# The Ninth Circuit Reiterates That "Knowingly" Handling Hazardous Waste Without a Permit Is a General Intent Crime Under RCRA § 6928(D)(2)(A)

By Richard E. Stultz / Sep 27, 2017

Max Spatig was convicted of knowingly storing and disposing of hazardous waste without a permit and sentenced by the U.S. District Court for the District of Idaho to 46 months in prison under 42 U.S.C. § 6928(d)(2)(A). See *U.S. v Spatig* (2017) 2017 WL 4018398. At trial, Spatig had sought to introduce evidence on his diminished capacity arguing that he did not have the required state of mind for the offense. The district court, however, granted the government's motion in *limine* to exclude all such evidence because § 6928(d)(2)(A) under the Resource Conservation and Recovery Act (RCRA) only required general intent and diminished capacity was not a defense to a general intent crime.

For years, Spatig had operated a business which used paint and paint-related materials. Over time Spatig had accumulated several used containers of this material, some of which ended up on his residential property in Idaho. In 2005, the county discovered the several containers and reported it to the Idaho Department of Environmental Quality (DEQ). Working with Spatig, DEQ collected and destroyed most of the containers. In 2010, Spatig was again found to be storing used containers of paint and paint related materials on another of his properties. This time the job was too big for local or state authorities so the U.S. Environmental Protection Agency (EPA) was notified. The EPA determined that the waste was hazardous and that a cleanup was necessary. The EPA removed approximately 3400 containers and spent $498,562 on the cleanup. The EPA charged Spatig with violation of § 6928(d)(2)(A) for knowingly storing and disposing of a hazardous waste without a permit from either DEQ or the EPA.

Spatig appealed his trial conviction and argued on appeal that § 6928(d)(2)(A) required specific intent. He also took issue with the district court's enhancement of his base sentence arguing that the cleanup did not result in a "substantial expenditure." The Ninth Circuit Court of Appeals, however, disagreed with Spatig and affirmed the district court.

Under § 6928(d)(2)(A), a person may not "knowingly" treat, store or dispose of a hazardous waste without a permit. According to the U.S. Supreme Court, "'knowingly' merely requires proof of knowledge of the facts that constitute the offense." The Ninth Circuit had also held that "knowingly" generally does not require specific intent. In other words, a defendant's particular purpose or objective is not required. The Ninth Circuit previously rejected the argument that § 6928(d)(2)(A) required that a defendant know there was no permit for disposal. The court held there that "knowingly" only required "that a defendant be aware that he is treating, storing, or disposing of something that he knows is hazardous." The court found that RCRA was a public-welfare statute and that "§ 6928(d)(2)(A) fits within a class of general-intent crimes that protect public health, safety, and welfare." Because § 6928(d)(2)(A) only requires general intent, the Ninth Circuit upheld the district court's exclusion of evidence at trial of Spatig's state of mind.

Spatig argued that his sentence enhancement was error because the cleanup did not constitute a "substantial expenditure" required under the federal sentencing guidelines (U.S.S.G. § 2Q1.2(b)(3)). The Ninth Circuit refused to establish a bright-line rule but noted that sister circuits had found that expenditures under $200,000 were "substantial." In upholding the district court, the Ninth Circuit noted that in the instant case the $498,562 underestimated the total cost because it did not include the local agencies' expenditures.

This holding underscores the long-standing general purpose of environmental laws to protect the public welfare. These statutes do not generally require specific intent—only knowing of the act is required.

 | 