

Tenth Circuit Upholds Conviction for “Knowing” RCRA Violation

The United States Court of Appeals for the Tenth Circuit has found that two individuals were properly convicted of violations of the Resource Conservation and Recovery Act (RCRA), as the government proved that both individuals “knowingly” committed the environmental violations.

Carl Eugene Hines owned H&J Auto (H&J) in Marshall County, Oklahoma. The Marshall County emergency manager director noticed numerous fifty-five gallon drums outside of H&J, and told Hines that the drums were a “danger” and that Hines “should get rid of them properly.” A complaint about the barrels was later filed with the Oklahoma Department of Environmental Quality (ODEQ), stating that the barrels were leaking and that the owner would not remove them.

ODEQ investigator Kelly Davis (Davis) visited H&J on February 4, 1997, and upon inspection found 34 barrels behind the building. Davis found the barrels to be old and rusty, and some were leaking or bulging, an indication that they contained hazardous waste. Some of the barrels were labeled “methylethyl ketone”, and some emitted a strong odor similar to paint-thinner. At this time Hines told Davis that another business, Bullard Oil, was responsible for leaving the barrels, and that he had no idea how or why they were placed in H&J’s yard. Davis warned Hines to stay away from the barrels pending further investigation.

Upon further investigation, ODEQ determined that Bullard Oil had not placed the barrels at H&J, and notified Hines that he was responsible for the clean up of the barrels. Another ODEQ inspector later returned to H&J to test the barrels but found them missing. Hines claimed that Bullard Oil had removed them.

Shortly after the ODEQ’s first visit to H&J, Hines instructed his friend, Daniel Martin, and two other acquaintances, Victor Lucas and Billy Jack Orange, to remove the barrels from H&J’s yard. Hines assisted them with loading the barrels onto a trailer. Hines told them to try taking them to the house of another acquaintance, Ronnie Hickman and, if he would not accept them, they were to take them to Martin’s home and place them in his carport. Hickman took only a few of the barrels, so the rest of them were taken to Martin’s carport. Martin later paid a neighbor \$80 to haul some of the barrels from his carport and dump them in a vacant lot. Hines instructed all involved parties to say nothing about moving the barrels.

When the ODEQ learned that the barrels had disappeared from H&J’s yard, the United States Environmental Protection Agency (EPA) and the Federal Bureau of Investigation (FBI) were brought in to investigate. The barrels in Martin’s carport were eventually discovered, as well as the dumped barrels in the vacant lot. The barrels were tested and found to contain hazardous waste as defined under RCRA.

Besides being involved in the disposal of the barrels of waste, Hines was also the leader of a large methamphetamine ring. All of the individuals involved in moving the

barrels were also involved in the drug ring with Hines. The local county Sheriff, Decco Baxter, himself a methamphetamine addict, agreed to protect Hines from the ODEQ, EPA and FBI investigation in exchange for methamphetamine and money. As a result, Hines, Martin and Baxter invented a false story to divert suspicion away from Hines.

The FBI did not believe the fabricated story to be plausible, and eventually Baxter was arrested and confessed to the false story. Hines, Martin and Orange were also charged. Baxter and Orange pled guilty and testified against Hines and Martin at trial.

Hines was convicted of several violations under RCRA, including illegally transporting hazardous waste, and sentenced to 420 months in prison. Martin was also convicted of RCRA violations and sentenced to 240 months in prison. They both appealed.

Upon appeal, both Hines and Martin challenged their RCRA convictions on the grounds that the government failed to prove that they “knowingly” committed the environmental violations. Section 6928(d)(1) of RCRA prohibits “knowingly transport[ing] or caus[ing] to be transported any hazardous waste. . . to a facility which does not have a permit.” Hines contended that the government failed to prove that he knew the barrels stored in H&J’s yard contained hazardous waste, and that Martin lacked the required permit to store hazardous waste in his carport and vacant lot. Martin also argued that the government failed to prove that he was aware the barrels contained hazardous waste.

Upon review, the court found that Section 6928(d) of RCRA does not require proof that a person knew that materials at issue were in fact identified or listed as a hazardous material under RCRA; but only requires proof that a person knew that the material was hazardous in the sense of being harmful to people or the environment. In this case, the court found that there was sufficient evidence for a jury to conclude that both Hines and Martin knew the barrels contained materials which could be harmful to people or the environment. The barrels gave off noxious fumes and showed characteristics of hazardous materials, such as leaking and bulging, and some even displayed hazardous material labels. Hines had also been warned by the ODEQ to stay away from the barrels, as they could be dangerous. Hines had ordered his associates to dispose of the barrels secretly, after regular business hours, and had ordered them to tell no one what they were doing. He also lied to the ODEQ, saying that Bullard Oil had removed the barrels. The court considered this behavior “unusual, clandestine, and deceptive”, and concluded that a rational juror would infer that the barrels had not been transported under proper and legal conditions.

Based on these findings, the court concluded that Hines and Martin were properly convicted, and affirmed the district court’s decision.

United States v. Hines, No. 98-7097 (10th Cir. Apr. 5, 2000)

This article was prepared by Jeffrey L. Woolstrum, a partner in our Environmental Department, and previously appeared in the October, 2000 edition of the

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