

Mr. Thomas Townsend

25 SEPT 2000

Commanding General (Attn: AC/S, EMD)
Marine Corps Base
P.O. Box 2004
Camp Lejeune, N.C. 28542-0004

SUBJ: Environmental Testing Contracts
Enclosure (1) Wall Street Journal article "Toxic Worker", Intertek Testing Services Ltd.

The mitigation/remediation program at MCB/CLWC to include investigations prior to NPL status involved numerous civilian contractors and their technical services.

Question: Given the background outlined in enclosure (1) is there is any indication that any Department of the Navy agency, LAUTDIV/NAVAC EXCOM, MCB, CLWC, MCB's Change Point utilized the services of Intertek Testing Services Ltd.?

Enclosure (1)

Submitted

Thomas A. Townsend

MAJOR, USMC (Retired)

CLW

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Toxic Waste

Intertek Lab Fudged Thousands of Tests, An Indictment Says

Case Raises Safety Questions On the Quality of Water, Soil in 59,000 Projects

Firm Sees no Health Risks

By PETER WALDMAN
And JIM CARLTON

Staff Reporters of THE WALL STREET JOURNAL

DALLAS—in the annals of scientific euphemism, this was one for the books.

Intertek Testing Services Ltd. of London, faced in 1998 with its own findings of technical misconduct at its U.S. environmental-testing unit, offered to "revalidate" thousands of toxicity tests for its clients without handling a single speck of dirt or drop of water. All that was needed, the company argued, was to recalculate its original results, while adjusting for Intertek's failure over many years to properly clean and calibrate its lab equipment.

The corporate name for this plan: "The Reprocessing Protocol."

But that didn't wash with federal investigators, by then well into their own criminal investigation of Intertek's environmental labs. Yesterday, a federal grand jury here handed up the government's version of what went on inside the nation's second-largest independent environmental-testing lab in the 1990s. In a 36-count fraud indictment against eight Intertek chemists and five supervisors, federal prosecutors described a conspiracy within the company to pump up profits at any cost, orchestrated by managers at Intertek's big Richardson, Texas, environmental lab.

Federal prosecutors say the Intertek unit mishandled toxicity tests for about 59,000 different projects nationwide, ranging from military bases to corner gasoline stations, while producing tainted data on as many as 250,000 soil, water and air samples. That makes Intertek the biggest testing-fraud case ever pursued in the U.S., prosecutors say.

"We depend on these labs to calculate what level of toxins poses an acceptable risk," says Ellen Z. Harrison, director of Cornell University's Waste Management Institute. "If they can't do that, the whole system is bankrupt."

Many of Intertek's big clients learned of its testing problems when the company notified them in early 1998. But Paul Coggins, U.S. attorney for the Northern District of Texas, says he believes only a small fraction of "end users" of the 59,000 sites in question have any idea they're living or working or drinking ground water on property that might have contaminants no one knows about, despite the testing performed by Intertek.

Intertek itself isn't named in the indictment. The company's executive chairman, Richard Nelson, interviewed by telephone from Intertek headquarters on London's Savile Row, denied the fraud allegations and said there are no threats to human health from any of Intertek's work. The Environmental Protection Agency, for now, agrees with that assessment, but officials say that it's impossible to assess what risks may arise in the future. Mr. Nelson said the company's original testing was sound, although the results were sometimes "slightly changed" for "convenience" purposes.

"There was absolutely nothing nefarious," says Mr. Nelson, 57 years old, who has run Intertek since 1985. "There are no health and safety issues. At worst, there was just a bit of sloppiness, I feel."

Therein lies the central point of contention between Intertek and U.S. prosecutors. Intertek maintains that whatever data manipulation it did was inconsequential and was meant merely to tidy up the presentation of results to meet customers' expectations. That's why, it argues, it should have been allowed to "revalidate" its results using the Reprocessing Protocol, which simply entailed restoring the data to their raw, unaltered form.

The government alleges that the data fudging was pervasive at Intertek's Richardson lab, that management's profit-driven pressure for fast results made the fudging standard practice, and that one result of the pressure was that the lab's delicate gear wasn't properly cleaned, maintained or calibrated. Since the tests were conducted with faulty gear in the first place, the government says, it is ludicrous to believe the original results were any more accurate than the altered versions.

"This was set up solely to make money," says Mr. Coggins in an interview. "What they had was a mill to generate false test results."

Although yesterday's indictments didn't name the corporation itself, Mr. Coggins says the investigation is continuing and may well lead to charges against the company and its officers in London.

"I'm treating this case as I would illegal-alien smuggling or drug running," he says. "We're going to squeeze as hard as we can, and move up the [corporate] ladder as far as we can go."

While Intertek's U.S. environmental lab shut down in 1998 after the problems came to light, the company still operates several facilities in the U.S. in its current specialty, which involves laboratory testing of products and commodities. Worldwide, Intertek operates in 80 countries and has about 9,000 employees, Mr. Nelson says. It was acquired in 1996, in a management-led buyout, by Charterhouse Development Capital, a British venture-capital firm.

Please Turn to Page A11, Column 2

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Probe Focuses on Belgian Intertek Labs

Continued From Page A1

firm. In its most recent fiscal year, it reported operating income of \$48 million (\$67.7 million), on revenue of \$351 million.

Of the 13 named defendants, only one still works for Intertek, though Mr. Nelson says he didn't realize any of the defendants still worked for the company. The employee still active is Martin Dale Jeffus, listed in the indictment as defendant No. 1. Mr. Jeffus, Intertek's vice president for North America, ran the Richardson lab for most of the 1990s. The indictment alleges that as early as 1990, Mr. Jeffus "personally directed and trained" technicians to falsify results to meet customers' quality control specifications.

In court documents filed by prosecutors, Mr. Jeffus is depicted as riding herd over the lab's chemists to crank out results, and is repeatedly described by subordinates as inducing them to falsify test data. In one government affidavit—filed by Warren Amburn II, a criminal investigator for the EPA—a former Intertek technician named Sheila Petty is quoted as describing Mr. Jeffus "walking the halls of the laboratory carrying a bullwhip and a cattle prod, making comments like, 'What will it take to get this data out.'" Ms. Petty was defendant No. 10 in yesterday's indictment.

The Amburn affidavit, which was filed in U.S. District Court in Dallas as part of the federal government's application for search warrants, depicts the Richardson lab as a hive of scientific fraud. Even lab supervisors interviewed by Mr. Amburn, such as defendant No. 3, Michael Ludwick, freely admitted to routinely altering test data. The reason: "Ludwick said the pressure to get the work through the lab and back to the clients was continual," Mr. Amburn wrote.

For example, Mr. Ludwick told the EPA investigator that as much as half of Intertek's laboratory work for the Air Force in 1996 and 1997 "contained some level of falsified data," Mr. Amburn wrote. Mr. Ludwick couldn't be reached for comment. Mr. Amburn quotes Mr. Ludwick as saying that he knew Intertek fudged results in its work for the military's Rocky Mountain Arsenal, a former chemical-weapons manufacturing site in Commerce City, Colo., just north of Denver.

On the arsenal work, Mr. Amburn interviewed an Intertek chemist named Alan Humason, who wasn't named in the indictments. Mr. Humason analyzed arsenal samples as far back as 1994 for Intertek, and admitted to "routinely" falsifying results from that time onward, Mr. Amburn wrote.

Once, in 1985, Mr. Humason told Mr. Jeffus about difficulties he was having obtaining accurate data on a particularly stubborn compound called thiodiglychol, according to the Amburn affidavit. The lab boss advised Mr. Humason to "downplay the significance of the problem," Mr. Amburn wrote. "Jeffus said, 'That's the way to lie,' or words to that effect."

In the court affidavit, Mr. Amburn identified thiodiglychol as a byproduct of sulphur mustard gas, one of many toxic agents left behind at the Rocky Mountain Arsenal site.

Unlike many of the other Intertek customers, though, officials of the arsenal say they discovered problems on their own and severed relations with the lab well before the company's disclosure in 1998. Arsenal officials say they arranged for another lab to perform the same tests on its toxic-waste samples, just to see how Intertek would perform after a trial contract was awarded in 1995. "We found their results not very reliable, and in some cases way off," says Elijah Jones, chief of the arsenal's lab, which stopped dealing with Intertek after about six months.

Moreover, arsenal scientists visited the Intertek labs in Richardson and reported numerous quality problems. For example, they said caps were left off some vials of samples, exposing them to air and possible chemical reactions. Technicians were rou-

tinely performing analyses by hand instead of the more normal technique of relying on computers.

"Luckily, we backed away from them before they affected our program here," Mr. Jones says.

Mr. Jeffus, reached yesterday at Intertek's Richardson offices outside Dallas, referred questions to his lawyer, who didn't return phone messages. Mr. Jeffus says he was surprised at his indictment. He also says he hasn't spoke to Mr. Nelson, Intertek's chairman, "in years." Mr. Jeffus, who is 52, says he has four children and has worked as an Intertek lab worker and manager for 20 years. He won't say whether the company is helping to pay his legal bills, but the company's New York lawyer, John Kenney, of Simpson, Thacher and Bartlett, says Intertek lawyers aren't helping any indicted employees.

In late 1997, court papers show, Intertek tried to avoid corporate liability by filing a voluntary disclosure with the EPA and the Defense Department. Based on an internal audit, the disclosure described improper practices over a two-year period in one section of the Richardson lab. Intertek resolved the problem, it said, by firing the department manager and disciplining another employee, court records show.

But in 1999, the two government agencies refused to accept Intertek's voluntary confession as grounds for leniency. One reason, government officials say, was because the narrowly written disclosure didn't come close to describing what investigators had learned: the systematic manipulation of data throughout the Richardson lab over nearly a decade. Investigators were aided in their reconstruction of Intertek's misdeeds by software Intertek used which stored every keystroke and mouse click its chemists had made in altering data.

Another reason the government rejected Intertek's confession was because, by the time Intertek filed it, investigators were already closing in.

The government's Amburn affidavit describes two separate instances when, before the Intertek confession, regulators had raised doubts about Intertek's data. In the first, in September 1997, about three months before Intertek's admission, EPA investigator Stephen Remaley in San Francisco inserted a covertly prepared "check" sample into a regular shipment of samples to Intertek from the Newmark Superfund site in California. The Superfund program, which uses government money to clean up the worst toxic-waste sites, relies heavily on testing firms like Intertek to supply data on environmental dangers. The results came back, signed by Mr. Jeffus, with falsified data, according to the Amburn affidavit.

The client that shipped the samples, called URS Greiner, notified Intertek of the data problems, and Intertek altered the results, the Amburn affidavit says. Then in October 1997, a team from the Air Force inspected Intertek's Richardson lab and found extensive problems, including data misstatements, the court document says. Air Force officials briefed Intertek personnel on the problems and demanded responses by February 1998.

Less than two months after the Air Force briefing, Intertek filed its voluntary disclosure with U.S. regulators.

In a written statement yesterday, Intertek reiterated its position that it discovered the data problems "by its own quality-control procedures" and "promptly reported" them to the EPA. It said the company had no knowledge of Mr. Remaley's sting operation in San Francisco. The statement didn't address the Air Force audit.

Initially, many of Intertek's larger clients—undoubtedly afraid of their own potential liability—agreed to let Intertek revalidate their results with the Reprocessing Protocol. But when the EPA said that program was unacceptable, three clients filed civil suits against the lab.

In Texas, the EPA told the companies they would have to review test results from nearly 2,000 locations where Intertek had analyzed samples. Luckily, officials say, in many of those cases the companies involved had hired second labs to conduct parallel tests. Those results showed sufficient disparities to invalidate the Intertek work, but not enough to raise health concerns, says Leigh Ing, deputy director of the Texas Natural Resource Conservation Commission in Austin.

—Kortney Stringer
contributed to this article.

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