Message

From: Palmer, Leif [Palmer.Leif@epa.gov]
Sent: 9/14/2020 1:00:54 PM
To: Nagrani, Kavita [Nagrani.Kavita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]
CC: Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: 9th Cir decision on simple negligence
Attachments: 9th Circ. Tells EPA To Reconsider Idaho Water Permit Program - Law360.pdf; 1309000-1309122-18-72684.pdf

Not much to it. Weird holding. Remanded but did not vacate.

At issue was whether Idaho could take over administration of the NPDES program and incorporate its state law standard for negligence claims into the criminal enforcement component, a provision that would be used if a party were to sue a permit holder for a violation. The Ninth Circuit said the problem is that the state's standard to prove negligence is "gross negligence," while under circuit precedent, the EPA is only required to prove ordinary negligence. "EPA abused its discretion in approving a mens rea standard 'greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action,'" the panel said. "A state plan must employ a standard 'no greater than' simple negligence, such as strict liability or simple negligence ."The **judges remanded the approval decision to the agency for reconsideration, but did not vacate the overall approval**.

From: Nagrani, Kavita <Nagrani.Kavita@epa.gov>
Sent: Monday, September 14, 2020 8:48 AM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>
Cc: Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: 9th Cir decision on simple negligence

Hi Leif,

I also was out Thursday and Friday last week. I haven't seen it yet but will send you the decision soon. thanks!

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Friday, September 11, 2020 12:19 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>
Cc: Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: 9th Cir decision on simple negligence

Hi Kavita – Matt's out, can you send us the decision.

From: Hicks, Matt <Hicks.Matthew@epa.gov>
Sent: Thursday, September 10, 2020 4:18 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Subject: FW: 9th Cir decision on simple negligence

FYI...

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Thursday, September 10, 2020 3:50 PM
To: Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Morgan, James <Morgan.James@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>
Cc: Creswell, Michael <Creswell.Michael@epa.gov>; Clark, Maria <Clark.Maria@epa.gov>; Kajumba, Ntale <Kajumba.Ntale@epa.gov>
Subject: 9th Cir decision on simple negligence

All,

We finally got the Idaho opinion. The Ninth Circuit just held that Idaho's simple negligence standard is inconsistent with EPA's regulations, which require that a state have the same authority to prosecute gross negligence that EPA has. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Florida has the **reckless indifference or gross careless disregard** standard. Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

-----Original Appointment-----
From: Laycock, Kelly <Laycock.Kelly@epa.gov>
Sent: Thursday, July 9, 2020 8:43 AM
To: Laycock, Kelly; Calli, Rosemary; Mcgill, Thomas; Hicks, Matt; Hurld, Kathy; Nagrani, Kavita; Wade, Alexis; Parker, Christopher; Ghosh, Mita; Kupchan, Simma; Speir, Jeffrey; Morgan, James; Beck, Whitney
Cc: Creswell, Michael; Clark, Maria; Kajumba, Ntale
Subject: FL assumption daily check-in
When: Thursday, September 10, 2020 11:30 AM-12:15 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teams Meeting

Join Microsoft Teams Meeting

Ex. 6 Personal Privacy (PP) United States, Atlanta (Toll)

Conference ID: Ex. 6 Personal Privacy (PP)

Local numbers | Reset PIN | Learn more about Teams | Meeting options

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.