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Envtl. Quality Comm'n v. City of Coos Bay, 14 P.3d 649 (Or. Ct. App. 2000)

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OREGON

Envtl. Quality Comm'n v. City of Coos Bay, 14 P.3d 649 (Or. Ct. App. 2000) (holding the Environmental Quality Commission improperly imposed civil penalties for discharging sewage sludge without a permit based upon an incorrect interpretation of state statutory law).

The City of Coos Bay ("City") operated a sewage disposal system and treatment plant, which partially treated sewage and then pumped it through a pressure pipeline to a sludge lagoon for further treatment. The City had a National Pollution Discharge Elimination System ("NPDES") permit to operate the sewage disposal system. The NPDES permit specified effluent limitations for waste discharged from the system. In September 1996, the pipe between the treatment plant and the sludge lagoon ruptured, spilling partially treated sewage sludge into nearby tidal wetlands. The Environmental Quality Commission ("EQC") issued an Order imposing civil penalties against the City for, among other things, discharging sewage sludge without a permit in violation of state statute. The City sought review of the Order.

On appeal, the City argued the statute did not apply because it prohibited discharges only from a sewage disposal system without a permit, and the City had obtained a NPDES permit for its sewage disposal system. The City contended that a separate provision of the statute covered the violations of permit terms, which it agreed it did violate. EQC argued any discharge in violation of the conditions of a permit was an "unpermitted" discharge. Accordingly, any discharge in violation of a permit was a discharge "without first obtaining a permit."

The Oregon Court of Appeals noted the specific provision of the statute said nothing about violations of the specific terms and conditions of a permit and did not prohibit discharges in violation of particular permit conditions. The statute only averred that before any discharge from a sewage disposal system occurred, the operator of the system had to obtain a permit. The court further noted that a separate provision of the statute addressed violations of the terms and conditions of a permit. The court held EQC's construction of the provisions of the statute was redundant. Consequently, the court reversed that part of the Order that imposed penalties for discharging sewage sludge without a permit.

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PENNSYLVANIA

Shamnoski v. PG Energy, 765 A.2d 297 (Pa. 2000) (holding: (1) violation of a statute designed to protect a particular class of individual is negligence per se; (2) an "Act-of-God" does not preclude liability for