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OIL SPILL CLEANUP FULFILLS AIM OF FEDERAL WATER POLLUTION CONTROL ACT

ENVIRONMENTAL LAW—FEDERAL WATER POLLUTION CONTROL ACT: Under the Federal Water Pollution Control Act, oil terminal operators, who use reasonable security measures, will be reimbursed for their cleanup expenses when unknown vandals spill oil from railroad tank cars, owned by third parties and parked at the terminal. *Union Petroleum Corp. v. United States*, 651 F.2d 734 (1981).

Union Petroleum Corporation (Union) operates an oil terminal, in Revere, Massachusetts, which includes a dock extending into Chelsea Creek, a navigable waterway, where oil tankers moor. Railroad cars enter the terminal on a railroad spur. Union's personnel pour oil into the cars from a loading rack, separated from Chelsea Creek by a narrow, unfenced strip of land owned by the Boston and Main Railroad (B&M).¹ The terminal operates on a 24-hour basis, and has 1000 watt mercury street lights above the loading rack.²

Union has an "oil separator" and a spill containment system to prevent oil from spilling into the creek.³ Both the Coast Guard and the Environmental Protection Agency (E.P.A.) regularly inspected the terminal and had never found any inadequacies in Union's measures to contain oil spills, nor did E.P.A. advise Union to do anything different.⁴

On April 3, 1975, during a labor strike at the terminal, unknown vandals entered Union's yard and discharged oil from two tank cars owned by,

1. In addition to this unfenced area, there was no fence behind a warehouse (not owned by Union) on the north perimeter of the terminal. Nor was there a fence for approximately 75 feet beyond the west end of the warehouse. In place of a fence there was a large pipeline which a person could crawl through with difficulty.

2. There were also 200-400 watt lights on the unfenced, north perimeter of the terminal. The office building and gasoline racks in the interior of the area were also well lighted.

3. The "oil separator" is located under the railroad car loading rack. Rainwater and some oil flow through catch basins into the separator, where the oil is separated from the water. The water flows into Chelsea Creek and the oil remains on top and is periodically pumped out. The separator shuts off automatically when it is overloaded.

The spill containment system is low-lying land on the loading rack side of the tracks which serves as a containment pocket. It is lower than the land on the Chelsea Creek side of the tracks and should have prevented oil from reaching the creek, but for unknown "ancient" wooden culverts under the tracks owned by B&M.

4. Testimony showed that from 1964 to 1975 no vandalism which resulted in an oil spill was ever witnessed at Union's terminal. The office building and gasoline racks in the interior of the area were also well lighted.

and leased to, third parties. Although seals were attached to valves on the tank cars loaded with oil, a general practice in the industry, these valves were not locked and were susceptible to vandalism. The discharge amounted to about 60,000 gallons of fuel oil, part of which reached Chelsea Creek. In accordance with the notice and cleanup provisions of the Federal Water Pollution Control Act (FWPCA),⁵ Union promptly notified the Coast Guard, a cleanup contractor, the local police and fire departments, and the state authorities. Union paid \$99,952.17 in cleanup costs.

Union brought an action, pursuant to the FWPCA, in federal district court seeking recovery from the United States Coast Guard for its cleanup costs. The Coast Guard counterclaimed for the \$34,862.55 it spent cleaning up the same spill.

Union argued that the purpose of the FWPCA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."⁶ To help accomplish this purpose, the Act provides that when

the owner or operator of . . . an onshore facility . . . from which oil . . . is discharged in violation of subsection (b)(3) of this section acts to remove such oil . . . in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal . . . upon establishing . . . that such discharge was caused solely by . . . an act or omission of a third party.⁷

The trial court, therefore, ordered that Union be reimbursed for its cleanup expenses. Defendants appealed, and in a *per curiam* opinion the United States Court of Claims affirmed and adopted the recommendations of the district court and dismissed the counterclaim.

In deciding whether Union could recover its cleanup expenses under Section 1321(i)(1) of the FWPCA, the court had to determine (1) whether Union was an "owner or operator" of a "facility," and (2) whether the discharge was caused solely by the acts of a third party, the vandals.⁸

The court construed "owner or operator" to include the person best able to deal with the emergency. Section 1321(b)(5) of the FWPCA provides that notice is to be given by the "person in charge of" the facility. By deciding Union was an owner or operator, the court followed the legislative intent of the Act, which construed the "person in charge" as the one "operationally responsible for the . . . facility involved."⁹

5. 33 U.S.C. § 1251-1376 (1976).

6. 33 U.S.C. § 1251(a) (1976).

7. 33 U.S.C. § 1321(i)(1) (1976).

8. The Coast Guard took the inconsistent positions that Union acted as a volunteer, because it did not own or operate the facility from which the oil was discharged; and that Union was responsible for the discharge.

9. *Union Petroleum Corp. v. United States*, 651 F.2d 734, 743 n.22 (Ct. Cl. 1981).

Both the terminal and the railroad tank cars are "facilities" under the FWPCA.¹⁰ Although the actual spill occurred from the railroad tank cars owned by others, the court reasoned that Union's terminal was the relevant facility because Union was in charge of the area. "To hold otherwise would be to discourage immediate cleanup operations which is the main thrust of the Act."¹¹

The court recognized that a narrow interpretation of an "owner or operator" of a "facility" would tend to frustrate the purpose of the Act and clog the emergency process while involved parties debated who was responsible for the cleanup.

Finally, the court held that the discharge was caused solely by the acts of the vandals, and that Union used reasonable care to prevent or forestall those acts of vandalism.¹²

CONCLUSION

The decision in *Union Petroleum Corp. v. United States* reaffirms the Federal judiciary's commitment to control water pollution under the Federal Water Pollution Control Act. Those in charge of oil terminals who have taken reasonable precautions to prevent vandalism and oil spills into navigable rivers will be reimbursed when vandals spill oil from tank cars parked at the terminal. Awarding Union the full \$99,952.17 encourages other terminal operators to quickly cleanup harmful discharges into the nation's waters.

The decision is also noteworthy for what it did not say. Union's yard was not entirely and securely enclosed, and the terminal continued to operate 24 hours per day under strike conditions. The court, however, did not penalize Union for such activity. Nor did the court require Union to take extraordinary measures to prevent oil spills from reaching Chelsea Creek.

Further, the court did not question the accessibility of valves on railroad tank cars. The court implicitly recognized that the general security practice in the industry is a reasonable standard of care. Though the standard tolerates some danger of discharge of harmful substances, this level of industry risk remains unchanged by the decision of the Court of Claims.

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10. 33 U.S.C. § 1321(a)(10) (1976). "Onshore facility" is defined as:
[A]ny facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

11. *Union Petroleum Corp. v. United States*, 651 F.2d 734, 743 (1981).

12. A reasonable standard of care is the basic requirement placed on owners and operators of facilities who wish to recover for expenses incurred cleaning up oil spills. *Chicago, Minn., St.P. & Pac. R.R. v. United States*, 575 F.2d 839 (Ct. Cl. 1978).

Union's security arrangements were reasonable under strike conditions. In addition to its regular security guard, the company assigned two police officers to patrol the terminal regularly, and stationed two Union employees in the control shack on the night of the spill.