

Sixth Circuit Sends Brighton Township Case Back to District Court

For the second time, the United States Court of Appeals for the Sixth Circuit has reversed the district court's ruling regarding Brighton Township's potential liability for contamination from a closed municipal waste dump. Although the district court has twice held that the Township is liable as an "operator" of a portion of the dump and that there is no basis for dividing the environmental harm caused by the Township's operation and other harm, the Sixth Circuit reversed the district court both times. This most recent reversal is based on the district court's failure to follow the Sixth Circuit's directions in the last appellate decision.

From 1960 until 1973, Brighton Township contracted with Vaughan Collett, and his son Jack (collectively, Collett), to allow Township residents to dispose of waste at a dump operated by Collett 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 EPA inspection team 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 the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

In its first 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, and that there was no reasonable basis to divide the environmental harm caused by the dump among the Township and Collett. Accordingly, the district court determined that the Township could be held liable for all of the cleanup costs. The Sixth Circuit, however, reversed this decision because the district court had not developed sufficient facts to determine whether the Township was an "operator" of the dump, and had applied the wrong standard for determining the divisibility of harm. With respect to the standard for divisibility, the Sixth Circuit stated that 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 thus remanded the case back to the district court to consider whether the Township exercised "actual control" over the dump and, if the Township did exercise such control, whether the harm caused by the Township's operation was divisible based on the standard articulated by the court.

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. The district court then held that the Township exercised actual control over the operation of the dump. With respect to divisibility, the district court held that the Township had not demonstrated any geographic, volumetric, or temporal basis for dividing the damages among the liable parties. The district court's March 13, 2000 opinion, therefore, again imposed liability on the Township for the entire amount of the cleanup costs.

The Township appealed district court's second opinion and the Sixth Circuit again reversed the lower court, this time because it had failed to address "either the letter or the spirit" of the Sixth Circuit's mandate from the first appeal. With respect to the Township's status as an operator of the dump, the Sixth Circuit stated that the district court "merely stated a conclusion without any analysis whatsoever." The district court failed to explain "which of its forty findings of fact triggered this conclusion, or to what extent Brighton Township actually macromanaged the facility in question," the Sixth Circuit stated. With respect to the divisibility of harm, the Sixth Circuit held that the district court had failed to conduct the proper analysis of the facts in light of the applicable law, as explained in the first appellate decision.

The Sixth Circuit thus vacated the district court's judgment and, once again, remanded the case back to the district court for further proceedings. The Sixth Circuit also instructed the district court to hold an evidentiary hearing regarding the issue of divisibility, in part because a new district court judge had been assigned to the case.

United States v. Township of Brighton, No. 00-2175 (6th Cir. March 13, 2002)

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