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United States v. Iverson, 162 F.3d 1015 (9th Cir. 1998)

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allow water dependent uses of the parcel. The court granted summary judgment in favor of the United States.

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United States v. Iverson, 162 F.3d 1015 (9th Cir. 1998) (holding the defendant criminally liable for violating and conspiring to violate the Clean Water Act and other state and local laws by dumping industrial waste from his business into storm and sewer drains).

In September 1997, a grand jury indicted the defendant, Thomas Iverson for violating the Clean Water Act ("CWA"), the Washington Administrative Code ("WAC"), and the City of Olympia's Municipal Code. The prosecution charged Iverson with both violating and conspiring to violate these laws between 1992 and 1995. The indictments arose out of illegal disposal of industrial waste from Iverson's business, CH2O, Inc. ("CH2O").

Iverson was the company's founder and served as the president and chairman of the board. The company blended chemicals to create numerous products, including acid cleaners and heavy-duty alkaline compounds. The company shipped the blended chemicals to its customers in drums, and asked the customers to return the drums when finished. When the drums were returned, they were often not cleaned properly and contained a chemical residue which had to be removed before the drum was used again.

To remove the residue, CH2O instituted a drum-cleaning operation, which generated wastewater. On several occasions, the defendant asked the local sewer authority if it would accept the wastewater. However, because the metal content of the wastewater was so high, the sewer authority refused to accept it.

Subsequently, the defendant discharged the wastewater, and ordered his employees to discharge the wastewater, either on the industrial plant's property, through a sewer drain at an apartment complex the defendant owned, or through a sewer drain at the defendant's home. He continued these discharges for about eight years until he hired someone to dispose of the wastewater properly. CH2O either paid a waste disposal company to dispose of the wastewater, or shipped the drums to a professional outside contractor for cleaning. However, these procedures cost the company thousands of dollars each month and Iverson discontinued this program four years later.

Shortly thereafter, Iverson bought a warehouse in Olympia and restarted its drum-cleaning operation at the warehouse and disposed of its wastewater through the municipal sewer. Iverson did not obtain a permit to make these discharges. Iverson continued this method of wastewater disposal for three years, until CH2O learned it was under

investigation for illegal discharges of pollutants into the sewer.

The defendant had a jury trial, where they found him guilty on all counts. The district court sentenced Iverson to one year in custody, three years of supervised release, and a $75,000 fine. Iverson appealed his conviction. Iverson's primary arguments were that (1) the CWA, the WAC, and the Olympia Code, when read together, allowed his discharges; (2) the statutes were unconstitutionally vague; and (3) the trial court erred in formulating its "responsible corporate officer" jury instruction. All of Iverson's claims of error relied on the premise that the WAC and the Olympia Code allowed discharges of industrial waste that did not *affect* the water. However, the Ninth Circuit Court of Appeals disagreed.

For the first issue, the defendant argued that the Olympia Code defines "pollutant" based on the effect of the discharge. However, the code also expressly provides that if state standards are more stringent, then state law applies under the Olympia Code itself. Iverson argued that state law also measures discharges based on their effect on the water. However, the WAC lists certain discharges as always prohibited, including a discharge into municipal sewage of substances prohibited by the Clean Water Act. The CWA defines "pollutant" to include any industrial waste discharged into water. Additionally, the CWA requires publicly owned treatment works ("POTW") to create their own regulatory programs. Authorities deem those local regulations as pretreatment standards under the CWA. When all the CWA provisions are read together, the CWA prohibits the discharge of any trucked or hauled industrial waste, regardless of the effect on water, except at discharge points designated by the POTW. The court held that the CWA, the WAC, and the Olympia Code prohibited the discharge of hauled or trucked industrial waste except at certain discharge points.

Regarding the vagueness challenge, Iverson argued that a conflict in the definitions of "pollutant" in the three statutes created vagueness. However, the court stated that a reasonable person of ordinary intelligence would understand from reading the statutes that all three prohibit the discharge of any hauled or trucked industrial waste except at certain discharge points. A statute is not unconstitutionally vague merely because it incorporates other provisions by reference. A reasonable person of ordinary intelligence would consult the incorporated provisions.

Next, Iverson argued that a corporate officer is "responsible" only when the officer in fact exercises control over the activity causing the discharge. However, the CWA holds criminally liable any person who knowingly violates its provisions. The CWA defines "person" to include any responsible corporate officer. When Congress' intent of the statute and the ordinary and common meaning of words are considered, a person is a "responsible corporate officer" if the person has authority to exercise control over the corporation's activity causing the discharges. There is no requirement that the officer in fact exercise such authority. Additionally, the CWA has a knowledge requirement. A defendant must know that the substance discharged

was a pollutant. Here, the defendant's involvement with the prior discharges tended to prove knowledge and familiarity with the company's industrial waste. Because Iverson was personally involved and had authority to exercise control over the illegal discharge of industrial waste, he was a responsible corporate officer and was subsequently criminally liable for the company's wastewater disposal practices.

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Kalamazoo River Study Group v. Rockwell Int'l, 3 F. Supp. 2d 815 (W.D. Mich. 1997) (holding that summary judgment for the defendant in a suit for contribution for response costs was proper where the plaintiff could not prove the defendant caused the contamination, and where the plaintiff based its theory of liability solely on speculation and possibility).

Plaintiff, Kalamazoo River Study Group ("KRSG"), filed this suit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and the Michigan Natural Resources and Environmental Protection Act ("NREPA"). It also sought contribution for response costs incurred in response to releases of polychlorinated biphenyls ("PCBs") into the Kalamazoo River. KRSG filed this suit against eight other companies with facilities on or near the Kalamazoo River. The issue before the court was defendant Benteler Industries, Inc.'s ("Benteler") motion for summary judgment.

Based upon studies conducted between 1972 and 1989, the Michigan Department of Natural Resources ("MDNR") determined that a three mile portion of Portage Creek, from Cork Street to the Kalamazoo River, and a thirty-five mile portion of the Kalamazoo River, from this confluence downstream to the Allegan City Dam (the "Site"), contained large amounts of PCBs. In 1990, the EPA listed the Site on the National Priority List as a Superfund site pursuant to CERCLA, and the MDNR listed the Site as an environmental contamination site under the Michigan Environmental Response Act. The MDNR identified three paper companies as potentially responsible parties as a result of their past recycling operations from 1957-1971. The recycling operations included the de-inking of carbonless copy paper, which contained PCBs. James River Paper Company joined HM Holdings, Inc., Georgia-Pacific Corporation, and Simpson Plainwell Paper Company to form KRSG, an unincorporated association. KRSG alleged that the eight other companies contributed to PCB contamination and sought reimbursement or contribution for their response costs.

Benteler manufactures automobile parts. Benteler purchased the Galesburg manufacturing facility at issue in this case in 1986. The