

GEBH/JSB/DMD

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:08cr95-30

UNITED STATES OF AMERICA)

v.)

BOYCE ALLEN HUDSON)

CRIMINAL INFORMATION

The United States Attorney charges that:

INTRODUCTION

I. BOYCE ALLEN HUDSON's position as a public official with the North Carolina Department of Environment and Natural Resources.

1. The North Carolina Department of Environment and Natural Resources (hereinafter "DENR") is statutorily empowered to, among other things, "[t]o provide for the protection of the environment and public health through the regulation of solid waste and hazardous water management. . . ." N.C. Gen. Stat. § 143B-279.2. According to its Website, DENR describes its mission as follows:

[DENR] is the lead stewardship agency for the preservation and protection of North Carolina's outstanding natural resources. The organization, which has offices from the mountains to the coast, administers regulatory programs designed to protect air quality, water quality, and the public's health.

2. As part of its mission, DENR is charged with ensuring that newly constructed manufacturing and production facilities, such as refineries, comply with regulations intended to safeguard

North Carolina's air, water, wetlands, and soil. Accordingly, North Carolina law requires a company to obtain various permits from DENR prior to constructing and operating a production or manufacturing facility. The process of obtaining such permits can be very costly, often requiring a company to hire consultants to assist in preparing the permit applications and to conduct lengthy environmental impact studies.

3. In approximately 1986, HUDSON, who was then employed as Town Manager for Elm City, North Carolina, was appointed by the Governor of North Carolina to serve as head of one of DENR's regional offices. HUDSON was subsequently moved to the position of Senior Field Officer in DENR's Legislative and Intergovernmental Affairs Office, a position he held until his retirement from DENR on June 30, 2005. As a Senior Field Officer, HUDSON, who worked primarily out of Raleigh, North Carolina, served as DENR's liaison with members of the state legislature and the Governor's Office.

4. The ability to obtain the various DENR permits necessary to develop, construct, and operate a production or manufacturing facility is often crucial to whether a company attempting to develop such a facility can secure the funds necessary to build such a facility. Due to his long tenure at DENR and his relationship with high level public officials, HUDSON, by asserting his influence over career DENR employees, had the ability to expedite or delay the permit process in certain situations.

II. HUDSON'S solicitation of \$196,000 in exchange for using his official position at DENR to expedite the permits necessary for a company seeking to construct and operate an ethanol production facility.

5. In 2004, a company was formed to develop, construct, and operate ethanol production facilities in the Eastern United States (hereinafter "Ethanol Company"), with plans to build its first facility in North Carolina. Ethanol is created by distilling corn, cane sugar, sweet potatoes, or certain other agricultural crops into alcohol and then blending the alcohol with gasoline for use as a motor fuel. The Ethanol Company initially planned to construct a 54 million gallon per year ethanol production plant at a cost of approximately \$125,000,000.¹ The owners of the Ethanol Company intended to raise the capital necessary to build the ethanol production plant through equity investors and bank financing.

6. Because an ethanol production plant emits pollutants into the nearby air, water, and soil, the Ethanol Company was required to obtain a number of permits from DENR, including an Air Quality Permit and a Water Discharge Permit. Due to the cost and delay often faced in obtaining such permits, lenders and investors that provide the funds to build ethanol production plants often condition their commitments to advance funds upon a company's

¹After obtaining its initial permits, the Ethanol Company modified its construction plans to increase the production capacity of the proposed ethanol plant to 108 million gallons per year. This increased the cost of the project to \$220,000,000.

obtaining the environmental permits necessary to build the plant. Consequently, the Ethanol Company hired an in-house engineer and an outside environmental consultant to assist in preparing the permit applications. The in-house engineer was paid a salary of \$150,000 per year. The outside environmental consultant charged approximately \$130,000 for its assistance in preparing the Ethanol Company's permit applications with DENR.

7. In order to ensure a quick turnaround on the Ethanol Company's permit applications, some of the owners of the Ethanol Company arranged a meeting between HUDSON and the chief executive of the Ethanol Company (hereinafter "Ethanol Company Executive"). On April 15, 2004, HUDSON met the Ethanol Company Executive for lunch at Winston's Grille in Raleigh, North Carolina. During the meal, the Ethanol Company Executive requested HUDSON to use his official position at DENR to expedite the granting of the Ethanol Company's permit applications. HUDSON, who was planning on retiring in mid-2005, agreed to use his position at DENR to expedite the permit process for the Ethanol Company, but solicited compensation in exchange for such assistance.

8. During the April 15, 2004, lunch meeting at Winston Grille, HUDSON proposed that in exchange for his assistance in expediting DENR's permit process he should receive a \$100,000 lump sum payment to be received following HUDSON's June 2005 retirement, and a monthly consulting contract at the rate of \$5,000 per month,

also to begin following his retirement. HUDSON and the Ethanol Company Executive ultimately agreed that if HUDSON could get the Ethanol Company's Air Quality Permit granted within 90 days,² HUDSON would receive the following compensation, payable once the Ethanol Company had received full funding on its ethanol production facility: (i) a \$100,000 lump sum payment; and (ii) a two-year consultant contract with the Ethanol Company under which HUDSON was guaranteed a salary of \$4,000 per month and an expense account of \$500 per month. The agreement was not reduced to writing at this point.

9. On November 17, 2004, the Ethanol Company filed its application for an Air Quality Permit with DENR's Division of Air Quality. HUDSON then contacted the supervisor in the office handling the Ethanol Company's Air Quality Permit application and ensured that the application would be given the highest priority. On December 16, 2004, an Air Quality Permit was issued to the Ethanol Company.

10. The Ethanol Company encountered problems with obtaining its Water Discharge Permit because a DENR employee reviewing the Ethanol Company's application was concerned about the fact that the ethanol production plant would use six million gallons of water a

²Many applicants are required to provide DENR with an environmental impact study which can cost in excess of \$1,000,000. The time necessary to complete the Air Quality Permit application process can sometimes take from 18 to 24 months.

day, possibly depleting surrounding water aquifers. HUDSON was also able to assist the Ethanol Company in obtaining its Water Discharge Permit.

11. As shown from the following statement made to a potential investor by a representative of the Ethanol Company during a January 25, 2005, meeting, the value of the permits to the Ethanol Company's efforts to obtain financing was significant:

And make no mistake about it, that [getting its permits in less than a month] has impressed the financial community . . . they're saying, wait a minute, you guys already got your permits. Usually that's the last thing, so that's why I think that event has helped move us to the front of the stack. They're saying, well you got all your outfits done, you've got your permitting, we're down to financing now.

12. During this same meeting, the Ethanol Company Executive described the deal with HUDSON as follows:

I said it's worth a hundred grand to me if you get my permits out of here in ninety days and he said I can do it and he did it. If he didn't . . . if he hadn't gotten them in ninety . . . , if we're still waiting for them, we don't owe him the hundred.

According to the Ethanol Company Executive, HUDSON, in order to assist the Ethanol Company with cashflow issues, agreed to delay receipt of the \$100,000 lump sum and the commencement of his two-year consulting contract until the ethanol production plant was fully funded.

III. HUDSON'S receipt of partial payments of the amount owed to him

for expediting the Ethanol Company's
DENR permits.

13. It was initially thought that the Ethanol Company would obtain all the funds necessary to construct the ethanol production plant soon after getting its DENR permits in December of 2004. However, it became clear by mid-2005 that the Ethanol Company would face some delays in obtaining the funds necessary to construct the ethanol production plant. HUDSON retired from DENR effective June 30, 2005, and soon thereafter formed a consulting business named The Kilworth Group, LLC.

14. On October 24, 2005, HUDSON received a \$15,000 bank check from a purported investor on behalf of the Ethanol Company as part payment on his agreement with the Ethanol Company. At this point in time, HUDSON had yet to perform any consulting services for the Ethanol Company. On or about October 25, 2005, HUDSON deposited this amount into a bank account he had opened in the name The Kilworth Group, LLC.

15. By early 2006, due to delays faced by the Ethanol Company in finalizing the funding of its ethanol production plant, HUDSON requested the Ethanol Company Executive to reduce their agreement to writing. As a result of this request, on January 24, 2006, the Ethanol Company Executive provided HUDSON with a letter committing the Ethanol Company to make the following payments to The Kilworth Group, LLC:

An initial consulting fee of \$100,000 plus a

2-year contract that would be validated at the time of financial close (on the plant) which would be paid as follows . . . \$48,000 per year (plus expenses which are capped at \$6,000 per year) to be paid in monthly payments over the next 2 years.

Notwithstanding the fact that HUDSON had done no work for the Ethanol Company since his retirement from DENR in June of 2005, the Ethanol Company Executive agreed that the monthly payment obligation to The Kilworth Group, LLC would be retroactive beginning on September 1, 2005.

16. By late July of 2006, the Ethanol Company had neither received the funding necessary to build the ethanol production plant nor asked HUDSON to perform any services on its behalf. Consequently, in late July of 2006, The Kilworth Group, LLC submitted an invoice to the Ethanol Company demanding payment of the \$100,000 lump sum payment and the monthly consulting fee due from September 2005 through August 2006. On or about July 31, 2006, the Ethanol Company issued a \$5,000 check payable to The Kilworth Group, LLC in payment of "June Environmental Consulting." Hudson deposited the \$5,000 business check into The Kilworth Group, LLC's bank account.

17. The allegations set forth in the foregoing Introduction are hereby incorporated by reference into each count of this Indictment and re-alleged therein.

COUNT ONE

[Extortion Under Color of Official Right;
18 U.S.C. §§ 1951 and 2]

Beginning in or about April of 2004, and continuing through on or about December 6, 2006, in the Eastern District of North Carolina, BOYCE ALLEN HUDSON, defendant herein, knowingly attempted to and did obstruct, delay, and affect commerce by extortion, in that BOYCE ALLEN HUDSON obtained property, namely, a promise to pay \$196,000, from a company seeking environmental permits relating to the construction of an ethanol production facility, with its consent induced under color of official right, and did aid, abet, and cause said offense, in violation of Title 18, United States Code, Sections 1951 and 2.

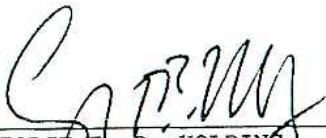
COUNT TWO

[Engaging in Monetary Transactions in Criminally
Derived Property; 18 U.S.C. § 1957]


On or about October 25, 2005, within the Eastern District of North Carolina, BOYCE ALLEN HUDSON, defendant herein, did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, the defendant did deposit a \$15,000 bank check, said funds constituting property which had been derived from a specified unlawful activity, that is, extortion, in violation of Title 18, United States Code, Section 1951, as alleged in Count One, all in

violation of Title 18, United States Code, Section 1957.

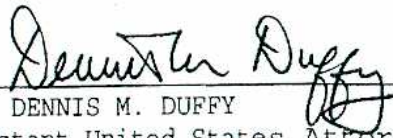
APRIL 3, 2008
Date



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