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Sharper Teeth for the Resource Conservation and Recovery Act

In a recent case of first impression, a U.S. appeals court expanded the reach of an important criminal penalty provision of the Resource Conservation and Recovery Act (RCRA).¹ The U.S. Supreme Court denied the certiorari petition, so the decision stands as new law.²

In *United States v. Johnson & Towers, Inc.*,³ the Third Circuit found the criminal sanctions of the Act's illegal disposal provisions⁴ applicable to employees as well as owners and operators. Johnson & Towers, Inc., a New Jersey based company, used certain degreasers which were classified as "hazardous waste" under RCRA. During operations, waste chemicals were drained into a holding tank located on the company's premises. This holding tank was connected by a trench to a creek emptying into a major river. After federal agents watched workers pump waste for 3 days from the holding tank into the trench,⁵ the government brought an action against the company and its service manager and foreman. The district court held that these two employees were not within the purview of RCRA.

The appellate court reversed the district court's decision that limited application of the provision to owners and operators. Rejecting the lower court's reasoning that the penalty should only be levied upon those who the statute required to have a permit, the owners and operators of waste generating facilities,⁶ the appellate court instead based its decision on the definition of the term "person" within the Act. Since "person" was defined broadly to include the range from "individual" to "state", the court held that the employ-

1. 42 U.S.C. §§ 6901-6987 (1982). "[C]ongress enacted RCRA in 1976 as a 'cradle-to-grave' regulatory scheme for toxic materials, providing 'nationwide protection against the dangers of improper hazardous waste disposal.'" 741 F.2d 662, 666 (3d Cir 1984), *cert. denied*, 53 U.S.L.W. 3617 (U.S. Feb. 19, 1985) (No. 84-586)

2. 741 F.2d 662.

3. *Id.*

4. "Any person who . . . (2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter . . . (A) without having obtained a permit . . . shall upon conviction, be subject [to a fine, or to imprisonment, or both]" 42 U.S.C. § 6928(d) (1982).

5. 741 F.2d at 663.

6. 42 U.S.C. § 6925(a) (1982).

ees were *persons* under RCRA.⁷

The court supported its decision with the statute's legislative history. As originally drafted, the statute prohibited knowing disposal of toxic waste without a permit. In subsequent years, Congress expanded the statute to cover treatment and storage of such waste, and elevated the nature of the violation from a misdemeanor to a felony.⁸ The court felt that its decision was in harmony with Congress' increasing concern about the improper disposal of hazardous waste.

Under RCRA, prosecutors must show that employees knew, or should have known, of the regulation requiring a permit and that their employers did not possess one. This new reading forces responsibility upon those actually working with toxic waste and not just upon owners and operators of these facilities. Furthermore, knowledge may be inferred in some circumstances. The court instructed the jury that this inference may be grounded upon the amount of responsibility assigned to the employee's position with the corporate defendant. In support thereof, the court cited *United States v. International Minerals & Chemical Corp.* where knowledge of a regulation was presumed when obnoxious waste materials were involved.⁹ The presumption was based solely upon the high probability of regulation of activities involving materials such as toxic waste. Although *International Minerals* was construing a different statute, the rationale appears equally applicable to the employees in *Johnson & Towers*. Consequently, all employees working with toxic waste might now be motivated to comply with the permit requirements.

Under the criminal sanction provisions of the Act, a convicted violator could face substantial penalties. Each of the employees in *Johnson & Towers* could be fined up to \$50,000 for each day of violation or imprisoned for up to two years, or both.¹⁰

Decisions such as *Johnson & Towers* are crucial to making our current environmental protection laws more effective. It is necessary to direct the impact of these laws at all responsible parties.

7. 42 U.S.C. § 6903(15) (1982).

8. 741 F.2d at 667.

9. *Id.* at 669-70 (citing *United States v. International Minerals & Chemical Corp.*, 402 U.S. 558 (1971)).

10. 42 U.S.C. § 6928(d) (1982).

The Court of Appeals for the Third Circuit should be praised for its attempt at making such important laws work.

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