



Federal Appeals Court Rules That Failure To Notify Coast Guard Immediately Constitutes a Continuing Offense

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The U.S. Court of Appeals for the Sixth Circuit recently ruled in *United States v. Canal Barge Co, et al.* that the failure to notify the Coast Guard immediately of a leak of benzene from a tank barge constituted a continuing violation of the Ports and Waterways Safety Act. In the incident, no discharge of benzene into the navigable waters occurred, the leak was patched by the crew, and no one was injured. However, the government proved at trial that a hazardous condition had existed. Therefore, according to the court, the obligation to report immediately commenced “when the relevant actor has the relevant knowledge, and continues at least until a report is made” or the pertinent authority becomes aware of the condition. In this instance, the decision upheld the government decision to prosecute the case in Kentucky rather than near St. Louis where the leak occurred. The majority was not persuaded by the vigorous dissent of the Chief Judge who warned that the decision rendered the failure to immediately report “an offense that is perpetual and ongoing.”

Importantly, the decision highlights the critical importance for vessel and facility operators to take the reporting requirement seriously and err on the side of reporting immediately. Other federal statutes, such as the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act, also feature immediate reporting provisions pertaining to the discharge or release of oil and hazardous substances.

1 Min Read

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