

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

C&J WELL SERVICES, INC.,

Defendant.

Case No. 1:19-cr-079

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of America, by its attorneys, Drew H. Wrigley, United States Attorney for the District of North Dakota, and Gary L. Delorme, Assistant United States Attorney; Christopher J. Costantini, Senior Trial Attorney; Samuel Lord, Trial Attorney; defendant, C&J WELL SERVICES, INC. ("defendant"); and defendant's counsel, Nadira Clarke and Anne Carpenter, agree to the following:

1. Defendant acknowledges the Information charges a violation of Title 29, United States Code, Section 666(e).
2. Defendant has read the Information and defendant's attorneys have fully explained the charge to defendant.
3. Defendant fully understands the nature and elements of the charged crime, a willful violation of an Occupational Safety and Health Act (OSH Act) standard causing death.
4. Defendant will voluntarily plead guilty to Count One of the Information.

5. The parties agree this Plea Agreement shall be filed as part of the Court record and be governed by Federal Rule of Criminal Procedure 11(c)(1)(C). Defendant understands that, if the Court rejects this Agreement, the Court must: (a) inform the parties that the Court rejects the Agreement; (b) advise defendant's counsel that the Court is not required to follow the Agreement and afford defendant the opportunity to withdraw its plea; and (c) advise defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward defendant than the Agreement contemplated. If the Court rejects this Agreement and the defendant withdraws its plea, then the Statement of Facts, Criminal Information, Plea Agreement, and all other statements made during a proceeding under Federal Rule of Criminal Procedure 11, or during plea discussions, are not admissible against defendant. Defendant further understands that if the Court refuses to accept any provision of this Agreement, neither party shall be bound by the provisions of the Agreement.

6. Defendant will plead guilty because defendant is in fact guilty of the charge of a willful violation of an OSH Act standard causing death. In pleading guilty to Count One, defendant acknowledges that the facts contained in the attached Joint Factual Statement are true and correct and provide a sufficient factual basis for the guilty plea in this case.

7. Defendant understands the following maximum penalties apply:

Count One

Imprisonment:	Not applicable
Fine:	\$500,000
Supervised Release:	Not applicable

Probation: Five year maximum term
Special Assessment: \$50

Defendant agrees to pay the Clerk of United States District Court the special assessment on or before the day of sentencing.

8. Defendant understands that by pleading guilty defendant surrenders rights, including:

- (a) The right to a speedy public jury trial and related rights as follow:
 - (i) A jury would be composed of twelve lay persons selected at random. Defendant and defendant's attorney would help choose the jurors by removing prospective jurors "for cause," where actual bias or other disqualification is shown; or by removing jurors without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict. The jury would be instructed that defendant is presumed innocent and that it could not return a guilty verdict unless it found defendant guilty beyond a reasonable doubt.
 - (ii) If a trial were held without a jury, then the Court would find the facts and determine whether defendant was guilty beyond a reasonable doubt.
 - (iii) At a trial, whether by a jury or Court, the United States is required to present witness testimony and other evidence against defendant. Defendant's attorney can confront and examine them. In turn, the defense can present witness testimony and other evidence. If witnesses for

defendant refuse to appear voluntarily, defendant can require their attendance through the subpoena power of the Court.

9. Defendant understands that by pleading guilty defendant is giving up all of the rights set forth in the prior paragraph, and there will be no trial. Defendant's attorney has explained those rights, and consequences of defendant's waiver.

10. In exchange for defendant's guilty plea and defendant's fulfillment of all of its obligations under this Plea Agreement, the government agrees that it will not file additional criminal charges against defendant related to any conduct referenced in or related to the Joint Factual Statement, or the investigation of this matter.

11. The Court shall impose a sentence sufficient to comply with purposes set forth in the Sentencing Reform Act. In doing so, the Court shall consider factors set forth in Title 18, United States Code, Section 3553(a). Because the crime of conviction is a Class B misdemeanor, the United States' Sentencing Commission, Guidelines Manual, does not apply. The parties have agreed to a joint sentencing recommendation pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). Defendant and the government agree to file a joint motion requesting that the Court exercise its sentencing authority without the preparation of a pre-sentence investigation report, as permitted by Federal Rule of Criminal Procedure 32(c).

12. This Plea Agreement is binding only upon the United States Attorney for the District of North Dakota and the Environment and Natural Resources Division of the Department of Justice. It does not bind any United States Attorney outside the District of North Dakota, nor does it bind any state or local prosecutor. They remain free to

prosecute defendant for any offenses under their jurisdiction. This Plea Agreement also does not bar or compromise any civil or administrative claim.

13. Defendant understands the United States Attorney reserves the right to notify any local, state, or federal agency by whom defendant is licensed, or with whom defendant does business, of defendant's conviction.

14. At sentencing, the United States and defendant will jointly recommend the following sentence:

(a) that defendant be ordered to pay a fine of \$500,000;

(b) that defendant be ordered to pay restitution to the estate of the victim, Dustin Payne, in the amount of \$1,600,000;

(c) that defendant be ordered to pay a special assessment of \$50;

(d) that defendant be ordered to perform a three-year term of probation to include the following special conditions:

(i) defendant will allow Occupational Safety and Health Administration (OSHA) personnel to inspect defendant's domestic facilities and equipment without a warrant, without advance notice, and without a specified inspection reason, and that OSHA may issue citations or take other lawful enforcement actions during such inspections;

(ii) OSHA will have access to and the right to require production of documents in the possession or control of defendant, subject to limitations of privilege, which OSHA reasonably requires to determine defendant's compliance with the OSH Act; and

(iii) OSFIA will have the authority to interview privately any agent or employee of defendant concerning any matter related to compliance with the OSH Act, subject to limitations of privilege.

15. Defendant acknowledges and understands that if defendant violates any term of this Plea Agreement, engages in any further criminal activity, or fails to appear for sentencing, the United States will be released from its commitments. In that event, this Plea Agreement shall become null and void at the discretion of the United States, and defendant will face the following consequences: (1) all testimony and other information defendant has provided at any time to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury, may be used against defendant in any prosecution or proceeding; and (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions. Nothing in this agreement prevents the United States from prosecuting defendant for perjury, false statement(s), or false declaration(s), if defendant commits such acts in connection with this agreement.

16. Defendant acknowledges and agrees that the Court will order defendant to make restitution to the estate of Dustin Payne in the amount of \$1,600,000, payable to the Clerk of Court within ten days and to be distributed to the estate by the Clerk thereafter.

17. Defendant will provide ongoing cooperation with the government's investigation of the Dustin Payne fatality and related subjects by making reasonable efforts to respond to requests for information and documents that are reasonably targeted

to specific topics, custodians, and time frames. Defendant will make reasonable efforts to provide and produce relevant information and documents in response to such requests, and to make current employees available for interviews by the government. Defendant agrees to provide certifications for the information and documents produced during the period of defendant's cooperation, including as applicable, certifications of authenticity, business record certifications, and certifications of the non-existence of a record, to the extent that defendant is able make such certifications in good faith based on the knowledge of current corporate custodians and information maintained by current corporate custodians.

The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. Defendant and defendant's attorney acknowledge that no threats, promises, or representations exist beyond the terms of this Plea Agreement.

18. Defendant's Waiver of Appeal. Defendants have a right to appeal their conviction and sentence (Judgment), unless they agree otherwise. Appeals are taken to the United States Court of Appeals for the Eighth Circuit (appellate court), pursuant to Title 18, United States Code, Section 3742(a). The appellate court has ruled that defendants can waive (give up) their right to appeal. Defendants often waive their right to appeal as part of a plea agreement and in exchange for concessions by the United States. The appellate court will enforce such waivers.

Defendant and defendant's attorney acknowledge they have fully reviewed and fully discussed the record in this case and all issues that may be raised on appeal. They

have fully discussed defendant's right of appeal and the consequences of waiver.

Defendant has decided to waive any right of appeal, except as may be provided herein.

By signing this Plea Agreement, defendant voluntarily waives defendant's right to appeal the Court's Judgment against defendant; and, absent a claim of ineffective assistance of counsel, defendant waives all rights to contest the Judgment in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255. Defendant reserves only the right to appeal from a sentence that is greater than the statutory maximum penalties applicable to the offense, including the maximum fine provided for a misdemeanor causing death under Title 18, United States Code, Section 3571(c)(4).

Defendant understands that the United States was motivated by defendant's willingness to waive any right of appeal when the United States chose to offer defendant terms of a plea agreement. In other words, the United States was willing to offer certain terms favorable to defendant in exchange for finality. Defendant understands and agrees this case will be over once defendant has been sentenced by the Court. Defendant agrees that it will be a breach of this agreement if defendant appeals in violation of this agreement. The United States will rely upon defendant's waiver and breach as a basis for dismissal of the appeal. Defendant agrees an appeal in violation of this agreement should be dismissed.

By signing this Plea Agreement, defendant further specifically waives defendant's right to seek to withdraw defendant's plea of guilty, pursuant to Federal Rules of Criminal Procedure 11(d), once the plea has been entered in accordance with this

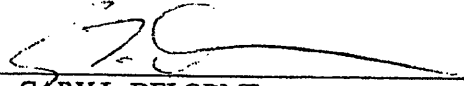
agreement. The appellate court will enforce such waivers. Defendant agrees that any attempt to withdraw defendant's plea will be denied and any appeal of such denial should be dismissed.

19. Defendant acknowledges reading and understanding all provisions of the Plea Agreement. Defendant and defendant's attorneys have discussed the case and reviewed the Plea Agreement. They have discussed defendant's constitutional and other rights, including, but not limited to, defendant's plea-statement rights under Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure.


AGREED:

DREW H. WRIGLEY
United States Attorney

Dated: 5/27/19


By: GARY L. DELORME
Assistant United States Attorney

Dated: 5/29/19

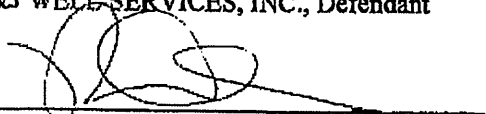

By: SAMUEL CHARLES LORD
Trial Attorney

Dated: 5/23/19

CHRISTOPHER J. COSTANTINI
Senior Trial Attorney


DANIELLE HUNTER, Representative for
C&J WELL SERVICES, INC., Defendant

Dated: 5/28/19


NADIRA CLARKE
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,

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C&J WELL SERVICES, INC.,

Defendant.

Case No. *1:19-cr-079*

JOINT FACTUAL STATEMENT

Offense: Willful OSHA Violation
Causing Death, 29 U.S.C. § 666(e)

JOINT FACTUAL STATEMENT

The following Joint Factual Statement is incorporated by reference as part of the Plea Agreement ("Agreement") between the United States of America and Defendant C&J WELL SERVICES, INC. ("CJWS"), a Delaware corporation, formerly known as Nabors Completion and Production Services, Co. ("NCPS"). The Defendant hereby agrees and stipulates that, to Defendant's knowledge and belief, this Joint Factual Statement is true and accurate in all material respects and provides a sufficient factual basis for the guilty plea in the above captioned case. The Defendant agrees that the acts and omissions forming the criminal violation described herein were committed by employees of NCPS. The Defendant agrees that, had this matter proceeded to trial, the United States would have proven the charge set forth in the accompanying Criminal Information and the facts contained in this Joint Factual Statement beyond a reasonable doubt. This Joint Factual Statement does not contain all of the facts known to the United States or the Defendant.

Prior to March 24, 2015, and during the timeframe that is the subject of this Joint Factual Statement, NCPS was wholly-owned by Nabors Industries Ltd. ("Nabors"). On or about the March 24, 2015 date, NCPS separated from Nabors and was later renamed CJWS. CJWS continues to exist and operate as a Delaware corporation headquartered in Houston, Texas.

The Defendant acknowledges that it is liable for the criminal conduct of NCPS described in this Joint Factual Statement. The Defendant acknowledges that on October 3, 2014, NCPS willfully violated a federal safety standard that caused the death of employee Dustin Payne.

Overview of NCPS Operations in North Dakota

1. At all times relevant to this matter, NCPS was a well completion and production services company that employed several thousand workers nationally with operations in the major domestic oil and gas fields. NCPS was incorporated in Delaware and headquartered in Houston, Texas. The well "completion" services provided by NCPS to well operators included hydraulic fracturing (fracking) and well cementing services. The well "production" services included "workover" jobs designed to improve the performance of existing wells and "fluids management" services, which primarily consisted of hauling waste fluids from wells to injection wells for underground disposal.

2. NCPS operated a facility in Williston, North Dakota, at which it operated the business lines described above. The facility employed approximately 45 workers in a maintenance department to maintain and repair NCPS equipment.

3. The victim, Dustin Payne, was one of three welders employed by the maintenance department and assigned to work in a mechanics bay that NCPS had designated as the “welding bay.” The duties of Payne and the other welders included the fabrication of equipment, such as joining pieces of metal to make equipment stands, and the repair of NCPS equipment.

NCPS’s Written Policy for Complying with the Fire Prevention Standard

4. NCPS had a written policy governing welding safety (hereinafter the “welding policy”), the purpose of which was to ensure compliance with OSH Act welding standards, including the fire prevention standard set forth at Title 29, Code of Federal Regulations, Subpart 1910.252(a).

5. The NCPS welding policy contained most of the requirements of the OSH Act fire prevention standard. The policy (1) directed managers to evaluate potential fire and explosion hazards in the workplace and to make sure that all employees were aware of welding policies and procedures; (2) required that all welders, their supervisors, and individuals responsible for authorizing welding work receive job-specific welding training; (3) required that managers designate a local manager to perform pre-work inspections and issue hot work permits, and to take and record gas readings with a meter prior to welding; and (4) required that district managers review local compliance with the welding policy twice a year, and submit the results of the review to the NCPS health and safety director in Houston. The policy also prohibited welding “[i]n the presence of explosive atmospheres (mixtures of flammable gases, vapors, liquids or dusts with air), or explosive atmospheres that may develop inside uncleaned or improperly prepared

tanks or equipment which have previously contained such materials . . .”, as required by Title 29, Code of Federal Regulations, Subpart 1910.252(a)(3)(i).

Training

6. Payne, the last of the three welders hired by NCPS for the Williston facility, started working in late July 2014. None of the three welders had substantial prior professional welding experience or substantial prior oilfield experience.

7. NCPS did not provide the welders with welding-specific training. Instead, the welders received the same three-day, 25-subject “awareness” training that NCPS provided to all new hires regardless of job duties. The awareness training was expressly intended to identify oilfield hazards and was to be used in conjunction with company- and job-specific supplemental training. The awareness training did not instruct new hires on the specific requirements of the OSH Act or company policies, including the regulations related to tank welding.

8. NCPS policy required that all new hires be provided with a safety handbook containing instructions for the safe completion of various oilfield tasks. The handbook instructed that welding on tanks “shall never be done until the vessel has been completely cleaned and checked for residual explosive gases.” NCPS did not provide the handbook to Payne or the other welders.

9. NCPS’s written welding policy was not provided to the welders.

Supervision

10. NCPS management failed to perform the risk assessment and job planning responsibilities required under the OSH Act. NCPS management failed to designate a responsible individual to perform pre-work inspections and authorize welding jobs for work done by the welders, as its welding policy required. The NCPS maintenance department did not have a gas meter that could be used to test for explosive vapors prior to welding. No hot work permits were issued for any of the approximately 200 welding projects performed by the welders in or around the welding bay.

11. Also, the NCPS maintenance manager failed to adequately supervise the daily work of the welders.

Compliance Monitoring

12. NCPS's Health, Safety, and Environmental (HSE) department, which was also responsible for responding to injuries, environmental incidents, inspections by state, local, and federal agencies, injury claims management, and internal investigations of losses and compliance failures, failed to monitor compliance with OSH Act standards and company policy. NCPS's welding policy required that HSE professionals complete a semiannual review of welding-related incidents, employee complaints, the number of hot work permits issued, and the adequacy of welding training. Such semiannual reviews were to be completed in January and July of each year to reflect the welding compliance history of the six preceding months. At the time of the explosion that caused the death of Payne in October 2014, the HSE department had not started the process of reviewing Williston's welding compliance for the first half of 2014.

Leaking Tankers

13. NCPS's Williston facility contracted with oil well operators in the Bakken to haul "produced water" or "salt water" from oil wells to underground injection wells by trucks with attached tanker trailers called "water haulers." The tankers were lined with a protective coating to prevent corrosion by the highly saline produced water. However, a number of the trailers in Williston were experiencing liner failures and had begun to leak out of small holes, especially when placed under positive pressure during the offloading process. Leaking tanker trailers were a problem for NCPS's water hauling department because produced water spills were prohibited by North Dakota state environmental law and by NCPS customers.

14. However, beginning in August 2014, NCPS had a strong business need to ensure that as many tanker trailers as possible were kept on the road hauling produced water to meet the demands of a new contract. Beginning in September 2014, the welders repeatedly repaired the tanks by welding aluminum patches over tank holes, or by filling in the holes using aluminum wire-fed welding equipment. Either approach involved welding on used tanks. None of these repairs complied with the OSH Act fire prevention standard. Specifically, none of the tankers were cleaned to remove hydrocarbon residue prior to welding, no pre-work inspections with gas detectors took place, and no hot work permits were issued. To perform the repairs in compliance with the law required a steam cleaning of the tank interiors, which did not occur.

15. NCPS was aware that produced water—which NCPS's production services business line was in the business of transporting—contained hydrocarbons.

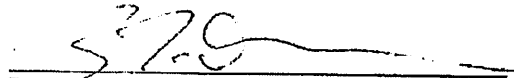
Nevertheless, NCPS failed to warn the welders about the dangers inherent in welding on tankers that previously contained produced water.

The Fatal Explosion


16. On October 3, 2014, a leaking tanker trailer was brought to the welding bay for repair. The trailer was backed into the welding bay so that Payne could access the small hole located at the rear of the trailer. The tanker was neither clean nor vented. When Payne struck his welding torch to the side of the tanker, hydrocarbon vapors inside the tanker ignited and the closed tanker exploded, fatally injuring Payne, who died on October 8, 2014.

DREW H. WRIGLEY
United States Attorney for the
District of North Dakota

Dated: 5/29/2019



By: GARY L. DELORME
Assistant United States Attorney

Dated: 5/29/19


By: SAMUEL CHARLES LORD
Trial Attorney

CHRISTOPHER J. COSTANTINI
Senior Trial Attorney

Dated: 5/23/19


DANIELLE HUNTER, Representative for
C&J WELL SERVICES, INC., Defendant

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NADIRA CLARKE
Attorney for Defendant