

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**GARY FILLERS,**

**Defendant.**

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**Docket No: 1:09-cr 147**

**Judge COLLIER/CARTER**

**PLEA AGREEMENT**

The United States of America, by the United States Attorney for the Eastern District of Tennessee and the Assistant Attorney General for the Environment and Natural Resources Division, the Defendant, GARY FILLERS, and the Defendant's attorney, Hugh J. Moore, have agreed upon the following:

1. The Defendant will waive indictment and arraignment and plead guilty to the one-count Criminal Information charging with conspiring to violate the Clean Air Act, 42 U.S.C. § 7413(c), in violation of 18 U.S.C. § 371. The punishment for violating 18 U.S.C. § 371 is as follows: imprisonment for up to five (5) years; fine of up to \$250,000.00; supervised release for three (3) years; any lawful restitution; and a \$100 special assessment.
2. The parties agree that the appropriate disposition of this case would be the following:
  - a) The Court may impose any lawful term of imprisonment up to the statutory maximum;
  - b) The Court may impose any lawful fine up to the statutory maximum;

- c) The Court may impose any lawful term of supervised release up to the statutory maximum;
- d) The Court will impose a special assessment fee as required by law; and
- e) The Court may order forfeiture as applicable and restitution as appropriate.

3. The Defendant has read the Criminal Information, discussed the charges and possible defenses with defense counsel, and understands the crime charged. The Defendant is pleading guilty because the Defendant is, in fact, guilty. In order to be guilty of Count One, making a false statement in a record required pursuant to the Clean Air Act, the Defendant agrees that each of the following elements of the crime must be proved beyond a reasonable doubt: (1) that two or more persons conspired or agreed to violate the Clean Air Act; (2) that the defendant knowingly and voluntarily joined the conspiracy; and (3) that a member of the conspiracy committed one or more of the overt acts described in Paragraph\_\_ of the Information for the purpose of advancing or helping the conspiracy

4. The Defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, also constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines. They do not necessarily constitute all the facts in the case. Other facts may be relevant to sentencing. Both the Defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

5. The Defendant understands that, by pleading guilty, he is giving up several rights,

including:

- a) the right to be indicted by a grand jury for this crime;
- b) the right to plead not guilty;
- c) the right to a speedy and public trial by jury;
- d) the right to assistance of counsel at trial;
- e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the Defendant guilty beyond a reasonable doubt;
- f) the right to confront and cross-examine witnesses against the Defendant;
- g) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- h) the right not to testify and to have that choice not used against the Defendant.

6. The Defendant further agrees to cooperate completely and truthfully with any and all law enforcement agents and personnel of the United States Attorney's Office. This cooperation includes, but is not limited to, meeting with and being interviewed by such law enforcement agents or personnel of the United States Attorney's Office whenever requested. The Defendant further agrees not to protect anyone who was truly involved and not to falsely implicate anyone who was not truly involved in the commission of criminal offenses. The Defendant further agrees to testify completely and truthfully before a federal grand jury, at any trial, or at any other proceeding if called upon by the United States to do so. Upon request by the United States, the Defendant must furnish all documents, objects and other evidence in the Defendant's possession, custody or control that are relevant to the United State's inquiries. The

Defendant and defense counsel also knowingly, voluntarily, and intentionally waive the Defendant's right (where applicable) to have defense counsel present during the course of cooperation, including questioning or court appearances.

7. To ensure the Defendant's truthful cooperation, the United States agrees, except as provided below, not to use any self-incriminating information provided by the Defendant pursuant to this written plea agreement against the Defendant. However, nothing in this plea agreement shall be applied to restrict the use of any information, (1) known to the United States prior to entering into this written plea agreement; (2) obtained from any other source; or (3) concerning the Defendant's prior criminal record. Should any of the following occur (1) the Defendant provides false or materially misleading information during the course of the Defendant's cooperation; (2) the Defendant later moves to withdraw the Defendant's guilty plea or (3) the Defendant breaches any of the terms of this plea agreement, then the United States may make use of any information provided by the Defendant for any purpose in any subsequent proceeding, including grand jury, trial and sentencing phases of this case or in any other prosecutions or proceedings against the Defendant.

8. At the time of sentencing, the United States may bring to the Court's attention the nature, extent, and value of the Defendant's cooperation so that it may be considered in determining a fair and appropriate sentence under the facts of the case. If, in the sole discretion of the United States, the Defendant provides substantial assistance, the United States may file a motion for downward departure pursuant to Section 5K1.1 of the Sentencing Guidelines or 18 U.S.C. § 3553(e), or both, allowing the Court to impose a sentence which may fall below the

minimum mandatory term of imprisonment or below the Sentencing Guidelines, but the United States will be under no obligation to do so. The United States retains complete discretion whether to file such a motion. If such a motion is filed, the Defendant understands that the Court, not the United States, determines whether the Defendant receives a downward departure or a sentence below a minimum mandatory term of imprisonment.

9. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the parties that the following provisions of the United States Sentencing Guidelines apply to the Defendant's Sentencing Guidelines calculation:

- a) The Defendant's conduct is governed by U.S.S.G. Section 2Q1.2, and the Defendant's base offense level is eight (8);
- b) For the purpose of Section 2Q1.2(b)(1)(A), the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a hazardous or toxic substance into the environment;
- c) For the purpose of Section 2Q1.2(b)(3), the offense resulted in a cleanup requiring a substantial expenditure; and
- d) Given the Defendant's agreement to plead guilty, the Defendant is entitled to a two-level reduction for acceptance of responsibility under the provisions of U.S.S.G. Section 3E1.1(a) Further, if the defendant 's offense level is 16 or greater, the United States agrees to move, at or before the time of sentencing, that the Court decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any

conduct or make statements that are inconsistent with accepting responsibility for the defendant's offense(s), including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines..

The parties further agree to reserve the right to assert at sentencing that other provisions of the United States Sentencing Guidelines should or should not be applied to the calculation of the Defendant's Sentencing Guidelines.

10. The Defendant agrees to pay the special assessment in this case prior to sentencing.

11. The Defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately and consents to the entry of an order directing him to pay restitution in full to any person who would qualify as a victim under 18 U.S.C. § 3663 or § 3663A. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the Defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the United States deems appropriate. Finally, the

Defendant and counsel agree that the Defendant may be contacted regarding the collection of any fine and/or restitution without notifying counsel and outside the presence of counsel.

12. (a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the Defendant's acceptance of responsibility for the offense, the Defendant agrees not to file a direct appeal of the Defendant's conviction.

(b) In addition, the Defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the conviction(s) and/or resulting sentence. The parties agree that the Defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant by the time of the entry of judgment.

13. The Defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth in the Agreed Factual Basis shall be admissible and useable against the Defendant by the United States in any subsequent criminal or civil proceeding, even if he fails to enter a guilty plea pursuant to this Agreement, or if such a guilty plea is later vacated or withdrawn. The Defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent these rules are inconsistent with this paragraph or with this Agreement generally.

14. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to fully disclose all assets in which he has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party.

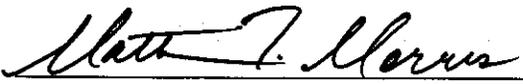
- a. The Defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The Defendant's financial statement and disclosures shall be complete, accurate and truthful.
- b. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on him.

15. If the United States violates the terms of this agreement, the Defendant will have the right to withdraw from this agreement. If the Defendant violates the terms of this agreement, moves to withdraw the Defendant's guilty plea, or violates any court order, local, state or federal law pending the resolution of this case, the United States will have the right to void any or all parts of the agreement. The United States may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the Defendant for any and all federal crimes that the Defendant committed related to this case, including any charges that were dismissed. The Defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial defense to such a prosecution. The Defendant also understands that a violation of this plea agreement by the Defendant does not entitle the Defendant to withdraw the guilty plea in this case.

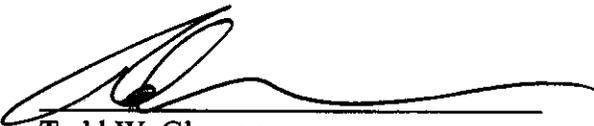
16. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the Defendant's guilty plea to the above-referenced charge, and there are no other agreements, promises, undertakings, or understandings between the Defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other

promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

JAMES R. DEDRICK  
United States Attorney  
Eastern District of Tennessee

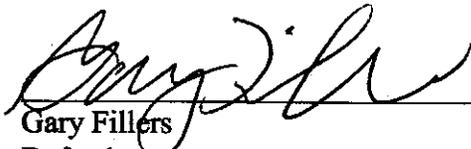
By:   
Matthew T. Morris  
Assistant United States Attorney

JOHN C. CRUDEN  
Acting Assistant Attorney General  
United States Department of Justice  
Environment & Natural Resources Division

By:   
Todd W. Gleason  
Trial Attorney  
Environmental Crimes Section

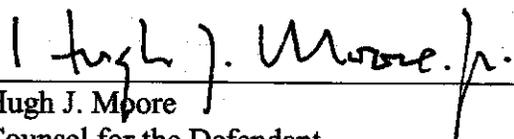
Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending Information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 8/25/09

  
\_\_\_\_\_  
Gary Fillers  
Defendant

Defense Counsel Signature: I am counsel for the Defendant in this case. I have fully explained to the Defendant the Defendant's rights with respect to the pending Information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the Defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 8/29/09

  
\_\_\_\_\_  
Hugh J. Moore  
Counsel for the Defendant

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD FILLERS, DAVID WOOD,  
JAMES MATHIS, MATHIS COMPANIES, INC.,  
and WATKINS STREET PROJECT, LLC,

Defendants.

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1:09-CR-144

JUDGES Collier/Carter

18 U.S.C. § 371 – Conspiracy to Violate the  
Clean Air Act & to Defraud the  
United States

42 U.S.C. § 7413(c) – Clean Air Act  
Violations

18 U.S.C. § 1001 – False Statements

18 U.S.C. § 1519 – Obstruction of Justice

18 U.S.C. § 2(a) – Aiding & Abetting

**INDICTMENT**

THE GRAND JURY CHARGES that, at all times material to this Indictment:

**PARTIES**

a. Defendant WATKINS STREET PROJECT, LLC (hereinafter “WSP”) was a limited liability company organized under the laws of Tennessee (I.D. Number 0448069) engaged in the business of, among other things, the acquisition, demolition, and salvage of commercial buildings, including the Standard Coosa Thatcher textile plant located on the 1700 Block of Watkins Street, Chattanooga, Hamilton County, Tennessee.

b. Defendant DONALD FILLERS was a part-owner, and general partner of WSP.

c. Defendant DAVID WOOD was a manager/supervisor of, among other things, salvage and demolition activities for WSP.

d. Defendant MATHIS COMPANIES, INC., (hereinafter “MCI”) was a corporation organized under the laws of Tennessee (I.D. Number 0441829), engaged in, among other things, commercial construction, demolition, and salvage activities in the vicinity of Chattanooga, Tennessee, to include the demolition and salvage of the former Standard Coosa Thatcher Textile Plant (hereinafter “Standard Coosa”), located on the 1700 Block of Watkins Street, Chattanooga, Hamilton County, Tennessee.

e. Defendant JAMES MATHIS was the owner of MCI.

### **STATUTORY & REGULATORY BACKGROUND**

f. Congress enacted 42 U.S.C. §§ 7401 *et. seq.* (hereinafter “the Clean Air Act” or “CAA”), with the stated purpose of “to protect and enhance the quality fo the Nation’s air resources so as to promote the public health and welfare . . . .” To that end, Congress and the United States Environmental Protection Agency (hereinafter “EPA”) have determined that asbestos is a "hazardous" air pollutant. Congress has found that medical science has established no minimum level of exposure to asbestos fibers which is considered safe to exposed persons. 20 U.S.C. § 3601(a)(3).

g. EPA, United States Department of Labor, Occupational Safety and Health Administration (hereinafter “OSHA”), and the State of Tennessee administer laws and regulations governing how asbestos must be abated, the equipment that must be provided to workers conducting abatement, and sampling methodology and analysis to verify the effectiveness of the abatement.

h. The standards promulgated by EPA are commonly known as the National

Emission Standards for Hazardous Air Pollutants or “NESHAPs”. Pursuant to these NESHAPs, EPA established work practice standards that must be followed to ensure the safe and proper handling, removal, and disposal of asbestos during renovation or demolition work. 40 C.F.R. §§ 61.145, 61.150, 61.154.

i. “Friable asbestos material,” as used in this Indictment, means any material containing more than one percent (1%) asbestos, as determined by approved EPA methodologies, that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure.

j. “Regulated asbestos-containing material” (hereinafter “RACM” or “asbestos”), means friable asbestos material or asbestos containing material that can become friable as a result of demolition activities. 40 C.F.R. § 61.141.

k. Demolition and renovation activities are regulated under the Clean Air Act when they involve at least 260 linear feet on pipes, 160 square feet on other facility components, or 35 cubic feet off facility components (where the length or area could not be measured previously) of RACM, which includes friable asbestos material. 40 C.F.R. § 61.145(a).

l. “Owner or Operator of a demolition or renovation activity” means any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both. 40 C.F.R. § 61.141.

m. The Clean Air Act's asbestos work practice standards describe the appropriate procedures for the notification and safe handling, stripping, removal and disposal of RACM during renovation or demolition to prevent emissions of particulate asbestos material into the air.

These work practice standards require, in pertinent part, that:

- i. to determine the requirements for proper building renovation or demolition, prior to commencement, the owner or operator must cause the affected facility to be "thoroughly inspected," or "surveyed," for the presence of asbestos (40 C.F.R. § 61.145(a));
- ii. the owner or operator must remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material (40 C.F.R. § 61.145(c)(1));
- iii. the owner or operator must provide the EPA Administrator with written notice of the intention to renovate or demolish a facility containing regulated asbestos material ten days before the activity begins (40 C.F.R. § 61.145(b));
- iv. the owner or operator must have present during the renovation or demolition project a foreman, management-level person or other authorized representative, trained in compliance with the asbestos regulations (40 C.F.R. § 61.145(b)(xiii) and (c)(8));
- v. friable asbestos materials must be adequately wetted when being stripped from facility components (40 C.F.R. § 61.145(c));
- vi. friable asbestos materials and facility components covered with such materials must be carefully lowered to the floor and to ground level, not

dropping, throwing, sliding, or otherwise damaging or disturbing the RACM (40 C.F.R. § 61.145(c));

- vii. RACM that has been removed or stripped must remain adequately wetted until it is packed and sealed in leak-tight containers or wrappings (40 C.F.R. § 61.145(c));
- viii. friable asbestos waste containers transported off the facility site must be marked with labels that state the name of the asbestos waste generator and the location at which the waste was generated (40 C.F.R. § 61.145(c));
- ix. the owner or operator must maintain waste shipment records that contain the information set forth in 40 C.F.R. §§ 61.150(d)(1) through (5)(40 C.F.R. § 61.145(c)); and
- x. the waste generator must deposit friable asbestos-containing materials and other components containing or covered with asbestos-containing materials as soon as practical at a disposal site authorized to accept asbestos (40 C.F.R. § 61.150(b)(1));

n. OSHA-promulgated regulations prescribe the protective gear that must be provided to asbestos-abatement workers, the licensing requirements for such workers and supervisors, and the air monitoring and sampling requirements that must be conducted before, during and after such abatement. These requirements provide that:

- i. individuals supervising the removal of RACM must be properly accredited to do so;

- ii. individuals conducting the removal of RACM must wear protective gear during abatement activities to include properly fitted respirators and protective suits as set forth in 29 C.F.R. § 1926.1101; and
- iii. each employer conducting specified types of asbestos abatement work must have air monitoring analysis performed during the work to accurately determine the airborne concentration of asbestos to which employees may be exposed. Such air analysis is referred to herein as “OSHA Personals.” To conduct air analysis on OSHA Personals, analysts must be trained in, and utilize, required methodologies set by the National Institute of Safety and Health (hereinafter “NIOSH”). Each air monitor must be given a respirator and fit tested for its use, pursuant to OSHA regulations. See 29 C.F.R. part 1926.1101.
- iv. Training for asbestos abatement workers and supervisors is required under the Asbestos Hazard Emergency Response Act of 1986 (hereinafter “AHERA”). AHERA requires certain individuals dealing with friable asbestos-containing material in commercial buildings to be specially accredited. 15 U.S.C. § 2646(a)(1).
  - o. Each state is permitted to develop a program for the implementation and enforcement of Clean Air Act emission standards (discharges into the air) and other requirements of 42 U.S.C. § 7412 and submit the program to EPA for approval. A program submitted by a state may provide for partial or complete delegation of EPA's authority to implement and enforce Clean Air Act emission standards and prevention requirements, but shall

not include authority to set standards less stringent than those promulgated by EPA. 42 U.S.C. § 7412(1). The Tennessee Department of Environment and Conservation, Division of Air Pollution Control, is responsible for enforcing these regulations for the State of Tennessee with the exception of Davidson and Knox counties. See 40 C.F.R. § 61.04; 46 Fed. Reg. 29330-02, 1981 WL 109430 (June 1, 1981); Tenn. Comp. R. & Regs. 1200-03-11-.0. As part of the EPA-approved delegation to Tennessee, municipalities and counties are likewise permitted to apply to the State of Tennessee for “Certificates of Exemption” to administer the delegated NESHAP program. See T.C.A. § 68-201-115. Having applied for, and obtained such certificates, demolition and asbestos renovation activities conducted in Hamilton County (i.e., where the Standard Coosa facility is located) are under the jurisdiction of the Chattanooga-Hamilton County Air Pollution Control Bureau (hereinafter "Air Pollution Control"). Accordingly, in addition to the work-practice standards described above, the following requirements apply in Chattanooga, Tennessee:

- i. An owner or operator wishing to demolish a building must submit an application for a demolition permit to the City of Chattanooga.
- ii. Prior to the commencement of any demolition activities, the owner or operator must cause the affected facility to be "thoroughly inspected" or “surveyed” for the presence of asbestos in accordance with the work-practice standards described in the preceding paragraphs.
- iii. The owner or operator must then submit a 10-day notice to Air Pollution Control listing, among other things, the amount of RACM present in the

building, the aforementioned survey, the owner of the facility, the operator who will be in charge of demolition, and the licensed asbestos-abatement company that will remove any asbestos prior to the commencement of demolition activities.

### **COUNT 1**

#### **Conspiracy to Defraud the United States & Conspiracy to Violate NESHAPs**

1. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.
2. Beginning in or about August 2004 through in or about December 2005, the exact dates being unknown to the Grand Jury, within the Eastern District of Tennessee and elsewhere, Defendants DONALD FILLERS, DAVID WOOD, JAMES MATHIS, WSP, and MCI did combine, confederate, conspire and agree together, and with others both known and unknown to the Grand Jury, (i) to defraud the United States by impeding and impairing the governmental functions of EPA and Air Pollution Control in enforcing the federal environmental regulations and the Department of Labor and its agency, OSHA, in enforcing the federal safety and health regulations covering certain workers throughout the United States and (ii) to knowingly commit offenses against the United States, that is to: violate the Clean Air Act, 42 U.S.C. §§ 7412(b) and (h) and 7413(c)(1), 40 C.F.R. §§ 61.145, 61.150 and 61.154.

#### **Manner & Means**

3. DONALD FILLERS and others, known and unknown to the Grand Jury, founded WSP on June 6, 2003, in part, for the purpose of purchasing and demolishing Standard Coosa to

salvage brick, lumber, piping, metals, and other marketable materials for resale and profit.

4. WSP purchased Standard Coosa, which occupied the 1700 Block of Watkins Street, bordered by E. 18<sup>th</sup> Street and E. 17<sup>th</sup> Street in Chattanooga, Tennessee, on or about July 30, 2003. WSP purchased each and every commercial building located on this block, with the exception of a day-care center and nursery, which was located on the same block as Standard Coosa in Chattanooga, Tennessee.

5. On or about July 8, 2003, the exact dates unknown to the Grand Jury, Defendants WSP and DONALD FILLERS hired Alternative Actions, Inc., a certified asbestos surveying company, to survey Standard Coosa for the presence of asbestos. Alternative Actions, Inc. produced a written survey which identified 6,126 linear feet of pipe insulation, 348 EA of pipe fittings, 4,293 square feet of equipment insulation, 3,570 square feet of transite, 1,600 square feet of floor tile / mastic, and 2,440 square feet of oven insulation, all of which contained RACM.

6. On or about July 16, 2003, June 22, 2004, August 19, 2004, and September 7, 2004, the Defendants obtained estimates from Alternative Actions, Inc.; SCI Remediation, Inc.(hereinafter "SCI"); and Battlefield Abatement, Inc. (hereinafter "Battlefield"), for the lawful abatement and removal of all of the asbestos identified in the above-described 2003 Alternative Actions, Inc. survey. Alternative Actions, Inc.'s, SCI's, and Battlefield's estimates for the asbestos abatement at Standard Coosa were \$214,650, \$129,250 and \$126,542 respectively. Each and every one of those bids were rejected by Defendants WSP and DONALD FILLERS.

7. In furtherance of the conspiracy, the Defendants had incomplete and partial surveys of Standard Coosa conducted to mislead regulatory authorities and others as to the

amount of RACM located at Standard Coosa, which was to be demolished.

8. In furtherance of the conspiracy, Defendants WSP, DONALD FILLERS and JAMES MATHIS provided false and misleading 10-day notifications to Air Pollution Control of their intention to demolish Standard Coosa.

9. In furtherance of the conspiracy, the Defendants failed to have a properly-licensed person or other authorized representative trained in compliance with the asbestos regulations present at Standard Coosa during certain asbestos-abatement and demolition activities.

10. In furtherance of the conspiracy, the Defendants and people acting at the Defendants' direction performed asbestos abatement in violation of Federal, State and county laws and regulations, to wit: asbestos was removed without wetting with knives, chisels, saws, fork lifts and by hand; thrown out of windows; swept up using brooms and loaders; pushed into open piles; stored on-site in open dumpsters; sorted by hand; hidden in dumpsters; transported off-site without providing for proper labeling or shipping; and disposed of off-site at facilities not authorized to accept asbestos.

11. In furtherance of the conspiracy, Defendants WSP, DONALD FILLERS, and DAVID WOOD hired untrained and unlicensed day-laborers, homeless people, and other individuals to carry out the illegal activities listed in the preceding paragraph. These individuals had neither the requisite asbestos abatement training, proper licenses, nor protective equipment before they engaged in these activities.

12. In furtherance of the conspiracy, the Defendants and their employees, day-laborers, and other individuals acting at their direction, failed to remove all RACM from

Standard Coosa prior to commencing demolition and renovation activities.

13. In furtherance of the conspiracy, the Defendants concealed and covered up their illegal activities by making false statements to inspectors, regulators and law enforcement personnel and preparing false and fraudulent documents.

#### **Overt Acts**

14. In or about August 2004, the exact dates being unknown to the Grand Jury, Defendants solicited an additional bid from ADC Systems, Inc. (hereinafter "ADC"), a certified asbestos-abatement company for the removal of RACM from the Standard Coosa facility. However, the Defendants failed to provide ADC with the 2003 Alternative Actions, Inc. survey and, instead, showed ADC personnel only a limited portion of the Standard Coosa facility. The ADC survey of this limited portion of Standard Coosa identified substantially less RACM than actually existed on the Standard Coosa site to be demolished. The corresponding ADC estimate was less than \$28,900.

15. On or about August 1, 2004, the exact dates unknown to the Grand Jury, Defendants WSP and DONALD FILLERS hired Defendant DAVID WOOD to oversee all salvage operations at Standard Coosa.

16. On or about August or September of 2004, the exact date being unknown to the Grand Jury, Defendants WSP and DONALD FILLERS entered into a contract with Defendants JAMES MATHIS and MCI, to demolish Standard Coosa.

17. On or about August 30, 2004, Defendant JAMES MATHIS filed a materially false and misleading 10-day notice to Air Pollution Control that (a) listed the limited RACM

figures provided by ADC (i.e., 1,800 linear feet, 800 pipe insulation, and 200 square feet of linoleum) and (b) misrepresented that these limited ADC figures reflected the total RACM present at the entire Standard Coosa site.

18. Shortly after August 30, 2004, the exact date unknown to the Grand Jury, DONALD FILLERS called Air Pollution Control and modified the RACM figures provided in the 10-day notice – again using falsified numbers (e.g., 2,000 linear feet of pipe wrap).

19. On September 17, 2004, Defendants JAMES MATHIS and DONALD FILLERS provided an application for demolition to the City of Chattanooga indicating that the vast majority of Standard Coosa was to be demolished knowing that the 10-day notice did not account for all RACM present.

20. Between August and October of 2004, the exact dates being unknown to the Grand Jury, Defendants DONALD FILLERS and JAMES MATHIS instructed ADC to conduct its limited abatement on the northwest quadrant of the Standard Coosa complex.

21. On or about September 27, 2004, the exact date being unknown to the Grand Jury, Defendant JAMES MATHIS directed employees of MCI to commence with demolition activities despite knowing that substantial amounts of RACM remained in the Standard Coosa buildings. MCI employees subsequently conducted demolition activities from at least September 2004 through at least January of 2005, the exact dates being unknown to the Grand Jury.

22. In or around September 2004, the exact date being unknown to the Grand Jury, Defendant DAVID WOOD hired a crew of day-laborers, and other vulnerable individuals to assist him and Defendant DONALD FILLERS with salvage operations throughout the entire

Standard Coosa complex (hereinafter the “Salvage Crew”). At all times relevant to this Indictment, none of the members of this Salvage Crew were properly accredited, trained, or otherwise qualified to conduct such asbestos-abatement activities.

23. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, Defendants DAVID WOOD and DONALD FILLERS and others acting at their direction, removed RACM in violation of work-practice standards – i.e., they used saws, power tools, fork-lifts, pry-bars and other tools to remove dry RACM; let RACM fall directly to the floor; threw bulk quantities of RACM out of windows, letting it fall to the ground below; stored RACM on-site for prolonged periods by piling it into co-mingled debris piles with brooms, shovels, and front-end loaders; and disposed of RACM without properly wetting, containerizing, or labeling.

24. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, Defendants DAVID WOOD, DONALD FILLERS, and others acting at their direction, caused RACM to lie in open debris piles on site without disposing of such RACM at approved sites as soon as practicable.

25. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, Defendants DONALD FILLERS and DAVID WOOD ordered members of the Salvage Crew to transfer RACM to and between various unsealed dumpsters on site in an effort to hide such materials from regulatory authorities.

26. In or around September 2004, the exact dates being unknown to the Grand Jury, Defendant JAMES MATHIS was informed by ADC personnel that RACM was present

throughout the Standard Coosa buildings being demolished and that Defendant JAMES MATHIS should cease all demolition activities. Defendants JAMES MATHIS and MCI continued demolition activities despite being advised of the presence of RACM, thereby exposing others to asbestos contamination.

27. On or about September 27, 2004, Defendant DONALD FILLERS informed ADC personnel that the scattered RACM mentioned in the previous paragraph would be cleaned up by members of the Salvage Crew.

28. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, Defendants DONALD FILLERS, DAVID WOOD and others, known and unknown to the Grand Jury, arranged for the illegal transportation of open containers of RACM to disposal facilities unpermitted and ill-equipped to handle this hazardous material.

29. In or after March 2005, the exact dates being unknown to the Grand Jury, Defendants JAMES MATHIS and MCI quit working at Standard Coosa. Defendant DONALD FILLERS authorized Defendant DAVID WOOD to complete salvage and demolition activities at Standard Coosa. Defendant DAVID WOOD subsequently began demolishing the remaining Standard Coosa buildings, despite knowing that all RACM had not yet been removed from the facility.

30. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, DONALD FILLERS and DAVID WOOD directed the Salvage Crew to conduct the abatement, salvage and demolition activities mentioned in the

preceding paragraphs without providing them with respirators or any other protective gear, OSHA personals, or any licensing training.

31. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, Defendants DONALD FILLERS and DAVID WOOD ordered abatement and demolition activities to proceed without the presence of a person trained in compliance with the asbestos abatement regulations.

32. After Air Pollution Control discovered the presence of RACM on the ground and in debris piles at the Standard Coosa site in September of 2005, WSP owners attempted to have members of the Salvage Crew to pick up the scattered RACM by hand.

33. After Air Pollution Control discovered the presence of RACM on the ground and in debris piles at the Standard Coosa site in September of 2005, Air Pollution Control directed that WSP provide the 2003 Alternative Actions, Inc. survey to establish how much RACM was originally present in Standard Coosa. In response, Defendant DONALD FILLERS provided an incomplete version of the 2003 Alternative Actions, Inc. survey missing pages identifying significant amounts of RACM.

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

## **COUNT 2**

### **NESHAPs: Failure to Provide Accurate 10-Day Notice (As Against Donald Fillers, James Mathis, MCI, and WSP)**

34. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

35. On or about August 30, 2004, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, Defendants DONALD FILLERS, JAMES MATHIS, MCI, and WSP, who were owners and operators of a demolition activity (i.e., Standard Coosa), knowingly failed to provide an accurate written notification to EPA and Air Pollution Control prior to demolishing a facility containing a jurisdictional amount of RACM (i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM) from Standard Coosa thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1), and Title 18, United States Code, Section 2(a).

**COUNT 3**  
**NESHAPs: Commencing Demolition Prior to Abatement**  
(As Against All Defendants)

36. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

37. Between in or around September 2004 and in around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, Defendants DONALD FILLERS, DAVID WOOD, JAMES MATHIS, MATHIS COMPANIES, INC., and WSP, who were owners and operators of a demolition activity to wit, Standard Coosa (a facility containing a jurisdictional amount of RACM – i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM), knowingly commenced demolition activities before all RACM was removed from Standard Coosa thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1) and Title 18, United States Code, Section 2(a).

**COUNT 4**  
**NESHAPs: Failure to Have a Trained Individual Present**  
(As Against All Defendants)

38. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

39. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, Defendants DONALD FILLERS, DAVID WOOD, JAMES MATHIS, MATHIS COMPANIES, INC., and WSP, who were owners and operators of a demolition activity, to wit, Standard Coosa (a facility containing a jurisdictional amount of RACM – i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM), knowingly failed to have present during the demolition project, an individual trained in the provisions of NESHAPs and the attendant regulations and the means of complying with them, thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1), and Title 18, United States Code, Section 2(a).

**COUNT 5**  
**NESHAPs: Failure to Wet RACM**  
(As Against WSP, Donald Fillers, and David Wood)

40. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

41. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, Defendants

WSP, DONALD FILLERS, and DAVID WOOD, who were owners and operators of a demolition activity, to wit, Standard Coosa (a facility containing a jurisdictional amount of RACM – i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM), knowingly (a) failed to adequately wet friable asbestos while it was being removed from facility components at Standard Coosa and (b) failed to keep the RACM removed from Standard Coosa facility components adequately wetted until packed and sealed in leak tight containers or wrappings, thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1) and Title 18, United States Code, Section 2(a).

**COUNT 6**

**NESHAPs: Failure to Lower RACM Properly  
(As Against WSP, Donald Fillers, and David Wood)**

42. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

43. Between in or around at least September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, Defendants WSP, DONALD FILLERS, and DAVID WOOD, who were owners and operators of a demolition activity, to wit Standard Coosa (a facility containing a jurisdictional amount of RACM – i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM), failed to carefully lower to the floor and to ground level (not dropping, throwing, sliding, or otherwise damaging or disturbing) the RACM they removed from facility components at Standard Coosa, thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1), and Title 18, United States Code, Section 2(a).

**COUNT 7**

**NESHAPs: Failure to Containerize & Timely Dispose of RACM**  
(As Against WSP, Donald Fillers, and David Wood)

44. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

45. Between in or around September 2004 and in or around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee, WSP, DONALD FILLERS, and DAVID WOOD, who were owners and operators of a demolition activity, to wit, Standard Coosa (a facility containing a jurisdictional amount of RACM – i.e., at least 260 linear feet, 160 square feet, or 35 cubic feet of RACM), knowingly (a) disposed of asbestos in non-leak-tight containers and (b) failed to deposit RACM and other components containing or covered with RACM as soon as practical at a disposal site authorized to accept asbestos, thereby violating asbestos work practice standards.

All in violation of Title 42, United States Code, Section 7413(c)(1), and Title 18, United States Code, Section 2(a).

**COUNT 8**

**False Statements**  
(as Against James Mathis)

46. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

47. On or about August 30, 2004, in the Eastern District of Tennessee, in a matter

within the jurisdiction of an agency of the Executive Branch of the United States Government, Defendant JAMES MATHIS did knowingly and willfully submit a false writing or document to Air Pollution Control knowing the same document contained materially false, fictitious, and fraudulent entries. To wit, Defendant JAMES MATHIS filed a 10-day notice with Air Pollution Control listing 1,800 linear feet, 800 feet of pipe insulation, and 200 square feet of linoleum (all of which contained RACM), when in truth and fact, as JAMES MATHIS then and there well knew, there was RACM in the amounts of 6126 linear feet of pipe insulation, 348 EA of pipe fittings, 4,293 square feet of equipment insulation, 3,570 square feet of transite, 1,600 square feet of floor tile / mastic, and 2,440 square feet of oven insulation present at the Standard Coosa facility.

All in violation of Title 18, United States Code, Section 1001(a)(2).

**COUNT 9**  
**False Statements**  
(as Against Donald Fillers)

48. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

49. In or about September of 2004, the exact dates unknown to the Grand Jury, in the Eastern District of Tennessee, in a matter within the jurisdiction of an agency of the Executive Branch of the United States Government, Defendant DONALD FILLERS did knowingly and willfully make a materially false, fictitious, and fraudulent statement to APC personnel. To wit, Defendant DONALD FILLERS verbally amended the aforementioned, fraudulent 10-day notice with APC to list 2,000 linear feet, 1,200 square feet of duct pipe insulation, transite on the

cooling towers, and 200 square feet of linoleum (all of which contained RACM), when in truth and fact, as JAMES MATHIS Defendant DONALD FILLERS then and there well knew that there was RACM in the amounts of 6126 linear feet of pipe insulation, 348 EA of pipe fittings, 4,293 square feet of equipment insulation, 3,570 square feet of transite, 1,600 square feet of floor tile / mastic, and 2,440 square feet of oven insulation present at the Standard Coosa facility.

All in violation of Title 18, United States Code, Section 1001(a)(2).

**COUNT 10**  
**False Statements**  
(As Against David Wood)

50. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

51. On January 13, 2009, in the Eastern District of Tennessee, in a matter within the jurisdiction of an agency of the Executive Branch of the United States Government, Defendant DAVID WOOD, did knowingly and willfully make a materially false and fictitious statement to a Special Agent of the United States Environmental Protection Agency, to wit, Defendant DAVID WOOD stated that:

a. To facilitate their abatement estimate, he gave ADC personnel a complete tour of the Standard Coosa facility and pointed out all asbestos containing materials on the interior and exterior of the Standard Coosa Plant in its entirety;

b. The initial buildings salvaged and demolished in August and September of 2004 did not contain any asbestos; and

c. He did not accompany Battlefield personnel around the Standard Coosa facility when they were formulating their estimate of the amount of RACM present in the Standard Coosa facility.

When in truth and fact, as DAVID WOOD then and there well knew that:

a. He gave ADC personnel only a limited tour of one small portion of the Standard Coosa site;

b. The initial buildings salvaged and demolished in August and September 2004 did contain RACM as specified in the Alternative Actions, Inc. survey; and

c. He did accompany Battlefield personnel around the site when they were formulating their estimate for the removal of all RACM at the Standard Coosa facility.

All in violation of Title 18, United States Code, section 1001(a)(2).

**COUNT 11**  
**Obstruction of Justice: Incomplete Survey**  
(As Against WSP and Donald Fillers)

52. Paragraphs a through o of this Indictment are hereby realleged and incorporated by reference as if fully set forth herein.

53. In or around September 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of Tennessee Defendants DONALD FILLERS and WSP knowingly altered, destroyed, mutilated, concealed, covered up, falsified and submitted a record, document, or tangible object with the intention of impeding, obstructing, and influencing the investigation and proper administration of matters within the jurisdiction of a federal agency. To wit, Defendants WSP and DONALD FILLERS provided Air Pollution Control with an incomplete

version of the 2003 Alternative Actions, Inc. survey – from which DONALD FILLERS had removed several pages listing significant quantities of RACM with the intention of impeding EPA’s and Air Pollution Control’s proper administration of the NESHAPs work practice standards and the proper clean-up of the Standard Coosa site.

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

TRUE BILL: /s/Grand Jury Foreperson  
Grand Jury Foreperson

JOHN C. CRUDEN  
Acting Assistant Attorney General  
United States Department of Justice

JAMES R. DEDRICK  
United States Attorney  
Eastern District of Tennessee

By: /s/Todd W. Gleason  
Todd W. Gleason  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Crimes Section

By: /s/Matthew T. Morris  
Matthew T. Morris  
Assistant United States Attorney  
Eastern District of Tennessee