District Court Holds Municipality Liable as Landfill "Operator"

The United States District Court for the Eastern District of Michigan has held that a municipality is liable as an "operator" of a privately-owned landfill under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) by participating in the management of the facility. The case involves a 15-acre parcel located in Brighton Township (the Township) that had been used by Township residents as a dump under an agreement between the Township and the landowner.

Facts

From 1960 until 1973, the Township contracted with the dump's owner, Vaughan Collett, and his son Jack (collectively, Collett), to allow Township residents to dispose of waste on three acres in the southwest corner of Collett's property in exchange for a monthly fee paid by the Township. The Colletts also accepted waste from other commercial, industrial and non-resident sources; however in 1967 the Township negotiated a new contract with Collett that provided for the exclusive use of the dump by Township residents. The contracts between Collett and the Township required that the dump "meet specifications of and be under the supervision of the [Township's] Board of Appeals." Further, the Township Board often made special appropriations for the dump, such as bulldozing and other maintenance activities, when Collett failed to perform those activities to the Township's satisfaction. The Township also took responsibility for correcting conditions at the dump when it came under the scrutiny of state regulators. The Township eventually paid for the final closure of the dump in 1973 under increasing pressure from state officials to bring the dump into compliance with applicable solid waste regulations.

In 1989, an inspection team from the United States Environmental Protection Agency (EPA) discovered a cluster of 200 deteriorating drums on the parcel that had released hazardous substances to the surrounding soil and groundwater. After spending over $490,000 to clean up the dump, the United States sued Collett and the Township to recover those costs under Section 107 of CERCLA, which holds owners and operators of a contaminated facility, together with persons who arranged for the disposal of hazardous substances at the facility, jointly and severally liable for cleanup costs.

Court's Decision

In an earlier decision, the District Court had held that the Township's level of participation in the dump made it an "operator" of the facility, as that term is defined under CERCLA. The Sixth Circuit, however, reversed that decision because the District Court had not made adequate factual determinations to establish whether the Township was an "operator" of the dump and remanded the case back to the District Court to consider whether the Township exercised "actual control" over the dump. On remand, the District Court reviewed the Township's participation in the establishment, design, operation and closing of the dump and concluded that the Township was an "operator" of the dump within the meaning of CERCLA. In particular, the District Court noted that the Township regularly approved resolutions regarding the operation of the dump, paid for improvements to it, and met with state regulators regarding

compliance issues. Accordingly, the District Court held that the Township exercised actual control over the operation of the dump.

The Township argued that, if it *was* liable as an operator of the dump, it should only be liable for the 3-acre portion where Township residents disposed of waste or, alternatively, it should only be liable to the extent Township residents contributed to the disposal of the leaking drums discovered at the dump. In the earlier District Court decision, the court had held the Township failed to demonstrate that there was a reasonable basis to conclude that the harm was divisible. On appeal, the Sixth Circuit held that the District Court had applied the wrong standard for determining divisibility. The "proper standards for divisibility come from the Restatement (Second) of Torts, which seeks a reasonable basis for determining the contribution of each cause to a single harm," the Sixth Circuit stated. Accordingly, the Sixth Circuit remanded the matter back to the District Court to reconsider the possible bases of dividing cost between the Township and Collett. On remand, the District Court again held that the Township had not demonstrated any geographic, volumetric, or temporal basis for dividing the damages among the liable parties. The District Court therefore imposed joint and several liability on the Township for the entire amount of the cleanup costs.

United States v. Township of Brighton, No. 94-75289 (E.D. Mich. Mar. 13, 2000), *on remand from* 153 F.3d 308 (6th Cir. 1998)

This article was prepared by Jeffrey L. Woolstrum, a partner in our Environmental Department, and previously appeared in the April, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.