



From Generation to Prosecution

How RCRA Violations Turn Criminal

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Introduction: Civil vs. Criminal

- Inspection vs. Raid
- Regulator vs. Law Enforcement
- Findings and Write-up vs. Records Seizure and Prosecution
- Financial, Reputational, Job Risk vs. Corporate and Individual Criminal Charges and Catastrophic Business and Career Damage

Crimes Defined in RCRA

- Knowingly:
 - Treat/store/dispose of haz. waste without permit or in knowing violation of permit or requirement -- RCRA § 3008(d)(2)(A)-(C) -- \$50k/day, 5 years
 - Transport haz. waste without manifest -- 3008(d)(5) -- \$50k/day, 2 years
 - Transport haz. waste to unpermitted facility -- 3008(d)(1) -- \$50k/day, 5 years
 - Omit material information or make false statement or representation -- 3008(d)(3) -- \$50k/day, 2 years
 - Alter/destroy/conceal records -- 3008(d)(4) -- \$50k/day, 2 years
 - Export haz. waste without consent of receiving country or applicable international agreement -- 3008(d)(6) -- \$50k/day, 2 years
 - Treat/store/dispose/transport used oil in violation of permit or requirement -- 3008(d)(7) -- \$50k/day, 2 years
 - Endanger -- 3008(e) -- Persons: \$250k, 15 years; Orgs: \$1M

“Knowingly” Element

- For 3008(e) Knowing Endangerment Crime:
 - (1) A person's state of mind is knowing with respect to:
 - (A) his conduct, if he is aware of the nature of his conduct;
 - (B) an existing circumstance, if he is aware or believes that the circumstance exists;or
 - (C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
 - (2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury-
 - (A) the person is responsible only for actual awareness or actual belief that he possessed; and
 - (B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;
- For other crimes, not defined in RCRA

“Knowingly” Element, continued

2018 Example from Kansas District Court ruling:

“RCRA provides criminal penalties for “any person who ... knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter ... without a permit under this subchapter.” Thus, a hazardous waste conviction under RCRA requires proof beyond a reasonable doubt that (1) the material at issue was “hazardous” as that term is defined under RCRA; (2) the hazardous materials at issue were stored as “waste” as that term is defined under RCRA; (3) the defendant knew that the waste he was storing was hazardous; and (4) the defendant stored hazardous waste without a permit to do so under RCRA.”

Parties Subject to Prosecution

- Individual actors
- Company as an entity
- Corporate officers, imputed with knowledge
- Federal or state employees

Consultant Involvement

- Risk of prosecution/risk reduction
- Client red flags
- Navigating work under a criminal investigation

Roles of Enforcing Parties

- EPA Criminal Investigation Division
- U.S. Department of Justice
- EPA Civil
- State Environmental Agencies, e.g. MDNR
- Local law enforcement, FBI
- U.S. District Courts

Sampling of Past Prosecutions

- Example from Spencer Fane and Ramboll
- Themes
 - Grievous disregard for human health or environment
 - Just trying to save \$\$
 - Covering up past conduct
 - EPA had to spend \$\$ to clean up someone's mess
 - Recalcitrance
 - Cowboys (but not always. Sometimes large sophisticated companies, too.)
 - Accepting people's waste with no clear plan

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