

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:24-CR- <u>75</u>
v.)	
)	JUDGES <u>Varlan/McCook</u>
DOMERMUTH ENVIRONMENTAL)	
SERVICES, LLC,)	
)	
Defendant.)	

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Domermuth Environmental Services, LLC (hereinafter “defendant” or “DES”), by and through its authorized representative, J.M. Domermuth and the defendant’s attorney, David M. Eldridge, have agreed upon the following:

1. The defendant will waive indictment and arraignment and plead guilty to an information charging the defendant with knowingly discharging pollutants to a navigable water of the United States without a permit in violation of 33 U.S.C. §§ 1311 and 1319(c). The punishment for this offense is a term of imprisonment of not more than three years (33 U.S.C. § 1319(c)(2)), a term of supervised release of not more than one year (18 U.S.C. 3583(b)(3)), a fine of not less than \$5,000 per day nor more than \$50,000 per day of violation (33 U.S.C. § 1319(c)(2)), and a special assessment of \$400 (18 U.S.C. § 3013(a)(2)(A)).

2. The defendant has read the Information, discussed the charge and possible defenses with defense counsel, and understands the crime charged. Specifically, the elements of the offense are as follows:

a. The defendant discharged a pollutant;

- b. The pollutant was discharged from a point source;
- c. The pollutant was discharged into a navigable waterway of the United States;
- d. The defendant did so without a permit; and
- e. The defendant did so knowingly.

3. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. 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.

a. Defendant is a limited liability corporation registered in the State of Tennessee. Defendant's principal business address is 5915 Rutledge Pike, Knoxville, Tennessee. Defendant is a "person" as that term is used in the statutes referenced herein.

b. On or about July 26, 2018, the defendant was engaged in the business of, among other things, processing soil and water contaminated with petroleum from underground storage tank remediations and roadside cleanups of petroleum spills. Defendant's processing facility was located at 5915 Rutledge Pike, Knoxville, Tennessee.

c. On or about July 26, 2018, a spill of wastewater contaminated with petroleum occurred on an outdoor concrete pad located at defendant's processing facility, which was bounded on the downhill sides with a concrete retaining wall. The spill resulted in the ponding of petroleum-contaminated wastewater on the concrete pad at DES.

d. DES employees, including Chris Domermuth, acting within the scope of their duties, attempted to soak up the visible petroleum contamination on the ponded water by placing with absorbent pads into the petroleum-contaminated wastewater.

e. DES employees, including Chris Domermuth, acting within the scope of their duties, then placed the intake hose of a portable pump into the petroleum-contaminated pool of wastewater and placed the output hose over the retaining wall and in a patch of vegetation on the downhill side of the wall and pumped the petroleum-contaminated wastewater from the concrete pad onto the ground beyond the retaining wall.

f. The petroleum-contaminated water flowed from the outlet hose onto the ground and into a shallow ditch that ran across an adjoining property into a drainage culvert, which traversed under a railroad track and discharged into the Holston River, a navigable waterway of the United States pursuant to 33 U.S.C. § 1362(7).

g. The culvert through which the petroleum-contaminated water discharged into the Holston River was a “point source” as defined by 33 U.S.C. § 1362(14). The petroleum-contaminated water that the defendant discharged to the Holston River was a “pollutant” as defined by 33 U.S.C. § 1362(6). The discharge of petroleum-contaminated wastewater was not authorized by a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1342, for the discharge of the petroleum-contaminated wastewater into the Holston River as described above.

h. No known quantifiable harm to human health or the environment resulted from the offense.

4. The defendant is pleading guilty because the defendant is in fact guilty. The defendant understands that, by pleading guilty, the defendant is giving up several rights, including:

- a. the right to be indicted by a grand jury for the 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.

5. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a. The Court may impose any lawful term of imprisonment, any lawful fine, and any lawful term of supervised release up to the statutory maximum;
- b. The Court will impose special assessment fees as required by law; and
- c. The Court may order forfeiture as applicable and restitution as appropriate.

6. No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence investigation report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the defendant and the United States agree to recommend that the Court impose the sentence set forth below. If the Court declines to accept the parties' position on the recommended sentence, the defendant will not have a right to withdraw the defendant's guilty pleas:

a. Pursuant to U.S.S.G. § 8C2.10, on or before the date of defendant's sentencing, the defendant shall pay a fine of \$50,000 to the Clerk of Court, United States District Court for the Eastern District of Tennessee.

b. The Court shall place defendant on probation for a term of three years.

c. During the period of probation, pursuant to U.S.S.G. § 8B1.2(a), defendant shall not receive any free liquid wastes for treatment or disposal at defendant's facility, including but not limited to water containing petroleum contamination or petroleum constituents.

d. If the ownership of DES is sold or transferred to any other party during the period of probation, defendant shall notify the representatives of any successor owner of DES of the terms of this plea agreement including but not limited to the prohibition set forth in Paragraph c., above.

e. The offense otherwise involved a discharge of a pollutant (U.S.S.G. § 2Q1.3(b)(1)(B));

f. Due to the lack of harm resulting from the offense and the defendant's efforts to absorb the petroleum contamination prior to discharge, a downward departure of two levels is appropriate (U.S.S.G. § 2Q1.3, Application Note 4);

g. The offense involved a discharge without a permit (U.S.S.G. §2Q1.3);

h. Due to the nature and quantity of the substance involved and the lack of risk associated with the offense, a downward departure of two levels is appropriate (U.S.S.G. § 2Q1.3, Application Note 7); and

i. No aggravating role adjustment applies to the defendant's offense (U.S.S.G. § 3B1.1).

Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to 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 any statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of any additional offense prior to sentencing, the United States will be free to decline to make such motion, to withdraw that motion if already made, and to recommend to the Court that the defendant not receive any reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

8. The defendant agrees to pay the \$400 special assessment in this case prior to sentencing.

9. Financial Obligations. The defendant agrees to pay all fines and/or restitution to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. 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 any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. To facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a. If so requested by the United States, 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 promises that such financial statement and disclosures will be complete, accurate, and truthful.

b. The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c. If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's Office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

10. The defendant acknowledges that the principal benefits to the United States of a plea agreement include the conservation of limited government resources and bringing a certain end to the case. Accordingly, 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 committed, the defendant voluntarily, knowingly, and intentionally agrees to the following:

a. The defendant will not file a direct appeal of the defendant's conviction or sentence with one exception: The defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the Court. The defendant also waives the right to appeal the Court's determination as to whether the defendant's sentence will be consecutive or partially concurrent to any other sentence.

b. The defendant will not file any motions or pleadings pursuant to 28 U.S.C. § 2255 or otherwise collaterally attack the defendant's conviction(s) or sentence, with two exceptions: The defendant retains the right to file a § 2255 motion as to (i) prosecutorial misconduct and (ii) ineffective assistance of counsel.

c. The defendant will not, whether directly or by a representative, request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. Section 552, or the Privacy Act of 1974, 5 U.S.C. Section 552a.

11. This plea agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this plea agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this plea agreement in any way (including but not limited to failing to enter

guilty plea(s) as agreed herein, moving to withdraw guilty plea(s) after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and 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 and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy 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 defendant's guilty plea in this case.

12. The United States will file a supplement in this case, as required in every case by the Local Rules of the United States District Court for the Eastern District of Tennessee, even though there may or may not be any additional terms. If additional terms are included in the supplement, they are hereby fully incorporated herein.


13. This plea agreement and supplement constitute 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.

July 16, 2024

Date

FRANCIS M. HAMILTON III
UNITED STATES ATTORNEY

By:



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July 16, 2024

Date

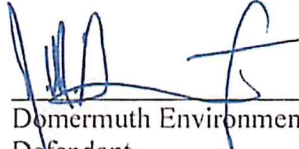
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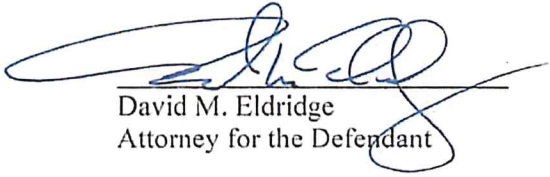
7/9/24

Date


Domermuth Environmental Services, LLC
Defendant
By: Authorized Representative of Defendant

7/9/24

Date


David M. Eldridge
Attorney for the Defendant