described as "used cooking oil."

126. In or about March and April 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed and were paid excise tax credits on the used cooking oil they sold to Company No. 2 in 2010, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMMASO knew, they were not.

127. In or about April 2011, after defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO had been asked several times to provide a feedstock representation form for the 2010 sales to Company No. 2, representing that the product they sold to Company No. 2 in 2010 was feedstock for use by Company No. 2 in its production of biofuel, defendant TOMMASO e-mailed defendant DUNHAM and asked how he should respond, and defendant DUNHAM replied, "I don't know. They've been asking for it, but I haven't had a chance to look at it and think about why they need it. The less information the better."

128. Throughout 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO sold approximately 793,000 gallons of used cooking oil as feedstock to Company No. 2. The defendants knew, when they made these sales, that Company No. 2 would be using it as feedstock in its own production of biofuel. Defendants DUNHAM and TOMMASO then claimed the excise tax credits on these sales, sharing the credits evenly between them, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMMASO knew, they were not.

129. On or about July 15, 2011, defendant DAVID M. DUNHAM, JR. executed the Company No. 2 feedstock representation form, acknowledging that Smarter Fuel's sales to Company No. 2 in 2011 were feedstock, further described as "processed waste restaurant grease."

130. Throughout 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO sold approximately 793,000 gallons of used cooking oil feedstock to Company No. 2. The defendants knew, when they made these sales, that Company No. 2 would be using the used cooking oil as feedstock in its own production of biofuel. Defendants DUNHAM and TOMMASO then claimed the excise tax credits on these sales, sharing the credits evenly between them, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMMASO knew, they were not.

Company No. 4 and Excise Tax

131. In or about 2010, defendant RALPH TOMMASO entered into an agreement with Company No. 4, a company eligible to participate in IRS excise tax programs, for defendant TOMMASO to supply used cooking oil to Company No. 4 and that, once the excise tax program was restored by Congress for 2010, Company No. 4 was to retroactively claim the excise tax credit on the used cooking oil purchased from defendant TOMMASO, and Company No. 4 would remit one-half of that credit to defendant TOMMASO.

132. From in or about January 2010 through June 2010, Company No. 4 purchased approximately 738,620 gallons of used cooking oil from defendant RALPH TOMMASO. After the Alternative Fuel Tax credit was reinstated by Congress for 2010, Company No. 4 through its affiliated company received a 50 cent per gallon excise tax credit on the gallons purchased from defendant TOMMASO. Company No. 4 paid RALPH TOMMASO half of the tax credit, or 25 cents per gallon, for a total of \$184,655. Defendant TOMMASO also

claimed and was paid a 50 cent per gallon excise tax credit, or an additional \$369,310, on the same gallons sold to Company No. 4, for which defendant TOMMASO had also received one-half of the excise tax credits claimed by Company No. 4.

Company No. 1 and Excise Tax Credits

133. In or about March 10, 2011 and April 19, 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO claimed millions of gallons in 2010 excise tax credits for the Company No. 1 ghost product. Based on these paper transactions, defendants DUNHAM and TOMMASO claimed a total excise tax credit on approximately 7 to 8 million gallons, for which they were paid a 50 cents credit on each gallon, when they knew that these claims were false.

2011 Excise Tax Credits

134. In or about February 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO trained a newly-hired employee whose identity is known to the grand jury, identified here as Employee No. 6, to submit the excise tax returns for both Smarter Fuel and EERC. Defendants DUNHAM and TOMMASO directed Employee No. 6 to get the production figures from an internal worksheet, and then split the tax credits evenly between Smarter Fuel and EERC. The production figures and tax credit applications were reviewed, approved, and signed for by defendants DUNHAM and TOMMASO before being submitted to the IRS by Employee No. 6. Employee No. 6 made the web-based applications for excise tax credits for Smarter Fuel and EERC on a monthly basis from February through December 2011.

135. Throughout 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO agreed to share the alternative fuel excise credit claimed and paid on the total gallons produced and sold by Smarter Fuel and EERC.

136. Throughout 2011, defendant DAVID M. DUNHAM, JR. prepared and caused to be filed, in total, an alternative fuel excise tax credit of 9,148,148 gallons. Defendant DUNHAM claimed, and was paid, a 50 cents credit on each gallon, resulting in a payment of \$4,574,073.50 from the IRS to defendant DUNHAM.

137. Throughout 2011, defendant RALPH TOMMASO prepared and caused to be filed, in total, an alternative fuel excise tax credit of 8,978,843 gallons. Defendant TOMMASO claimed, and was paid, a 50 cents credit on each gallon, resulting in a payment of \$4,489,421.50 from the IRS to defendant TOMMASO.

138. Throughout 2011, Smarter Fuel and EERC claimed to the IRS to have produced and sold a combined total of approximately 18,121,935 gallons, resulting in a total payment of \$9,060,967.50 from the IRS to defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO when, as defendants DUNHAM and TOMMASO knew, a total of approximately 11 million gallons of product was produced but only approximately 8 million gallons were sold by Smarter Fuel and EERC in 2011 (and approximately 3 million gallons were in inventory).

EERC Excise Tax Review

139. On or about December 23, 2011, an IRS excise tax specialist notified defendant RALPH TOMMASO that the IRS intended to conduct a follow-up compliance review of EERC's registration in the excise tax programs.

140. On or about February 7, 2012, the IRS excise tax specialist conducted a site visit to EERC as part of the compliance review. During the site visit, defendants RALPH TOMMASO and DAVID M. DUNHAM, JR. directed an employee of Greenworks to provide the IRS with information and altered documents that defendants TOMMASO and DUNHAM knew to

be inaccurate, altered, and which falsely represented that EERC had legitimately claimed the excise tax credits under review.

Wastewater and Excise Tax Credits

141. Throughout 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO directed Employee No. 6 to include wastewater figures in the production totals provided to the IRS. As a result, included in the tax credits claimed and paid to defendants DUNHAM and TOMMASO throughout 2011 was 3,033,925 gallons of wastewater that was the byproduct of their processes to clean debris and pollutants from used cooking oil, when defendants DUNHAM and TOMMASO knew that wastewater did not qualify for such credits.

Company No. 5 and Excise Tax Credits

142. In or about August 2011, defendant RALPH TOMMASO, using the entity name Middlesex BioFuels Inc., entered an agreement with Company No. 5, a producer of alternative fuel, for defendant TOMMASO and EERC to supply used cooking oil to Company No. 5. Under the agreement, Company No. 5, and not Middlesex BioFuels, Inc., was to claim the IRS Alternative Fuel Credit. The agreement further provided that the “supplier also certifies that it will not file any claims with the Internal Revenue Service for tax credits associated with the Alternative Fuel acquired under this purchase order.”

143. On or about August 16, 2011, defendant RALPH TOMMASO sent an e-mail to Company No. 5 stating, “I am going to change the seller of the material to Middlesex Biofuels. The Alternative Fuel Foundation is a registered 5013c, and this is a taxable transaction. So as not to raise any flags, please change the seller to Middlesex Biofuels Inc. ...”

144. From in or about August 2011 through December 2011, defendant RALPH TOMMASO, using the name Middlesex BioFuels, Inc., sold approximately 1,237,447 gallons of

used cooking oil to Company No. 5. Defendant TOMMASO and defendant DAVID M. DUNHAM, JR. prepared and caused to be filed alternative fuel excise tax credits for the gallons sold by defendant TOMMASO to Company No. 5. Defendants TOMMASO and DUNHAM each claimed one-half of the tax credits from these sales. The defendants were paid a 50 cent credit on each gallon, resulting in a combined payment of approximately \$618,723.50 from the IRS to defendants TOMMASO and DUNHAM.

Company No. 10 and Excise Tax Credits

145. Throughout 2011, defendant DAVID M. DUNHAM, JR. and Smarter Fuel sold approximately 1,599,597 gallons of used cooking oil to Company No. 10, whose identity is known to the grand jury. When he sold this used cooking oil, defendant DUNHAM knew that Company No. 10 would be using it as feedstock in its own production process. Defendants DUNHAM and RALPH TOMMASO then claimed the excise tax credits on these sales, sharing the credits evenly between them, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMMASO knew, they were not.

146. On or about December 21, 2011, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO caused an e-mail to be sent to Company No. 10 which stated, “The new description will read as follows: Advanced Biofuel/UCO Based-99.9%, For Domestic Fuel Use Only, No Associated RINS Attached, Non Hazardous.” Company No. 10 responded, “Obviously there must be some confusion. [Company No. 10] is a renewable fuel producer. As such, we only purchase used cooking oil feedstock from Smarter Fuels. The language you have forwarded is for a renewable fuel and is a product we do not purchase nor do we have a desire to purchase. If Smarter Fuel can no longer provide [Company No. 10] with used cooking oil, we completely understand – however, we are not interested in purchasing the renewable fuel described in your

previous e-mail. All product sold to [Company No. 10] must remain simply used cooking oil and all associated paperwork must reflect used cooking oil only.”

Company No. 3 and Excise Tax Credits

147. Throughout 2011, defendant DAVID M. DUNHAM, JR. and Smarter Fuel sold approximately 134,152 gallons of used cooking oil to Company No. 3. When he sold this used cooking oil, defendant DUNHAM knew that Company No. 3 would be using it as feedstock in Company No. 3’s own production of biofuel. Defendants DUNHAM and RALPH TOMMASO then claimed the excise tax credits on these sales, sharing the credits evenly between them, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMMASO knew, they were not.

Sales Between Smarter Fuel and EERC

148. In or about April 2010 through October 2010, defendant DAVID M. DUNHAM, JR. and Smarter Fuel sold approximately 277,000 gallons of product to defendant RALPH TOMASSO and EERC. Defendants DUNHAM and TOMASSO both later claimed excise tax credits on these transactions, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMASSO knew, they were not.

149. In or about January 2010 through September 2010, defendant RALPH TOMASSO and EERC sold approximately 176,000 gallons of product to defendant DAVID M. DUNHAM, JR. and Smarter Fuel. Defendants DUNHAM and TOMASSO both later claimed excise tax credits on these transactions, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMASSO knew, they were not.

150. In or about February 2011 through April 2011, defendant RALPH TOMASSO and EERC sold approximately 560,000 gallons of product to defendant DAVID M.

DUNHAM, JR. and Smarter Fuel. Defendants DUNHAM and TOMASSO both later claimed excise tax credits on these transactions, falsely representing they were entitled to such claims when, as defendants DUNHAM and TOMASSO knew, they were not.

USDA and the Advanced Biofuel Payment Program

On or about the following dates, defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO made and caused to be made false statements about the amount of qualified fuel their companies had produced and sold during the following time periods, and such false statements were submitted to the USDA to support requests for Advanced Biofuel Payment Program funds:

Overt Act	Date	Company	Production Time Period	Amount of Qualified Product Falsely Claimed
151.	4/11/2011	Smarter Fuel	Q1 FY 2010 (Oct. 1 - Dec. 31, 2009)	627,556 gal.
152.	4/11/2011	EERC	Q1 FY 2010 (Oct. 1 - Dec. 31, 2009)	942,987 gal.
153.	4/11/2011	Smarter Fuel	Q2 FY 2010 (Jan. 1 – Mar. 31, 2010)	939,190 gal.
154.	4/11/2011	EERC	Q2 FY 2010 (Jan. 1 – Mar. 31, 2010)	508,503 gal.
155.	4/11/2011	Smarter Fuel	Q3 FY 2010 (Apr. 1 – June 30, 2010)	1,595,266 gal.
156.	4/11/2011	EERC	Q3 FY 2010 (Apr. 1 – June 30, 2010)	418,064 gal.

Overt Act	Date	Company	Production Time Period	Amount of Qualified Product Falsely Claimed
157.	4/11/2011	Smarter Fuel	Q4 FY 2010 (July 1 – Sept. 30, 2010)	2,351,713 gal
158.	4/11/2011	EERC	Q4 FY 2010 (July 1 – Sept. 30, 2010)	1,084,118 gal.
159.	5/1/2011	Smarter Fuel	Q1 FY 2011 (Oct. 1 - Dec. 31, 2010)	1,378,428 gal.
160.	5/1/2011	EERC	Q1 FY 2011 (Oct. 1 - Dec. 31, 2010)	502,671 gal.
161.	5/1/2011	Smarter Fuel	Q2 FY 2011 (Jan. 1 – Mar. 31, 2011)	1,394,635 gal.
162.	5/1/2011	EERC	Q2 FY 2011 (Jan. 1 – Mar. 31, 2011)	1,390,165 gal.
163.	8/8/2011	Smarter Fuel	Q3 FY 2011 (Apr. 1 – June 30, 2011)	1,174,727 gal.
164.	8/9/2011	EERC	Q3 FY 2011 (Apr. 1 – June 30, 2011)	1,213,567 gal.
165.	10/11/2011	Smarter Fuel	Q4 FY 2011 (July 1 – Sept. 30, 2011)	1,677,608 gal.
166.	10/11/2011	EERC	Q4 FY 2011 (July 1 – Sept. 30, 2011)	1,683,718 gal.
167.	1/19/2012	Smarter Fuel	Q1 FY 2012 (Oct. 1 – Dec. 31, 2011)	1,990,362 gal.
168.	1/19/2012	EERC	Q1 FY 2012 (Oct. 1 – Dec. 31, 2011)	1,990,299 gal.

169. After a USDA employee notified defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO that Smarter Fuel and EERC were required to provide daily production

records for fiscal years 2009 through 2011 as part of the USDA national office review of program payments, and knowing that the companies did not have daily production logs to support the false claims of fuel produced and sold, beginning in or about March 2012, defendant DUNHAM instructed Employee No. 5 to back into the daily production figures by taking the production figures that had already been reported to USDA and “fiddle” with them to make them work.

170. Beginning in or around March 2012, as part of the project to create a daily production log that matched the false claims of qualified production that had already been reported to USDA and to prepare for an upcoming USDA site visit, defendant DAVID M. DUNHAM, JR. instructed Employee No. 5 to try to collect all invoices and bills of lading to support the gallons of product that Smarter Fuel and EERC had claimed to have sold. If Employee No. 5 found that there were no records to support transactions, defendant DUNHAM instructed her to make up the records, which Employee No. 5 did.

171. Beginning on or about April 2, 2012, defendant DAVID M. DUNHAM, JR. began providing, and causing to be provided, the daily production logs for EERC and Smarter Fuel to USDA, each of which contained false and inflated figures for final fuel produced and sold because they included the companies’ feedstock sales and numerous other unqualified gallons.

172. On or about May 1, 2012, a USDA employee notified a Greenworks employee whose identity is known to the grand jury, identified here as Employee No. 7, by e-mail that the USDA was also going to conduct a site visit at Smarter Fuel and EERC. The USDA employee explained that “National Office directives emphasize the importance of good records to verify production/sales and feedstock use. Spreadsheets are important but we will want to see actual records for all facilities to verify reported numbers.” The USDA employee attached a “site visit form” to help Smarter Fuel and EERC prepare, and on that form it indicated, among other

things, that the reviewers would be required to review “Fuel Sale Records” and would look for “any evidence that the payments were for ineligible feedstock or biofuel produced.” On or about the same day, Employee No. 7 forwarded the USDA employee’s e-mail concerning the site visit and the attached “site visit form” to both defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO.

173. On or about May 1, 2012, the USDA employee advised Employee No. 7 in another e-mail that during the site visit, “[t]here will be a strong focus on paperwork and records to support the numbers submitted.” On or about the same day, Employee No. 7 forwarded this e-mail to both defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO. Defendant DUNHAM reacted to the forwarded USDA e-mail by responding, “It just gets worse.”

174. On or about May 3, 2012, defendant DAVID M. DUNHAM, JR. e-mailed the USDA employee and asked, “[F]or the visit so we have everything ready, you’ll need all the docs for every sale and feedstock purchase for Fiscal Year 2012 for both PA plants..., correct?” to which the USDA employee responded, “Yes, we will want to see that along with how you track your production.”

175. In or about May 2012, knowing that many of the companies’ sales had been sales of feedstock to biodiesel producers, and that such sales did not qualify for subsidies under the Advanced Biofuel Payment Program, defendant DAVID M. DUNHAM, JR. instructed Employee No. 5 to alter company records in order to conceal sales to biodiesel producers and other non-qualified sales in preparation for the USDA site visit.

176. In or about May 2012, in preparation for the USDA on-site review, defendant DAVID M. DUNHAM, JR. directed Employee No. 5 to take existing bills of lading that showed the names of customers who were biodiesel producers, and change the customer names to

other customer names that were not biodiesel producers, and were companies owned by or closely affiliated with Greenworks, in order to conceal the unqualified nature of the sales. Employee No. 5 did as defendant DUNHAM directed. Defendant DUNHAM instructed Employee No. 5 to sign the altered records in the name of a former employee, which she did. Knowing that it would be unusual for Smarter Fuel and EERC to have bills of lading containing original signatures in their files, and in order to make the records appear authentic, defendant DUNHAM directed Employee No. 5 to assist him in copying the altered, forged records and collecting those copied records to make them available for the USDA site visit. Employee No. 5 did as she was directed.

177. On or about May 22, 2012, defendant DAVID M. DUNHAM, JR. and Employee No. 5 made the falsified company records available to the USDA employees conducting the site visit and review of program payments to Smarter Fuel and EERC.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

18 U.S.C. § 1001

False statement made to the EPA

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. William H. Barnes, charged elsewhere, was a registered professional engineer licensed by the Commonwealth of Pennsylvania and the state of New Jersey and working at an engineering firm located in Easton, Pennsylvania.

3. In order to complete Smarter Fuel's application to EPA as a RIN generator, in or about July 2010, defendant DAVID M. DUNHAM, JR. contacted William H. Barnes to complete the Engineering Review.

4. Defendant DAVID M. DUNHAM, JR. falsely told William H. Barnes that his actual production capacity was 10 million gallons per year, so that Smarter Fuel would not be limited to generating RINs on only its actual production.

5. Without reviewing production records to verify the false 10 million gallon production figure provided to him by defendant DAVID M. DUNHAM, JR., in violation of the regulations governing RFS-2 engineering reviews, William H. Barnes signed and stamped the Smarter Fuel RFS-2 engineering review, falsely claiming he had reviewed production records and that those records supported an actual production capacity of 10 million gallons.

6. On or about November 3, 2010, at Wind Gap, Pennsylvania, in the Eastern District of Pennsylvania, defendant

DAVID M. DUNHAM, JR.,

in a matter within the jurisdiction of the U.S. Environmental Protection Agency, an agency of the executive branch of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, and falsified and concealed a material fact, in that defendant DUNHAM submitted an Engineering Review to the U.S. Environmental Protection Agency which stated that Smarter Fuel had an actual peak production capacity of 10 million gallons of fuel per year that was supported by production records, when, as defendant DUNHAM well knew, Smarter Fuel's actual production capacity was closer to 3 million gallons per year.

In violation of Title 18, United States Code, Sections 1001 and 2.

COUNT THREE

18 U.S.C. § 1001

False statement made to the EPA

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One and paragraph 2 of Count Two of this indictment are incorporated here.

2. In order to complete EERC's application to EPA as a RIN generator, in or about July 2010, defendant RALPH TOMMASO contacted William H. Barnes to complete the Engineering Review.

3. Defendant RALPH TOMMASO falsely told William H. Barnes that his actual production capacity was 8.803 million gallons per year, so that he would not be limited to generating RINs on his actual production.

4. Without reviewing production records to verify the false 8.803 million gallon production figure provided to him by defendant RALPH TOMMASO, in violation of the regulations governing RFS-2 engineering reviews, William H. Barnes signed and stamped the EERC RFS-2 engineering review, falsely claiming he had reviewed production records and that those records supported an actual production capacity of 8.803 million gallons.

5. On or about August 5, 2010, at Allentown, Pennsylvania, in the Eastern District of Pennsylvania, defendant

RALPH TOMMASO,

in a matter within the jurisdiction of the U.S. Environmental Protection Agency, an agency of the executive branch of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, and falsified and concealed a material fact, in that

defendant TOMMASO submitted an Engineering Review to the U.S. Environmental Protection Agency which stated that EERC had an actual peak production capacity of 8.803 million gallons of fuel per year that was supported by production records, when, as defendant TOMMASO well knew, EERC's actual production capacity was closer to 2.5 million gallons per year.

In violation of Title 18, United States Code, Sections 1001 and 2.

COUNTS FOUR THROUGH FORTY-ONE

**18 U.S.C. § 1343
Wire fraud relating to RINs**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

THE SCHEME

2. From in or about July 2010 to in or about July 2012, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO**

devised and intended to devise a scheme to defraud RIN purchasers, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO stole tens of millions of dollars by generating, separating, and selling fraudulent RINs that were created in connection with material they did not produce, material that was not intended for use as a fuel, and material that was not intended to be used as a fuel without further blending, and through these means they defrauded the purchasers of the fraudulent RINs out of tens of millions of dollars.

It was further a part of the scheme that:

4. On or about each of the dates set forth below, at Wind Gap, Allentown, and Bethlehem, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO,**

for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each wiring constituting a separate count:

Count	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
4.	9/27/2010	Smarter Fuel	RIN generation	HGE015PO	80,000
5.	9/27/2010	Smarter Fuel	RIN separation	HGE015PO	80,000
6.	9/27/2010	Smarter Fuel	RIN generation	HGE016PO	80,000
7.	9/27/2010	Smarter Fuel	RIN separation	HGE016PO	80,000
8.	11/4/2010	Smarter Fuel	RIN generation	INV1445	280,000
9.	11/4/2010	Smarter Fuel	RIN separation	INV1445	280,000
10.	11/12/2010	Smarter Fuel	RIN generation	INV1453	280,000
11.	11/12/2010	Smarter Fuel	RIN separation	INV1453	280,000
12.	9/22/2010	EERC	RIN generation	130	148,176
13.	9/22/2010	EERC	RIN separation	130	148,176
14.	9/27/2010	EERC	RIN generation	134	293,600
15.	9/27/2010	EERC	RIN separation	134	220,200
16.	9/27/2010	EERC	RIN separation	134	73,400
17.	10/5/2010	EERC	RIN generation	136	294,400

Count	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
18.	10/5/2010	EERC	RIN separation	136	294,400
19.	10/18/2010	EERC	RIN generation	137	294,000
20.	10/18/2010	EERC	RIN separation	137	29,400
21.	10/18/2010	EERC	RIN separation	137	264,600
22.	8/12/2011	Smarter Fuel	RIN generation	INV1653	28,946
23.	8/16/2011	Smarter Fuel	RIN separation	INV1653	28,946
24.	10/25/2011	Smarter Fuel	RIN generation	INV1672	47,688
25.	12/9/2011	Smarter Fuel	RIN separation	INV1672	47,688
26.	11/3/2011	Smarter Fuel	RIN generation	INV1678	50,133
27.	12/9/2011	Smarter Fuel	RIN separation	INV1678	50,133
28.	10/13/2011	EERC	RIN generation	SF1668	20,450
29.	12/2/2011	EERC	RIN separation	SF1668	20,450
30.	10/13/2011	Smarter Fuel	RIN generation	INV1668	98,846
31.	12/9/2011	Smarter Fuel	RIN separation	INV1668	98,846
32.	10/25/2011	EERC	RIN generation	SF INV 1673	18,517
33.	12/2/2011	EERC	RIN separation	SF INV 1673	18,517
34.	10/25/2011	Smarter Fuel	RIN generation	INV1673	39,598
35.	12/9/2011	Smarter Fuel	RIN separation	INV1673	39,598
36.	2/15/2012	EERC	RIN generation	EERC0053	101,886
37.	6/22/2012	EERC	RIN separation	EERC0053	101,886
38.	11/3/2011	Smarter Fuel	RIN generation	INV1677	237,050
39.	12/9/2011	Smarter Fuel	RIN separation	INV1677	237,050
40.	12/5/2011	Smarter Fuel	RIN generation	INV1683	58,496

Count	EMTS Submission Date	Company	Entry Type	Batch No.	RIN Quantity
41.	12/9/2011	Smarter Fuel	RIN separation	INV1683	58,496

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS FORTY-TWO AND FORTY-THREE

**26 U.S.C. §7206(1)
Subscribing to False Tax Returns**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. On or about the following dates, in the Eastern District of Pennsylvania and elsewhere, defendant

DAVID M. DUNHAM, JR.

willfully made and subscribed, and aided and abetted the making and subscription of, the following Forms 1040, U.S. Individual Income Tax Returns, for the following tax years, which were verified by a written declaration that the returns were made under the penalty of perjury and filed with the Director of the Internal Revenue Service, and which defendant DUNHAM did not believe to be true and correct as to every material matter, in that the returns reported total adjusted gross income of approximately the following amounts, when, as defendant DUNHAM knew and believed, the actual total adjusted gross income was approximately as follows:

Count	Date Filed	Tax Year	Reported Taxable Income	Revised Taxable Income
42.	April 15, 2010	2009	\$349,084	\$587,888
43.	April 15, 2011	2010	\$612,020	\$1,246,460

3. As part of his efforts to subscribe false income tax returns, and to conceal his false subscribing, defendant DAVID M. DUNHAM, JR. did the following:

- (a) he altered the dates on invoices and changed entries in Smarter Fuel's accounting system to move income earned from sales consummated in 2009 into the following year, in order to avoid paying taxes on these sales;
- (b) he delayed generating invoices from sales consummated in 2009 until 2010, in order to avoid paying taxes on these sales in 2009;
- (c) he altered dates on invoices and changed entries in Smarter Fuel's accounting system to move income earned from sales consummated in 2010 into the following year, in order to avoid paying taxes on these sales;
- (d) he delayed generating invoices from sales consummated in 2010 until 2011, in order to avoid paying taxes on these sales in 2010;
- (e) he failed to file income tax returns in 2012, avoiding altogether paying taxes on the income pushed from 2009 and 2010 into the subsequent years;
- (f) in 2010, he explained to Company No. 9, a business consulting and acquisitions company that was retained to help maximize the value of Smarter Fuel and EERC, and two other companies, for potential sale as a single entity, that his profits for 2009 were higher than indicated on his tax returns because "we moved all of my current receivables at the end of 2009 into 2010 to avoid taxes and because we weren't sure what was going to happen with the tax credit. I didn't want to pay big money in taxes not knowing what the credit

was going to look like for 2010. Those receivables were
essentially all profit, but it's been pushed to 2010 ...”

All in violation of Title 26, United States Code, Section 7206(1), and
Title 18, United States Code, Section 2.

COUNTS FORTY-FOUR THROUGH FIFTY-SIX

**26 U.S.C. §7206(1)
Subscribing to False Tax Returns**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. On or about the following dates, in the Eastern District of Pennsylvania and elsewhere, defendant

DAVID M. DUNHAM, JR.

willfully made and subscribed, and aided and abetted the making and subscription of, the following IRS Forms 8849, Claims for Refund of Excise Taxes, for the following tax periods, which were verified by a written declaration that the claims were made under the penalty of perjury and filed with the Director of the Internal Revenue Service, and which defendant DUNHAM did not believe to be true and correct as to every material matter, in that the returns reported production of alternative fuel that qualified for the refund of approximately the following amounts, when, as defendant DUNHAM knew and believed, he did not qualify for the refunds:

Count	Date Filed	Filer	Period Covered	Gallons	Amount
44.	4/19/2011	DUNHAM	January – December 2010	9,143,092	\$4,571,546
45.	3/22/2011	DUNHAM	January 2011	477,972	\$238,986
46.	3/22/2011	DUNHAM	February 2011	348,861	\$174,430.50
47.	4/13/2011	DUNHAM	March 2011	567,802	\$283,901
48.	5/11/2011	DUNHAM	April 2011	382,344	\$191,172
49.	6/10/2011	DUNHAM	May 2011	425,765	\$212,882.50
50.	7/13/2011	DUNHAM	June 2011	732,497	\$366,248.50
51.	8/10/2011	DUNHAM	July 2011	574,941	\$287,470.50
52.	9/9/2011	DUNHAM	August 2011	598,613	\$299,306.50
53.	10/11/2011	DUNHAM	September 2011	853,704	\$426,852
54.	11/11/2011	DUNHAM	October 2011	782,861	\$391,430.50

Count	Date Filed	Filer	Period Covered	Gallons	Amount
55.	12/14/2011	DUNHAM	November 2011	1,608,568	\$804,284
56.	1/20/2012	DUNHAM	December 2011	1,794,220	\$897,110

All in violation of Title 26, United States Code, Section 7206(1), and
Title 18, United States Code, Section 2.

COUNT FIFTY-SEVEN THROUGH SIXTY-NINE

**26 U.S.C. §7206(1)
Subscribing to False Tax Returns**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. On or about the following dates, in the Eastern District of Pennsylvania and elsewhere, defendant

RALPH TOMASSO

willfully made and subscribed, and aided and abetted the making and subscription of, the following IRS Forms 8849, Claims for Refund of Excise Taxes, for the following tax periods, which were verified by a written declaration that the claims were made under the penalty of perjury and filed with the Director of the Internal Revenue Service, and which defendant TOMASSO did not believe to be true and correct as to every material matter, in that the returns reported production of alternative fuel that qualified for the refund of approximately the following amounts, when, as defendant TOMASSO knew and believed, he did not qualify for the refunds:

Count	Date Filed	Filer	Period Covered	Gallons	Amount
57.	3/10/2011	TOMASSO	January – December 2010	8,576,236	\$4,288,118
58.	3/21/2011	TOMASSO	January 2011	296,347	\$148,173.50
59.	3/21/2011	TOMASSO	February 2011	539,986	\$269,993
60.	4/13/2011	TOMASSO	March 2011	553,783	\$276,891.50
61.	5/11/2011	TOMASSO	April 2011	405,125	\$202,562.50
62.	6/10/2011	TOMASSO	May 2011	450,686	\$225,343
63.	7/13/2011	TOMASSO	June 2011	818,990	\$409,495
64.	8/10/2011	TOMASSO	July 2011	573,236	\$286,618
65.	9/9/2011	TOMASSO	August 2011	671,611	\$355,805.50
66.	10/11/2011	TOMASSO	September 2011	878,131	\$439,065.50
67.	11/11/2011	TOMASSO	October 2011	868,859	\$434,429.50

Count	Date Filed	Filer	Period Covered	Gallons	Amount
68.	12/14/2011	TOMASSO	November 2011	1,409,666	\$704,833
69.	1/20/2012	TOMASSO	December 2011	1,512,423	\$756,211.50

All in violation of Title 26, United States Code, Section 7206(1), and
Title 18, United States Code, Section 2.

COUNTS SEVENTY THROUGH NINETY-FIVE

**18 U.S.C. § 1343
Wire fraud relating to tax credits**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

THE SCHEME

2. From in or about March 2011 to in or about January 2012, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO**

devised and intended to devise a scheme to defraud the U.S. Treasury, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO stole nearly \$20 million from the U.S. Treasury by fraudulently claiming excise tax credits for sales of non-qualified material such as material they did not produce or even possess, water waste, material that had not been blended with diesel, and material that was not sold as a final fuel, and through these means they defrauded the U.S. Treasury.

It was further a part of the scheme that:

4. On or about each of the dates set forth below, at Wind Gap, Allentown, and Bethlehem, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO,**

for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each wiring constituting a separate count:

Count	Date Filed	Filer	Period Covered	Gallons	Amount
70.	3/10/2011	TOMASSO	January – December 2010	8,576,236	\$4,288,118
71.	4/19/2011	DUNHAM	January – December 2010	9,143,092	\$4,571,546
72.	3/21/2011	TOMASSO	January 2011	296,347	\$148,173.50
73.	3/22/2011	DUNHAM	January 2011	477,972	\$238,986
74.	3/21/2011	TOMASSO	February 2011	539,986	\$269,993
75.	3/22/2011	DUNHAM	February 2011	348,861	\$174,430.50
76.	4/13/2011	TOMASSO	March 2011	553,783	\$276,891.50
77.	4/13/2011	DUNHAM	March 2011	567,802	\$283,901
78.	5/11/2011	TOMASSO	April 2011	405,125	\$202,562.50
79.	5/11/2011	DUNHAM	April 2011	382,344	\$191,172
80.	6/10/2011	TOMASSO	May 2011	450,686	\$225,343
81.	6/10/2011	DUNHAM	May 2011	425,765	\$212,882.50
82.	7/13/2011	TOMASSO	June 2011	818,990	\$409,495
83.	7/13/2011	DUNHAM	June 2011	732,497	\$366,248.50
84.	8/10/2011	TOMASSO	July 2011	573,236	\$286,618
85.	8/10/2011	DUNHAM	July 2011	574,941	\$287,470.50
86.	9/09/2011	TOMASSO	August 2011	671,611	\$355,805.50
87.	9/09/2011	DUNHAM	August 2011	598,613	\$299,306.50
88.	10/11/2011	TOMASSO	September 2011	878,131	\$439,065.50
89.	10/11/2011	DUNHAM	September 2011	853,704	\$426,852
90.	11/11/2011	TOMASSO	October 2011	868,859	\$434,429.50
91.	11/11/2011	DUNHAM	October 2011	782,861	\$391,430.50
92.	12/14/2011	TOMASSO	November 2011	1,409,666	\$704,833
93.	12/14/2011	DUNHAM	November 2011	1,608,568	\$804,284
94.	01/20/2012	TOMASSO	December 2011	1,512,423	\$756,211.50
95.	01/20/2012	DUNHAM	December 2011	1,794,220	\$897,110

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT NINETY-SIX

**26 U.S.C. §7212(a)
Obstruction of Due Administration of IRS**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. Beginning in or about March 2010, and continuing until in or about October 2010, in the Eastern District of Pennsylvania and elsewhere, defendant

DAVID M. DUNHAM, JR.

corruptly endeavored to obstruct and impede the due administration of the internal revenue laws of the United States by, among other things: (1) filing and causing to be filed false Forms 8849, Claim for Refund of Excise Taxes, by Smarter Fuel throughout 2009; (2) filing and causing to be filed false Form 8849 for the month of July 2009, in which defendant DUNHAM claimed, and was paid, \$188,759 in excise tax credits, to which he knew he was not entitled; (3) filing and causing to be filed false Form 8849 for the month of August 2009, in which defendant DUNHAM claimed, and was paid, \$182,128 in excise tax credits, to which he knew he was not entitled; (4) filing and causing to be filed false Form 8849 for the month of September 2009, in which defendant DUNHAM claimed, and was paid, \$218,838 in excise tax credits, to which he knew he was not entitled; (5) falsely representing to an IRS audit agent that his excise tax claims for July 2009, August 2009, and September 2009, were true and accurate, and that he was entitled to the credits claimed and paid therefore; and (6) providing to an IRS agent sales records and documents in support of defendant DUNHAM's claims that these excise tax claims were legitimate when, as defendant DUNHAM knew, he had altered these records to provide to the IRS auditor to create the

false appearance that the claims were legitimate.

THE DEFENDANT'S OBSTRUCTIVE PRACTICES

The acts committed in furtherance of defendant DAVID M. DUNHAM, JR.'s endeavor to corruptly interfere with the IRS include, but are not limited to, the following:

3. On or about March 8, 2010, IRS personnel advised defendant DAVID M. DUNHAM, JR. of its intention to conduct an examination regarding Smarter Fuel's registration in the U.S. Department of Justice excise tax credit programs and claims made for such excise tax credits by defendant DUNHAM on behalf of Smarter Fuel. Defendant DUNHAM was advised that the examination would involve a site visit to the Smarter Fuel facility in Wind Gap, Pennsylvania, on or about March 25, 2010. Defendant DUNHAM was advised that the scope of the review included claims for refund of excise taxes made by defendant DUNHAM, on behalf of Smarter Fuel, for the third fiscal quarter of 2009, that being the months of July 2009, August 2009, and September 2009. IRS personnel advised DUNHAM of the documents he would be required to provide to complete the examination.

4. In or about March 2010, defendant DAVID M. DUNHAM, JR. was informed by the owner of Company No. 11, a company that, like Smarter Fuel, engaged in a process to clean used cooking oil, that Company No. 11 underwent the same IRS audit scheduled for Smarter Fuel, and the result of that audit was a determination that Company No. 11 had claimed \$1 per gallon in excise tax credits that did not qualify for the program. Company No. 11 negotiated a settlement with IRS where they paid back half of the value of the credit for the final five weeks of the review period. The owner of Company No. 11 told defendant DUNHAM what was required of him by the auditing agents and the settlement negotiated by Company No. 11 so,

as defendant DUNHAM stated in an e-mail, “I knew what to expect” when Smarter Fuel faced a similar audit.

5. On or about March 24, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. altered Smarter Fuel Invoice number 1180, originally generated on July 23, 2009, documenting a unspecified transaction with a company whose identity is known to the grand jury, referenced here as Company No. 12, for \$3,064.80, which defendant DUNHAM altered to falsely represent a transaction of 6,500 gallons of “renewable diesel for use as fuel” for \$28,125, creating the impression that defendant DUNHAM’s claim of excise tax credits claimed on this transaction was legitimate when, as he knew, it was not. On or about the same date, defendant DUNHAM included the false information from this altered invoice on the spreadsheet he prepared for production to the IRS audit agent.

6. On or about March 24, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. altered Smarter Fuel Invoice number 1201, originally generated on August 18, 2009, documenting a transaction with Company No. 12 for the removal of waste water for \$13,713.70, which defendant DUNHAM altered to falsely represent five deliveries of 6,500 units each of “Smarter Fuel, renewable diesel for boiler application,” creating the impression that defendant DUNHAM’s claim of excise tax credits claimed on this transaction was legitimate when, as he knew, it was not. On or about the same date, defendant DUNHAM included the false information from this altered invoice on the spreadsheet he prepared for production to the IRS audit agent.

7. On or about March 24, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. altered Smarter Fuel Invoice number 1206, originally generated on August 24, 2009, documenting a transaction of 45,000 pounds of

“processed cooking oil,” sold as feedstock to a producer of alternative fuel, which defendant DUNHAM altered to falsely represent a transaction of a “6,500 gallon tanker of vegetable oil for use as boiler fuel,” creating the impression that defendant DUNHAM’s claim of excise tax credits claimed on this transaction was legitimate when, as he knew, it was not. On or about the same date, defendant DUNHAM included the false information from this altered invoice on the spreadsheet he prepared for production to the IRS audit agent.

8. On or about March 24, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. altered Smarter Fuel Invoice number 1211, originally generated on September 4, 2009, documenting a transaction of 93,860 pounds of “processed cooking oil” sold as a feedstock to a producer of alternative fuel, which defendant DUNHAM altered to falsely represent as a transaction to a customer of Smarter Fuel whose identity is known to the grand jury, referenced here as Company No. 13, for “renewable diesel used as fuel,” creating the impression that defendant DUNHAM’s claim of excise tax credits claimed on this transaction was legitimate when, as he knew, it was not. On or about the same date, defendant DUNHAM included the false information from this altered invoice on the spreadsheet he prepared for production to the IRS audit agent.

9. On or about March 24, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. altered Smarter Fuel Invoice number 1221, originally generated on September 24, 2009, documenting a transaction of \$350 charged to a customer for “water removal from frying oil drums,” which defendant DUNHAM altered to falsely represent as a transaction to a different customer name, for 7200 units of “vegetable oil for use as heating oil,” creating the impression that defendant DUNHAM’s claim of excise tax credits claimed on this transaction was legitimate when, as he knew, it was not. On or about the same

date, defendant DUNHAM included the false information from this altered invoice on the spreadsheet he prepared for production to the IRS audit agent.

10. On or about March 24 and 25, 2010, in preparation for production to the IRS audit agent, defendant DAVID M. DUNHAM, JR. prepared a spreadsheet purporting to document Smarter Fuel sales from July, August, and September 2009. DUNHAM populated the spreadsheet with false information intended to mislead the IRS about the propriety of DUNHAM's excise tax claims, which he knew he had falsely claimed. DUNHAM also altered at least 30 entries in the sales records of QuickBooks, Smarter Fuel's accounting system, to create the false impression that the information on the spreadsheet was accurate. The alterations performed by DUNHAM included changes to customer names, product description, quantity of product sold, and the dollar amount of product sold.

11. On or about March 25, 2010, the IRS examining agent conducting the audit visited with defendant DAVID M. DUNHAM, JR. at Smarter Fuel. Defendant DUNHAM told the agent that Smarter Fuel's finished product was going directly to end-user customers who used it as heating oil or to power diesel vehicles. Defendant DUNHAM also provided documents to IRS personnel in support of the audit inquiries. These documents included the accounting spreadsheets, and the QuickBooks report of sales from July to September 2009, purporting to support the excise tax credits claims filed by defendant DUNHAM on behalf of Smarter Fuel for the period of the review. Sales-related documents, including altered invoices numbered 1180, 1201, 1206, 1211, 1221, 1176, 1175, 1190, 1219, and 1218, were also provided by defendant DUNHAM to IRS personnel for purposes of the audit. At the completion of the visit, the agent explained to defendant DUNHAM that another IRS agent would be scheduling a visit to Smarter Fuel to take a sample of the product for which defendant DUNHAM had claimed excise tax

credits.

12. On or about March 26, 2010, April 1, 2010, and April 20, 2010, defendant DAVID M. DUNHAM, JR. used Smarter Fuel's QuickBooks accounting system to change the information he had altered back to the original state, after providing the altered versions to the IRS, thus re-balancing Smarter Fuel's internal bookkeeping.

13. On or about April 12, 2010, an IRS fuel compliance officer visited with defendant DAVID M. DUNHAM, JR. at Smarter Fuel for the purpose of collecting samples of Smarter Fuel's finished product for independent lab testing in furtherance of the examination process. Defendant DUNHAM intentionally provided the fuel compliance officer with a sample that was not representative of Smarter Fuel's finished product. Defendant DUNHAM admitted in an e-mail, "I played dumb and stalled them a little ... This bought me about six months while they sampled, tested, clarified, resampled, and retested."

14. On or about April 27, 2010, IRS personnel were notified that Smarter Fuel's collected samples did not meet one or more of the ASTM (American Society for Testing and Materials) standards required by IRS regulations, and therefore Smarter Fuel did not qualify for the \$1 excise tax credit claimed by defendant DAVID M. DUNHAM, JR., and paid to him, throughout 2009.

15. On or about May 3, 2010, defendant DAVID M. DUNHAM, JR. was advised by IRS that the product sample he provided to IRS did not qualify for the excise tax credit. DUNHAM falsely claimed that he had misunderstood the source from which he was supposed to draw the requested sample.

16. On or about May 13, 2010, an IRS fuel compliance officer again visited Smarter Fuel's plant to collect samples for independent laboratory testing purposes. Defendant

DAVID M. DUNHAM, JR. advised the fuel compliance officer that Smarter Fuel produced renewable diesel that was used in-lieu of Nos. 4, 5 and 6 oils in boilers for heating at restaurants and colleges, which defendant DUNHAM said were basically Smarter Fuel's end user customers, which defendant DUNHAM knew to be untrue.

17. On or about June 14, 2010, the IRS advised defendant DAVID M. DUNHAM, JR. that the Smarter Fuel product did not qualify for the \$1 per gallon tax credit as he had claimed for each month of 2009.

18. On or about October 29, 2010, defendant DAVID M. DUNHAM, JR. agreed to resolve the audit determination that Smarter Fuel's product did not qualify for the \$1 per gallon excise tax credit. The audit findings relied upon verbal information and documents previously supplied by defendant DUNHAM. Defendant DUNHAM agreed to pay back 50 cents on each \$1 credit paid to him for the last five weeks of 2009, or a total of approximately \$142,973.

All in violation of Title 26, United States Code, Section 7212(a).

COUNTS NINETY-SEVEN THROUGH ONE HUNDRED

18 U.S.C. § 1343

Wire fraud relating to USDA Advanced Biofuel Payment Program

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

THE SCHEME

2. From in or about April 2011 to in or about July 2012, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO**

devised and intended to devise a scheme to defraud the USDA, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. Defendants DAVID M. DUNHAM, JR. and RALPH TOMMASO applied for and received millions of dollars from the Advanced Biofuel Payment Program based on their fraudulent claims that they had produced and sold millions of gallons of qualified product.

4. On or about each of the dates set forth below, at Wind Gap, Allentown, and Bethlehem, in the Eastern District of Pennsylvania, and elsewhere, defendants

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO,**

for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each wiring constituting a separate count:

Count	Date	Recipient	Amount Wired From USDA	Recipient Account	Production Time Period
97.	9/22/2011	EERC	\$1,518,150.87	Lafayette Ambassador Bank account ending in 4441	FY 2010 (Oct. 1, 2009 – Sept. 30, 2010)
98.	9/22/2011	Smarter Fuel	\$4,849,639.04	Sovereign Bank account ending in 2118	FY 2010 (Oct. 1, 2009 – Sept. 30, 2010)
99.	9/28/2011	EERC	\$240,701.98	Lafayette Ambassador Bank account ending in 4441	Q1-Q3 FY 2011 (Oct. 1, 2010 – June 30, 2011)
100.	9/28/2011	Smarter Fuel	\$352,440.51	Sovereign Bank account ending in 2118	Q1-Q3 FY 2011 (Oct. 1, 2010 – June 30, 2011)

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT ONE HUNDRED ONE

**18 U.S.C. § 1519
Obstruction of USDA review**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 43 and 45 through 77 and Overt Acts 1 through 177 of Count One of this indictment are incorporated here.

2. Beginning in or around early 2012, the USDA Advanced Biofuel Payment Program national office was conducting a review of payments that participating companies had received under the Advanced Biofuel Payment Program. The USDA was also conducting a review concerning Smarter Fuel's and EERC's participation in the Advanced Biofuel Payment Program for 2012.

3. In or about May 2012, in the Eastern District of Pennsylvania, the defendants,

**DAVID M. DUNHAM, JR. and
RALPH TOMMASO**

knowingly altered, falsified, and made a false entry in records and documents, and aided and abetted such conduct, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Department of Agriculture, and in contemplation of such matter, by causing an employee to generate bogus bills of lading that concealed sales to customers who had purchased product as a feedstock, and falsely showed that sales had been to other customers, in order to conceal the non-qualified nature of the transactions for Advanced Biofuel Payment Program payments.

In violation of Title 18, United States Code, Sections 1519 and 2.

NOTICE OF FORFEITURE

1. As a result of the violations of Title 18, United States Code, Sections 371 and 1343 set forth in this indictment, defendants

DAVID M. DUNHAM, JR. and RALPH TOMMASO

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offense, including, but not limited to the sum of approximately \$50,000,000, which includes the following:

- (a) Bank of America account no. XXXXXXXXXX3188 in the name Greenworks Holdings, LLC, in the amount of \$900,000.00;
- (b) National Financial account no. XXXXXX0517 in the name of DAVID M. DUNHAM, JR. and J.K., in the amount of \$527,964.90;
- (c) TD Ameritrade account no. XXXXXX3476 in the name of RALPH TOMMASO, in the amount of \$100,000.00;
- (d) Sovereign Bank account no. XXXXXXX2118 in the name of Smarter Fuel, Inc., in the amount of \$50,794.97;
- (e) Lafayette Ambassador Bank account no. XXXXXX4441 in the name of Environmental Energy Recycling Corporation, LLC, in the amount of \$47,604.56;
- (f) JP Morgan Chase account no. XXXXXXXXXXXXXXX5365 in the name of RALPH TOMMASO, in the amount of \$34,337.31;
- (g) Sovereign Bank account no. XXXXXX6039 in the name of DAVID. M. DUNHAM, in the amount of \$21,892.56;
- (h) PNC Bank account no. XXXXXXX8857 in the name of C.T., in the amount of \$12,376.61;
- (i) Regions Bank account no. XXXXXXX3543 in the name of S.F.S., LLC, in the amount of \$9,410.76;
- (j) Citizens Bank account no. XXXXXXX2346 in the name of J.K., in the amount of \$1,695.37;

(k) 395 West Macada Road, Bethlehem, PA 18017;

(l) 16 Pinewood Lane, Warren NJ 07059.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

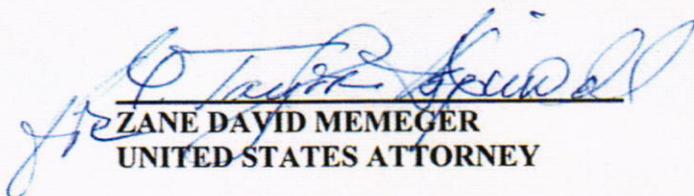
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot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

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

GRAND JURY FOREPERSON


ZANE DAVID MEMEGER
UNITED STATES ATTORNEY