

Total in frame for Erika oil clean-up costs

Sandra Speares - Wednesday 25 June 2008

FRENCH oil company Total could be held liable for Erika clean up costs following a ruling by the European Court of Justice, writes Sandra Speares.

The court ruled that the cost of disposing of the waste caused by the spillage of oil at sea can be borne by the producer of the product from which the waste came.

However in accordance with the 'polluter pays' principle, a producer cannot be liable to bear the cost unless "he contributed by his conduct to the risk that the pollution caused by the shipwreck will occur".

Following the ECJ judgment, it will now be for the French courts to decide whether Total will be liable to pay the clean-up costs. The case was originally brought by the municipality of Mesquer and referred to the ECJ by the French Cour de Cassation to interpret provisions contained in the EU Waste Directive.

The questions put to the ECJ were:

- whether heavy fuel oil accidentally spilled at sea following an accident must be classified as waste within the meaning of the directive; and
- whether, in the event of the sinking of a tanker, the producer of the heavy fuel oil spilled and/or the seller of that oil and charterer of the ship carrying it may be required to bear the cost of disposing of the waste produced, even though the substance spilled at sea was being transported by a third party.

The court determined that heavy fuel oil carried by the ship was not waste "as it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing".

However, according to the court, oil spilled as a result of an accident, which then mixed with water and other sediment, could be classified as waste within the meaning of the directive. The court also ruled that in the event of a shipwreck, the owner of the ship carrying the oil immediately prior to the accident when it was transformed into waste might be regarded as having produced the waste, and on that basis be classified as a "holder" within the meaning of the directive.

However, the judgment continued, the the French court might argue the seller of the oil or the charterer of the vessel had 'produced waste' if they contributed to the pollution risk, "if he failed to take measures to prevent such an occurrence, such as measures concerning the choice of ship."

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