

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

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| UNITED STATES OF AMERICA | : CRIMINAL NO. |
| v. | : DATE FILED: |
| MOSHE RUBASHKIN, | : 42 U.S.C. § 6928 (d)(2)(A) |
| a/k/a “Moisha Rubashkin,” | (illegal storage of hazardous |
| a/k/a “Moishe Rubashkin,” | waste without a permit - 1 count) |
| a/k/a “Mosh Rubashkin,” | 18 U.S.C. § 1001 (false statement - 1 count) |
| SHOLOM RUBASHKIN, | : 18 U.S.C. § 2 (aiding and abetting |
| a/k/a “Shalom Rubashkin,” | and causing) |
| a/k/a “Shmuel Rubashkin,” | : |
| a/k/a “Sam Sternberg” | |

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant MOSHE RUBASHKIN, a/k/a “Moisha Rubashkin,” a/k/a “Moishe Rubashkin,” a/k/a “Mosh Rubashkin,” was the owner and operator of Montex Textiles, Ltd. (“Montex”), a textiles bleaching and dyeing company, doing business in the Eastern District of Pennsylvania.

2. Defendant SHOLOM RUBASHKIN, a/k/a “Shalom Rubashkin,” a/k/a Shmuel Rubashkin,” a/k/a “Sam Sternberg,” was the son of defendant MOSHE RUBASHKIN, and was the director of business development for Supreme Realty, LLC, a closely-held, Rubashkin family real estate investment and management company, doing business in the Eastern District of Pennsylvania and elsewhere.

3. From in or about 1989 and continuing until on or about April 11, 2001,

defendant MOSHE RUBASHKIN operated the Montex textile bleaching and dyeing business, located at 1101 South 6th Street, in Allentown, Pennsylvania (the “Site”).

4. While in operation, Montex accumulated at the Site numerous drums and containers of chemical materials, including, but not limited to: caustic soda; peroxide; and acetic acid.

5. On or about April 11, 2001, defendant MOSHE RUBASHKIN closed the Montex business. Numerous drums and containers of chemical materials (hereinafter referred to as “waste”) remained stored at the Site until on or about December 15, 2005.

6. On or about September 9, 2002, Montex sold and transferred title to the Site to Skyline Industries, Inc., a New York corporation doing business in the Eastern District of Pennsylvania.

7. In response to two fires that occurred on the Site in 2005, the United States Environmental Protection Agency in Philadelphia, Pennsylvania (“EPA”) on or about October 5, 2005 issued a unilateral administrative order (the “Order”) to Skyline Industries, Inc. and the company’s owner, a person known to the grand jury as A.F., finding that the conditions on the Site presented a possible imminent and substantial endangerment to public health and the environment, and that the clean-up and removal of the drums and containers of hazardous substances and wastes at the Site were necessary to abate such an endangerment.

8. Due to the refusal of Skyline Industries, Inc. and A.F. to comply with the Order, commencing in or about October 2005 and continuing through on or about December 15, 2005, EPA undertook a clean-up of the Site which resulted in the disposal of hazardous waste and hazardous substances.

Applicable Environmental Laws and Regulations

9. Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), the United States EPA and the states regulate various types of solid wastes as hazardous wastes. States may apply for and receive authorization to operate a hazardous waste regulatory program in lieu of the federal program pursuant to 42 U.S.C. § 6926. Once a state program has been federally authorized, EPA retains full authority to enforce the authorized state program pursuant to 42 U.S.C. § 6928.

10. Pennsylvania obtained initial authorization from EPA for its state hazardous waste regulatory program in January 1986. 51 Fed. Reg. 1791 (Jan. 15, 1986). Pennsylvania’s regulatory program was re-authorized by EPA effective November 27, 2000.

11. Pennsylvania’s re-authorized hazardous waste state regulatory program is set forth in its Hazardous Waste Management Regulations, Title 25, Pa. Code §§ 260a-266a, 266b and 268a-270 (the “HWMR”).

12. Under RCRA, solid waste includes any discarded material not otherwise excluded. 42 U.S.C. § 6903(27). Hazardous waste is a solid waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. 42 U.S.C. § 6903(5).

13. For purposes of the HWMR, a solid waste is a hazardous waste if it either: exhibits the characteristics of ignitability, corrosivity, reactivity or toxicity, 25 Pa. Code § 261a.1

and 40 C.F.R. § 261.21-.24; or is listed as a hazardous waste in accordance with 25 Pa. Code § 261a.1, 40 C.F.R. § 260.10-.11.

14. Persons generating hazardous waste must identify it as hazardous and provide for its proper treatment, storage, and disposal. 25 Pa. Code § 262a.10; 42 U.S.C. §§ 6903(5), 6922; 40 C.F.R. § 262.

15. A “generator” of hazardous waste means any person who produces or creates hazardous waste, 25 Pa. Code §260a.1-.10, 40 C.F.R. § 260.10, including the hazardous wastes identified or listed in 25 Pa. Code § 261a.1, 40 C.F.R. § 260.10.

16. “Storage” includes, among other things, “the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.” 25 Pa. Code § 260a.1-.10; 42 U.S.C. § 6903(33).

17. Title 25, Pa. Code § 270a.1 and Section 3003 of RCRA, 42 U.S.C. § 6935, require the owner or operator of any facility at which hazardous waste is treated, stored and/or disposed of to have a permit for such activity. The owner or operator has to have either obtained a permit or be in interim status, having met certain statutory requirements under RCRA or applied for a permit.

18. RCRA makes it a crime for a person to knowingly treat, store or dispose of hazardous waste without a permit. 42 U.S.C. § 6928(d)(2).

The Site and Defendant Moshe Rubashkin

19. Many of the drums and chemicals stored at the Site up to on or about December 15, 2005 contained hazardous waste within the meaning of RCRA.

20. Neither the Site, nor defendant MOSHE RUBASHKIN, nor Montex had

interim status or a permit to treat, store or dispose of hazardous waste.

21. Commencing on or about April 11, 2001, and continuing through on or about September 9, 2002, in Allentown, in the Eastern District of Pennsylvania, defendant

**MOSHE RUBASHKIN,
a/k/a “Moishe Rubashkin,”
a/k/a “Moisha Rubashkin,”
a/k/a “Mosh Rubashkin”**

knowingly stored, and aided and abetted the storage of, hazardous waste at the Site, including:

- 2 containers of waste that exhibited a flash point of less than 140 degrees Fahrenheit and that were identified as an ignitable hazardous waste (EPA hazardous waste number D001), as defined by 25 Pa. Code § 261a.1 and 40 C.F.R. § 261.21(a);
- 14 containers of waste with a pH of less than 2 or greater than 12.5 and that were identified as a corrosive hazardous waste (EPA hazardous waste number D002), as defined by 25 Pa. Code § 261a.1 and 40 C.F.R. § 261.22(a); and
- 4 containers of 35% hydrogen peroxide, a strong oxidizer, that were identified as an ignitable hazardous waste (EPA hazardous waste number D001), as defined by 25 Pa. Code § 261a.1 and 40 C.F.R. § 261.21(a),

without a hazardous waste permit.

In violation of Title 42, United States Code, Section 6928 (d)(2)(A), and Title 18, United States Code, Section 2.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in paragraphs one through twenty of Count One of this indictment are realleged and incorporated here.

2. On or about June 30, 2003, Platinum Rx, LLC, a New Jersey corporation doing business in the Eastern District of Pennsylvania and elsewhere, purchased an existing and outstanding mortgage and note on the Site.

3. In or about July 2003, purportedly on behalf of Skyline Industries, Inc., defendant SHOLOM RUBASHKIN hired an equipment rigging company to remove textile machinery from the Site, and provided the company with access to the Site for the removal.

4. On or about July 15, 2003, Platinum Rx, LLC issued a company check in the amount of five thousand dollars to this equipment rigging company, in payment for its removal of the textile machinery from the Site.

5. On or about May 10, 2004, Supreme Realty, LLC purchased from Platinum Rx, LLC the mortgage and note on the Site.

6. On or about June 25, 2004, defendant SHOLOM RUBASHKIN signed as "SAM STERNBERG" a letter on Platinum Rx, LLC letterhead addressed to the City of Allentown solicitor concerning, among other things, delinquent real estate taxes on the Site.

7. As part of its comprehensive response to the environmental conditions at the Site, and consistent with its usual practices, EPA endeavored to determine who would be financially responsible for payment for the clean-up and disposal of hazardous wastes and other hazardous substances at the Site.

8. In order to identify any such responsible parties, on or about February 23, 2006, EPA sent an information request letter pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604(e) (the “CERCLA Section 104(e) information request”) to “SAM STERNBERG” of Supreme Realty, LLC, as the creditor that had foreclosed on the property.

9. Defendant SHOLOM RUBASHKIN on behalf of Supreme Realty, Inc., sent a letter response to the CERCLA Section 104(e) information request, which EPA received on or about July 20, 2006.

10. The CERCLA Section 104(e) information request sought, among other things, the following information:

Question No. 1. Describe any and all business relationships between Montex, Supreme, you and Skyline. Please provide supporting documentation.

11. In response to Question No. 1, defendant SHOLOM RUBASHKIN stated, among other things, that:

Platinum [Rx, LLC] had no formal relationship and no common ownership or management with Montex or Skyline, and *I had no involvement in it.* (Emphasis added.)

This response was false because, as he knew, defendant SHOLOM RUBASHKIN had some involvement in Platinum Rx, LLC and Skyline.

12. In response to Question No. 1 of EPA’s CERCLA Section 104(e) information request, defendant SHOLOM RUBASHKIN also stated, among other things, that:

On May 20, 2004, Supreme acquired from Platinum the mortgage rights originally held by Parkdale. (Skyline continued to hold and still holds the fee title.) *At that*

point my family once again had some authority over the Site, ending an almost two-year period during which we had no ownership or access rights at all. (Emphasis added.)

This response was false because, as defendant SHOLOM RUBASHKIN knew, his family had authority and ownership rights over, and/or access rights to the Site during the almost two-year period ending on May 20, 2004.

13. The CERCLA Section 104(e) information request also sought the following information:

Question No. 8. Who was or is responsible for the management, decision making policies, and/or operations at the Site? Please provide dates, names, and phone numbers.

14. In response to this question, defendant SHOLOM RUBASHKIN stated, among other things, that:

I cannot answer this question for the period before May 2004 since I had no involvement in these matters before that time. (Emphasis added.)

This response was false because, as defendant SHOLOM RUBASHKIN knew, before May 2004 he was involved in these matters, including the management, decision making policies, and/or operations at the Site.

15. On or about July 20, 2006, in Philadelphia, in the Eastern District of Pennsylvania, defendant

**SHOLOM RUBASHKIN,
a/k/a “Shalom Rubashkin,”
a/k/a “Shmuel Rubashkin,”
a/k/a “Sam Sternberg,”**

in a matter within the jurisdiction of the United States Environmental Protection Agency (“EPA”), an agency of the executive branch of the Government of the United States, knowingly

and willfully made materially false, fictitious, and fraudulent statements and representations to EPA, that is, the defendant stated and represented in his CERCLA Section 104(e) response letter received by the EPA on or about July 20, 2006 that he had no involvement with Platinum Rx, LLC, and that he and his family had no ownership or access rights at all to the Site for the approximately two- year time period preceding May 20, 2004, and that he had no involvement in the Site prior to May 2004, when, as defendant SHOLOM RUBASHKIN knew, these statements and representations to EPA were false.

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

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney