

Image not found or type unknown

Ocean Point Terminals Must Continue Water Program, Appeals Court Rules

Third Circuit Court of Appeals upholds District Court's decision requiring Ocean Point to fund water distribution program after oil flaring incidents, citing joint responsibility and public health concerns

Business / **Published On August 07, 2024 06:42 AM /**

Janeke Simon **August 07, 2024**

Image not found or type unknown



Oil terminal and refinery on the south shore of St. Croix. By. V.I. CONSORTIUM

On Monday, an appellate court ruled that the V.I. District Court acted correctly in ordering that Ocean Point Terminals, formerly known as Limetree Bay Terminals, [continue a water distribution program](#) established after flaring incidents at St. Croix's south shore refinery sent [fine mists of oil droplets](#) over fenceline communities in 2021.

In January 2023, plaintiffs on St. Croix asked the court to order Ocean Point to continue the program established under a mediation and bankruptcy plan with the former Limetree Bay Refinery, which was subsequently acquired by Port Hamilton Refining and Transportation. The court determined that the request was justified, particularly for those who couldn't procure clean water without sacrificing other basic essentials.

Ocean Point pushed back, saying that Limetree Bay Terminals was a separate company to Limetree Bay Refinery, which had undergone bankruptcy and was subsequently acquired by Port Hamilton Refining and Transportation. Lawyers for Ocean Point filed notice of appeal and asked the court to stay its ruling while the matter was pending before the Third Circuit Court of Appeals. They argued that it was unfair to require the company to pay millions each year to mitigate alleged harm done by a separate entity. However, presiding judge Wilma Lewis ultimately ruled against them, declining to stay her order.

Now, the Third Circuit Court of Appeals has upheld the ruling from Judge Lewis. A three-judge panel found that the terminal and refinery were jointly responsible for ensuring compliance with the refinery's operating permit. As a co-permittee, "Terminals could not contract away that federal duty," the appeals court held. "Even if Terminals could have, it did not....so if the refinery violated the federal operating permit, as suggested by the weight of the evidence, both Terminals and Refining are on the hook," the court determined.

The appeals court also found that the District Court took steps to ensure that only those "irreparably harmed by the oil contamination would benefit" from the distribution program, by applying limits to who qualified to receive bottled water "based on expert reports, models, and extensive data."

Cost concerns advanced by Ocean Point were also dismissed. Although the Third Circuit acknowledged the "substantial cost of giving out bottled water," it found that the cost "pales in comparison with the health costs of drinking, cooking with, or bathing in oil-contaminated water." Maintaining the water distribution system was in the public's "strong interest in access to safe drinking water," the appellate court declared.

For those reasons, the District Court was correct in granting the preliminary injunction mandating the continuation of the water distribution program "even before certifying the class" in the underlying lawsuit, the appellate court determined. Additionally, the \$50,000 bond required of the plaintiffs, albeit modest when compared to the costs of the distribution program, is appropriate.

"When a defendant has more money than the plaintiffs, as here," the appellate court said, "it may not be possible to set a bond high enough to fully compensate the defendant but low enough that the plaintiffs can pay it." The District Court did not abuse its discretion in setting the bond amount so low, but rather made "specific findings" about how much the plaintiffs could afford to post. "The court prudently balanced the residents' ability to pay against Terminals's ability to recover something if it eventually won," the Third Circuit panel held.

With the lower court's preliminary injunction upheld, Ocean Point will now have to pay costs and fees in the matter, on top of the money required to keep the water distribution program going while the class action lawsuit unfolds.