

Hazardous Waste/Methamphetamine Manufacturing: Can An Alleged RCRA Violation Enhance a Drug Sentence?

Arkansas Environmental, Energy, and Water Law Blog



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Can an alleged statutory environmental violation enhance a sentence for a federal drug manufacturing conviction?

The United States Court of Appeals for the 4th Circuit (“Court”) in an October 5th opinion addressed whether an individual (“McGee”) convicted of conspiracy to manufacture methamphetamine had his sentence inappropriately enhanced because of an alleged violation of the Resource Conservation and Recovery Act (“RCRA”). See U.S. v. McGee, 2016 WL 5799661.

McGee had pled guilty to conspiracy to manufacturing methamphetamine in violation of 21 U.S.C. § 846.

The United States District Court (“District Court”) had sentenced McGee to 234 months’ imprisonment. McGee’s counsel argued that the District Court had erred in applying two sentences enhancements.

The Court noted that the District Court imposed a two-level enhancement pursuant to an U.S. Sentencing Guidelines Manual § 2D1.1(b)(13)(A). The District Court had concluded that:

...the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of hazardous waste.

For the enhancement to apply, a defendant’s conduct must violate one of several environmental statutes such as RCRA.

McGee challenged the District Court’s application of this enhancement.

The District Court heard testimony regarding the hazardous characteristics of the chemicals used to manufacture methamphetamine. McGee was also alleged to have traveled in a vehicle while manufacturing methamphetamine. He is also alleged to have disposed of the byproduct by littering and burning it in a barrel. The chemicals and byproducts are stated to have the potential to cause serious harm to human health or the environment when handled properly citing 42 U.S.C. § 6903(5).

The Court held that the District Court properly applied the § 2D1.1(b)(13)(A) enhancement.

The opinion also addressed whether defendant properly qualified for a four-level enhancement as the organizer or leader of the conspiracy. This enhancement was also upheld.

[A copy of the opinion can be downloaded here.](#)

