

## ***Appeals Court Upholds RCRA Criminal Sentence***

The United States Court of Appeal for the Sixth Circuit has upheld the sentence handed down by a Tennessee district court following a plea of guilty to storing hazardous waste without a permit in violation of the federal Resource Conservation and Recovery Act (RCRA). The appeals court held that the district court had properly applied the United States Sentencing Guidelines by declining to adjust the sentence downward based on the “relatively innocuous nature” of the offense, and by adjusting the sentence upward based on the defendant’s past criminal conduct.

Michael Kyle and his partner, Edward Johnson, operated Custom Concepts, Inc. (CCI), a fiberglass automotive parts company located in Tennessee. CCI generated a variety of hazardous waste, including acetone, xylene, and toluene, and had a history of improperly storing, labeling, and disposing that waste. In January 2000, after being evicted from the building in which it operated, CCI abandoned the premises and left behind seventy-two 55-gallon drums containing various liquid wastes and fiberglass resins. In February 2000, the United States Environmental Protection Agency (“EPA”) initiated a criminal investigation into the abandoned drums and discovered that fourteen of those drums contained regulated hazardous waste.

Kyle and Johnson were subsequently arrested and indicted on three separate counts of criminal RCRA violations. Both men ultimately plead guilty to Count One, which charged that “from on or about [the] 20<sup>th</sup> day of October, 1998, and continuing until on or about the 7<sup>th</sup> day of July 2000,” the two men knowingly stored hazardous waste without a permit, and the other two counts were dismissed. In exchange for the dismissal of Counts Two and Three, the men agreed

to admit to all of the facts alleged in the indictment and in the “agreed Factual Basis” of the crime, and waived all their rights except for the right to appeal their sentence.

The district court accepted Kyle’s plea agreement and sentenced him to 5 months of imprisonment and three years of supervised release. The district court based this sentence, in part, on Kyle’s criminal history of driving under the influence (DUI) and for committing the environmental offence while on probation for that crime. Kyle appealed, claiming that the district court’s sentence was excessive because it did not take into account the “relatively innocuous nature” of the hazardous waste involved and it improperly assumed that Kyle had committed the environmental offense while on probation for the unrelated DUI. The court of appeals reject both of Kyle’s claims.

With respect to the “relatively innocuous nature” of the hazardous waste, Kyle argued on appeal that the district court failed to consider the nature, quantity and risk associated with the illegally abandoned waste. Kyle claimed that none of the fourteen abandoned drums had leaked and, in any case, “the quantity was so minimal that it did not present a threat.” The appeals court noted that, although Kyle had raised these claims at his sentencing hearing, he provided no supporting evidence whatsoever during the hearing or on appeal. “Rather, he merely reiterated his view that in relation to other environmental offences (and compared to the really reprehensible actions he could have undertaken with regard to the hazardous waste that he illegally stored), this offense was innocuous.” The appeals court found that the district court properly determined that, although it *could* have reduced Kyle’s sentence, the facts presented by Kyle at the sentencing hearing did not justify a downward departure from the sentence recommended in the Sentencing Guidelines. Accordingly, the appeals court reject Kyle’s claims.

With respect to Kyle's prior criminal history, the district court had increased Kyle's sentence in accordance with the Sentencing Guidelines because the court found that he was on probation for a prior DUI conviction at the time he committed the environmental offense. The district court found that Kyle was placed on probation for his DUI convictions on June 1, 2000, more than a month before CCI's former landlord disposed of the hazardous waste that CCI had abandoned. On appeal, Kyle argued that the illegal storage of hazardous waste ended in February 2000 when EPA began its criminal investigation, long before Kyle's DUI probationary period had started. Although it is not clear why Kyle believed that the environmental offense ended in February 2000, the appeals court found that it "need not address this issue—or Kyle's related claim that the district court failed to make specific factual findings with regard to the date the offense terminated—*because Kyle plead guilty to this offense.*" (Emphasis added.) Kyle's guilty plea expressly admitted that the beginning and ending dates of his offense were October 20, 1999 and July 7, 2000, respectively. The appeals court noted that "when a defendant voluntarily and knowingly enters into a guilty plea, that individual admits all [claims] of fact in the indictment." Accordingly, the appeals court held that the district court properly increased Kyle's sentence because he was on probation for at least a portion of the time period of the environmental offense.

***United States v. Kyle***, No. 01-6014 (6<sup>th</sup> Cir. Dec. 6, 2001)

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