

# William & Mary Environmental Law and Policy Review

---

Volume 18 (1993-1994)  
Issue 1 *William and Mary Journal of  
Environmental Law*

---

Article 6

October 1993

## The Public Welfare Rationale: Defining Mens Rea in RCRA

J. Manly Parks

Follow this and additional works at: <https://scholarship.law.wm.edu/wmelpr>



Part of the [Environmental Law Commons](#)

---

### Repository Citation

J. Manly Parks, *The Public Welfare Rationale: Defining Mens Rea in RCRA*, 18 Wm. & Mary Envtl. L. & Pol'y Rev. 219 (1993), <https://scholarship.law.wm.edu/wmelpr/vol18/iss1/6>

Copyright c 1993 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmelpr>

## THE PUBLIC WELFARE RATIONALE: DEFINING MENS REA IN RCRA

J. MANLY PARKS\*

The green movement, as it is sometimes called,<sup>1</sup> has appeared on America's political and social horizons suddenly -- a summer storm thundering warnings of an environmental apocalypse. The 1960s witnessed the birth of modern environmentalism in the United States.<sup>2</sup> Within thirty years the issue has grown into one of the primary world concerns, as witnessed by the recent Earth Summit in Rio de Janeiro.<sup>3</sup>

The growth of environmental awareness has brought a new method of enforcement of environmental regulations: criminal punishment.<sup>4</sup> This trend of punishing criminally environmental crimes has been well documented and analyzed.<sup>5</sup> Some commentators feel that these laws are steps in the proper direction. In support, they have offered justifications for the use of criminal sanctions as a method of

---

\* B.A. Colgate University, 1991; J.D. Marshall-Wythe School of Law, College of William and Mary, expected 1994.

1. See Roger D. Wynne, *Defining "Green": Toward Regulation of Environmental Marketing Claims*, 24 U. MICH. J.L. REF. 785, 785-86 (1991).

2. See, e.g., MARTIN V. MELOSI, *COPING WITH ABUNDANCE* 296-97 (1985) (associating the beginning of modern environmentalism with the publication of Rachel Carson's *SILENT SPRING* in 1962).

3. See Paul Lewis, *The Earth Summit, Battle in Rio*, N.Y. TIMES, June 15, 1992, at A1.

4. Examples of Federal Statutes providing criminal sanctions for regulatory violations include Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 1361(b) (1988); Toxic Substances Control Act, 15 U.S.C. §§ 2614, 2615(b) (1988); Federal Water Pollution Control Act, 33 U.S.C. § 1319(c) (1988); Solid Waste Disposal Act, 42 U.S.C. § 6928(d) (1988) (also known as RCRA); Clean Air Act, 42 U.S.C. § 7413(c) (1988); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9603 (1988) (also known as "Superfund"); Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11045(b)(4) (1988). See also Robert A. Milne, Comment, *The Mens Rea Requirements of the Federal Environmental Statutes: Strict Criminal Liability in Substance But Not Form*, 37 BUFF. L. REV. 307, 324-28 (1989) (reviewing intent requirements in federal environmental laws which provide for criminal punishment).

5. Many commentators have discussed the birth and development of the criminal enforcement of environmental regulations. See, e.g., Karen M. Hansen, *Knowing Environmental Crimes*, 16 WM. MITCHELL L. REV. 987 (1990); Milne, *supra* note 4; Rebecca S. Webber, Comment, *Element Analysis Applied to Environmental Crimes*, 16 B.C. ENVTL. AFF. L. REV. 53 (1988).

enforcing environmental regulations including: the increased awareness of environmental responsibility and reprioritization of environmental protection,<sup>6</sup> the failure of civil enforcement through monetary fines because the cost of compliance with the regulations is greater than the amount of the fine imposed for violations,<sup>7</sup> and the belief that criminal sanctions will result in greater compliance due to the stigma attached to a criminal offense.<sup>8</sup>

Much of the recent debate surrounding the use of these criminal sanctions has focused on the concept of mens rea,<sup>9</sup> or "ill will," and its role in these criminal statutes.<sup>10</sup> Many commentators have remarked that when interpreting the mens rea requirements of federal environmental statutes, courts have "lowered" the intent necessary to convict a defendant for a criminal violation.<sup>11</sup> Some commentators have condemned this trend,<sup>12</sup> while others have welcomed it.<sup>13</sup> This debate, however, neglects to evaluate the rationale behind the actions of these courts.

An examination of the scholarly reviews and judicial decisions on one criminal environmental statute, the Resource Conservation and Recovery Act (RCRA),<sup>14</sup> reveals that courts applying this statute

---

6. Milne, *supra* note 4, at 308-09, 318. *But see* Brian E. Concannon, Jr., Comment, *Criminal Sanctions for Environmental Crimes and the Knowledge Requirement*, 25 CRIM. L. REV. 535, 538 (1988) for a different analysis of the public perception of pollution.

7. Concannon, *supra* note 6, at 537-38; Milne, *supra* note 4, at 320.

8. Concannon, *supra* note 6, at 538. *See generally*, Milne, *supra* note 4, at 319 (offering justifications for the use of criminal sanctions to punish corporate officers).

9. The term "mens rea" describes the culpable state of mind required of the defendant in all criminal convictions, excepting strict liability. *See infra* text accompanying note 29. For a complete discussion of the role of the mental state requirement in criminal law, *see* 1 CHARLES E. TORCIA, WHARTON'S CRIMINAL LAW § 27 (14th ed. 1978).

10. *See, e.g.*, Hansen, *supra* note 5, at 997-98 (describing the courts' reduction of mens rea for environmental crimes); Judith Ianelli, Note, *Lessening the Mens Rea Requirement for Hazardous Waste Violations*, 16 VT. L. REV. 419, 420 (1991) (calling for states to "adopt a lesser mens rea [requirement] than RCRA's 'knowing' standard"); Milne, *supra* note 4, at 309 (arguing that environmental statutes with mens rea requirements actually impose strict liability in substance).

11. Hansen, *supra* note 5, at 997-98; Ianelli, *supra* note 10, at 426; Milne, *supra* note 4, at 328.

12. Hansen, *supra* note 5, at 987-88.

13. Milne, *supra* note 4, at 333.

14. 42 U.S.C. §§ 6901-6992 (1988 & Supp. III 1991).

consistently interpret the mens rea requirement as minimal.<sup>15</sup> By borrowing from strict liability rationales, courts have fashioned a rule of construction and applied it to the mental state requirement in public welfare regulations. This rule reverses the traditional rule requiring strict interpretation of a criminal statute against the state.<sup>16</sup> Nowhere have courts applied this rule of construction more extensively than in the interpretation of the knowing requirement of RCRA.

This Article will follow the early development of the "public welfare rationale" from which this rule of construction is derived, tracing its roots in strict liability to its application to statutes regulating matters of public welfare. This Article will then examine the further development of this rationale in the area of environmental criminal enforcement by following the judicial interpretation of the mens rea requirement of RCRA.

Using these foundations, this Article will demonstrate that the courts' use of the public welfare rationale to interpret restrictively the intent requirements of RCRA is warranted. Furthermore, this Article will propose that the public welfare rationale helps to resolve the current dispute between federal circuits as to the proper interpretation of the intent language in RCRA.

## I. THE DEVELOPMENT OF THE PUBLIC WELFARE RATIONALE

### A. *Strict Liability Origins*

The special rule of construction created by the public welfare rationale is best understood when juxtaposed with the general rule for interpreting the mens rea requirements of criminal statutes. The widely recognized rule of statutory interpretation for criminal cases dictates that a court must strictly interpret the language of a criminal statute against the state.<sup>17</sup> *Morisette v. United States*<sup>18</sup> sets out the basic scheme for interpreting statutory requirements of mens rea.

In *Morisette*, a man was convicted of unlawful conversion for collecting and selling the scrap metal he had taken from government

---

15. See *infra* parts I.C. through II.C.2.

16. For an explanation of the traditional rule, see 1 TORCIA, *supra* note 9, § 12.

17. See *id.*

18. 342 U.S. 246 (1951).

property.<sup>19</sup> Relying on a previous line of cases, the Court of Appeals ruled that because the statute omitted any mention of a criminal intent requirement, none was required to convict under it.<sup>20</sup> In taking issue with the lower court's interpretation, the Supreme Court distinguished the cases upon which the lower court had relied, saying that the offenses prohibited in those prior cases were "aptly called 'public welfare offenses.'"<sup>21</sup> "While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order.... In this respect whatever the intent of the violator, the injury is the same."<sup>22</sup>

The Supreme Court contrasted these "public welfare offenses" to the statute under which *Morisette* was convicted, based on the fact that the conversion statute sought to prevent a form of the common law offense of larceny.<sup>23</sup> The Court reasoned that, by codifying a common law crime which required mens rea, Congress had implied that it intended to retain mens rea as an element of the crime after codification.<sup>24</sup> Thus, while applying the traditional rule in *Morisette*, the Court recognized a special rule of interpretation for "public welfare statutes."<sup>25</sup>

As the Supreme Court pointed out in *Morisette*,<sup>26</sup> public welfare statutes were first given special treatment as a class in *United States v. Balint*.<sup>27</sup> In *Balint*, the defendants were charged with selling derivatives of coca leaves and opium under a federal statute criminalizing the sale of certain narcotics.<sup>28</sup> The defendants claimed that because they had not been charged with knowing that the substance they possessed was an opium or coca derivative, the state had failed to charge -- and prove -- the criminal intent necessary for conviction.<sup>29</sup> The statute in question

---

19. *Id.* at 247-48.

20. *Id.* at 250.

21. *Id.* at 255.

22. *Id.* at 256.

23. *See id.* at 260-61.

24. *See id.* at 260-62.

25. *Id.* at 255.

26. *See id.* at 250.

27. 258 U.S. 250 (1922).

28. *Id.* at 251.

29. *Id.*

did not mention intent as an element of the crime which it punished.<sup>30</sup> In holding that the statute did not require mens rea as an element of conviction,<sup>31</sup> the Court reasoned that Congress had balanced the harm of punishing a violator who lacked ill will against the threat of "exposing innocent purchasers to the danger of the drug, and concluded that the latter was the result preferably to be avoided."<sup>32</sup> Thus, the Court justified a strict liability<sup>33</sup> interpretation of the statute on the grounds that the "State may in the maintenance of a public policy"<sup>34</sup> prohibit certain acts or omissions in order to achieve a public benefit.<sup>35</sup>

In *United States v. Dotterweich*,<sup>36</sup> decided over twenty years later, the Supreme Court again applied the public welfare rationale. In *Dotterweich*, a corporate officer of a drug distributing company was convicted under a statute criminalizing the sale of misbranded drugs, despite the absence of any proof that the officer had personal knowledge of the misbranding.<sup>37</sup> The Supreme Court, relying in part on *Balint*, concluded that when Congress imposes a criminal penalty as a means of regulation without including any element of mens rea, the Court should not imply an element of mens rea when (1) the person charged stands in responsible relation to a public danger and (2) criminal penalties will serve to make the regulation more effective.<sup>38</sup> In justifying its interpretation, the Court classified the legislation as "touch[ing] phases of the lives and health of people which ... are largely beyond self-protection."<sup>39</sup>

The Court's unique interpretation of the intent requirements of the statutes in *Balint*, *Dotterweich*, and *Morisette* rested on the idea that regulatory laws protecting public welfare should dispense with any intent requirements not expressly included by Congress, because inserting such

---

30. *Id.*

31. *Id.* at 254.

32. *Id.*

33. Strict liability is a concept of accountability wherein liability is determined by whether an event occurred, rather than by whether an offender is made culpable by her own negligent or intentional behavior. For a more complete explanation and examination of strict liability, see 1 TORCIA, *supra* note 9, § 23.

34. *Balint*, 258 U.S. at 252.

35. *Id.*

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

37. *Id.* at 278, 280-81.

38. *Id.* at 280-81.

39. *Id.* at 280.

a requirement would hinder enforceability of the statute, limit its effectiveness and contravene congressional purpose.<sup>40</sup>

The Court again applied the *Balint* public welfare rationale, with some modification, in the 1971 case of *United States v. Freed*.<sup>41</sup> The District Court dismissed the charge that Freed violated the Firearms Act by possessing unregistered hand grenades, in part because of the state's failure to allege scienter.<sup>42</sup> The Court was faced, yet again, with a question of how to interpret a statute which did not include intent as an element. Focusing on the registration requirement, the Court reasoned that because the statute was a "regulatory measure in the interest of public safety ... [,] one would hardly be surprised to learn that possession of hand grenades is not an innocent act."<sup>43</sup> Thus, because of the public welfare nature of the statute, the Court interpreted the statute as not requiring any element of mens rea.<sup>44</sup>

*Freed* is central to the development of the public safety doctrine because in it, the Supreme Court took the public welfare rationale of the *Balint* line of strict liability cases out of the strict liability context and applied it to a statute which was not a true strict liability statute.<sup>45</sup> Prior to *Freed*, the Court had only used the public welfare rationale to guide its interpretations of congressional silence regarding the element

---

40. If a statute is found to be a public welfare statute, the lower burden of proof required will necessarily result in a greater ability to enforce the regulations in that statute, at least for cases that go to trial. The state will be more likely to obtain a conviction if it need only show that a defendant knew what he was doing, as compared to having to prove that the defendant acted knowing that his act was unlawful. Some critics have challenged the Court's reasoning in *Balint* and *Dotterweich*, arguing that enforcement of a non-regulatory statute would be as much obstructed by its intent requirement as enforcement of a regulatory statute would be. Webber, *supra* note 5, at 53.

41. 401 U.S. 601 (1971).

42. *Id.* at 604-05.

43. *Id.* at 609.

44. *Id.* at 607.

45. The statute in *Freed* was not a true strict liability statute because lower courts had interpreted the statute to require that the defendant know that he possessed a firearm. *Id.* at 607. If the Firearms Act were a true strict liability statute, it would not have required any knowledge for a conviction. Note also that, if the statute was indeed a public welfare regulation, the lower courts' interpretation of the statute as requiring this knowledge was probably erroneous. The *Balint* line of cases demands that when Congress is silent as to the element of scienter and the statute is a regulatory measure in furtherance of the public welfare, no element of scienter should be implied by the courts.

of scienter. *Freed* marked the Court's first use of the public welfare rationale to interpret a statute with a mens rea requirement. The Court adapted the doctrine to help determine how much the defendant had to know, rather than whether the defendant had to know anything at all.<sup>46</sup>

While extending the public welfare rationale beyond the strict liability context, the Supreme Court offered in *Freed* a new justification for the fact that the statute was designed to protect the public. In *Balint* and *Dotterweich*, the public welfare character of a statute was used to explain why Congress chose to subject an innocent person to criminal punishment.<sup>47</sup> In *Freed*, however, the Court used the fact that the statute was in furtherance of public safety to conclude that a reasonable person would have noticed that the matter would be subject to regulation.<sup>48</sup> A reasonable person, argued the Court, should know that an item dangerous to public safety will be regulated, so long as that person realizes the true nature of that item.<sup>49</sup>

As most criminal environmental statutes condition the use of criminal punishment on a knowing violation, the transportation of the public welfare rationale from the strict liability context to statutes which require some element of mens rea made possible the eventual application

---

46. See *id.* at 609-10.

47. In *Balint* the Court reasoned that "Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided." *United States v. Balint*, 258 U.S. 250, 254 (1921). In *Dotterweich*, the Court explained that "[b]alancing 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 customers before sharing in illicit commerce, rather than to throw the hazard on the innocent public who are wholly helpless." *United States v. Dotterweich*, 320 U.S. 277, 285 (1943).

48. *Freed*, 401 U.S. at 609. Applying the "congressional choice" reasoning of *Balint* to the *Freed* situation, one would be forced to attempt to argue that the public welfare nature of the statute indicated that Congress had balanced the various harms and determined that the possessors of firearms should bear the burden of liability in order to protect the public from a greater harm. This reasoning, however, does not explain the lower courts' conclusion that the statute required that the defendant know that he was possessing a firearm. Perhaps in an effort to avoid this problem, or perhaps simply to avoid reasoning which seems to create legislative intent where there is no evidence of it, the Court downplayed the congressional intent rationale, basing its conclusion instead on the concept that the public welfare status of the thing regulated acted to put the defendant on notice of the possibility of regulation.

49. *Id.*

of the public welfare rationale to these environmental statutes.

B. *Public Welfare Statutes With Knowledge Requirements*

By expanding the use of the public welfare rationale to a statute that did not mention an element of scienter but that had been interpreted to require some minimum knowledge on the part of the perpetrator, the Supreme Court set the stage for the further expansion of the use of the public welfare rationale. The doctrine was soon used by the Court to interpret a statute that on its face required an element of scienter.

This expansion began with the case of *United States v. International Minerals & Chem. Corp.*,<sup>50</sup> in which the government's case was dismissed by the District Court on the grounds that the facts alleged did not indicate a violation knowingly committed; the defendant in that case allegedly violated a statute requiring notation on shipping papers whenever a corrosive liquid was being shipped across state lines.<sup>51</sup> The statute stated that whoever "knowingly" violated its provisions was subject to criminal punishment.<sup>52</sup> The Supreme Court was faced, just as in *Freed*, with determining the proper level of scienter to attribute to a statute, but in this case the statute expressly required a "knowing" violation. The Court concluded that the statute's knowledge requirement meant having a knowledge of the facts.<sup>53</sup> So long as the transporter knew that he was carrying a corrosive liquid and knew he was crossing a state line, he would be subject to conviction for a violation knowingly committed. Knowledge of the regulation was not required by the language of the statute, according to the Court, because of the "dangerous" and "deleterious" nature of the thing regulated.<sup>54</sup>

The fact that the statute regulated an item dangerous to the public safety provided the Court with the basis for concluding that Congress intended "knowingly" to mean knowledge of the facts only, because the dangerous nature of the item regulated should have alerted the defendant to the possibility of its regulation. Thus, the Court used the public welfare rationale to come to the same conclusion in both *Freed* and *International Minerals*, despite the fact that in the latter the statute on its

---

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

51. *Id.* at 559.

52. *Id.*

53. *See id.* at 563.

54. *Id.* at 565.

face required mens rea, whereas in the former, the statute was silent on the issue.

From the *International Minerals* decision, one may conclude that if the statute in question seeks to regulate a substance dangerous to the public, "knowingly" violating it can mean as little as simply knowing the facts of the situation.<sup>55</sup> However, it was not until 1985 and the case of *Liparota v. United States*<sup>56</sup> that the Supreme Court indicated the scope of this public welfare rationale by defining the limits of what constituted a public welfare statute.

C. *Non-Public Welfare Statutes With Knowledge Requirements*

With *Liparota v. United States*, the Supreme Court defined the limits of what constituted a public welfare statute and indicated how to interpret an intent requirement in a non-public welfare statute. Liparota was convicted of food stamp fraud under a statute which required that "whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [the statute] or the regulations shall be guilty of a criminal offense."<sup>57</sup>

Liparota had allegedly been buying the stamps at less than face value and redeeming them to the government for face value, in violation of the statute.<sup>58</sup> The Court faced the question of whether the state must prove that Liparota knew that his use was unauthorized by the statute, or simply that he knew he was buying and selling food stamps. In rejecting the state's argument that the food stamp regulation was in the nature of a public welfare regulation, under which mens rea would be easier for the state to prove, the Court said that public welfare regulations sought to prevent the "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."<sup>59</sup> The Court explained that requiring the state to prove that Liparota knew that his use of the stamps was not authorized by the statute did not offer the defendant a mistake of law

---

55. At least one commentator has argued that *International Minerals* is not, in actuality, part of the public welfare rationale line of cases. See Hansen, *supra* note 5, at 1009-10.

56. 471 U.S. 419 (1985).

57. *Id.* at 419.

58. *Id.* at 421.

59. *Id.* at 433.

defense,<sup>60</sup> because requiring the state to prove that one knows one's actions are unauthorized is not the same as requiring the state to prove that one knows one's actions are illegal.<sup>61</sup>

*Liparota* clarifies the importance of the public welfare rationale as well as the limits of its application. Because the food stamp law in *Liparota* did not deal with a matter that "seriously threaten[ed] the community's health or safety,"<sup>62</sup> The Court did not find the statute to be a public welfare statute. As a result, the Court interpreted the food stamp statute knowledge requirement according to the general rule evidenced in *Morisette* -- strictly against the state. The Court thus determined that the state must show that the defendant knew that his use of the food stamps was in a manner unauthorized by the statute.<sup>63</sup>

Although Congress conditioned criminal punishment on a "knowing" violation, the Court used the public welfare rationale to say, in effect, that the type of harm the statute seeks to prevent will determine how the Court must interpret the meaning of "knowingly." In the case of a public welfare statute, a rule of interpretation that demands that the enforceability of the statute be effectuated to the greatest degree possible prevails over the general rule of statutory interpretation, which requires that statutes be construed strictly against the state. The justifications for applying this exception to the general rule are: first, the extreme degree of danger to the public welfare that the statute seeks to prevent,<sup>64</sup> and second, the likelihood that the defendant will be alerted to the regulations by the dangerous nature of the item.<sup>65</sup> In *Liparota*, the Court made

---

60. A mistake of law defense involves a defendant claiming that he ought not be punished because he did not know of a law or realize that it applied to his conduct. Such a defense is available to a defendant only in very limited circumstances. See 1 TORCIA, *supra* note 9, § 77.

61. *Liparota*, 471 U.S. at 429-30. This distinction, if it indeed is a distinction at all, is very difficult to comprehend. Justice Brennan may be pointing out the difference between regulatory crimes and *mala in se* (bad in themselves) crimes. Whereas proving that one know one's conduct is unauthorized may involve proving that one know one's conduct is not allowed by a statute, proving that one know that one's conduct is illegal may involve merely proving that one know one's conduct is wrong, which may be assumed in the case of any *mala in se* crime. According to one commentator, the difference between "unauthorized" and "unlawful" is of extreme importance. See Hansen, *supra* note 5, at 1010-11.

62. *Liparota*, 471 U.S. at 433.

63. *Id.*

64. See, e.g., *United States v. Balint*, 258 U.S. 250, 254 (1922).

65. See *United States v. Freed*, 401 U.S. 601, 609 (1971).

clear that food stamp fraud does not cause a sufficiently serious public harm to justify abandoning the standard rule of interpretation.<sup>66</sup>

Although we can determine from the cases the broadest limits of the applicability of this rationale and rule of interpretation, its application and effect when applied are uncertain. When deemed applicable by a court, the public welfare rationale requires that court to interpret the mens rea requirement of the statute in such a way as to best effectuate the statutory purpose. In every case, such a requirement will mean interpreting the mens rea requirement as narrowly as the language of the statute will reasonably allow. A court must read the statute as requiring for conviction as little mens rea as the plain meaning of the statute will allow.<sup>67</sup>

An understanding of the historical basis of the public welfare rationale and accompanying rule of construction permits a critical examination of the various interpretations of RCRA's knowledge requirement.<sup>68</sup> This examination not only indicates that the courts' use of the rationale to interpret RCRA is consistent with the rationale's foundations and purposes, it also counsels that some courts have not as of yet interpreted the intent requirements of RCRA as restrictively as the public welfare rationale requires.

## II. THE ENFORCEMENT OF RCRA'S KNOWLEDGE REQUIREMENT

### A. *The Statutory Language of RCRA*

The Resource Conservation and Recovery Act, or RCRA, is an environmental protection statute passed in 1980 in part to help the federal government keep better track of what private corporations and individuals are doing with hazardous wastes.<sup>69</sup> As one method of enforcement, the Act provides for the criminal punishment of individuals

---

66. One commentator argues that the holding in *Liparota* limits *how* the public welfare rationale operates. Hansen, *supra* note 5, at 1010. On the contrary, because the Court in *Liparota* determined that the statute was not a public welfare statute, the issue of how that rationale works was never reached. Thus, the opinion suggests *when* the public welfare rationale operates, but not *how* it operates.

67. This, however, leaves the court with the obvious question of how narrow an interpretation the language allows.

68. See RCRA § 3008(d), 42 U.S.C. § 6928(d) and *infra* note 70.

69. S. REP. NO. 172, 96th Cong., 2d Sess. 39 (1980).

who knowingly violate its provisions.<sup>70</sup> Among the various offenses for which the Act provides criminal enforcement, sections 3008(d)(1) and (2) provide for the criminal punishment of "[a]ny person who knowingly transports ... any hazardous waste ... to a facility which does not have a permit,"<sup>71</sup> as well as "[a]ny person who knowingly treats, stores, or disposes of any hazardous waste ..., (A) without a permit ...; or (B) in knowing violation of any material condition or requirement of such permit."<sup>72</sup>

### B. *The Early Cases*

The first major case interpreting the criminal penalties provisions of RCRA was *United States v. Johnson & Towers, Inc.*,<sup>73</sup> decided by the Third Circuit Court of Appeals in 1984. *Johnson & Towers*, which has been called the "leading case" on the interpretation of the level of knowledge necessary to sustain a conviction under section 3008(d)(2) of

70. RCRA § 3008(d), 42 U.S.C. § 6928(d). The section reads in pertinent part: 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 (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(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 (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; 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; ...

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.

71. RCRA § 3008(d)(1), 42 U.S.C. § 6928(d)(1)). This subsection is also known as the "transport provision."

72. RCRA § 3008(d)(2), 42 U.S.C. § 6928(d)(2). This subsection is also known as the "storage provision."

73. 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

RCRA,<sup>74</sup> dealt with the criminal prosecution of a foreman and a mid-level manager for knowing violations of RCRA permit requirements.<sup>75</sup> The company failed to get a permit before releasing hazardous wastes into a nearby stream, a tributary of the Delaware River.<sup>76</sup> The central question of the case was which elements of the offense were modified by the "knowingly" language.<sup>77</sup>

That the statute met the requirements of a "public welfare" statute was of little question to the court.<sup>78</sup> "We conclude that in RCRA ... Congress endeavored to control hazards that, 'in the circumstances of modern industrialism, are largely beyond self-protection.'"<sup>79</sup> Using the interpretive leeway afforded by the public welfare rationale as it had been set forth in the *Balint* line of cases, the court rejected the defendants' claim that the scope of the Act was limited to include only owners and operators who bear responsibility for handling regulated materials. Such an interpretational limitation on the statute, said the court, would contravene the policy of seeking to construe regulatory statutes intended to protect public welfare to effectuate their regulatory purpose.<sup>80</sup>

Referring to the *Balint* line of strict liability cases that developed the public welfare rationale, the court in *Johnson & Towers* admitted that, given the nature of the harm sought to be prevented by RCRA, "there would be a reasonable basis for reading the statute without any mens rea requirement."<sup>81</sup> However, "when applied to this statute," reasoned the court, "such a reading would be arbitrary and nonsensical."<sup>82</sup> Thus the court indicated a willingness to use the public welfare rationale as an interpretive tool, but would not permit itself to use this rationale to contravene the clear and plain language of the statute

---

74. Ianelli, *supra* note 10, at 427.

75. *Johnson & Towers*, 741 F.2d at 663-64.

76. *Id.* at 664.

77. *See id.* at 667.

78. *Id.* at 666. *But see* Hansen, *supra* note 5, at 1006-07 (arguing that RCRA is not a public welfare statute). Her conclusion appears to be based on the premise that a statute which on its face includes the element of intent by definition may never be a public welfare statute. This author reads the cases differently. *See supra* text accompanying notes 46-51.

79. *Johnson & Towers*, 741 F.2d at 667 (quoting *United States v. Dotterweich*, 320 U.S. 277 (1943)).

80. *Id.*

81. *Id.* at 668.

82. *Id.*

that requires some degree of mens rea.

This aspect of the court's decision is in accord with the prior public welfare rationale cases. Prior to *Johnson & Towers*, no court had used the public welfare rationale to abolish an intent requirement from the face of a statute on the grounds that such an interpretation would better effectuate the statutory purpose.<sup>83</sup>

The balance of the court's decision, however, planted a seed of discontent that gave rise to a major interpretational controversy. Reasoning "either that the omission of the word 'knowing' in (A) [of section 3008(d)(2)] was inadvertent or that 'knowingly' which introduces subsection (2) applies to subsection (A),"<sup>84</sup> the court concluded that section 3008(d)(2)(A) must be knowingly violated (as to all the elements listed therein) for conviction to lie.<sup>85</sup> This conclusion meant that in order for a defendant to be convicted under § (A) of § 3008(d)(2), the state must establish that the particular defendant knew both that he was disposing of hazardous material and that such disposal was not allowed by the statute.

In an attempt to limit the harmful effects to statutory enforcement of its conclusion, the court referred to the *International Minerals* case for the proposition that when items of great danger are regulated, "anyone who is in possession of them ... must be presumed to be aware of the regulation."<sup>86</sup> The court appears to suggest that although the statute requires knowledge of the regulation, such knowledge can be assumed when the defendant deals extensively in the regulated field.<sup>87</sup> The ultimate effect of the Third Circuit's ruling in *Johnson & Towers* is to

---

83. To do so would be directly contrary to congressional intent, expressed by the inclusion of a mens rea requirement in the language of the statute. Indeed, the justification for the public welfare that suggests that the rule of construction engendered by the rationale serves only to aid the court in interpreting congressional silence or ambiguity. This justification breaks down if the rationale is used to contravene plain statutory language.

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

85. *Id.*

86. *Id.* at 669 (quoting *United States v. International Minerals & Chem. Corp.*, 402 U.S. 558, 565 (1971)).

87. This rationale could raise constitutional questions by suggesting that the government need not prove each element of its case beyond a reasonable doubt. See *In re Winship*, 397 U.S. 358 (1970). However, when this concept is couched, as it is, in the language of circumstantial evidence and assumptions rather than presumptions, the court appears to be simply suggesting an inference that would not be contrary to notions of constitutional criminal law.

place a higher burden on the state when it seeks to convict low level employees under the storage provision of RCRA; lower level workers must be shown to have actually known of the existence of the RCRA regulations.<sup>88</sup> In contrast, the ruling places a lower burden on the state when it seeks to convict corporate officers, whose knowledge of the existence of the RCRA provisions may be inferred.<sup>89</sup>

In *United States v. Hayes Int'l*,<sup>90</sup> the United States Court of Appeals for the Eleventh Circuit applied the reasoning used by the Third Circuit in the *Johnson & Towers* storage provision case to interpret the knowledge requirement of section 3008(d)(1) of RCRA. *Hayes* involved the alleged violation of the transport provision of RCRA by a corporation and an individual employee of that corporation and arose from the transportation of hazardous waste to a disposer who lacked the proper permit.<sup>91</sup> Again, the determination of what elements of the offense were modified by the statute's "knowingly" language confronted the court. Agreeing with the Third Circuit that RCRA is a public welfare statute, the Eleventh Circuit concluded that *Liparota* did not control.<sup>92</sup> Thus, a defendant could not assert as a defense that he or she did not realize that RCRA created a permit requirement or that the paint, of which he or she was disposing, was classified as hazardous by federal law.<sup>93</sup> The Eleventh Circuit, however, agreed with the Third Circuit that the transport provision's mens rea requirement, just as in the storage provision, should be read to constrain the state from assuming a defendant's mens rea -- the state must prove a defendant's "ill will." To read the mens rea provision as requiring less proof of "bad intent" would, according to the court, "criminalize innocent conduct."<sup>94</sup>

Finally, the Eleventh Circuit concluded that the "knowingly" language modified all the elements of the offense as set forth in section 3008(d)(1).<sup>95</sup> According to the Eleventh Circuit's reading of the

---

88. *Johnson & Towers*, 741 F.2d at 665.

89. At least one commentator has suggested that such a bi-leveled pattern of enforcement is the practical result of the *Johnson & Towers* decision. See Milne, *supra* note 4, at 330. See also Hansen, *supra* note 5, at 1004-07 (analyzing court's application of "knowing" requirement to employee defendants).

90. 786 F.2d 1499 (11th Cir. 1986).

91. *Id.* at 1500-01.

92. *Id.* at 1503.

93. *Id.*

94. *Id.* at 1504.

95. *Id.* at 1505.

transport provision of RCRA, in order for the state to obtain a conviction it must show that the transporter knew of the permit status of the disposer and that the status failed to meet RCRA standards.<sup>96</sup> Therefore, as the Eleventh Circuit interpreted the transport provision, failure to know the permit status of the waste receiver would be a valid defense to a section 3008(d)(1) transport action, whereas failure to know that the law required a permit at all would not be a valid defense.

The Eleventh Circuit, echoing words of the Third Circuit in *Johnson & Towers*, noted that the defendant's involvement in the waste disposal business would be evidence of his knowledge of RCRA requirements.<sup>97</sup> The practical effect of this reasoning was no different than in the *Johnson & Towers* case: the court's interpretation created a higher level of proof in order to convict a low level worker, because circumstantial evidence of an individual's involvement in the waste disposal business is not as likely to suggest that the low level worker had knowledge of the permit status of the disposer.

In these early cases interpreting RCRA's prohibitions against storage and transportation of hazardous waste, the courts relied on the public welfare rationale to justify a reduced burden of proof for mens rea than would have been required if the statute were not a public welfare statute.<sup>98</sup> In neither of these cases did the court conclude that the statute required the extreme burden of proof that the court required of the state in *Liparota*, a non-public welfare statute case. Nevertheless, when interpreting the scope of the intent language, these courts used tortured reasoning to read "knowingly" as applying to every element of the offense. Such interpretations of the "knowingly" language do not mesh well with the public welfare rationale as it was developed outside RCRA cases.

Outside the realm of RCRA, the public welfare rationale justifies a rule of construction that dictates that a court must interpret the mens rea required by the statute as narrowly as possible without contravening the clear language of the statute in order to effectuate the regulatory purpose of preventing harm to the public.<sup>99</sup> The Third Circuit's interpretation of the storage provision and the Eleventh Circuit's use of the Third Circuit's reasoning to interpret the transport provision were

---

96. See *id.* at 1504.

97. *Id.*

98. See Milne, *supra* note 4, at 329; Hansen, *supra* note 5, at 1005-06.

99. See *supra* note 40.

both soon challenged by other circuits.<sup>100</sup> These circuits found the power of the public welfare rationale to be much greater than recognized by the Third or Eleventh Circuits in either *Johnson & Towers* or *Hayes*.<sup>101</sup>

C. *Reevaluation of RCRA: Two Circuit Splits*

1. *The Storage Provision Split*

The first challenge to the Third Circuit's interpretation of the storage provision of RCRA came from the United States Court of Appeals for the Ninth Circuit in *United States v. Hoflin*.<sup>102</sup> *Hoflin* involved a public works director charged with improperly disposing of hazardous waste by failing to obtain the permit required by RCRA.<sup>103</sup> Taking a fresh look at the storage provision of RCRA,<sup>104</sup> the Ninth Circuit concluded that because subsection (2)(A) of this provision does not include the word "knowingly," whereas subsection (2)(B) does, Congress intentionally left the knowledge requirement out of subsection (2)(A).<sup>105</sup> Thus, according to the Ninth Circuit, section 3008(d)(2)(A) does not require the state to show that the defendant knew of the lack of a permit before he can be convicted.<sup>106</sup> Acknowledging that its interpretation conflicted with that of the Third Circuit, the Ninth Circuit argued that the language of the section was clear, and that the basis on which the Third Circuit extended the scope of the knowledge requirement was not sound.<sup>107</sup>

In defense of its interpretation, the Ninth Circuit relied not only on rules of grammar and common sense, but also on the public welfare

---

100. See *United States v. Hoflin*, 880 F.2d 1033 (9th Cir. 1989), *cert. denied*, 493 U.S. 1083 (1990); *United States v. Dean*, 969 F.2d 187 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 1852 (1993); *United States v. Speech*, No. 90-50708 (9th Cir., March 20, 1992).

101. See *United States v. Johnson & Towers, Inc.*, 741 F.2d 662 (3d Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985); *United States v. Hayes Int'l*, 786 F.2d 1499 (11th Cir. 1986).

102. 880 F.2d 1033 (9th Cir. 1989), *cert. denied*, 493 U.S. 1083 (1990).

103. *Id.* at 1035.

104. RCRA § 3008(d)(2), 42 U.S.C. § 6928(d)(2).

105. *Hoflin*, 880 F.2d at 1037.

106. *Id.* at 1039. This decision by the Ninth Circuit was contrary to the conclusion of the Third Circuit in *Johnson & Towers*.

107. *Id.* at 1038.

rationale as presented in *Dotterweich* and *International Minerals*.<sup>108</sup> "In the face of ... obvious congressional action we will not write something into the statute which Congress so plainly left out."<sup>109</sup> "[O]ur conclusion is consistent with RCRA's goals and the treatment Congress gave 'knowledge' in [section 3008(d)(2)(A) and (B) of RCRA] to achieve these goals."<sup>110</sup> Given the purpose and language of the statute, the Ninth Circuit found the Third Circuit's attempt to create a knowledge requirement where none existed to be in direct contradiction with the reasoning and result demanded by the relevant rules of statutory interpretation.<sup>111</sup>

According to the Ninth Circuit's interpretation, in order for the state to convict under the storage provision, the state must prove only that the defendant made no mistake of fact in the true identity of the hazardous material involved.<sup>112</sup> The court explained that section 3008(d)(2) required the state to show that the defendant knew that the substance he was handling was sludge from a sewage treatment plant and "had the potential to be harmful to others and the environment," but not that he knew that such sludge was classified by law as "hazardous waste."<sup>113</sup>

By refusing to copy the Third Circuit's knowledge requirement, created in *Johnson & Towers*, the Ninth Circuit effectively abolished the distinction between higher and lower-level employees created by the Third Circuit. Under the Third Circuit interpretation, circumstantial evidence is likely to be more effective in establishing the requisite knowledge in the case of a higher-level worker.<sup>114</sup> According to the Ninth Circuit's interpretation, the state does not bear the burden of proving that the defendant knew that a permit was required. Thus, this interpretation frees the state from relying on circumstantial evidence to make this proof, and the discrepancy in the treatment of the two classes of workers created by the Third Circuit reading disappears.

Other circuits have subscribed to the Ninth Circuit's reasoning. The Sixth Circuit recently adopted the Ninth Circuit's interpretation of

---

108. *Id.* See text accompanying notes 32-40, 47-49.

109. *Hoflin*, 880 F.2d at 1038.

110. *Id.*

111. *Id.*

112. *Id.* at 1039.

113. *Id.*

114. See *Milne supra* note 4, at 331-32.

section 3008(d)(2) of RCRA<sup>115</sup> in the case of *United States v. Dean*.<sup>116</sup> The Fourth Circuit agreed with the Ninth Circuit's interpretation at the District Court level in *United States v. Laughlin*.<sup>117</sup> The impact of *Hoflin*, however, has since been extended beyond the storage provision of section 3008(d) of RCRA. The Eleventh Circuit's challenge of the Third Circuit's reasoning has prompted another split in the federal circuits, this time over the proper interpretation of the "knowingly" language of section 3008(d)(1) of RCRA, the transport provision.<sup>118</sup>

## 2. *The Transport Provision Split*

The break from the Third Circuit's interpretation of section 3008 of RCRA, applied by the Eleventh Circuit to the transport subsection in the *Hayes* case, came in *United States v. Speech*,<sup>119</sup> decided in March of 1992 by the Ninth Circuit. *Speech* involved the conviction of a transport company president for storing waste without a permit in violation of the storage provision of section 3008(d)(4) and for transport of waste to a facility that lacked a permit in violation of the transport provision of section 3008(d)(1).<sup>120</sup> As in *Hayes*, the question facing the court was to what elements of the offense of transportation of hazardous waste the "knowingly" language of section 3008(d)(1) attaches. In direct contradiction of the Eleventh Circuit's interpretation of the transport provision, the Ninth Circuit, relying on its holding in *Hoflin*, held that the statute did not require the state to prove that the defendant had knowledge of the permit status of the receiving facility.<sup>121</sup> One commentator has written that, after the *Hoflin* decision, such a conclusion was the only possible consistent result.<sup>122</sup>

The rationale for the *Hoflin* holding, that proof of knowledge of permit status is not required, is exactly the same for a storage case as it is for a transport case. Just as "knowingly" modifies "stores" and does

---

115. 42 U.S.C. § 6928(d)(2).

116. 969 F.2d 187 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 1852 (1993).

117. 768 F. Supp. 957 (N.D.N.Y. 1991).

118. 42 U.S.C. § 6928(d)(1).

119. No. 90-50708 (9th Cir., Mar. 20, 1992).

120. Gary S. Lincenberg, *Lowered Intent Requirements in Environmental Crimes Cases*, 7 CRIM. JUST. 28, 32 (1992).

121. *Id.*

122. *Id.* at 31.

not modify "without a permit" under section 3008(d)(2), "knowingly" modifies "transports" and does not modify "to a facility which does not have a permit" under section 3008(d)(1).<sup>123</sup>

Although the majority opinion in *Speech* based its interpretation on a plain meaning rationale, a concurring judge reached the same result by focusing exclusively on the public welfare nature of the statute at issue.<sup>124</sup> Such a use of the public welfare rationale is fully consistent with the rationale set forth in earlier cases.<sup>125</sup> As a construction device, the rationale demands that when a regulatory statute seeks to prevent a significant public harm, the court must interpret the statute in order to best "effectuate the statutory purpose."<sup>126</sup> The public welfare rationale is not designed to defeat or intentionally misconstrue the clear language of a statute, or the intent of Congress expressed therein. Rather, this rationale demands an interpretation that best enables the statute to regulate the conduct it seeks in order to best prevent the public harm caused by that conduct. In the case of section 3008(d)(1) of RCRA, a strict interpretation of the statute's mens rea requirement will best enable the statute to accomplish the regulatory purpose for which it was created. A strict reading of the statutory language demands that "knowingly" refers only to "transports to a facility" and not to "a facility which does not have a permit."<sup>127</sup> The rules of grammar and statutory construction serve to buttress the interpretation suggested by this rationale.

The *Speech* case, and the interpretation dispute it created, is not without its drama. Within two months of the March decision, the Ninth Circuit withdrew the opinion from publication, thereby making it unavailable as precedent.<sup>128</sup> Speculating as to why the Ninth Circuit would withdraw this opinion, one commentator has suggested that "rather than end[ing] the debate [over the interpretation of RCRA], the *Speech* case has sharpened it.... Perhaps the Ninth Circuit felt that the debate was being sharpened too much."<sup>129</sup>

---

123. *Id.* See RCRA § 3008(d)(1)-(2), 42 U.S.C. § 6928(d)(1)-(2) or *supra* note 70 for text of statute.

124. Lincenberg. *supra* note 120, at 32.

125. See, e.g., *United States v. Freed*, 401 U.S. 601, 609 (1972); *United States v. International Minerals*, 402 U.S. 558, 565 (1971).

126. See *United States v. Park*, 421 U.S. 658, 672-73 (1975). *Park* is a member of the *Balint* line of strict liability public welfare statute cases.

127. See RCRA § 3008(d)(1), 42 U.S.C. § 6928(d)(1).

128. Lincenberg, *supra* note 120, at 32.

129. *Id.*

3. *Evaluating the Interpretations: The Role of The Public Welfare Rationale*

As much as the Ninth Circuit may wish to avoid a showdown over the interpretation of the intent requirements of section 3008(d) of RCRA, such a showdown is imminent. The Ninth Circuit's rejection of the Third Circuit's approach to interpreting the language of RCRA's storage provision necessarily has consequences for the interpretation of the transportation clause. However, the divisions between the approaches taken by the two circuits are even more far ranging than disputes over the proper interpretation of statutory language. In a more fundamental sense, the dispute really involves the proper role of the public welfare rationale as a construction device for regulatory statutes.

The dispute between the circuits over the public welfare rationale is based on the difference of degree to which the public welfare rationale guides a court in statutory interpretation. According to the Third and Eleventh Circuits, the public welfare rationale permits a court to interpret a statute as not requiring proof that a violator had knowledge of the unlawfulness of the act.<sup>130</sup> This easing of the government's burden is as far as the rationale goes in aiding construction.<sup>131</sup> Once beyond the scope of the public welfare rationale, the Third and Eleventh Circuits look at the statute with reason as their lone interpretational guide. Thus in the case of the storage provision of RCRA,<sup>132</sup> a court must ask itself whether reading the statute as not requiring a knowing violation when waste is stored without a permit is fair in light of the fact that the statute clearly requires a knowing violation before a defendant may be convicted of violating the terms of such a permit. The Third and Eleventh Circuits say that such a reading is not fair, and thus cannot be accurate.

In defense of their interpretations of the mens rea requirements of section 3008(d) of RCRA, both the Third and Eleventh Circuits argue that the public welfare rationale allows an inference from circumstantial evidence that certain classes of violators did have the knowledge required

---

130. See *United States v. Hayes Int'l*, 786 F.2d 1499, 1503 (11th Cir. 1986); *United States v. Johnson & Towers, Inc.*, 741 F.2d 662, 669 (3d Cir. 1984), cert. denied, 469 U.S. 1208 (1985).

131. Note, however, that the Third Circuit used the rationale in the *Johnson & Towers* case to reject an argument that the statute applied only to owners and operators, not to employees. *Johnson & Towers*, 741 F.2d at 664-66.

132. RCRA § 3008(d)(2), 42 U.S.C. § 6928(d)(2).

by the statute, as interpreted by the courts.<sup>133</sup> Thus, these circuits might argue, reading the mens rea requirement broadly does not actually hinder the statutory objective. However, as prior discussion has indicated,<sup>134</sup> for RCRA, whenever any element is added to those that the state must prove, the statutory objective is hindered to some degree.

Consider, for example, the low level employee at a hazardous waste handling company. Because it is the employee's business to know the regulations imposed on the industry, the company will presumably know the nature of regulations which affect it. Realizing that having its employees convicted for regulatory violations will hurt business -- because workers cannot work if they are in jail and because people will not wish to work in the industry if they are likely to be prosecuted -- the company will have a significant incentive to ensure that such convictions do not occur. The company can protect itself by taking precautions to avoid violations and by informing the low level workers of what constitutes a violation, enabling these workers to prevent any potential violations. The result of such widespread knowledge of the regulations will almost certainly be a decrease in violations, and, in turn, a decrease in the chance that the public will be harmed by a regulated hazardous substance. Such a result is undeniably a better effectuation of the statutory purpose. Thus, although the limited application of the public welfare rationale practiced by the Third and Eleventh Circuits does not devastate the statutory purpose, it does hinder the statutory purpose in that it does not give the fullest effect possible to the regulatory purpose.

The approach used by the Ninth Circuit in the *Hoflin* and *Speech* cases, however, does not similarly frustrate the regulatory purpose. These cases illustrate how a court can fully implement the public welfare rationale without contravening the statutory language. The limit of the rationale is clear; even though the statute protects the public from great harm does not allow the court to contravene clear language in an effort to better effectuate the statutory purpose. Conversely, one might argue that when a statute requires a "knowing" violation, it clearly requires that the state prove that the defendant knew that his behavior was prohibited by the statute before he may be convicted under the statute. Thus, the use of the public welfare rationale to reduce the government's burden of proof of mens rea would contravene the clear language of the statute.

This argument must fail in light of the *Liparota* case. In

---

133. *Johnson & Towers*, 741 F.2d at 669; *Hayes*, 786 F.2d at 1504-05.

134. See *supra* part I.C.

*Liparota*, the Supreme Court points out the various interpretations that could be given to a knowledge requirement.<sup>135</sup> The fact that the Court finds more than one possible interpretation necessitates the conclusion that there is no "plain meaning" to be given to a requirement that a crime be committed "knowingly."<sup>136</sup> Because a knowledge requirement is not self defining, the Supreme Court examines the range of possibilities of meaning evoked by such a requirement. Among these possibilities are the most basic requirement that one know the facts surrounding the event,<sup>137</sup> and the most extensive requirement that one know that one's conduct is not authorized by law.<sup>138</sup>

The Supreme Court, in an attempt to define the knowledge requirement, has held that the purpose of the statute, as interpreted under the public welfare doctrine, is controlling.<sup>139</sup> When the statutory purpose is to prevent a serious harm from befalling the public and the statute is a regulatory measure, the Court will opt for the least stringent in the range of possible interpretations -- the one requiring the least mens rea.

To understand why reading a statute to require such a limited level of mens rea is not a contravention of the statutory knowledge requirement, one need only compare a statute read in this way to a statute read to require strict liability. A strict liability statute demands that if a given event occurs, anyone with a responsible relation to that event is liable regardless of intent or fault.<sup>140</sup> The defendant is afforded no mistake of law defense. The inclusion of a knowledge requirement in a statute clearly indicates that the legislature did not intend that the statute be a strict liability statute. So long as a court interprets the statute to allow a mistake of law defense, the statute has not been interpreted by that court as a strict liability statute, and the

---

135. *Liparota v. United States*, 471 U.S. 419, 424-26 (1985). Indeed, Congress itself recognized the ambiguity of the term when it expressly left to the courts the task of determining the meaning of RCRA's "knowingly" language. See Concannon, *supra* note 6, at 540 & n.42.

136. Indeed, the Supreme Court in *Liparota* says as much: "Beyond [the fact that the use of the word 'knowingly' by Congress indicates its desire that some mental state be required] the words themselves provide little guidance." *Liparota*, 471 U.S. at 424.

137. This is not strict liability, because a mistake of fact defense would be available to a defendant. See *supra* note 33 and text accompanying notes 33-35.

138. *Liparota*, 471 U.S. at 423.

139. *Id.* at 423-25.

140. See *supra* note 33.

clearly expressed legislative intent has not been contravened.

Given the nature of the public welfare rationale as it developed, first in strict liability cases and then in statutes requiring some mens rea, the Ninth Circuit's interpretation of section 3008(d) of RCRA is more consistent with the public welfare rationale than is the interpretation given this section by the Third and Eleventh Circuits. The public welfare rationale demands that when a court is interpreting a regulatory statute that seeks to prevent one of a group of certain specified types of public harm,<sup>141</sup> the court must interpret the statute so as to best effectuate the regulatory purpose. A less burdensome mens rea standard makes enforcement of a statute easier for the government. An easily enforced statute is more likely to deter potential violators and to punish actual violators. Thus, the Ninth Circuit's interpretation of RCRA's language requiring knowledge is the interpretation required by the public welfare rationale.

### III. CONCLUSION

The public welfare rationale requires that when a regulatory statute seeks to prevent a serious public harm, the language of that statute should be interpreted so as to best effectuate the regulatory purpose, thereby protecting the public from that harm to the greatest degree.<sup>142</sup> Currently, this rationale has been applied by courts to regulatory statutes which target such items as misbranded<sup>143</sup> and dangerous drugs,<sup>144</sup> hand grenades,<sup>145</sup> caustic chemicals,<sup>146</sup> and hazardous wastes.<sup>147</sup>

The federal courts have time and again concluded that RCRA is a public welfare statute. In interpreting the intent requirements of RCRA, however, these courts have not applied fully the rule of construction which follows from such a classification. When applied, the

---

141. See *infra* text accompanying notes 142-47.

142. See *supra* text accompanying notes 25-34, 78-89, 98 and 124-34.

143. *E.g.*, *United States v. Dotterweich*, 320 U.S. 277 (1943).

144. *United States v. Balint*, 258 U.S. 250 (1922).

145. *United States v. Freed*, 401 U.S. 601 (1971).

146. *United States v. International Minerals & Chem. Corp.*, 402 U.S. 558 (1971).

147. See, *e.g.*, *Unites States v. Hoflin*, 880 F.2d 1033 (1989), *cert. denied*, 493 U.S. 1083 (1990). Although traditionally used by courts only when the threat of harm to the public is immediate and deadly, the rationale might arguably be used to interpret statutes that seek to prevent equally serious, but less immediate and overtly threatening, public harms.

public welfare rationale's rule of construction demands that courts re-examine their interpretation of the mens rea required by these statutes to ensure that they have met this rationale's demands; namely, that the court has interpreted the statute such that its regulatory purpose is best effectuated without contravening the clear statutory language. When courts recognize the full scope of the public welfare rationale, not only will the differences in interpretation of RCRA be resolved, but environmental protection statutes protecting the public health and welfare also will finally be given the muscle they need to protect our nation's waters, air, and soil for all future citizens.