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Ninth Circuit Sends Defendant Up the River for His Role in Oil Spill

In *United States v. Hanousek*, 176 F.3d 1116 (9th Cir. 1999), the Ninth Circuit took the unusual step of imposing criminal punishment under the Clean Water Act (CWA) on a supervisor who acted with ordinary (as opposed to gross) negligence in contributing to an oil spill. In 1994, a backhoe driver working on a railroad construction site in Alaska accidentally punctured a high-pressure oil line, discharging between 1,000 and 5,000 gallons of heating oil directly into the Skagway River. Although the supervisor, Edward Hanousek, Jr., was off-duty and at home when the accident occurred, the U.S. Department of Justice chose to prosecute him, and not the backhoe driver.

The trial court convicted Hanousek of ordinary negligence under Sections 1319(c)(1)(A) and 1321(b)(3) of the CWA and sentenced him to six months of prison, six months of supervised release, and a $5,000 fine. In affirming the sentence, the Ninth Circuit rejected Hanousek's argument that the ordinary negligence standard violated his Fifth Amendment due process rights. The court reasoned that, as public welfare legislation, the CWA allows criminal punishment for acts committed with levels of *mens rea* that fall below knowledge or intent. The Supreme Court denied certiorari, despite a vigorous dissent by Justices Thomas and O'Connor.1

The Ninth Circuit's decision has far-reaching implications for environmental prosecution under the CWA. The ordinary negligence standard lessens the government's burden of proof, thus allowing for easier and more numerous convictions under the CWA. The decision also confirms the state's authority to look beyond the immediate actor when imposing liability for such violations. Finally, in affirming the trial court's decision to give Hanousek nearly the maximum allowable jail time but a relatively minor monetary fine, the Ninth Circuit sent a strong

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1. See Hanousek v. United States, 120 S. Ct. 860 (2000) ("I think we should be hesitant to expose countless numbers of construction workers and contractors to heightened criminal liability for using ordinary devices to engage in normal industrial operations.").
message that it will not allow environmental offenders to discharge their sentences merely by writing a check.

Jennifer Lee