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A Little Knowledge May Be Dangerous, but Absence of Knowledge May Lead to Criminal Penalties: United States v. Hoflin 880 F.2d 1033

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A LITTLE KNOWLEDGE MAY BE DANGEROUS, BUT ABSENCE OF KNOWLEDGE MAY LEAD TO CRIMINAL PENALTIES: *UNITED STATES v. HOFLIN* 880 F.2d 1033 (9th Cir. 1989)

The criminal law in Anglo-American criminal jurisprudence aims to punish those whom society considers to be culpable.[1] Cognizant of the stigma associated with a criminal conviction, and loth to impose sanctions on an innocent person, courts require that defendants possess some degree of scienter before passing judgments of guilt.[2] A legislature, however, may exercise its police power to eliminate the *mens rea* element of a criminal offense.[3] When enacting criminal statutes defining crimes involving regulating food contaminants,[4] obscene material,[5] drugs and narcotics,[6] weapons and explosives,[7] and pollutants,[8] gov-

1. United States v. Marvin, 687 F.2d 1221, 1226 (8th Cir. 1982), *cert. denied*, 460 U.S. 1081 (1983). *See also* Morissette v. United States, 342 U.S. 246, 250-51 (1952) (relationship between mental element and punishment is instinctive).

2. *Marvin*, 687 F.2d at 1226. *See also* United States v. United States Gypsum Co., 438 U.S. 422, 436 (1978) ("the existence of a *mens rea* is the rule of . . . the principles of . . . criminal jurisprudence." (quoting Dennis v. United States, 341 U.S. 494, 500 (1951))); United States v. Balint, 258 U.S. 250, 251-53 (1922) (scienter is necessary to indict and prove criminality at common law, even if not included in statutory definition).

3. *Balint*, 258 U.S. at 251-52. *See also* United States v. Frezzo Bros., Inc., 546 F. Supp. 713, 720 (E.D. Pa. 1982) (legislature's power to exclude knowledge requirement "cannot . . . be questioned" (quoting Chicago, B. & Q. Ry. v. United States, 220 U.S. 559, 578 (1910))), *aff'd*, 703 F.2d 62 (3d Cir.), *cert. denied*, 464 U.S. 829 (1983); *cf.* United States v. Flores, 753 F.2d 1499, 1505 (9th Cir. 1985) (Congress will include specific intent language if it intends to require proof of willful conduct).

4. *See, e.g.*, United States v. Park, 421 U.S. 658, 672-78 (1975) (Federal Food, Drug, and Cosmetic Act regulating food contamination).

5. *See, e.g.*, Smith v. California, 361 U.S. 147, 152 (1959) (municipal ordinance regulating possession of obscene material).

6. *See, e.g.*, United States v. Dotterweich, 320 U.S. 277, 281 (1943) (Federal Food, Drug, and Cosmetic Act regulating drug labeling and content); *Balint*, 258 U.S. at 251 (Anti-Narcotic Act regulating narcotic sales); United States v. Behrman, 258 U.S. 280, 285 (1922) (same). *See infra* notes 36-42 and accompanying text for a discussion of *Dotterweich*.

ernments on occasion have dispensed with *mens rea* requirements to better combat threats to the public welfare posed by these items.[9] Unfortunately, legislative drafters do not always particularize *mens rea* requirements for various crimes within vast regulatory schemes. The Resource Conservation and Recovery Act of 1976[10] (RCRA) expressly declares that the state of mind necessary for many of its criminal provisions is "knowing."[11] It is unclear, however, whether Congress intended for the criminal intent requirement to attach to all of the RCRA for proscribed offenses.[12] In *United States v. Hoflin*,[13] the Ninth Circuit held that a person who disposes of hazardous waste without a permit violates 42 U.S.C. § 6928(d)(2)(A)[14] despite his lack

7. *See, e.g.*, United States v. Flores, 753 F.2d 1499, 1502 (9th Cir. 1985) (Federal Gun Control Act regulating firearm shipments).

8. *See, e.g.*, United States v. Frezzo Bros., Inc., 602 F.2d 1123, 1128 (3d Cir. 1979) (Federal Water Pollution Control Act regulating pollutant discharge), *cert. denied*, 444 U.S. 1074 (1980).

9. *Balint*, 258 U.S. at 251-52. *See also* Harris, Cavanaugh & Zisk, *Criminal Liability for Violations of Federal Hazardous Waste Law: The "Knowledge" of Corporations and Their Executives*, 23 WAKE FOREST L. REV. 203, 215 (1988) (presumption of criminal intent element is less forceful in the context of "public welfare" offenses). For a definition of "public welfare" offense, see *infra* note 62.

10. Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, § 3008(d), 90 Stat. 2795 (codified as amended at 42 U.S.C. §§ 6901-6992i (West 1983 & Supp. 1990)) [hereinafter RCRA]. *See infra* notes 29-33 and accompanying text discussing RCRA's purpose.

11. For the text of RCRA § 6928(d), see *infra* note 14.

12. *See generally* Harris, Cavanaugh & Zisk, *supra* note 9.

13. 880 F.2d 1033 (9th Cir. 1989), *cert. denied*, 110 S. Ct. 1143 (1990). Hoflin was the Director of Public Works for the City of Ocean Shores, Washington. *Id.* at 1035. *See infra* notes 16-27 and accompanying text for a discussion of the facts.

14. 42 U.S.C. § 6928(d) provides:

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act . . .

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter -

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act. . . ; or

(B) in knowing violation of any material condition or requirement of such permit; or

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or

of knowledge that no disposal permit had been obtained.[15]

During his tenure as Director of the Public Works Department of Ocean Shores, Washington,[16] the defendant in *Hoflin* ordered an em-

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other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after the date of the enactment of this paragraph) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter -

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter.

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

Id.

15. *Hoflin*, 880 F.2d at 1039. Finding that knowledge of the absence of a permit was not an essential element of the offense, the court stressed that omitting "knowledge" as a required element was consistent with RCRA's goals. *Id.* at 1038. *See infra* notes 29-33 and accompanying text for additional discussion of RCRA's purpose and goals.

16. *Hoflin*, 880 F.2d at 1035. Hoflin held this position from 1975 to 1980, at which point he left for two years for personal reasons. *Id.* He returned in 1982 as Assistant Director, and in 1983, regained his position as Director. *Id.* As Director, Hoflin's responsibilities included supervising road maintenance and sewage treatment plant operation. *Id.*

ployee to dispose of and bury fourteen drums containing excess liquid road paint[17] on the city's sewage treatment plant premises.[18] The defendant gave that order disregarding the plant director's warning[19] that such conduct might jeopardize the plant's National Pollutant Discharge Elimination System certificate.[20] Approximately two years later, in March 1985, the plant director informed state authorities, who inspected the plant and then referred the matter to the Environmental Protection Agency (EPA).[21] The EPA subsequently recovered the drums, but not before paint had leaked into the soil.[22] The EPA tested samples taken from the drums[23] and determined that the materials were of a type disposable only at a facility possessing an EPA permit.[24] The treatment plant in question did not possess such a permit.[25] Based upon the EPA's evidence, a grand jury indicted Hoflin for disposing of

17. *Id.* From 1975 to 1982, the city purchased 3500 gallons of road paint for maintenance jobs. *Id.* Once the road crews completed the painting jobs, they returned the 55-gallon drums containing paint to the Public Works Department's yard. *Id.* The Public Works Department either reused or gave away the empty drums. *Id.* In 1982, Hoflin's successor, John Hastig, stored 14 of the drums inside a building at the yard. *Id.* The Fire Marshal, however, ordered Hastig to store the drums outside because they created a risk of explosion. *Id.* Hoflin was aware of the Fire Marshal's orders. *Id.*

18. *Id.* City employees, at Hoflin's behest, dug a hole on the treatment plant grounds in which to bury the 14 drums. *Id.* Some of the drums were rusty and leaky. *Id.* In order for the drums to fit inside the hole, the city employees crushed the drums with a front-end loader. *Id.* During the process, at least one drum burst. *Id.* The employees then covered the drums with sand. *Id.*

19. Prior to issuing the burying orders, Hoflin announced to Fred Carey, the sewage treatment plant director, that he planned to bury the 14 drums on plant grounds. *Id.* Carey informed Hoflin that burying the drums could cause the issuing authority to revoke the plant's National Pollutant Discharge Elimination System (NPDES) certificate. *Id.*

20. *Hoflin*, 880 F.2d at 1035. Any person desiring to discharge pollutants directly into the United States' navigable waters must obtain a NPDES certificate. *Id.* at 1035 n.1. The EPA Administrator or an EPA authorized state agency issues the certificate pursuant to the Clean Water Act. *Id.* (citing the Clean Water Act, 33 U.S.C. § 1342 (1977)).

21. *Id.* at 1035.

22. *Id.* Some of the drums the EPA found did not have lids or were crushed. *Id.* Ten of the drums contained liquid material. *Id.*

23. *Id.* The EPA samplings indicated a high flash point of 65 degrees Fahrenheit. *Id.*

24. RCRA deems substances with flash points of 140 degrees Fahrenheit or less hazardous. *Id.* (citing EPA Characteristics of Hazardous Waste, 40 C.F.R. § 261.21 (1989)). A person may dispose of these hazardous substances only at facilities which have obtained EPA permits. *Id.*

25. *Id.*

paint without a permit in violation of 42 U.S.C. § 6928(d)(2)(A).[26] At trial, the jury found Hoflin guilty of substantially the same charges.[27] On appeal, the Ninth Circuit Court of Appeals affirmed the verdict, and held that knowledge of a facility's permit status is not required for conviction under 42 U.S.C. § 6928(d)(2)(A).[28]

Congress enacted RCRA to regulate disposal of the growing volume of hazardous and toxic waste produced by American industry.[29] Congress viewed disposal of toxic materials as a serious national problem[30] and concluded that the grave danger which hazardous materials posed to the public required a "greater degree" of regulation than did non-hazardous waste.[31] In order to deter improper waste disposal, Congress promulgated enforcement provisions which included criminal penalties.[32] Subsequent to RCRA's enactment, Congress amended the statute in 1978 and 1980 to expand the criminal provision and to ele-

26. *Id.* at 1036. Count II charged Hoflin with disposing of the paint without a permit in violation of 42 U.S.C. § 6928(d)(2)(A) and regulations issued pursuant to RCRA. *Id. See supra* note 14 for the text of 42 U.S.C. § 6928(d)(2)(A). The grand jury also indicted Hoflin on two other counts. *Hoflin*, 880 F.2d at 1036. Count I charged him with conspiracy to dispose of hazardous waste without a permit in violation of 18 U.S.C. § 2 and 18 U.S.C. § 371. *Id.* Count III charged Hoflin with disposing of sludge on the plant grounds in violation of 18 U.S.C. § 2 and 33 U.S.C. § 1319(c)(1).

27. *Id.* The jury found Hoflin guilty on Counts II and III. *Id.* The district court suspended sentencing and placed Hoflin on two years probation. *Id.*

28. *Id.* at 1039.

29. *Id.* at 1038. RCRA was enacted to provide "nationwide protection against the dangers of improper hazardous waste disposal." H.R. REP. NO. 1491, 94th Cong., 2d Sess., pt. 1, at 11 [hereinafter H.R. REP. No. 1491], *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6249 (increasing volumes of hazardous waste have the potential to "blind, cripple or kill" members of the public).

30. *Hoflin*, 880 F.2d at 1038. *See also* S. REP. No. 172, 96th Cong., 2d Sess. 1, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 5019 (legislative history of the RCRA 1980 amendments discussing the health danger to the general public which the hazardous waste creates); H.R. REP. No. 1491, *supra* note 29, at 3-4, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6241.

31. *Hoflin*, 880 F.2d at 1038 (quoting 42 U.S.C. § 6901 (b)(5)). RCRA was also an attempt to provide "a multifaceted approach towards solving the problems associated with the 3-4 billion tons of discarded materials generated each year, and the problems resulting from the anticipated 8% annual increase in the volume of such waste." H.R. REP. NO. 1491, *supra* note 29, at 2, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6239.

32. "[J]ustification for the penalties section is to permit a broad variety of mechanisms so as to stop the illegal disposal of hazardous wastes." United States v. Johnson & Towers, Inc., 741 F.2d 662, 667 (3d Cir. 1984) (quoting H.R. REP. NO. 1491, *supra* note 29, at 31, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6269), *cert. denied*, 469 U.S. 1208 (1985). In addition to the criminal penalties set forth in

vate section 6928 violations from misdemeanors to felonies.[33]

As with RCRA, the Federal Food, Drug, and Cosmetic Act[34] provides criminal penalties for violators of its shipping requirements.[35] The Supreme Court interpreted the Act's criminal provisions in *United States v. Dotterweich*,[36] in which the Government charged Dotterweich and his pharmaceutical company with shipping adulterated and misbranded drugs.[37] Although Dotterweich's misconduct was not intentionally undertaken, the Court upheld his conviction.[38] The Court first noted that Congress, when promulgating the Act, intended to prevent the shipment of adulterated and misbranded drugs in interstate commerce[39] in order to protect the public consumers.[40] The Court then

§ 6928(d), RCRA also enumerates several penalties in § 6928(g) and compliance orders in § 6928(a).

33. Harris, Cavanaugh & Zisk, *supra* note 9, at 224 n.136. *See also Johnson & Towers*, 741 F.2d at 667 (the fact that Congress has twice amended RCRA's criminal provisions to broaden their scope and enhance the penalty from misdemeanors to felonies indicates Congress' awareness of the seriousness of the proscribed conduct). *See infra* notes 76-90 and accompanying text for a discussion of *Johnson & Towers*.

34. 21 U.S.C. §§ 301-393 (1988).

35. The Act prohibits, *inter alia*, "the introduction or delivery for introduction into interstate commerce of any . . . drug . . . that is adulterated or misbranded." 21 U.S.C. § 331(a) (1988). Any person who violated the provision was guilty of a misdemeanor. 21 U.S.C. § 333(a) (1940) (current version at 21 U.S.C. § 333(a)(1) (1988)).

36. 320 U.S. 277 (1943).

37. *Id.* at 278. The defendant company was a jobber in drugs. *Id.* After purchasing the drugs from a manufacturer, the company repacked the drugs under its own label and shipped them in interstate commerce. *Id.*

38. *Id.* at 285. A jury convicted Dotterweich on two counts of shipping misbranded drugs and one count of shipping an adulterated drug in interstate commerce. *Id.* at 278. The jury acquitted the pharmaceutical company on all three counts. *Id.* The Second Circuit reversed Dotterweich's conviction finding the company the only "person" subject to prosecution under the Act. *Id.* at 279. *See* United States v. Buffalo Pharmacal Co., Inc., 131 F.2d 500, 503 (2d Cir. 1942). The Supreme Court reversed the appellate court decision. *Dotterweich*, 320 U.S. at 285.

39. *Id.* at 280. By enacting the Food and Drugs Act of 1906, Congress exerted its power to prevent the shipment of impure and adulterated food and drugs in interstate commerce. *Id.* With the Act of 1938, Congress extended its control over "illicit and noxious articles" and exacted stiffer penalties for Act violations. *Id.*

40. The legislative history of the Act of 1938 demonstrates Congress' concern for protecting the consuming public from the dangers associated with the articles' distribution. *Id.* at 282. The House Committee stated that the Act "seeks to set up effective provisions against abuses of consumer welfare growing out of inadequacies in the Food and Drugs Act of June 30, 1906." *Id.* at 282 (quoting H.R. REP. No. 2139, 75th Cong., 3d Sess., pt. 1). Similarly, the Senate Committee reported that the new legislation "must strengthen and extend that law's protection of the consumer." *Id.* (quoting S. REP. No. 152, 75th Cong., 1st Sess., pt. 1).

reasoned that after balancing the danger the articles posed to the public against the needs of the supplier, Congress appropriately omitted a *mens rea* requirement and assigned the responsibilities and risks of drug misidentification to the shipper.[41] Although recognizing that the statute effectively criminalized innocent conduct, the Court found the inherent hazards of the regulated, shipped items justified any hardship the statute imposed on the shippers.[42]

The Supreme Court applied the *Dotterweich* balancing approach in *United States v. Freed*.[43] In *Freed*, the defendant was indicted for possessing and conspiring to possess hand grenades[44] which had not been registered pursuant to the National Firearms Act.[45] The Court found that the criminal provision did not require that one who receives or possesses a firearm have the specific intent to acquire an unregistered firearm or knowledge of the firearm's registration status.[46] Finding firearms inherently dangerous,[47] the Court opined that Congress could

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41. The statute under which Dotterweich was convicted was the type of legislation whereby penalties serve as effective means of regulation. Such legislation dispenses with the conventional requirement for criminal conduct-awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger. *Id.* at 280-81 (citing United States v. Balint, 258 U.S. 250 (1922)).

42. *Id.* at 284-85. Noting that Congress may dispense with the consciousness of wrongdoing requirement even if drastic consequences result, the Court stated:

> Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting. Balancing relative hardships, Congress has preferred to place it upon those who have at least the opportunity of informing themselves of the existence of conditions imposed for the protection of consumers before sharing in illicit commerce, rather than to throw the hazard on the innocent public who are wholly helpless.

Id. *But see id.* at 286-87 (Murphy, J., dissenting) (the Court should not impose individual liability on corporate officers without Congress' clear intent to do so).

43. 401 U.S. 601, 609 (1971).

44. *Id.* at 601.

45. 26 U.S.C. § 5861(d) (1988). The statute under which Freed was indicted made it unlawful for any person "to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record." *Freed*, 401 U.S. at 604 (quoting 26 U.S.C. § 5861(d) (Supp. V 1964)).

46. Id. at 607. *But see id.* at 612 (Brennan, J., concurring). Justice Brennan argued that even though the Act does not require the prosecutor to prove the possessor's knowledge that the grenades are unregistered, the Act does mandate that the prosecutor prove knowing possession of the items and knowledge that the items possessed were hand grenades. *Id.* In Justice Brennan's view, therefore, the Act does not completely dispense with the knowledge element. *Id.*

47. *Id.* at 609.

justifiably regulate firearm possession by not including a knowledge or intent requirement.[48] Cognizant of the legitimate public safety concern, the Supreme Court hence deferred to Congress' choice to omit a scienter component from the statute.[49]

The Court has extended the balancing approach beyond those regulatory statutes at issue in *Dotterweich* and *Freed* into the context of prosecutions under environmental laws. In *United States v. International Minerals & Chemical Corp.*[50] (*IMC*), the Supreme Court upheld Interstate Commerce Commission regulations governing the transportation of hazardous materials[51] which did not require proof that the transporter knew of the regulation.[52] In *IMC*, the Government charged the defendant with transporting hazardous materials without including classification information on the shipping papers as required.[53] Focussing on the cargo's extremely dangerous nature, the

48. *Id.* at 610 (quoting United States v. Balint, 258 U.S. 250, 253-54 (1922)). *Cf. Balint*, 258 U.S. at 254 (regulation of narcotics sales is justified because of risks they pose to innocent purchasers); United States v. Flores, 753 F.2d 1499 (9th Cir. 1985) (regulation of firearms distribution is necessary for citizen safety); United States v. Flum, 518 F.2d 39, 45 (8th Cir. 1975) (en banc) (regulation of firearm possession on aircraft is necessary for passenger safety), *cert. denied*, 423 U.S. 1018 (1975).

49. *Freed*, 401 U.S. at 609-10. Noting the public safety interest, the Court theorized that "one would hardly be surprised to learn that possession of hand grenades is not an innocent act." *Id.* at 609.

50. 402 U.S. 558 (1971).

51. *Id.* at 559 (construing 18 U.S.C. § 834(a) (repealed 1979)). Section 834(a) empowered the Interstate Commerce Commission to promulgate regulatory regulations ensuring the "safe transportation" of "corrosive liquids." *Id.* (quoting 18 U.S.C. § 834(a)). Congress also enacted a statute stating that whoever "knowingly violates any . . . regulation" created under § 834(a) shall be penalized. *Id.* (quoting 18 U.S.C. § 834(f) (repealed 1979)).

52. *IMC*, 402 U.S. at 563. Although the Court noted that Congress did not intend to create strict liability for a regulatory violation, it doubted that Congress was also "carving out an exception to the general rule that ignorance of the law is no excuse." *Id.* at 562-63 (construing S. REP. No. 901, 86th Cong., 1st Sess., 3 (1959) and H.R. REP. No. 1975, 86th Cong., 2d Sess., 10-11, *reprinted in* 1960 U.S. CODE CONG. & ADMIN. NEWS 3351). The Court added that the principle that ignorance of the law is no defense applies to both statutory and regulatory enactments. *Id.* at 563. *Cf.* United States v. Bishop, 412 U.S. 346, 360 (1973) (willful violation entails knowledge of a legal duty to comply with statutory tax obligations); Lambert v. California, 355 U.S. 225, 228-29 (1957) (conviction of felon for failing to register requires proof of knowledge of obligation to register).

53. *IMC*, 402 U.S. at 559. Congress required any party transporting regulated "hazardous material" to indicate on the shipping papers the material's name and classification. *Id.* (quoting DOT Empty Radioactive Materials Packaging, 49 C.F.R. § 173.427 (1989)).

Court found the likelihood of government regulations in this case sufficiently probable to justify presuming the carrier's awareness of their existence.[54] Thus, the company's lack of knowledge concerning the transportation regulations did not excuse it from failing to maintain the required records.[55]

The Court, however, did not impose absolute liability upon the violators.[56] Rather, the Court interpreted the statutory term "knowingly" as requiring the shipper to know that the cargo was dangerous before any liability attached.[57] The term "knowingly" thereby refers to awareness of the cargo's nature, as opposed to the existence of the particular regulation.[58]

Liparota v. United States[59] presented the Supreme Court with another opportunity to interpret the term "knowingly" as included in a statute.[60] In *Liparota*, the Government charged Liparota with know-

54. Analogizing the acids to the drugs in *Balint* and the grenades in *Freed*, the Court concluded that the acids' inherent danger was sufficient to put a shipper on notice of the probability of the existence of enforcement regulations. *Id.* at 564-65. Although the Court distinguished these hazardous items from pencils, dental floss and paper clips, it did indicate that this latter group of articles might also become subject to government regulation. *Id.* The Court stated, however, that because these items are not inherently dangerous, a person shipping them cannot be presumed to be aware of any governing regulations. *Id.* at 564-65. Therefore, as to these items, failure of Congress to require *mens rea* "might raise substantial due process questions." *Id. Cf.* United States v. Freed, 401 U.S. 601, 609 (1971) (one must realize that possession of hand grenades is not an innocent or an unregulated act); United States v. Nofziger, 878 F.2d 442, 453 (D.C. Cir. 1989) (conduct inherently dangerous raises presumption of regulations).

55. *IMC*, 402 U.S. at 565. Under the Court's analysis, if the carrier knew the cargo was hazardous and failed to comply with the labeling regulations, the Government may hold the shipper accountable even if the shipper was unaware of the regulation's existence. *Id.* at 563-64. As an example, the Court stated that a shipper, who, in good faith, transported dangerous acid innocently believing that it was spring water would not fall within the Act's purview. *Id.*

56. *See supra* note 52 for a discussion of Congress' intent to impose strict liability for regulatory violation.

57. *IMC*, 402 U.S. at 563. Although it found the shipper's awareness of the regulation unnecessary, the Court stated that in order to convict the shipper the Government must prove the shipper was aware of the shipped materials' dangerous nature. *Id. See also supra* note 53.

58. In doing so, the Court excused good faith mistakes of fact. The Court noted that by requiring the possessor of the material to "know" the item was hazardous, Congress had retained a *mens rea* requirement. *IMC*, 402 U.S. at 563-64. This application of "knowingly" protects against overly harsh results and provides the statute with a minimal knowledge requirement.

59. 471 U.S. 419 (1985).

60. The Court's analysis focused on the Food Stamp Act of 7 U.S.C. § 2024(b)(1)

ingly possessing food stamps in a manner not authorized by the Food Stamp Act.[61] The Court held that because the violation did not threaten community health or safety, the illegal conduct in question was not a "public welfare" offense.[62] Accordingly, the Court required the prosecution to prove that the defendant knew the Food Stamp Act prohibited his possession of the food stamps.[63]

The Court distinguished its interpretation of the term "knowingly" in *Dotterweich*,[64] *Freed*,[65] and *IMC*[66] from its interpretation in *Liparota* on the basis of whether the respective regulated articles were

(1977). The Act imposed criminal penalties on any person who "knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized" by statute or regulation. *Id.* at 419 (quoting 7 U.S.C. § 2024(b)(1)).

61. *Id.* at 421. Frank Liparota co-owned a sandwich shop in Chicago which the Department of Agriculture had not authorized to accept food stamps. *Id.* The Government proved at trial that Liparota had on multiple occasions purchased food stamps from an undercover Department of Agriculture agent for an amount less than their face value. *Id.* Liparota was ultimately indicted for acquiring and possessing food stamps in violation of the Act. *Id.*

62. *Id.* at 432-33. The Court defined "public welfare" offenses in Morissette v. United States, 342 U.S. 246 (1952) as crimes which "depend on no mental element but consist only of forbidden acts or omissions." *Morissette*, 342 U.S. at 252-53. The Court, in *Liparota*, noted that the instances in which it had previously recognized "public welfare" offenses involved "a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety." *Liparota*, 471 U.S. at 433. *See, e.g.*, United States v. Holland, 810 F.2d 1215 (D.C. Cir. 1987) (drug trafficking within close proximity of school constitutes a "public welfare" offense); *cf.* United States v. Nofziger, 878 F.2d 442 (D.C. Cir. 1989) (lobbying not deemed a "public welfare" offense). Courts cite the extreme care which the public welfare laws promote as one advantage of the strict liability the laws essentially impose. United States v. United States Gypsum Co., 433 U.S. 422, 441 n.17.

63. *Liparota*, 471 U.S. at 433. The Court opined, however, that its holding did not place an undue burden on the Government. *Id.* at 433-34. The Government did not need to demonstrate that Liparota knew of the specific regulations governing food stamp acquisition and possession. *Id.* at 434. *See supra* note 52 discussing the principle that ignorance of the law is not a defense to a statutory or regulatory offense. Moreover, the Government was not required to present evidence conclusively establishing Liparota's state of mind. *Liparota*, 471 U.S. at 434. The Court stated that the Government could prove that Liparota knew his conduct was illegal or unauthorized by referring to the surrounding facts and circumstances. *Id. Accord* United States v. Cruz-Valdez, 773 F.2d 1541 (11th Cir. 1985) (en banc) (permitting use of circumstantial evidence to infer knowledge from presence of large amount of contraband on vessel); United States v. Burns, 597 F.2d 939, 942-45 (5th Cir. 1979) (allowing inference of guilty knowledge from fact of unexplained possession of recently stolen property).

64. *See supra* notes 36-42 and accompanying text for a discussion of *Dotterweich*.

65. *See supra* notes 43-49 and accompanying text for a discussion of *Freed*.

66. *See supra* notes 50-55 and accompanying text for a discussion of *IMC*.

inherently dangerous and hazardous to community health and safety.[67] Although the food stamps at issue in *Liparota* raise issues of public concern, they do not pose the same threat of harm or injury to an unsuspecting public as do drugs, firearms and hazardous materials.[68] Unlike the defendant Liparota's conduct, the patently dangerous actions discussed in *Dotterweich*, *Freed* and *IMC* warranted imposing a presumption that the defendants knew of the regulations existence.[69] Because the Court did not view food stamp acquisition and possession as inherently dangerous activities,[70] it refused to dispense with the *mens rea* element of the offenses.[71] Furthermore, the Court concluded that to interpret the statute as omitting a *mens rea* requirement would effectively criminalize too broad of a range of possibly innocent conduct.[72]

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67. *Liparota*, 471 U.S. at 433. The Court was unwilling to compare foods stamps to the hand grenades in *Freed*. *Id*. Nor was the Court willing to analogize unauthorized food stamp acquisition and possession to the adulterated and misbranded drug sales in *Dotterweich*. *Id*.

68. *Id*. at 423-33. The distinction between these cases is clear. Grenades, narcotics and drugs, and hazardous wastes are inherently dangerous items. Food stamps are innocuous. *See also* United States v. International Minerals & Chem. Corp., 402 U.S. 558 (1971) (comparison of drugs, grenades, and acid to pencils, dental floss, and paper clips); United States v. Nofziger, 878 F.2d 442 (D.C. Cir. 1989) (the common denominator in these cases is that the matter regulated is inherently dangerous). For a discussion of the court's awareness of the need for regulations governing the shipment of dangerous articles shipped in interstate commerce, see *supra* note 54.

69. *Liparota*, 471 U.S. at 432-33.

70. *See supra* note 67 and accompanying text.

71. Although recognizing that Congress did not "explicitly and unambiguously" indicate whether the statutory definition included a *mens rea* element, the Court was unwilling to deviate from "the background assumption of our criminal law" that criminal offenses require a *mens rea* element. *Id*. at 426. "[M]ore than the simple omission of the appropriate phrase from the statutory definition is necessary to dispense with an intent requirement." *Id*. (quoting United States v. United States Gypsum Co., 438 U.S. 422, 438 (1978)). *See also supra* notes 1-3 and accompanying text discussing the purpose of and need for scienter as an element of an offense at common law.

72. *Id*. The Court theorized that to read the statute with no "knowledge-of-illegality" requirement would, for example, render criminal a food stamp recipient who unknowingly purchased food from a store who charged the general public less than a food stamp recipient. *Id*. A similar reading of the statute would also render criminal a nonrecipient who mistakenly possessed the stamps because of the Department of Agriculture's inadvertent administrative error. *Id*. at 426-27. *But see id*. at 435 (White, J., dissenting). Justice White interpreted the term "knowingly" to modify only "uses, transfers, acquires, alters and possesses." *Id*. To him, therefore, knowledge of illegality was not an element of the crime. *Id*. at 436. *Cf.* United States v. Yermian, 468 U.S. 63, 69 n.6 (1984) ("knowingly and willfully" do not modify all elements of the statutory

As with the congressional enactments at issue in the cases discussed above, section 6928(d) of RCRA proscribes "knowing" participation in various activities involving transportation, storage, treatment and disposal of hazardous waste.[73] Congress, however, provided minimal guidance concerning the meaning of section 6928,[74] preferring to leave the defining process to the courts.[75]

The Third Circuit construed the term "knowing" in section 6928(d)(2)[76] in *United States v. Johnson & Towers, Inc.*[77] and read a scienter requirement into the statute.[78] In *Johnson & Towers*, the Government charged the defendants with disposing of hazardous waste without obtaining the required EPA permit.[79] Although the statute did not expressly require that the defendants know they were acting in violation of the law,[80] the court held that the Government must prove under section 6928(d)(2)(A) that each defendant knew both that Johnson & Towers was required to obtain a permit and that the company

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crime forbidding knowingly and willfully making false statements within a federal agency's jurisdiction).

73. Harris, Cavanaugh & Zisk, *supra* note 9, at 220.

74. *Id.*

75. "The conferees have not sought to define 'knowing' for offenses under subsection (d); that process has been left to the courts under general principles." S. REP. No. 172, 96th Cong., 2d Sess. 39, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 5038.

76. *Johnson & Towers* is one of two appellate decisions construing § 6928(d). The other case in which an appellate court interpreted the meaning of the provision was United States v. Hayes International Corp., 786 F.2d 1499 (11th Cir. 1986). In *Hayes*, the Government charged the defendants with unlawfully transporting hazardous waste to a facility which did not have a permit. *Id.* at 1501. Hayes and its employee were prosecuted under § 6928(d)(1), a different provision of § 6928 than the court addressed in *Johnson & Towers*. *Id.*

77. 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

78. *Id.* at 669.

79. *Id.* at 664. The original indictment named Johnson & Towers and two of its employees. *Id.* Johnson & Towers pleaded guilty to the indictment's three RCRA counts. *Id.* The district court dismissed the RCRA counts charging the employees after concluding that the RCRA criminal provisions apply only to "owners and operators" and that neither employee qualified as an "owner" nor an "operator." *Id.* The Government appealed the dismissal to the Third Circuit. *Id.* The Third Circuit held that the RCRA criminal provisions applied to the two employees after determining that the potential class of defendants under the Act should not be limited to "owners" and "operators." *Id.* at 664-67. The scope of this comment excludes a discussion of RCRA owner and operator liability.

80. *Id.* at 668. *See supra* note 14 for the text of § 6928 (d)(2).

had not procured a permit.[81]

Although cognizant of the accepted practice of declining to read a *mens rea* requirement[82] into a "public welfare" statute,[83] the court found that section 6928(d)(2) required a knowledge element in both subsections (A) and (B) for the sake of consistency.[84] The court ex-

81. *Johnson & Towers*, 741 F.2d at 669.

82. 741 F.2d at 668. *See, e.g.*, United States v. Freed, 401 U.S. 601 (1971) (upholding conviction for possession of unregistered hand grenades without proof of *mens rea*); United States v. Dotterweich, 320 U.S. 277, 280-81 (1943) (upholding conviction for shipping adulterated and misbranded drugs without proof of *mens rea*); United States v. Behrman, 258 U.S. 280, 288 (1922) (indictment under Narcotic Drug Act does not require proof of knowledge or intent); United States v. Balint, 258 U.S. 250, 252-54 (1922) (upholding indictment for sale of opium and coca leaves derivatives without proof of knowledge); United States v. Golitschek, 808 F.2d 195, 202-03 (2d Cir. 1986) (overturning conviction for exporting military helicopters to Iran because Government failed to show that defendant had knowledge of the specific requirements of the statute); United States v. Schmitt, 748 F.2d 249, 251-54 (5th Cir. 1984) (upholding conviction for gun possession holding that Congress omitted a requirement of specific intent from the statute), *cert. denied*, 471 U.S. 1104 (1985); United States v. Studna, 713 F.2d 416, 418-19 (8th Cir. 1983) (upholding conviction for altering automobile odometers holding that the statute did not require intent; rather an act committed voluntarily and intentionally in violation of a known legal duty is sufficient); United States v. Hussein, 675 F.2d 114, 115-16 (6th Cir.) (upholding conviction for entering the United States illegally without proof of specific intent), *cert. denied*, 459 U.S. 869 (1982); United States v. Mullens, 583 F.2d 134, 138-39 (5th Cir. 1978) (upholding conviction for accepting gifts and bribes without proof of specific intent); United States v. Turcotte, 558 F.2d 893, 896 (8th Cir. 1977) (upholding conviction for gun possession after felony conviction holding that for regulations of dangerous or harmful items, Congress will not be presumed to have required scienter as an element of offense); McQuoid v. Smith, 556 F.2d 595, 598-99 (1st Cir. 1977) (upholding conviction for firearm possession without valid license requiring defendant be aware only that he possessed a weapon, thereby creating strict liability for unlicensed gun carriers); United States v. Flum, 518 F.2d 39, 45 (8th Cir.) (en banc) (upholding conviction for attempting to board aircraft with concealed weapon without proof of intent to conceal), *cert. denied*, 423 U.S. 1018 (1975); *cf.* United States v. Murdock, 290 U.S. 389 (1933) (tax laws require willful withholding of information to constitute violation). *But cf.* United States v. Erne, 576 F.2d 212, 214-16 (9th Cir. 1978) (upholding conviction for failing to collect and deposit sufficient F.I.C.A. taxes holding that specific intent was not an element of the offense).

83. After examining the statute's legislative history, the court concluded that by enacting RCRA, Congress attempted to "control hazards that 'in the circumstances of modern industrialism, are largely beyond self-protection.'" *Johnson & Towers*, 741 F.2d at 666-67 (quoting United States v. Dotterweich, 320 U.S. 277, 280 (1943)). *See supra* notes 29-33 and accompanying text for a discussion of RCRA's legislative history; *see also supra* note 62 for a definition of "public welfare" offenses.

84. *Johnson & Towers*, 741 F.2d at 668. The court noted that although policy justifications might warrant omitting a *mens rea* requirement from the statute, it was concerned that such an omission would render the statute "arbitrary and nonsensical." *Id.*

plained that to support a conviction under subsection (B)[85] the Government must prove that the defendant knowingly treated, stored or disposed of hazardous waste in violation of a permit condition or requirement.[86] Further, the court found it unlikely that Congress would allow the Government to successfully prosecute a person who acted without a permit even if he was unaware of the facility's permit status.[87] Addressing the linguistic knot the statute presented, the court determined that rather than inadvertently omitting the word "knowing" from subsection (A), Congress must have intended for the term "knowing" introducing subsection (2) to modify subsection (A).[88] In the court's view, a contrary interpretation would criminalize actions of those who acted without a permit, irrespective of their knowledge,[89] but would excuse those who violated conditions of their permit unless their actions were committed knowingly.[90]

In *United States v. Hoflin*,[91] the Ninth Circuit declined to follow the Third Circuit's interpretation of RCRA section 6928(d)(2)(A).[92] In

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Further, the court acknowledged that it should interpret statutes intended to protect the public health so as to implement their regulatory purpose. *Id.* at 666.

85. *See supra* note 14 for the text of § 6928(d)(2)(B).

86. *Johnson & Towers*, 741 F.2d at 668.

87. *Id. Cf.* United States v. Hayes Int'l Corp., 786 F.2d 1499 (11th Cir. 1986). Confronted with a similar linguistic problem of determining whether knowledge of a facility's permit status was an element of a § 6928(d) offense, the court in *Hayes* found that Congress intended that section to require knowledge of the permit status of the facility. *Id.* at 1504. The court stated, "[r]emoving the knowing requirement from this element would criminalize innocent conduct; for example, if the defendant reasonably believed that the site had a permit, but in fact had been misled by the people at the site." *Id.* (citing Liparota v. United States, 471 U.S. 419, 426 (1985)). *See also* Boyce Motor Lines v. United States, 342 U.S. 337, 337 (1952) (defendant who willfully fails to determine a facility's permit status acts knowingly).

88. *Johnson & Towers*, 741 F.2d at 668-69 (citing United States v. Marvin, 687 F.2d 1221, 1226 (8th Cir. 1982), *cert. denied*, 460 U.S. 1081 (1983)). The court noted, however, that its conclusion that "knowingly" applied to subsection (A) did not overly burden the Government. *Id.* at 669. The Government was required to prove only knowledge of the actions taken, and not necessarily knowledge of the statute criminalizing them. *Id.* (citing United States v. International Minerals & Chem. Corp., 402 U.S. 558, 563 (1971)).

89. *Id.* at 668 (construing 42 U.S.C. § 6928(d)(2)(A)).

90. *Id.* (construing 42 U.S.C. § 6928(d)(2)(B)).

91. 880 F.2d 1033 (1989).

92. *Id.* at 1038. The court adhered to the fundamental principle of statutory construction that statutory interpretations "which would render some words surplusage are to be avoided." *Id.* (quoting *In re* Kun, 868 F.2d 1069, 1071 (9th Cir. 1989)). "[A]dopt[ing] the Third Circuit's interpretation [in *Johnson & Towers*] of subsection

Hoflin, the court determined whether knowledge of the facility's permit status is an element of a section 6928(d)(2)(A) violation by way of statutory analysis.[93] Noting the absence of the term "knowing" in section 6928(d)(2)(A) and its presence in section 6928(d)(2)(B),[94] the court found the statute indisputably distinguished treatment of persons holding a permit from those not possessing a permit.[95] Finding the statute's language unambiguous, the court was unwilling to read "knowingly" into subsection (A).[96] Thus, the court ruled that knowledge of the absence of a permit was not an essential element of a subsection (A) offense.[97] The court reasoned that if Congress intended another interpretation, then it easily could have inserted "knowingly" into subsection (A).[98] Therefore, to provide meaning to the presence of "knowingly" in the introduction to section 6928(d)(2) and "knowing" in section 6928(d)(2)(B), the court was compelled to recognize and give effect to the terms conspicuous absence in subsection (A).[99]

The *Hoflin* court also found the omission of a knowledge requirement consistent with RCRA's purposes.[100] The court stated that Con-

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(A) would render the word 'knowing' in subsection (B) mere surplusage." *Id. See supra* notes 79-90 and accompanying text for a discussion of United States v. Johnson & Towers, Inc., 741 F.2d 662 (3d Cir. 1984).

93. *Hoflin*, 880 F.2d at 1036-37. Hoflin argued that the term "knowingly" in subsection (2) modified subsections (A) and (B). *Id.* at 1036. He believed, therefore, that the court could uphold his conviction only if the prosecutor could prove that Hoflin had known the company had not obtained a permit. *Id.* at 1036-37.

94. *Id.* at 1037. The court found that the absence of "knowing" in subsection (A) was in "stark contrast" with its presence in subsection (B). *Id.*

95. *Id.* Noting that the statute creates a distinction between those persons holding permits and those persons not holding permits, the court stated that subsection (B) only applies to permit holders who knowingly violate a permit condition or requirement. *Id.* To read the word "knowingly" from the introduction of subsection (2) into subsection (A) would eviscerate the distinction. *Id.*

96. *Id.* Having viewed the statute's language "plain and its meaning clear," the court concluded its statutory interpretation inquiry. *Id.* (quoting United States v. Patterson, 820 F.2d 1524, 1526 (9th Cir. 1987) (citing Burlington N. R.R. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461 (1987))).

97. *Id.*

98. *Id.* at 1038. The court stated that had Congress intended to include a permit's absence as an element of a subsection (A) defined offense, it could have done so. *Id.* Congress specifically included a knowledge element in subsection (B) "notwithstanding the 'knowingly' modifier which introduces subsection (2)." *Id.*

99. *Id.*

100. *Id. See supra* notes 29-33 and accompanying text discussing RCRA's legislative history.

gress enacted RCRA in order to protect the public and the environment from the risks of hazardous wastes.[101] Recognizing this inherent danger and the public's inability to protect itself,[102] the court deemed it appropriate to presume that hazardous waste handlers know of RCRA's various provisions.[103] By imputing to waste handlers knowledge of the regulation, the court reached its desired effect while avoiding the temptation to assume the term "knowing" into subsection (A).[104]

Furthermore, the *Hoflin* court substantiated its interpretation on the basis of RCRA's goals.[105] The court explained that one of RCRA's main concerns was to provide an enforcement mechanism whereby hazardous waste handlers would provide the EPA with information relating to the location of the hazardous waste from the time of its generation through the time of its disposal.[106] To exempt waste handlers who are ignorant of the statute's permit requirements from complying with the enforcement provisions would hinder the EPA's ability

101. *Hoflin*, 880 F.2d at 1038. The court noted the considerable expense involved in safely disposing of hazardous substances and the astounding volume of waste which handlers dump yearly. *Id.* (citing H.R. REP. NO. 1491, *supra* note 29, at 3-4, 11, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6240-41). The special dangers the wastes pose warrants a "greater degree of regulation than does non-hazardous solid waste." *Id.* (quoting 42 U.S.C. § 6901(b)(5)).

102. *Id.* Analogizing RCRA to the Food and Drug Act which the Supreme Court addressed in *United States v. Dotterweich*, the court found that RCRA was intended to protect the public from the health hazards incident to "modern industrialism." *Id.* (quoting United States v. Dotterweich, 320 U.S. 277, 280 (1943)). *See supra* notes 36-42 and accompanying text for a discussion of *Dotterweich*.

103. *Hoflin*, 880 F.2d at 1038. Applying the principles the Supreme Court developed in *IMC*, the court stated, "Where . . . dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation." *Id.* (quoting United States v. International Minerals & Chem. Corp., 402 U.S. 558, 565 (1971)). *See supra* notes 50-58 and accompanying text for a discussion of *IMC*.

104. *Hoflin*, 880 F.2d at 1038-39. Although knowledge of the absence of a permit is unnecessary for a conviction under § 6928(d)(2)(A), knowledge that the waste disposed of is hazardous is required. *Id.* at 1039.

105. *Id.* at 1038. *See supra* notes 29-33 discussing RCRA's purpose and goals.

106. *Hoflin*, 880 F.2d at 1038. The statute affirmatively requires waste handlers to provide information to the EPA in order to obtain a permit. *Id.* Placing this burden on waste handlers enables the EPA to know waste handlers' identity, monitor their activities and enforce statutory compliance. *Id. See also* United States v. Protex Indus., Inc., 874 F.2d 740, 745-46 (10th Cir. 1989) (RCRA imposes independent duty on drum recycling facility operator to ensure compliance with RCRA's civil and criminal provisions).

to perform its job.[107] Further, such an exception would shield the handler's activities from the regulating agency and severely handicap the EPA's attempt to achieve RCRA's goals.[108]

The *Hoflin* court correctly declined to follow the Third Circuit's decision in *Johnson & Towers* and properly applied the line of Supreme Court cases interpreting scienter in public welfare statutes.[109] The Supreme Court has repeatedly upheld and applied statutes that protect the general public without imposing a restrictive knowledge requirement.[110] In instances where the regulated industry poses a threat to the public, Congress waives the traditional intent requirement[111] and accepts that nonculpable individuals will be prosecuted as an unfortunate, but necessary trade off to protect public health and safety.[112] In practice, however, the risk of convicting the "innocent" is minimal because ignorance of government regulation in most instances would require extreme naivety.[113]

The *Johnson & Towers* court incorrectly read words into section 6928(d)(2)(A) that Congress did not include. Such a reading does violence to the legislative purpose of the Act.[114] The section's language is not ambiguous. Therefore, courts must give proper effect to the absence of the word "knowing" in subsection (A) of section 6928(d)(2).[115] Because those who dispose of hazardous waste without a permit pose a greater danger to the public than those who dispose of waste improperly under a permit, section 6928(d)(2)(A) makes sense in its present, albeit clumsily drafted state.[116] Unlike permit holders,

107. *Hoflin*, 880 F.2d at 1038-39.

108. *Id.*

109. *See supra* notes 36-58 and accompanying text for a discussion of cases in which the Supreme Court has interpreted statutes setting forth "public welfare" offenses.

110. *See supra* note 82 and accompanying text discussing cases in which the court determined proof of knowledge or intent to be unnecessary.

111. *Cf. supra* notes 1-3 and accompanying text discussing the purpose of and need for scienter as an element of an offense at common law.

112. *See supra* notes 39-42, 47-49, 54-55 and accompanying text illustrating the courts' balancing of the public's need for protection against Congress' need to enact effective legislation.

113. *See supra* notes 39-40, 47-48, 54, 103-04 and accompanying text listing examples of conduct, the nature of which, warrants regulation.

114. *See supra* notes 29-33 and accompanying text discussing RCRA's intended purpose.

115. *See supra* notes 91-108 and accompanying text explaining the court's proper interpretation of § 6928(d)(2).

116. United States v. Hoflin, 880 F.2d 1033, 1038-39 (9th Cir. 1989). Documented

non-permit holders are not subject to EPA monitoring.[117] The threat from deadly environmental time bombs thus warrants suspending the *mens rea* requirement. The *Hoflin* court's holding, that section 6928(d)(2)(A) does not require knowledge of the lack of a permit, better comports with congressional intent and better protects the public from non-regulated hazardous waste disposers.[118]

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sources of hazardous waste pose a significant threat to public health. A fortiori, § 6928(d) must be enforced as written to prevent the even greater dangers which unidentified waste handlers and undetected disposals present to society.

117. *Id.* *See supra* notes 106-07 and accompanying text discussing the effectiveness of the EPA's enforcement mechanisms.

118. *Hoflin*, 880 F.2d at 1038-39. *See supra* notes 91-107 and accompanying text discussing the court's rationale.

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