IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**CRIMINAL NO: 15-**
v.	:	**DATE FILED: 6-**
WILLIAM H. BARNES	:	**VIOLATIONS:** **18 U.S.C. § 371 (conspiracy to provide false statements - 2 counts)**
	:	

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material to this information:

1. Defendant WILLIAM H. BARNES 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.

2. A person whose identity is known to the United States Attorney ("Person 1") was the owner and President of a business referred to here as Company 1, which was located in Wind Gap, Pennsylvania, and which was seeking to qualify to participate in the United States Environmental Protection Agency's ("EPA") Renewable Fuel Standard program known as "RFS-2".

3. Consultant A was an individual hired by Person 1 to assist with, among other things, Company 1's RFS-2 registration.

4. The federal RFS-2 program was created to encourage gasoline and diesel refiners and importers to introduce renewable (non-fossil) fuels into the national fuel mix. To accomplish this goal, EPA created a system of credits known as "Renewable Identification

Numbers" or "RINs" to track and boost renewable fuel production. In summary, under RFS-2, qualified producers and importers of renewable fuels could generate RINs based on the amount of renewable fuel they produced, and certain producers and importers of fossil fuels (known as "obligated parties") were required to off-set their level of production and importation of fossil fuels by obtaining and retiring a designated number of RINs each year, which they reported to the EPA. Obligated parties could obtain RINs in a number of ways, including by producing renewable fuel themselves (if it qualified for the generation of RINs), by purchasing renewable fuel (with associated RINs) from approved domestic producers, and by purchasing RINs without the underlying renewable fuel.

5. Obligated parties were required to demonstrate their compliance with the RFS-2 requirements or face possible civil penalties. The annual RIN retirement obligation caused a market to develop for RINs. The RIN was the basic currency for the RFS-2 program, used by gasoline and diesel fuel producers and importers to demonstrate that they had met their annual RIN retirement obligations. Thousands of RIN transactions were electronically recorded with EPA every week. Hundreds of millions of dollars' worth of RINs were exchanged every year.

6. The RFS-2 program was a "buyer beware" program. If an obligated party used particular RINs to satisfy its annual RIN retirement obligation, and those RINs were later deemed invalid for any reason, the obligated party bore the financial consequence because it was required to obtain and retire qualifying substitute RINs.

7. 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."

8. 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.

9. Information regarding actual peak production capacity, and whether it had been properly verified by an independent third-party engineer, was material to both the EPA and to potential RIN purchasers because it was relevant to determining RIN validity.

10. Person 1 was applying to the EPA to have Company 1 qualified to participate in the RFS-2 program as a RIN generator. Person 1 represented to the EPA that Company 1 was constructed prior to 2007.

11. In order to complete Company 1's application to EPA as a RIN generator, Person 1 contacted defendant WILLIAM H. BARNES to complete the Engineering Review.

12. From in or about July 2010 to in or about August 2010, in Easton and Wind Gap, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendant

WILLIAM H. BARNES

conspired and agreed, together and with Person 1 and others known and unknown to the United States Attorney, to commit an offense against the United States, that is, in a matter within the jurisdiction of the United States Environmental Protection Agency, an agency of the executive branch of the United States, to knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in that defendant BARNES represented that he had verified the accuracy of assertions set forth in Company 1's Engineering Review, when, as the defendant then knew, he had not verified the accuracy of the assertions in that Engineering Review, in violation of Title 18, United States Code, Section 1001.

MANNER AND MEANS

13. It was part of the conspiracy that defendant WILLIAM H. BARNES incorporated without verification information from Person 1 and Consultant A into the Company 1 Engineering Review, which he then claimed to have verified as accurate by signing the report, knowing that he had not in fact verified the accuracy of the information and that the Engineering Review he signed was to be submitted to the EPA.

It was further a part of the conspiracy that:

14. Person 1 provided to defendant WILLIAM H. BARNES a previously completed draft of the Company 1 Engineering Review. In the pre-filled out report, Person 1 and Consultant A provided the vast majority of the information about Company 1 that was incorporated into defendant BARNES' final report without defendant BARNES' actual verification.

15. Person 1 represented to defendant WILLIAM H. BARNES that the actual peak production capacity of Company 1's facility was 10 million gallons of renewable fuel per year, which defendant BARNES incorporated into his final Company 1 Engineering Review without defendant BARNES' verification.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its object, defendant WILLIAM H. BARNES and Person 1 committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. In or about late July 2010, Person 1 contacted defendant WILLIAM H. BARNES to complete an Engineering Review for Company 1 in support of its RFS-2 application.

2. On or about July 29, 2010, Person 1 sent defendant WILLIAM H. BARNES an e-mail in which he stated, "I've attached the information and the ghost written report that [Consultant A] sent me." Attached to the e-mail was a draft of the Company 1 Engineering Review.

3. On or about August 2, 2010, defendant WILLIAM H. BARNES sent Person 1 a work proposal in which defendant BARNES offered to perform a third party engineering review "based on preliminary engineering review documentation provided by [Company 1]." The proposal further stated, "We understand that a draft report has been prepared by another third party consultant and includes all information required with the exception of Section 2. Professional Licensed Engineer Documentation, Section 3. Third Party Independence and some concluding remarks as needed in Section 6."

4. On or about August 5, 2010, defendant WILLIAM H. BARNES caused a draft of the Company 1 Engineering Review to be forwarded to Person 1, which stated that Company 1's peak production capacity was 10 million gallons of renewable fuel per year.

5. On or about August 5, 2010, Person 1 commented by e-mail on the draft Company 1 Engineering Review, "Looks good to me."

6. On or about August 5, 2010, defendant WILLIAM H. BARNES sent to Person 1 the final Company 1 Engineering Review, which defendant BARNES knew Person 1 intended to submit to the EPA, and in which defendant BARNES incorporated without actual verification the statement that Company 1's peak production capacity was 10 million gallons of renewable fuel per year. The report provided that defendant BARNES' review had been conducted in accordance with 40 C.F.R. § 80.1450 of EPA's Renewable Fuel Standard program, that the Company 1 documentation and information had been verified, and that "The on-site visit and engineering review conducted confirmed that all documentation submitted to EPA in the RFS-2 registration process is consistent with the actual [Company 1] operation." Further, the report provided, "The Actual Peak Production volume has been confirmed at 10 million gallons per year." Although these assertions were not true, defendant BARNES signed and applied his Registered Professional Engineer stamp to the final report.

7. On or about November 3, 2010, Person 1 submitted to the EPA the final Company 1 Engineering Review that was signed and stamped by defendant WILLIAM H. BARNES, and in which it was represented that Company 1's actual peak production capacity was 10 million gallons of renewable fuel per year, and that defendant BARNES had confirmed and verified that assertion, when, in fact, defendant BARNES knew he had not actually confirmed or verified that assertion.

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

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 and 4 through 9 of Count One of this information are incorporated here.

2. A person whose identity is known to the United States Attorney ("Person 2") was the owner and Chief Executive Officer and President of a business referred to here as Company 2, which was located in Allentown, Pennsylvania, which was seeking to qualify to participate in the United States Environmental Protection Agency's ("EPA") Renewable Fuel Standard program known as "RFS-2."

3. Person 2 also hired Consultant A to assist with, among other things, Company 2's RFS-2 registration.

4. Person 2 was applying to the EPA to have Company 2 qualified to participate in the RFS-2 program as a RIN generator. Person 2 represented to the EPA that Company 2 was constructed prior to 2007.

5. In order to complete Company 2's application to EPA as a RIN generator, Person 2 contacted defendant WILLIAM H. BARNES to complete the Engineering Review.

6. From in or about July 2010 to in or about August 2010, in Easton and Allentown, Pennsylvania, in the Eastern District of Pennsylvania, and elsewhere, defendant

WILLIAM H. BARNES

conspired and agreed, together and with Person 2 and others known and unknown to the United States Attorney, to commit an offense against the United States, that is, in a matter within the jurisdiction of the United States Environmental Protection Agency, an agency of the executive branch of the United States, to knowingly and willfully make materially false, fictitious, and

fraudulent statements and representations in that defendant BARNES represented that he had verified the accuracy of assertions set forth in Company 2's Engineering Review, when, as the defendant then knew, he had not verified the accuracy of the assertions in that Engineering Review, in violation of Title 18, United States Code, Section 1001.

MANNER AND MEANS

7. It was part of the conspiracy that defendant WILLIAM H. BARNES incorporated without verification information from Person 2 and Consultant A into the Company 2 Engineering Review, which he then claimed to have verified as accurate by signing the report, knowing that he had not in fact verified the accuracy of the information and that the Engineering Review he signed was to be submitted to the EPA.

It was further a part of the conspiracy that:

8. Person 2 provided to defendant WILLIAM H. BARNES a previously completed draft of the Company 2 Engineering Review. In the pre-filled out report, Person 2 and Consultant A provided the vast majority of the information about Company 2 that was incorporated into defendant BARNES' final report without defendant BARNES' actual verification.

9. Person 2 represented to defendant WILLIAM H. BARNES that the actual peak production capacity of Company 2's facility was 8.803 million gallons of renewable fuel per year, which defendant BARNES incorporated into his final Company 2 Engineering Review without defendant BARNES' actual verification.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its object, defendant WILLIAM H. BARNES and Person 2 committed the following overt acts, among others, in the Eastern

District of Pennsylvania and elsewhere:

1. In or about late July 2010, Person 2 contacted defendant WILLIAM H. BARNES to complete an Engineering Review for Company 2 in support of its RFS-2 application.

2. On or about July 29, 2010, defendant WILLIAM H. BARNES sent Person 2 a work proposal in which defendant BARNES offered to perform a third party engineering review "based on preliminary engineering review documentation provided [by Company 2]." Defendant BARNES' proposal further stated, "We understand that a draft report has been prepared by another third party consultant and includes all information required with the exception of Section 2. Professional Licensed Engineer Documentation, Section 3. Third Party Independence and some concluding remarks as needed in Section 6."

3. On or about July 31, 2010, Person 2 sent defendant WILLIAM H. BARNES an e-mail to which he attached a draft of the Company 2 Engineering Review that had been written by Consultant A.

4. On or about August 3, 2010, defendant WILLIAM H. BARNES caused a draft of the Company 2 Engineering Review to be forwarded to Person 2, which stated that Company 2's peak production capacity was 8.803 million gallons per year.

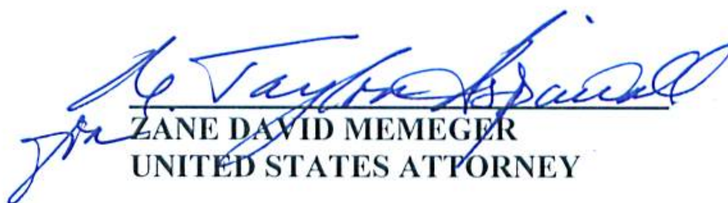
5. On or about August 4, 2010, Person 2 commented by e-mail on the draft Company 2 Engineering Review and acknowledged reading the assertion that Company 2's peak production capacity was 8.803 million gallons per year.

6. On or about August 5, 2010, defendant WILLIAM H. BARNES sent to Person 2 the final Company 2 Engineering Review, which defendant BARNES knew Person 2 intended to submit to the EPA, and in which defendant BARNES incorporated without actual verification the statement that Company 2's peak production capacity was 8.803 million gallons of

renewable fuel per year. The report provided that defendant BARNES' review had been conducted in accordance with 40 C.F.R. § 80.1450 of EPA's Renewable Fuel Standard program, that the Company 2 documentation and information had been verified, and that "The on-site visit and engineering review conducted confirmed that all documentation submitted to EPA in the RFS-2 registration process is consistent with the actual [Company 2] operation." Further, the report provided, "The Actual Peak Production volume has been confirmed at 8.803 million gallons per year." Although these assertions were not true, defendant BARNES signed and applied his Registered Professional Engineer stamp to the final report.

7. On or about August 5, 2010, Person 2 submitted to the EPA the final Company 2 Engineering Review that was signed and stamped by defendant WILLIAM H. BARNES, and in which it was represented that Company 2's actual peak production capacity was 8.803 million gallons of renewable fuel per year, and that defendant BARNES had confirmed and verified that assertion, when, in fact, defendant BARNES knew he had not actually confirmed or verified that assertion.

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



ZANE DAVID MEMEGER
UNITED STATES ATTORNEY