Criminal Enforcement: Federal Appellate Court Addresses Whether Resource Conservation and Recovery Act Violation was a General-Intent Crime

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The 9th Circuit United States Court of Appeals ("Court") in a September 13th opinion considered whether "knowingly storing and disposing of hazardous waste without a Resource Conservation and Recovery Act ("RCRA") permit" is a general-intent or specific-intent crime.

The Court also addressed whether a four-level enhancement under U.S.S.G. § 2Q1.2(b)(3) was appropriate because the cleanup of hazardous materials on the alleged violator's property required a "substantial expenditure."

The decision involves an Idaho property owner named Max Spatig ("Spatig") who operated a business for many years that resurfaced cement floors. Spatig purchased discounted paint in bulk and accumulated large quantities of paint and paint-related materials.

At some point he is stated to have begun storing the materials on his residential property in Menan, Idaho. Neither Spatig nor MS Enterprises obtained a hazardous waste permit from either the state environmental agency or the United States Environmental Protection Agency ('EPA") to store the referenced materials.

The property was the subject of a nuisance complaint in 2005 and the stored paint and paint-related materials were identified by county officials. The Idaho Department of Environmental Quality ("IDEQ") conducted a cleanup. The state agency identified for Spatig which containers must be removed and those that could retained. Most of the containers were stated to have been removed and destroyed by IDEQ.

Five years later nuisance complaints about the property once again arose. A sheriff's deputy reportedly observed canisters "haphazardly strewn across the property, many of which were in poor condition and labeled as flammable or corrosive." The property was later described by a witness as containing piles of corroded and rusting containers in the yard or packed into vehicles and trailers.

EPA was ultimately asked to conduct a cleanup because of the size or complexity of the stored materials. In conducting the cleanup EPA personnel confirmed that various substances stored in the containers were either flammable or corrosive to the extent necessary to be considered hazardous waste under the RCRA regulations. The federal agency is stated to have removed approximately 3,400 containers from the property, expending $498,562.

Spatig was indicted on one RCRA count. He was indicted for allegedly:

. . . knowingly stor[ing] and dispos[ing] of hazardous waste, namely ignitable and corrosive hazardous waste, on property in Rexburg, Idaho, without a permit from the EPA or DEQ . . . citing 42 U.S.C. § 6928(d)(2)(A).

Spatig sought to introduce evidence at trial of diminished capacity. However, the Court, in response to a government motion, concluded that diminished capacity was admissible only for specific-intent crimes and that § 6928(d)(2)(A) is a general-intent crime. Spatig was convicted by the jury on a single count and sentenced to 46 months.

The Court first addresses whether the cited RCRA provision is a crime of general- or specific-intent. It notes the importance of this question since that decision would dictate whether Spatig could advance a diminished-capacity defense. 6828(d)(2)(A) is noted to criminalize "knowingly. . . without a permit." It cites United States Supreme Court decisions which indicate the statutory term "knowingly" "merely requires proof of knowledge of the facts that constitute the offense," citing Bryan v. United States, 524 U.S. 184 (1998).

An earlier 9th Circuit decision is also discussed. United States v. Hoflin held that the term "knowingly" "normally signifies a requirement of general, not specific, intent." 880 F.2d 1033 (1989). By way of further explanation, the Court states:

. . . That is, under § 6928(d)(2)(A), the prosecution is not required to prove that Spatig intended a particular purpose or objective, as would be required for a specific-intent crime. . . Instead, the statute sets out a criminal act – treatment, storage, or disposal of hazardous waste – and provides that that act be performed with the mental state of knowledge.

In reviewing the question, the Court also references:

- Earlier RCRA cases held that a defendant simply needs to be aware that he is treating, storing, or disposing something that he knows is hazardous waste (and that the government is not required to prove that defendants had the knowledge that their acts were unlawful)
- The text of § 6928(d)(2)(A) compared to the Model Penal Code
- RCRA is a classic environmental public-welfare statute whose "overriding concern" is "the grave danger to people and the environment from hazardous wastes"

As a result, the Court concludes that the RCRA provision describes a crime of general-intent and the United States District Court did not err in excluding evidence of Spatig's diminished capacity.

The Court also addressed whether the United States District Court erred in applying a four-level enhancement under U.S.S.G. § 2Q1.2(b)(3) because the cleanup of the property "required a substantial expenditure," to remediate the property.

Subsection 2Q1.2(b)(3) states:

If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

The term "substantial expenditure" is undefined.

The Court cites United States v. Merino, 190 F.3d 956 (9th Cir. 1999) which noted that "substantial expenditure" is listed in the guideline next to two severe circumstances:

- Public utilities disruption
- Evacuation

Because the term "substantial expenditure" is located next to those two severe circumstances it was concluded in Merino that the provision "avoids sweeping in every garden-variety spill." The Court in Merino held that the cleanup cost of $32,000 was not a substantial expenditure.

The Court states it is not trying to establish a “bright-line rule between substantial and insubstantial expenditures. However, it notes that other Circuit Court of Appeals have determined that expenditures of $200,000 or less count as substantial. It notes that the $498,562 figure underestimates the total cleanup cost because it only reflected the amount spent by EPA (as opposed to those monies spent by local and regional personnel).

The Court therefore holds that the United States District Court did not abuse its discretion in characterizing the cost as a “substantial expenditure.”

A copy of the opinion can be downloaded here.