

WILLIAM M. WELCH II
Chief, Public Integrity Section

NICHOLAS A. MARSH
EDWARD P. SULLIVAN
Trial Attorneys
Public Integrity Section
United States Department of Justice
1400 New York Ave. NW, 12th Floor
Washington, D.C. 20005
(202) 514-1412

JOSEPH W. BOTTINI
JAMES A. GOEKE
Assistant U.S. Attorneys
District of Alaska
Federal Building & U.S. Courthouse
222 West Seventh Avenue, Room 253, #9
Anchorage, Alaska 99513-7567
(907) 271-5071

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,) No. _____
)
Plaintiff,) **FACTUAL BASIS FOR PLEA**
)
vs.)
)
JAMES CLARK,)
)
Defendant.)
)
_____)

FACTUAL BASIS FOR PLEA

At all times relevant hereto:

1. JAMES CLARK (hereinafter "CLARK" or "Defendant") was the Chief of Staff to the Governor of the State of Alaska (hereinafter "Governor").

2. VECO Corporation ("VECO") was originally incorporated in 1979 as VECO International, Inc., a Delaware corporation. The name was changed to VECO Corporation in 1995. VECO was a multi-national corporation that provides services (including project management, engineering, procurement, construction, operations and maintenance) to the energy, resource and process industries and to the public sector. VECO employed approximately 4,000

people in various projects worldwide, and was comprised at various times of the following companies: (1) VECO Alaska, Inc.; (2) VECO Construction, Inc.; (3) VECO Controls, Inc.; (4) VECO Environmental & Professional Services; (5) VECO Equipment, Inc.; (6) VECO Middle East, Inc.; (7) VECO Operations, Inc.; (8) VECO Pacific, Inc.; (9) VECO Products, Inc.; (10) VECO Properties, Inc.; (11) VECO Services, Inc.; and (12) Southwest VECO, Inc.

3. BILL J. ALLEN was the Chief Executive Officer and principal owner of VECO Corporation.

4. RICHARD L. SMITH, also known as RICK SMITH, was the Vice President of Community and Government Affairs for VECO.

5. Polling Company A was a business that provides polling services for political campaigns. Polling Company A was located in the State of Alaska.

6. Polling Company B was a business that provides polling services for political campaigns. Polling Company B was located in a jurisdiction other than the State of Alaska.

7. CONSULTANT A was a consultant who provided strategic analysis and other services to the campaign of the Governor of the State of Alaska. CONSULTANT A's business and residence were located in a jurisdiction other than the State of Alaska.

8. In April 2003, the Alaska State Legislature passed the Stranded Gas Development Act ("SGDA"), which, among other things, called for the executive branch to negotiate a gas development contract and present it to the Alaska State Legislature for approval. Beginning in or around 2005, Alaska Governor Frank Murkowski (the "Governor"), CLARK, and others engaged in negotiations with representatives of three oil companies (British Petroleum, Exxon Mobil, and

Conoco Phillips (collectively the "oil producers")) concerning the construction of a natural gas pipeline from Alaska's North Slope. Negotiations with the oil producers were completed on or about February 18, 2006, and the agreement was announced by the Governor on or about February 21, 2006.

9. The parties agreed at a February 20, 2006 meeting that the producers would support a 20/20 net profits tax on oil - referred to as a "petroleum production " or "petroleum profits tax" ("PPT") - and that the PPT legislation would be considered in parallel with amendments to the SGDA which authorized fiscal certainty on oil. The Murkowski Administration was not prepared to finalize SGDA amendments which authorized fiscal certainty on oil prior to passage of the agreed 20/20 net profits tax.

10. Shortly after the announcement of the gas pipeline agreement, the Murkowski administration proposed legislation relating to the negotiated change in the taxation of oil production. The new PPT tax system proposed by the terms of the agreement with the oil producers would be based upon a percentage of the producer's net profits, or revenues minus capital and operating expenditures. Under the proposed system agreed to by the state, the producers would pay a 20 percent tax rate and receive a 20 percent tradable tax credit (the "20/20 PPT legislation").

11. On or about May 26, 2006, the Governor announced that he would seek re-election.

12. The construction of the gas pipeline was of vital importance to VECO. VECO was primarily an oil field services company, and a significant source of VECO's income was

derived from contracts with the oil producers. Because the oil producers supported the 20/20 PPT legislation and the approval of the draft SGDA contract, VECO supported both of these items as well.

13. ALLEN, SMITH, and VECO were further aware that Governor Murkowski was the only candidate for the upcoming gubernatorial election who supported the passage of the 20/20 PPT legislation and the approval of the SGDA contract negotiated with the oil producers. ALLEN, SMITH, and VECO therefore supported the Governor Murkowski's campaign for re-election.

14. Beginning in approximately April 2006, and continuing thereafter up to and including approximately August 31, 2006, in the District of Alaska, and elsewhere, JAMES CLARK, together with RICHARD L. SMITH, BILL J. ALLEN, and others known and unknown, did knowingly and unlawfully conspire, combine, confederate, and agree together and with each other:

- a. to use and cause the use of:
 - i. the United States mails and/or commercial interstate couriers; and
 - ii. interstate wire communications;

to facilitate a scheme in which VECO would pay and ultimately paid approximately \$68,550 in expenses relating to the Governor's re-election campaign in a manner so that the public would be deceived and the payments would not be disclosed, as required by law.

15. CLARK, a public official, solicited ALLEN and SMITH for payments by VECO of various polling and consulting expenses to facilitate the Governor's re-election. Knowing that

VECO's payments were intended to facilitate the Governor's re-election, Clark used his official position and the Office of the Governor to continue to advocate for the 20/20 PPT legislation that CLARK knew was supported by ALLEN and VECO.

16. CLARK, ALLEN, SMITH, CONSULTANT A, and others concealed VECO's payments to facilitate the Governor's re-election campaign with the understanding that: (a) these payments would not be disclosed as either expenditures or income in filings submitted by the Governor's campaign to the Alaska Public Offices Commission ("APOC"), as required by law; and (b) the public of the State of Alaska would be deceived as to the existence of these payments as well as their true nature and source.

17. The following acts, among others, were committed in the District of Alaska and elsewhere:

18. In or about April 2006, CLARK solicited SMITH to have VECO pay approximately \$20,000 for a poll, to be prepared by Polling Company A, to facilitate the evaluation of the Governor's prospects for re-election.

19. In or about April 2006, VECO, through SMITH and ALLEN, agreed to pay for a poll for the Governor, for the purpose of facilitating evaluation of the Governor's prospects for re-election, that had been prepared by Polling Company A and written, at least in part, by CLARK.

20. On or about April 17, 2006, VECO paid Polling Company A approximately \$20,000 for a poll for the purpose of facilitating evaluation of the Governor's prospects for

re-election. This payment was not disclosed by the Governor's campaign on filings submitted to APOC, nor was it permissible under state law for VECO to make such a payment.

21. Between in or about June 2006 and in or about August 2006, CLARK solicited ALLEN and SMITH to have VECO pay for polling and other activities to be conducted by Polling Company B, assuming that this payment would not be disclosed by the Governor's campaign on filings submitted to APOC, and further knowing it was not permissible under state law for VECO to make such a payment.

22. Between in or about June 2006 and in or about August 2006, VECO, at CLARK's request, paid Polling Company B for additional polls to facilitate the Governor's re-election. These payments were not disclosed by the Governor's campaign on filings submitted to APOC, nor was it permissible under state law for VECO to make such payments.

23. On or about August 8, 2006, CLARK solicited SMITH to have VECO pay CONSULTANT A for fees incurred by CONSULTANT A, assuming that this payment would not be disclosed by the Governor's campaign on filings submitted to APOC, and further knowing it was not permissible under state law for VECO to make such a payment.

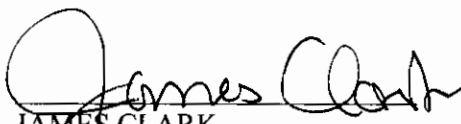
24. In or about August 2006, VECO paid CONSULTANT A for consulting work to facilitate the Governor's re-election. These payments were not disclosed by the Governor's campaign on filings submitted to APOC, nor was it permissible under state law for VECO to make such payments.

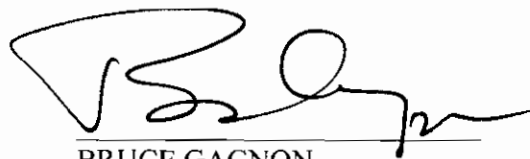
25. In connection with the activities by Polling Company B and CONSULTANT A, and VECO's payment thereof, described in Paragraphs 18 through 25, CLARK, ALLEN, and

SMITH used and/or caused the use of both (a) the United States mails and/or commercial interstate couriers and (b) interstate wire transmissions.

26. JAMES CLARK acknowledges that the statements and admissions contained in the foregoing Factual Basis for Plea do not constitute all of the facts relevant to the matters discussed herein, nor do the foregoing paragraphs contain a complete discussion of the acts taken by CLARK and/or his co-conspirators. Instead, CLARK understands that this Factual Basis for Plea is merely a summary of some, but not all, criminal conduct engaged in by CLARK. CLARK further understands that he may be required at future proceedings to provide further and more complete details of the matters discussed herein.

DATED: 3/3/08


JAMES CLARK
Defendant


BRUCE GAGNON
Attorney for JAMES CLARK