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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
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FILED

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.

15 DAVIS WIRE CORPORATION
16 Defendant.
17

CR No.

CR 10 00966

PLEA AGREEMENT FOR DEFENDANT
DAVIS WIRE CORPORATION

18
19 1. This constitutes the binding plea agreement between
20 DAVIS WIRE CORPORATION ("defendant") and the United States
21 Attorney's Office for the Central District of California ("the
22 USAO") in the above-captioned case. This agreement is limited to
23 the USAO and cannot bind any other federal, state or local
24 prosecuting, administrative or regulatory authorities.

25 2. The parties expressly agree that this Agreement is
26 entered into and is to be controlled by Federal Rule of Criminal
27 Procedure 11(c)(1)(C). The USAO and defendant understand and
28 agree that: (a) if the Court accepts this Agreement, the parties

1 are bound by the terms of the Agreement; and (b) if the Court
2 does not accept this Agreement, any party may withdraw from the
3 Agreement and defendant may withdraw its plea of guilty. The
4 parties request that the Court accept this Agreement at the time
5 of the entry of the guilty plea.

6 PLEA TO INFORMATION

7 3. Defendant agrees to plead guilty to a one-count
8 information in the form attached to this agreement or a
9 substantially similar form.

10 CORPORATE AUTHORIZATION

11 4. Defendant represents that it is authorized to enter into
12 this Agreement. On or before the date of entry of this
13 Agreement, defendant shall provide to the USAO and the Court a
14 notarized legal document certifying that defendant is authorized
15 to enter into and comply with all of the provisions of this
16 Agreement. Such corporate resolutions shall designate a
17 corporate representative authorized to take these actions, and
18 that all corporate formalities for such authorizations have been
19 observed.

20 ORGANIZATIONAL CHANGES AND APPLICABILITY

21 5. This Agreement shall bind defendant, its successor
22 corporation, if any, and any other person or entity that assumes
23 the liabilities contained herein ("successor-in-interest").
24 Defendant, or its successors-in-interest, if applicable, shall
25 provide the USAO and the United States Probation Office for the
26 Central District of California with immediate notice of any name
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1 change, business reorganization, sale or purchase of assets,
2 divestiture of assets, or similar action impacting their ability
3 to pay the fine or affecting this Agreement. No change in name,
4 change in corporate or individual control, business
5 reorganization, change in ownership, merger, change of legal
6 status, sale or purchase of assets, or similar action shall alter
7 defendant's responsibilities under this Agreement. Defendant
8 shall not engage in any action to seek to avoid the obligations
9 and conditions set forth in this Agreement.

10 NATURE OF THE OFFENSE

11 6. The parties stipulate and agree that under well-
12 established principles of corporate liability and respondeat
13 superior, as these principles apply in this case, defendant is
14 liable for the actions of its agents and employees. New York
15 Central and Hudson River R.R. v. United States, 212 U.S. 481, 495
16 (1909); United States v. Beusch, 596 F.2d 871 (9th Cir. 1979);
17 United States v. Hilton Hotels Corporation, 467 F.2d 1004-1007
18 (9th Cir. 1972).

19 7. In order for defendant to be guilty of count one,
20 which charges a violation of Title 33, United States
21 Code, Sections 1311(a), 1317(d), and 1319(c)(1)(A), the following
22 must be true: defendant, through its employees and agents, 1)
23 negligently discharged on or about February 19, 2008; 2)
24 pollutants, namely, industrial wastewaters derived from the
25 manufacture of wire; 3) into a publicly-owned treatment works
26 maintained by the County Sanitation Districts of Los Angeles
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1 County; and 4) without and in violation of a federal pre-
2 treatment standard. Defendant admits that defendant is, in fact,
3 guilty of this offense as described in count one of the
4 information.

5 PENALTIES AND RESTITUTION

6 8. The statutory maximum sentence that the Court can impose
7 for a violation of Title 33, United States Code, Sections
8 1311(a), 1317(d), 1319(c)(1)(A) is 5 years probation; pursuant to
9 18 U.S.C. § 3561(c)(2), a fine of \$200,000, pursuant to 18 U.S.C.
10 § 3571(c)(5), or twice the gross pecuniary gain derived from the
11 crimes or twice the gross pecuniary loss caused to the victims of
12 the crime, pursuant to 18 U.S.C. § 3571(d), and a special
13 assessment of \$125, pursuant to 18 U.S.C. § 3013(a)(1)(B)(iii).
14 The minimum mandatory fine the court must impose for a
15 misdemeanor violation of 33 U.S.C. § 1319(c)(1)(A) is \$2,500 per
16 day of violation.

17 SUSPENSION/REVOCATION/DEBARMENT

18 9. Defendant understands that if defendant holds any
19 regulatory license or permit the conviction in this case may
20 result in the suspension or revocation of such license and/or
21 permit. By this Agreement, the USAO makes no representation or
22 promise concerning suspension or debarment of defendant from
23 contracting with the United States or with any office, agency, or
24 department thereof. Suspension and debarment of organizations
25 convicted under various federal environmental protection and
26 criminal statutes is a discretionary administrative action solely
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1 within the authority of the federal contracting agencies.

2 FACTUAL BASIS

3 10. Defendant and the USAO agree and stipulate to the
4 statement of facts provided below. This statement of facts
5 includes facts sufficient to support a plea of guilty to the
6 charges described in this agreement. It is not meant to be a
7 complete recitation of all facts relevant to the underlying
8 criminal conduct or all facts known to defendant that relate to
9 that conduct.

10 a. In 2008, defendant was doing business at
11 5555 Irwindale Avenue, Irwindale, California. Defendant was
12 primarily involved in the manufacture of galvanized and
13 reinforcement wire. In manufacturing those products, defendant
14 used a strong acidic material. As part of its operations,
15 defendant generated pollutants, as that term is defined in Title
16 33, United States Code, Section 1362(6), namely industrial
17 wastewaters from its manufacture of galvanized and reinforcement
18 wire.

19 b. On or about February 19, 2008, defendant discharged
20 industrial wastewaters having a pH level under 2.0 into a sewer
21 drain (the "drain") located on defendant's facility. Thereafter,
22 during the period from February 20, 2009 through April 30, 2008,
23 there were various occasions, including, but not limited to the
24 dates and corresponding pH levels set forth below, when monitors
25 installed at the intersection of the drain and a trunk sewer line
26 operated and maintained by the County Sanitation Districts of Los
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1 Angeles County ("CSDLAC") detected pH levels below 4.0 in
2 industrial wastewater discharged by defendant.

3	<u>Date</u>	<u>pH Level</u>
4	2-19-08	under 2.0
	2-23-08	under 3.0
5	3-26-08	under 4.0
	4-12-08	under 4.0
6	4-30-08	under 2.0

7 c. The trunk sewer line would normally carry
8 industrial wastewaters discharged by defendant to a Publically
9 Owned Treatment Works ("POTW") which was also operated and
10 maintained by the CSDLAC. Under the terms of a pre-treatment
11 standard set forth Section 406(C) of the County Sanitation
12 Districts Of Los Angeles County Wastewater Ordinance, which
13 ordinance was developed in accordance with 40 C.F.R. § 403.5,
14 defendant was not permitted to discharge any
15 waste having a pH lower than 6.0 during the time period set forth
16 above.

17 WAIVER OF CONSTITUTIONAL RIGHTS

18 11. By pleading guilty, defendant gives up the following
19 rights:

- 20 a) The right to persist in a plea of not guilty.
- 21 b) The right to a speedy and public trial by jury.
- 22 c) The right to the assistance of legal counsel at
23 trial.
- 24 d) The right to be presumed innocent and to have the
25 burden of proof placed on the government to prove defendant
26 guilty beyond a reasonable doubt.

1 e) The right to confront and cross-examine witnesses
2 against defendant.

3 f) The right, if defendant wished, to testify on
4 defendant's own behalf and present evidence in opposition to the
5 charges, including the right to call witnesses and to subpoena
6 those witnesses to testify.

7 By pleading guilty, defendant also gives up any and all
8 rights to pursue any affirmative defenses, constitutional claims,
9 and other pretrial motions that have been filed or could be
10 filed.

11 SENTENCING FACTORS AND RESTITUTION

12 12. Defendant and the USAO agree and stipulate that,
13 pursuant to United States Sentencing Guidelines ("U.S.S.G.")
14 §§ 8C2.1 and 8C2.10, the Sentencing Guidelines are not applicable
15 in determining the fine for an organization violating statutes
16 relating to the environment. Defendant and the USAO further
17 agree and stipulate that an appropriate disposition of this case
18 is that the court impose the following sentence:

19 a. Defendant shall pay a criminal fine of \$25,000
20 based on the statutory penalties set forth above in paragraph 4.

21 b. Payment of the criminal fine shall be made by a
22 cashier's check payable to the Clerk of the United States
23 District Court, within ten days of the sentencing hearing date in
24 this matter.

25 c. Defendant shall pay to the Clerk of the United
26 States District Court on the date of sentencing (or as soon as
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1 the Court is able to accept the payment) the mandatory special
2 assessment of \$125 as to count one of the one-count information
3 pursuant to 18 U.S.C. § 3013(a)(1)(B)(iii).

4 d. Defendant shall pay restitution in the total amount
5 of \$1,500,000 to the County Sanitation Districts of Los Angeles
6 County for losses and costs incurred resulting from the damage to
7 the Sunset Avenue Trunk Sewer line. Defendant further agrees
8 that defendant will not seek the discharge of any restitution
9 obligation, in whole or in part, in any present or future
10 bankruptcy proceeding. Defendant further agrees to pay the
11 aforementioned restitution by providing the USAO with a cashier's
12 check payable to the County Sanitation District No. 2 of Los
13 Angeles County on or before the sentencing hearing date in this
14 matter. Defendant further agrees that it shall provide a copy of
15 the check or other instrument by which defendant satisfies this
16 restitution obligation to the Clerk of the United States District
17 Court for the Central District at the following address: 312 N.
18 Spring Street, Room 529, Los Angeles, California 90012.
19 Defendant shall also include the notation "Restitution Payment"
20 and the criminal case number of this matter on such check or
21 instrument.

22 13. The Court will determine the facts and calculations
23 relevant to sentencing and decide whether to agree to be bound by
24 this agreement. Both defendant and the USAO are free to: (a)
25 supplement the facts by supplying relevant information to the
26 United States Probation Office and the Court, and (b) correct any
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1 and all factual misstatements relating to the calculation of the
2 sentence.

3 14. Defendant understands and agrees that this agreement is
4 entered into pursuant to Federal Rule of Criminal Procedure
5 11(c)(1)(C). So long as defendant does not breach the agreement,
6 defendant may withdraw from this agreement and render it null and
7 void if the Court refuses to be bound by this agreement. The
8 USAO may, in its discretion, withdraw from this agreement and
9 render it null and void if the defendant breaches this agreement
10 or the Court refuses to be bound by this agreement.

11 DEFENDANT'S OBLIGATIONS

12 15. Defendant agrees that it will:

13 a) Plead guilty as set forth in this agreement.

14 b) Not knowingly and willfully fail to abide by all
15 sentencing stipulations contained in this agreement.

16 c) Not knowingly and willfully fail to: (i) appear as
17 ordered for all court appearances, and (ii) obey any other
18 ongoing court order in this matter.

19 d) Not commit any crime.

20 e) Not knowingly and willfully fail to be truthful at
21 all times with Pretrial Services, the U.S. Probation Office, and
22 the Court.

23 f) Pay the applicable special assessment at or before
24 the time of sentencing unless defendant lacks the ability to pay.

1 THE USAO'S OBLIGATIONS

2 16. If defendant complies fully with all defendant's
3 obligations under this agreement, the USAO agrees to abide by all
4 sentencing stipulations contained in this agreement.

5 BREACH OF AGREEMENT

6 17. If defendant, at any time between the execution of this
7 agreement and defendant's sentencing, knowingly violates or fails
8 to perform any of defendant's obligations under this agreement
9 ("a breach"), the USAO may declare this agreement breached. If
10 the USAO declares this agreement breached, and the Court finds
11 such a breach to have occurred by a preponderance of the evidence
12 as to which the USAO shall have both the burden of production and
13 persuasion, defendant will not be able to withdraw defendant's
14 guilty plea, and the USAO will be relieved of all of its
15 obligations under the agreement.

16 18. Following a knowing and willful breach of this
17 agreement by defendant, should the USAO elect to pursue any
18 charge or any civil or administrative action that was either
19 dismissed or not filed as a result of this agreement, then:

20 a) Defendant agrees that the applicable statute of
21 limitations is tolled between the date of defendant's signing of
22 this agreement and the commencement of any such prosecution or
23 action.

24 b) Defendant gives up all defenses based on the statute
25 of limitations as set forth in subparagraph (a), any claim of
26 preindictment delay, or any speedy trial claim with respect to
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1 any such prosecution or action, except to the extent that such
2 defenses existed as of the date of defendant's signing of this
3 agreement.

4 c) Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing; ii) the
6 stipulated factual basis statement in this Agreement; and iii)
7 any evidence derived from such statements, are admissible against
8 defendant in any future prosecution of defendant, and defendant
9 shall assert no claim under the United States Constitution, any
10 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of
11 the Federal Rules of Criminal Procedure, or any other federal
12 rule, that the statements or any evidence derived from any
13 statements should be suppressed or are inadmissible.

14 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

15 19. Defendant gives up the right to appeal any sentence
16 imposed by the Court, including any order of restitution and the
17 manner in which the sentence is determined, provided that the
18 sentence is that agreed to in paragraph 12 above. Defendant also
19 gives up any right to bring a post-conviction collateral attack
20 on the conviction or sentence, including any order of
21 restitution, except a post-conviction collateral attack based on
22 a claim of ineffective assistance of counsel, a claim of newly
23 discovered evidence, or a explicitly retroactive change in the
24 applicable Sentencing Guidelines, sentencing statutes, or
25 statutes of conviction.

1 20. The USAO gives up its right to appeal any sentence
2 imposed by the Court, including any order of restitution,
3 provided that the sentence is that agreed to in paragraph 12
4 above.

5 COURT NOT A PARTY

6 21. The Court is not a party to this agreement and need not
7 accept any of the USAO's sentencing recommendations or the
8 parties' stipulations.

9 NO ADDITIONAL AGREEMENTS

10 22. Except as set forth herein, there are no promises,
11 understandings or agreements between the USAO and defendant or
12 defendant's counsel. Nor may any additional agreement,
13 understanding or condition be entered into unless in a writing
14 signed by all parties or on the record in court.

15 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

16 23. The parties agree and stipulate that this Agreement
17 will be considered part of the record of defendant's guilty plea
18 hearing as if the entire Agreement had been read into the record
19 of the proceeding.

1 This agreement is effective upon signature by defendant and
2 an Assistant United States Attorney.

3 AGREED AND ACCEPTED

4
5 UNITED STATES ATTORNEY'S OFFICE
6 FOR THE CENTRAL DISTRICT OF CALIFORNIA

7 ANDRÉ BIROTTE JR.
8 United States Attorney

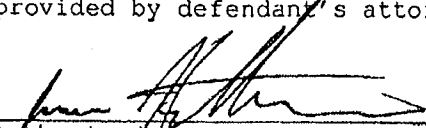
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10 DENNIS MITCHELL
11 Assistant United States Attorney

8-25-10

Date

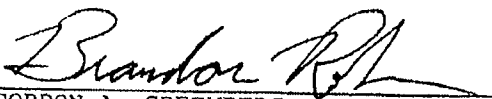
12 As an authorized representative of defendant Davis Wire
13 Corporation, a California corporation ("defendant") I have read
14 this agreement and carefully discussed every part of it with
15 defendant's attorneys. I understand the terms of this agreement,
16 and I voluntarily agree to those terms. Defendant's attorneys
17 have advised me of defendant's rights, of possible defenses, of
18 the Sentencing Guideline provisions, and of the consequences of
19 entering into this agreement. No promises or inducements have
20 been made to me other than those contained in this agreement. No
21 one has threatened or forced me in any way to enter into this
22 agreement. Finally, I am satisfied with the representation
23 provided by defendant's attorneys in this matter.

24 
25 Authorized Representative of
26 Davis Wire Corporation
27 Defendant

8/25/10

Date

1 We are Davis Wire Corporation's attorneys. We have
2 carefully discussed every part of this agreement with the
3 authorized representative of defendant. Further, we have fully
4 advised the authorized representative of defendant's rights, of
5 possible defenses, of the Sentencing Guidelines' provisions, and
6 of the consequences of entering into this agreement. To our
7 knowledge, the decision of defendant and its authorized
8 representative to enter into this agreement is an informed and
9 voluntary one.

10 

11 GORDON A. GREENBERG
12 BRANDON J. ROKER
13 Counsel for Defendant
14 Davis Wire Corporation

8/6/10

Date

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DAVIS WIRE CORPORATION,
Defendant.

) Case No.
)
) I N F O R M A T I O N
) [33 U.S.C. §§ 1311(a), 1317(d),
) and 1319(c)(1)(A): Negligent
) Discharge of Pollutants Into a
) Publicly-Owned Treatment Works;
) 18 U.S.C. § 2(b): Causing an Act
) to be Done]
)
) [Class A Misdemeanor]

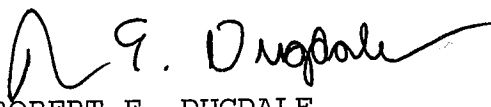
The United States Attorney alleges:

On or about February 19, 2008, in Los Angeles County, within the Central District of California, defendant DAVIS WIRE CORPORATION did negligently discharge, and cause to be discharged, pollutants, namely, industrial wastewater derived from the manufacture of wire, from the premises located at 5555 Irwindale Avenue, Irwindale, California, into a drain connected to a publicly-owned treatment works operated and maintained by

DM:dm

1 the Los Angeles County Sanitation Districts, in violation of a
2 pre-treatment standard adopted by the Sanitation Districts of Los
3 Angeles County.

4
5
6 ANDRÉ BIROTTE JR.
United States Attorney

7 
8 ROBERT E. DUGDALE
9 Assistant United States Attorney
Chief, Criminal Division

10 JOSEPH O. JOHNS
11 Assistant United States Attorney
12 Chief, Environmental Crimes Section

13 DENNIS MITCHELL
14 Assistant United States Attorney
15 Environmental Crimes Section
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CERTIFICATE OF SERVICE

I, Sandy Ear, declare:

That I am a citizen of the United States that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of California, at whose direction the service by fax and mail described in this Certificate was made; that on August 26, 2010, I deposited in the United States Courthouse at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope, a copy of: **Plea Agreement for Defendant Davis Wire**

Corporation

addressed to: Brandon Roker, Esq.
McDermott, Will & Emery
2049 Century Park East, 38th Floor
Los Angeles, CA 90067

at his last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on August 26, 2010, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct and resident or employed in Los Angeles County, California.



SANDY EAR