

The Circuits are now confronting the issue of the degree of knowledge necessary to convict under RCRA.

O'Neil, the much publicized "Film Recovery" case. Although *O'Neil* did not involve a prosecution under an environmental statute, it has become a landmark decision in the area of corporate criminal liability, in light of the serious nature of the charges and the twenty-five year sentences handed down by the Court.² *O'Neil* involved the death of a worker at Film Recovery Systems, Inc., a company that required its employees to work over vats of cyanide used to extract silver from used X-ray film. The workers, including many uneducated illegal Polish immigrants, were not informed that they were working with poisonous substances; nor were they provided with proper protective equipment. Argument on appeal took place on July 7, 1987 before the Illinois Appellate Court. If the jury verdict is ultimately upheld, the exposure to criminal liability for corporate officials will have been extended far beyond most previous expectations. As of the date of this article, no appellate decision has been rendered.

Where corporate activities lead to death, the issue arises as to whether a corporation can be tried for murder. In *Virginia v. Orkin Exterminating Co.*³ the state's case was dismissed on the grounds that the company was not a "person" under the common law theory of manslaughter. The case stems from misapplication of the pesticide Vikane which lead to the death of two people. The two Orkin employees responsible for the application were charged with involuntary manslaughter, but received 12 month suspended sentences for the lesser offense of unlawful use of pesticides.⁴

In addition to the state criminal prosecution, a federal grand jury has indicted Orkin in five counts of knowingly using a registered pesticide for the use contrary to its labeling. If convicted on all counts, Orkin could face up to \$1.7 million in fines.⁵

Criminal prosecutions of environmental crimes, while not as dramatic as the Film Recovery case, have signaled similarly significant expansions in corporate criminal liability. The mental culpability required for conviction of any environmental crime was confronted recently by the Eleventh Circuit in *United States vs. Hayes International Corporation*,⁶ which focuses on the degree of knowledge necessary for a conviction under the Resource Conservation and Recovery Act (RCRA)⁷. The defendant corporation had arranged to have a private waste hauler dispose of the waste it was generating and apparently was lead to believe that the hauler was recycling the waste.

Under the regulations effective at the time of the illegal disposal, the type of waste generated by the corporation required that a hauler with a valid permit dispose of the waste, unless it was being recycled. The hauler used by Hayes lacked such a permit and did not recycle the waste. As a result, both the corporation and the officer who made the agreement were found guilty by a jury of violating RCRA under which criminal penalties apply to:

Any persons who (1) knowingly transports any hazardous waste identified or listed under this subchapter to a facility

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