

# Individual Liability for Corporate Environmental Law Violations

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September 12, 2018

- ▶ Individual officers or employees can be held liable for violations of environmental laws by a corporation
- ▶ No defense that acts were done in the scope and course of or pertained to the duties of individual's employment

# Rationale

- ▶ Imposing liability only on the corporation would be inconsistent with Congress's intent to impose liability upon all persons who are involved in violations of environmental laws
- ▶ Comports with expansive construction that courts have given environmental statutes
- ▶ Public health is a goal of highest priority to Missouri Legislature

*State ex rel. Webster v. Mo. Resource Recovery, Inc.*, 825 S.W.2d 916, 926 (Mo. App. S.D. 1992)

# What does the Court look at?

- ▶ Most statutes define “person” to include an individual and the corporate employer
- ▶ Individual’s direct involvement in the activity
- ▶ Ability to control the conduct
- ▶ Was individual in charge of the operation of the facility
- ▶ All three not required, just any one

# Individual Liability Under the Missouri Clean Water Law

- ▶ “It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of [the Missouri Clean Water law], or any standard, rule or regulation promulgated by the commission.”
  - ▶ Fine up to \$10,000 and injunctive relief
- ▶ “Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to [the Missouri Clean Water Law] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to [the Missouri Clean Water Law]”
  - ▶ Fine up to \$10,000, imprisonment for up to 6 months, or BOTH

RSMo § 644.076

# Individual Liability Under the Missouri Clean Water Law

- ▶ “Any person who willfully or negligently violates the Missouri Clean Water Law
  - ▶ fine of at least \$2,500 and up to \$25,000 per day of violation
  - ▶ Imprisonment up to one year
  - ▶ Or BOTH
  - ▶ Two or more convictions under same provision- up to \$50,000 fine per day of violation and/or imprisonment up to two years

RSMo § 644.076.3

- ▶ “It shall be unlawful for any person to discharge water contaminants from any water contaminant or point source or wastewater treatment plant without a permit. Deemed guilty of a misdemeanor and shall be fined at least \$100 and not more than \$500 and shall be required to apply for such a permit within 30 days.

RSMo § 644.082

# Federal Law: Clean Water Act § 309

- ▶ Civil Liability
  - ▶ Strict liability- good faith or lack of knowledge is irrelevant
  - ▶ Up to \$37,500 civil penalty per day for each violation
- ▶ Administrative Penalties - Small vs. Large violations
  - ▶ Class I Penalty Action (for “smaller” violations)
    - ▶ Proceed relatively quickly and presided over by regional judicial officers rather than Administrative Law Judges (ALJs)
    - ▶ Penalties up to \$21,393 per violation or \$53,484 total
  - ▶ Class II Penalty Action (for “larger” violations)
    - ▶ Procedure takes longer and presided over by an ALJ
    - ▶ Penalties up to \$21,393 per day/violation or \$267,415 total

# Liability under Federal Law: Clean Water Act § 309

- ▶ Criminal Liability -- Requires knowledge or negligence
  - ▶ Commonly Charged CWA Offenses:
    - ▶ Direct discharges of pollutants from a point source into a water of the United States, including wetlands, either without a permit or in violation of a permit (33 USC 1319(c)(1) and (c)(2))
    - ▶ Discharge to a publicly owned sewer system in violation of pretreatment standards (33 USC 1319(c)(1) and (c)(2))
    - ▶ Falsification of information (33 USC 1319(c)(4))
    - ▶ Knowingly endangering another person (33 USC 1319(c)(3))
    - ▶ Discharges of oil or hazardous substances into waters of the United States/upon adjoining shorelines/into the contiguous zone (33 USC 1319(c)(1)(A) and (c)(2)(a) and 33 USC 1321(b)(3))



# Examples

# State ex rel. Webster v. Missouri Resource Recovery, Inc.

825 S.W.2d 916 (Mo. App. S.D. 1992)

- ▶ Missouri Resource Recovery, Inc. (MRR) was a resource recovery facility that received wastes from other firms and used a distillation process to reclaim the waste solvents and sell them back to the firms
- ▶ MDNR sought judicial determination that MRR and its president Frank E. Hostetter violated the Hazardous Waste Management Law
- ▶ MDNR sought an injunction and civil penalties

# State ex rel. Webster v. Missouri Resource Recovery, Inc.

825 S.W.2d 916 (Mo. App. S.D. 1992)

- ▶ MRR President Hostetter owned a farm near MRR facility
- ▶ President Hostetter made decision to take barrels full of ignitable material to his farm and personally transported them there
- ▶ Barrels buried on president's farm

# State ex rel. Webster v. Missouri Resource Recovery, Inc.

825 S.W.2d 916 (Mo. App. S.D. 1992)

- ▶ President's involvement was "substantial"
- ▶ "Hands-on" operator
- ▶ Participated in and directed all activities of the corporation
- ▶ Responsibility for day-to-day operation of the business

# State ex rel. Webster v. Missouri Resource Recovery, Inc.

825 S.W.2d 916 (Mo. App. S.D. 1992)

- ▶ President's decisions and actions were source of MDNR's charges against MRR
- ▶ President had the ability to control the activities of MRR that gave rise to the violations
- ▶ President did control those activities
- ▶ President could be held liable for corporation's violation of environmental laws

# U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.

810 F.2d 726 (8th Cir. 1986)

- ▶ Northeastern Pharmaceutical and Chemical Company (NEPACCO) had manufacturing plant in Verona, Missouri
- ▶ Edwin Michaels- president and major shareholder
- ▶ John Lee- vice-president, supervisor of Verona plant, shareholder
- ▶ Ronald Mills- shift supervisor at Verona plant

# U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.

810 F.2d 726 (8th Cir. 1986)

- ▶ Michaels and Lee knew NEPACCO's manufacturing process produced hazardous byproducts
- ▶ Typically hazardous byproducts were disposed of by waste haulers
- ▶ Some hazardous byproducts put into 55-gallon drums and stored at Verona plant

# U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.

810 F.2d 726 (8th Cir. 1986)

- ▶ Mills proposed disposal of waste-filled drums on a farm seven miles south of NEPACCO plant
- ▶ Proposal was discussed with Lee and he approved it
- ▶ Mills and another person dumped the drums into a trench on the farm
- ▶ EPA filed suit against NEPACCO for violations of environmental laws



# U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.

810 F.2d 726 (8th Cir. 1986)

- ▶ V.P. Lee was individually liable under CERCLA as a person who arranged for the transportation and disposal of hazardous substances:
  - ▶ Personally arranged for the transportation and disposal of the hazardous substances
  - ▶ Actually participated in the violations
  - ▶ Fact he was acting for corporation did not relieve him of individual liability

# U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.

810 F.2d 726 (8th Cir. 1986)

- ▶ Lee and Michaels were individually liable for RCRA violations as people who contributed to the disposal of hazardous substances:
  - ▶ Lee personally arranged for the transportation and disposal of the hazardous substances
  - ▶ Michaels was not involved in the decision to transport and dispose of the substances BUT:
    - ▶ Michaels was in charge of and directly responsible for NEPACCO's operations at the Verona plant
    - ▶ Michaels had ultimate authority to control NEPACCO's disposal of hazardous substances

# MORE EXAMPLES

## United States v. Barnett (D. Utah)

- ▶ Slade Barnett, Jr. was the principal agent of the bio-diesel production company Denali Industries Inc.
- ▶ What did he do?
  - ▶ Had knowledge of unpermitted discharge of a pollutant, instructed employees to discharge waste grease and oil into the Timpanogos sewer district, and made false statements to conceal the discharge
- ▶ What happened to him?
  - ▶ 48 months of probation
  - ▶ \$15,000 restitution to sewer district, the city and homeowners association

## United States v. Lupo (N.D. Ohio)

- ▶ Ben Lupo, owner, and Michael Guesman & Mark Goff, employees, of Hardrock Excavating LLC
- ▶ What did they do?
  - ▶ Knowledge of unpermitted discharge of wastewater into a storm drain on several occasions
- ▶ What happened to them?
  - ▶ Lupo- 28 months in prison, \$25,000 fine
  - ▶ Guesman- 3 years probation, 300 hours community service
  - ▶ Goff-3 years probation, 300 hours community service

# MORE EXAMPLES

## United States v. NH Environmental Group, Inc. et al. (N.D. Ind.)

- ▶ Ronald Holmes, owner, and Stewart Roth, manager, Thomas Grad, operations manager, of Tierra Environmental and Industrial Services
- ▶ What did they do?
  - ▶ Knowledge of/organized transportation of wastewater to closed facility and discharged directly into sewer system
- ▶ What happened to them?
  - ▶ Holmes- 4 years probation, \$30,000 fine, 100 hours community service
  - ▶ Roth- 2 years of probation, \$4,000 fine
  - ▶ Grad- 1 year probation, \$1,000 fine
  - ▶ Company- 4 years probation, \$70,000 fine, \$100,000 restitution

## United States v. Hidey (N.D. Ohio)

- ▶ James Hidey, rig manager for Great Plains Exploration, LLC
- ▶ What did he do?
  - ▶ Managed drilling sites that discharged pollutants into sewer catch basin that fed Beecher Brook and led to Chagrin River
- ▶ What happened to him?
  - ▶ 24 months of probation
  - ▶ \$2,000 fine

# Takeaways

- ▶ Liability can be imposed on individuals
  - ▶ not protected by corporate form or because in scope of employment/duties
- ▶ Liability is more likely to be imposed with the more direct involvement the person has with the activity that violates environmental laws
- ▶ Liability can be imposed even if not directly responsible for violations
  - ▶ just being in charge of operation of facility where violations occur may be enough

# SOURCES

- ▶ *State ex rel. Webster v. Mo. Resource Recovery, Inc.*, 825 S.W.2d 916 (Mo. App. S.D. 1992)
- ▶ *U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc.*, 810 F.2d 726 (8th Cir. 1986)
- ▶ *The State of Environmental Crime Enforcement: A Survey of Developments in 2014*, Steven P. Solow, Anne M. Carpenter and Katherine V. Noble, 46 ER 1418
- ▶ RSMo § 644.076
- ▶ RSMo § 644.082
- ▶ 33 USC 1319
- ▶ 33 USC 1321