

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 14-10363-RGS

UNITED STATES OF AMERICA

v.

BARRY J. CADDEN

MEMORANDUM AND ORDER
ON DEFENDANT'S MOTION TO ADMIT ENVIRONMENTAL
MONITORING EXHIBITS [Dkt #957]

March 8, 2017

STEARNS, D.J.

The motion is ALLOWED.

I am satisfied that defendant has made corrections in the proposed environmental monitoring diagrams that adequately address the concerns that led to their prior exclusion by the court.¹ I also believe that the government misapprehends the purpose for which defendant seeks to admit the monitoring data. It is true, and as the defendant concedes, fodder for the government to argue that the ISO standards used by NECC in its marketing materials were misleading (in the sense of being held out as more strict than those required by the USP). And this may well go to the heart of the element of misrepresentation alleged in the mail fraud counts. Defendant, however,

¹ The government in its opposition appears to have dropped its objection to the diagrams qua diagrams.

is staking a critical facet of his defense to the far more serious murder charges on evidence of NEEC's actual compliance with the USP ISO standards. There is, of course, a considered risk in mounting a defense that might be seen to concede an element of another charged offense. However, there is no basis for precluding the defendant from exercising his choice to do so. The court has from the beginning of the trial explained to the jury that the USP standards, while they do not define crimes under the U.S. criminal code, do set what Congress has determined to be best practices for the compounding industry, and for that reason may be looked to in determining the proper standard of care, a standard highly relevant to the recklessness element of second-degree murder.² Moreover, it is on the USP standards, and not on NEEC's self-declared SOP standards, that the government has chosen to frame the indictment.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

² That the evidence is to be offered through a summary witness in summary chart form is perfectly proper under Rule 1006, as I have previously explained in allowing the government to present summary evidence.