

Submarine Power Transmission Cables Subject to OPA

The U.S. Court of Appeals for the Second Circuit recently reversed a lower court decision that held that the release of thousands of gallons of oil from a submarine power-transmission cable into Long Island Sound was not governed by the federal Oil Pollution Act (OPA). The submarine cable is an underwater system that transmits electricity, and through which dielectric fluid is pumped as a lubricant and coolant.

The case arose when the anchor of the Barge B. No. 280, which was being towed by the tugboat M/V Ellen S. Bouchard, allegedly ruptured the cable, which the Power Authority of the State of New York (Authority) owns and operates. The rupture causes a leak of dielectric fluid, which is a hydrocarbon, petroleum-based oil that acts as a coolant and lubricant to the electrical components of the submerged cables. Following the containment and remediation of the oil discharge, the Authority sought compensation of more than \$9.8 million for its expenditures by suing the two vessels and their corporate owners. The Authority brought claims pursuant to OPA and the New York Oil Spill Law (NYOSL). The corporate defendants, meanwhile, initiated parallel proceedings pursuant to the Limitation of Liability Act (the Limitation Action) to limit recovery to the value of the vessel in question and its freight.

The district court held that the submarine cable was not a “facility” under OPA, which is defined as:

[A]ny structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

The Second Circuit held that the district court's conclusion that the Authority did not have a viable OPA claim was error. The cables clearly fit within the first portion of the definition, in that they are a structure or equipment. Moreover, the cables have the capability of “transferring” the dielectric fluid.

Further, the district court's decision to transfer the Authority's NYOSL claims to the Limitation Action was in error as well. The district court's prior order and judgement were vacated and the case remanded for further proceedings.

The Second Circuit left open the question of whether the dielectric fluid is oil within the meaning of OPA, noting that OPA defines “oil” broadly and restricts that definition only by excluding substances deemed “hazardous” pursuant to a separate statutory authority. Surprisingly, the defendants and the district court had assumed the fluid was oil, without deciding the issue.

The case is *Power Authority of the State of New York v. M/V ELLEN S. BOUCHARD, and the BARGE B No. 280, their engines, apparel, tackle, boats, appurtenances, etc., in rem, Bouchard Transportation Co., Inc., Motor Tug Ellen S. Bouchard, Inc., No. 280 Corp.*, No. 19-1140-cv.



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