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## Shamnoski v. PG Energy, 765 A.2d 297 (Pa. 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.

*Dawn Watts*

**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

negligence if such negligence was a substantial factor in the resulting damages; and (3) calculation of damages, particularly delay damages, must be adequately documented for explanation of determination).

Appellees, Stephen and Dorothy Shamnoski, owned property located along the banks of Springbrook Creek in Luzerne County, Pennsylvania. Appellants, PG Energy, owned and operated three water supply dams located upstream from the Shamnoskis' property ("Dam System"). On September 27, 1985, Hurricane Gloria hit Luzerne County. Severe flooding and overflow of Springbrook Creek destroyed completely the Shamnoskis' real and personal property.

The Shamnoskis filed suit claiming PG Energy's negligent maintenance and repair of the Dam System caused the flooding and subsequent loss of property. The trial court agreed and awarded damages to the Shamnoskis. Evidence presented at trial indicated the Army Corps of Engineers ("Corps") notified PG Energy on several occasions of serious deficiencies in its Dam System and it subsequently classified the Dam System as a high hazard reservoir pursuant to the Dam Safety and Encroachment Act ("Act"). The Corps advised PG Energy to maintain twenty-four hour surveillance of the Dam System during periods of unusually heavy rain. Evidence presented at trial indicated no surveillance of the Dam System occurred after 2:30 p.m. on the date the Hurricane struck.

On appeal, PG Energy made several arguments against liability. First, PG Energy argued it did not breach any duty owed to the Shamnoskis or other downstream residents. Second, PG Energy argued any negligence on its part was not the cause of the Shamnoskis' damages. Third, PG Energy argued the trial court abused its discretion in accepting evidence of damages that resulted in an incorrect damage award.

With respect to PG Energy's first argument, the Superior Court of Pennsylvania noted section 693.13 of the Act required PG Energy to maintain the Dam System in a safe operational condition and to notify certain authorities located downstream of the Dam System of any condition that would threaten safety, life, or property. Further, the court noted PG Energy had an emergency action plan in place that imposed a duty to warn downstream residents and municipalities under the same circumstances prescribed by the Act. The court determined the hurricane was an event requiring notification and, as such, PG Energy owed a duty to downstream authorities and residents pursuant to the Act. The court determined violation of the Act constituted negligence per se on the part of PG Energy.

Next, the court considered PG Energy's argument that its negligence was not the cause of the Shamnoskis' damages because the damages would have been more severe if the Dam System was not in place during the Hurricane. The court noted liability attaches to a negligent party if the negligent act was a significant factor in causing the injury, regardless of the fact such negligent act combined with an

“Act-of-God” to produce damages. The court determined that, although the hurricane was an Act-of-God, PG Energy’s negligence was a substantial factor causing the resulting damage.

Finally, the court considered PG Energy’s argument that the trial court abused its discretion in accepting the Shamnoskis’ testimony regarding the value of the lost property that resulted in an inappropriate damages calculation, especially with respect to delay damages. The court recognized the Shamnoskis’ damages occurred fifteen years before the date of the appeal and the record did indicate many periods of inactivity. The court declined to decide whether the trial court’s calculation of delay damages was appropriate, but remanded the case with directions that the trial court provide the superior court with an explanation of its method for calculating the damages awarded.

*Megan Becher-Harris*

## RHODE ISLAND

**R&R Assocs. v. City of Providence Water Supply Bd., 765 A.2d 432 (R.I. 2001)** (holding the City of Providence (“City”) neither effected a *de facto* condemnation of mill owners water rights, nor breached the contract between the mill owners and the City regarding condemnation compensation when the City supplied water to communities not mentioned in the statute establishing the Scituate Reservoir).

In 1915, the Rhode Island General Assembly enacted a statute (“Act”) enabling the City of Providence Water Supply Board (“City”) to condemn lands and water in and around the north branch of the Pawtuxet River to establish the Scituate Reservoir (“Reservoir”). The Act specified the City and other named municipalities could receive water from the Reservoir. Over the years, the General Assembly amended the Act many times to allow additional communities to receive water from the Reservoir.

In 1922, the City contracted with mills that abutted the north branch of the Pawtuxet River downstream from the Reservoir, to compensate them for the taking their riparian rights through the Act. The contract specified that under section 6 of the Act, the City could not impair the mills’ residual water rights, and that all rights enjoyed by the mills under the Act would remain in force.

The superior court certified R&R Associates, L&L Associates, and Robert LaFerriere (collectively, “R&R”) to represent a class that constituted the successors in interest to the mills. In 1996, R&R filed suit arguing that by allowing additional communities to use the Reservoir over the years, the City had breached the contract and taken their residual water and property rights without just compensation. R&R argued the language in both the Act and the contract gave them