

Court of Appeals: Past Landfill Owner Liable Even If Not an Owner At Time of Illegal Discharges

The Michigan Court of Appeals has held that even though contaminants did not leak from a landfill until after a prior owner or operator left the site, the prior owner/operator is still liable for clean up costs under the Michigan Environmental Response Act (MERA). Gene Hirs was a general partner in Waterford Sanitary Landfill, Ltd., which operated a property containing a solid waste landfill until 1986. In 1987, after Waterford Sanitary Landfill stopped owning the property, illegal discharges of hazardous substances began to emanate from the landfill. The State of Michigan spent over \$16 million to stop the discharges and clean up the site.

In 1991, the State sued defendants Hirs and Waterford Sanitary Landfill to recover the cleanup costs. When the defendants failed to appear for trial, the court entered a default judgment against them.

Hirs and Waterford Sanitary Landfill appealed the trial court's judgment to the Michigan Court of Appeals, arguing that they were denied due process of law because they were not given notice of the trial date. The Court of Appeals then considered whether the lack of notice was sufficient cause to "set aside" the trial court's default judgment under the circumstances.

In Michigan, a motion to set aside a default judgment may be granted only if 1) "good cause" is shown for failure to comply with court requirements; and 2) facts are provided to the court that show that the moving party has a "meritorious defense." Examples of "good cause" are procedural defects or irregularities or a reasonable excuse for failing to comply with the court's requirements. One basis for

“good cause” is failure to receive notice of the hearing. In this case, the Court of Appeals concluded that lack of notice was an acceptable excuse for Hirs’ and Waterford Sanitary Landfill’s failures to appear for trial.

But the Appeals Court refused to set aside the default judgment, concluding that defendants Hirs and Waterford Sanitary Landfill did not have a meritorious defense.

The defendants argued that they are not liable for cleaning up the landfill site because they did not own it when the illegal discharges from the landfill occurred. But the Appeals Court rejected the defendant’s argument because, under MERA, M.C.L. § 299.612(1)(b), cleanup liability depends on when the contaminants were disposed of in the landfill and not the timing of leaks or discharges from the landfill. Thus, as long as Hirs and Waterford Sanitary Landfill owned the landfill when hazardous substances were disposed of, said the Court of Appeals, the defendants are liable if the contaminants later leak from the landfill.

Hirs and Waterford Sanitary Landfill did not deny they owned the landfill when wastes were disposed of there. The Court of Appeals concluded from this lack of a denial that the defendants could not show that they could present a meritorious defense. Therefore, the Court of Appeals denied the defendants’ motion to set aside the default judgment.

Attorney General v. Oakland Disposal, Inc., Mich. Ct. App. No. 211591, Sept. 1, 2000.

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