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FEDERAL CIVIL PENALTY FOR OIL LEAKS CONSTITUTIONAL DESPITE OWNER'S DUE CARE AND THIRD PARTY CAUSATION

ENVIRONMENTAL LAW—FEDERAL WATER POLLUTION CONTROL ACT: Section 311(b)(6) of the Federal Water Pollution Control Act, which authorizes imposition of a civil penalty for oil spills in navigable waters regardless of fault, is reasonably related to the statutory purpose of achieving clean water, and therefore does not violate Fifth Amendment due process guarantees. *United States v. Coastal States Crude Gathering Company*, 643 F.2d 1125 (5th Cir. 1981), cert. denied, *Coastal States Crude Gathering Company v. United States*, 50 U.S.L.W. 3233 (October 5, 1981).

Coastal States Crude Gathering Company (Coastal) owns and operates a gasoline pipeline in Nueces Bay, near Corpus Christi, Texas. Coastal built and maintained this pipeline according to federal regulations and prevailing industry practices. On June 7, 1977, five thousand two hundred barrels of gasoline leaked from a hairline fracture in the pipeline into Nueces Bay. Inspection of the pipeline revealed the leak occurred when the pipeline was struck by an unknown vessel. Coastal immediately corrected the leak and cleaned up the affected area. Despite these facts, the Secretary of Transportation assessed a \$5,000 civil penalty against Coastal as required under the Water Pollution Control Act.¹ The United States District Court for the Southern District of Texas at Corpus Christi enforced the judgment against Coastal, entering summary judgment in favor of the United States.²

Coastal appealed the assessment to the Fifth Circuit Court of Appeals on the ground that the penalty violated its Fifth Amendment rights.³ They argued that imposing the fine despite showings of the company's due care and third party causation was a taking of property without due process of law.

1. The Federal Water Pollution Control Act, codified at 33 U.S.C. §§ 1251-1376 (1974 & Supp. II 1978), was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Toward that end, Section 311(b)(6) of the Act, codified at 33 U.S.C. § 1321(b)(6) (Supp. II 1978), prohibits the discharge of oil in harmful quantities in navigable U.S. waters. Various remedies and penalties are prescribed to enforce this provision, including a civil penalty not to exceed \$5,000 for each offense. The Secretary of the department in which the Coast Guard is operating enforces § 311(b)(6). The Coast Guard operates in the Department of Transportation except when operating in the Department of the Navy in time of war or emergency. (14 U.S.C. § 1 (1976)).

2. *United States v. Coastal States Crude Gathering Company* (unpublished decision, S.D. Tex. at Corpus Christi, Owen D. Cox, 9).

3. *United States v. Coastal States Crude Gathering Co.*, 643 F.2d 1125 (5th Cir. 1981).

The Fifth Circuit evaluated Coastal's challenge to the penalty by analyzing the statutory scheme as a whole. The court applied the due process test laid out in *Nebbia v. New York*⁴ that the legislation must bear "a reasonable relation to a proper legislative purpose [and be] neither arbitrary nor discriminatory."⁵ First, the court found clear Congressional intent to place the financial burden for achieving and maintaining clean water upon enterprises that engage in polluting activities and that profit from using the nation's waters.⁶ Shifting the economic burden from the public to the offending users was found a valid exercise of Congressional power. Second, the civil penalties collected under the statute are used to defray the costs of cleaning up spills in situations where the clean up costs are otherwise not recoverable.⁷ Agreeing with the Seventh Circuit's conclusion in *United States v. Marathon Pipe*,⁸ the court determined that a penalty so used is reasonably related to the statute's valid legislative purpose. Third, the statute is not arbitrary or discriminatory because it imposes penalties on a strict liability basis.⁹ Thus, the court held that the statutory penalty assessed against Coastal was not a violation of Coastal's Fifth Amendment due process rights.

The court, however, found the \$5,000 penalty excessive. While § 311(b)(6) allows no defense to the assessment of the penalty, it does direct the Secretary to consider the gravity of the violation in determining the amount of the penalty.¹⁰ The court pointed out that the Secretary, apparently impressed by Coastal's role as a good faith, non-negligent user, originally assessed a \$1,000 penalty. Nevertheless, for reasons unreflected in the record, at trial the government asked for the maximum penalty. The Fifth Circuit found the original \$1,000 assessment fair. Therefore, while affirming the judgment against Coastal, the court ordered it modified to \$1,000.

CONCLUSION

The Fifth Circuit is not alone in holding the civil penalty provision in § 311(b)(6) constitutional. Other circuits have reached the same conclu-

4. *Nebbia v. New York*, 291 U.S. 502 (1934).

5. *Id.* at 537.

6. *United States v. Coastal States Crude Gathering Co.*, 643 F.2d 1125, 1128 (5th Cir. 1981).

7. 33 U.S.C. § 1321 (c, d, i, k, l) (Supp. II 1978).

8. *United States v. Marathon Pipeline Co.*, 589 F.2d 1305 (7th Cir. 1978).

9. *United States v. Coastal States Crude Gathering Co.*, 643 F.2d 1125, 1128 (5th Cir. 1981).

Civil Liability under § 311(b)(6) attaches automatically at the time oil in harmful quantities is leaked into navigable waters. The penalty is imposed without regard to fault and is subject to no defenses. 33 U.S.C. § 1321(b)(6) (Supp. II 1978).

10. 33 U.S.C. § 1321(b)(6)(B) (Supp. II 1978).

sion.¹¹ The United States Supreme Court denied review of *Coastal*;¹² therefore, these circuit court opinions stand as law. As a result, the possibility of a civil penalty is a cost which a company engaged in potentially polluting activities must anticipate and protect against through insurance or other business mechanisms.

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11. See *United States v. City of Redwood City*, 640 F.2d 969 (9th Cir. 1981); *United States v. The Barge Shamrock*, 635 F.2d 1108 (4th Cir. 1980); *Marathon Pipeline*, 589 F.2d at 1307; *United States v. Atlantic Richfield Company*, 429 F.Supp. 830 (ED Pa 1977), *aff'd* 573 F.2d 1303 (3d Cir. 1977).

12. *Cert. denied*, *Coastal States Crude Gathering Co. v. United States*, 50 U.S.L.W. 3233 (Oct. 5, 1981).