
Environmental Crimes: The New Frontier of Environmental Enforcement

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I. INTRODUCTION

In the past few years, criminal prosecutions of environmental violations have grown to become a major enforcement tool in the federal government's arsenal. Criminal prosecution is now a viable alternative to civil and administrative enforcement.² President Bush and Attorney General Dick Thornburgh have demonstrated that prosecuting environmental criminals is a high priority within the United States Department of Justice.³ The business community, individuals, and all members of the bar should be sensitized to the new direction and emphasis on criminal enforcement. One Justice Department official recently said that the business community should pay attention because "environmental misdeeds often land company presidents in the slammer".⁴

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This article will first inform the reader of the large increase in the number of federal criminal environmental cases and provide an outline of the environmental statutes utilized by federal prosecutors. It then reviews the types of wrongdoing that are typically prosecuted by providing case summaries of some of the major criminal cases in New England. The few federal criminal cases prosecuted in New Hampshire are addressed in some detail. The conclusion then provides some brief insight and guidance for practitioners in the expanding field of environmental criminal enforcement.

The potential criminal sanctions of heavy fines and imprisonment provide a much greater deterrence to corporate officers and managers than the prospect of civil and administrative penalties. Civil penalties can be considered simply a cost of doing business,⁵ whereas spending time in jail makes corporate officers stand up and take notice. In fact, the Justice Department now encourages the prosecution of corporate officers and discourages allowing faceless corporations to accept the sole responsibility. In addition, it is no longer necessary for the individual corporate officer to directly participate in the wrongdoing; corporate officers who have a responsible relationship to the activity or who are in a position to prevent it may be held criminally responsible.⁶ Similarly, corpora-

The Post and Courier

Local attorney files suit on behalf of New Hampshire man with fungal meningitis

Posted: Wednesday, October 17, 2012 10:10 a.m., Updated: Thursday, October 18, 2012 12:25 a.m.

The manufacturer of a suspect steroid linked with a nationwide outbreak of fungal meningitis is being sued by a law firm with an office in Mount Pleasant.

Different hospitals, different drugs

Roper St. Francis Healthcare said it will notify 208 patients treated with the New England Compounding Center pain drug nalbuphine, which is injected into a muscle or vein.

East Cooper Regional Medical Center said it will contact patients who received the NECC drug triamcinolone as well as "injectable ophthalmic products." How many patients were involved was not available Wednesday night

The Ralph H. Johnson Veterans Affairs Medical Center said it has contacted patients who received NECC drugs. How many veterans were affected and which drugs were involved was not available Wednesday night.

The drugs were manufactured after May 21. All of NECC's products were recalled Oct. 6 on the recommendation of the U.S. Food and Drug Administration in the wake of a fungal meningitis outbreak linked to an NECC tainted steroid that has claimed 19 lives.

None of the local medical centers purchased the suspect steroid.

The suit is on behalf of a New Hampshire man suffering with fungal meningitis after receiving a spinal injection of a contaminated steroid linked to more than 200 cases of the illness that has killed 19.

"Meningitis is a horrible condition and there is no excuse for a patient having to face that risk unnecessarily," said Peter McGrath*, a former federal prosecutor whose law firm has offices east of the Cooper and in New Hampshire.

The suit is the first of its type filed in Massachusetts, the state where the company that made the steroid is located, McGrath* said.