

SUPREME COURT OF WASHINGTON

United States v. Hoffman

116 P.3d 999 (Wash. 2005) · No. No. 76629-1 · Decided July 28, 2005

SUMMARY

The Washington Supreme Court answered certified questions concerning Washington's Cleanup Priority Act, Initiative Measure No. 297, and its regulation of mixed radioactive and hazardous waste at the Hanford nuclear reservation. The court held that the Act's definition of mixed waste may encompass materials that do not designate as dangerous waste under state law or qualify as solid waste under the federal Resource Conservation and Recovery Act, and that the Act does not prohibit intrasite waste transfers. It also construed the naval-facility exemption, rejected a requirement for physical inspection of every disposed material, and declined to decide severability issues that were hypothetical and speculative.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Alexander, C.J.; C. Johnson, J.; Madsen, J.; Sanders, J.; Chambers, J.; Fairhurst, J.; J.M. Johnson, J.; Baker, J. Pro Tem.
JURISDICTION	Washington
DECIDED	July 28, 2005
DOCKET	No. 76629-1
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Eastern District of Washington certified five questions of Washington statutory law concerning Initiative Measure No. 297, the Cleanup Priority Act, to the Washington Supreme Court under RAP 16.16.
STANDARD OF REVIEW	Certified questions are accepted and answered under the court's discretion pursuant to RAP 16.16. Questions involving statutory interpretation are reviewed de novo. Whether to answer a certified question depends in part on whether the record is sufficient and answering would be provident.
PRECEDENTIAL VALUE	Published, en banc Washington Supreme Court opinion answering certified questions of state law.

PARTIES

United States of America, Fluor Hanford, Inc., Tri-City Industrial Development Council v. Linda Hoffman, in her official capacity as Director of the Washington Department of Ecology, Washington Department of Ecology, State of Washington

TOPICS

hazardous waste

statutory interpretation

administrative law

federalism

severability

PRACTICE AREAS

environmental law

administrative law

constitutional law

statutory interpretation

federalism

QUESTIONS PRESENTED

1. Whether the CPA's definition of mixed waste includes solely radioactive materials.
2. Whether the CPA's definition of mixed waste includes mixtures containing radioactive materials and hazardous substances that do not designate as dangerous waste under Washington law.
3. Whether the CPA's definition of mixed waste includes materials that are not solid wastes under RCRA.
4. Whether the CPA expands the scope of materials regulated as mixed waste beyond the HWMA and RCRA.
5. Whether the CPA prevents intrasite transfers of waste among units at a site or facility.
6. Whether the CPA's naval-facility exemption extends beyond sealed nuclear reactor vessels or compartments and related specifically identified activities.
7. Whether the requirement for an inventory based on actual characterization requires physical inspection of every material disposed in unlined trenches.
8. Whether the absence of a severability clause necessarily precludes severability if other provisions of the CPA are unconstitutional.

HOLDINGS

1. Solely radioactive source, special nuclear, or byproduct materials do not qualify as mixed waste under the CPA because the statutory definition requires both a nonradioactive component and a radioactive component.
2. The CPA includes mixed materials that qualify as hazardous substances under RCW 70.105.010(14) even if they do not designate as dangerous waste under the HWMA because the concentration of dangerous material is insufficient.
3. The CPA includes materials that do not qualify as RCRA solid waste because they were not discarded, abandoned, recycled, or inherently wastelike, when those materials fall within the hazardous-substance categories incorporated by RCW 70.105D.020(7)(b)-(d).
4. The CPA expands the scope of materials regulated as mixed waste beyond the HWMA and RCRA by reaching certain materials that do not designate as dangerous waste and certain materials that are not

RCRA solid waste; it does not reach purely radioactive materials.

5. The operation of the CPA does not prevent the intrasite transfer of waste among units at a site or facility.
6. The exemption in RCW 70.105E.080 is limited to the materials and activities specifically listed, including sealed nuclear reactor vessels and compartments, and does not extend to other materials that qualify as hazardous substances under the CPA's mixed-waste definition.
7. The requirement to create an inventory based on actual characterization does not, as a matter of law, necessarily require physical inspection of each and every material disposed in unlined trenches; reasonable use of process knowledge is not precluded.
8. The absence of a severability clause does not necessarily preclude severability of constitutional portions of the CPA; however, the court declined to decide whether particular provisions would be severable because that question was hypothetical and speculative.

KEY QUOTATIONS

“Accordingly, the answer to question 1(b) is, yes, to the extent that a “hazardous substance,” as defined in RCW 70.105.010(14), might fail to designate as dangerous waste because the concentration of dangerous material is insufficient.” (1005)

“Because a reasonable alternative construction is available, and that construction is proposed by the agency responsible for enforcing the CPA, the answer to this question is, no.” (1008)

“The presence of an applicable severability clause is evidence that the legislature would have enacted the constitutional portions of a statute without the unconstitutional portions, State v. Anderson, 81 Wash.2d 234, 236, 501 P.2d 184 (1972), but a severability clause is not necessary in order to meet the severability test.” (1008)

FACTUAL BACKGROUND

Washington voters enacted Initiative Measure No. 297, later codified as the Cleanup Priority Act, to prevent the addition of new radioactive and hazardous waste to the Hanford nuclear reservation until existing contamination was cleaned up. The Act operated within a complex state and federal regulatory system involving the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and related cleanup statutes. The United States challenged the Act in federal court, while Ecology argued that a narrowing interpretation of the Act would eliminate or reduce the federal constitutional claims.

PROCEDURAL HISTORY

The Cleanup Priority Act was enacted in November 2004 to restrict the addition of radioactive and hazardous waste to the Hanford nuclear reservation pending cleanup of existing contamination. Before the Act could be implemented, the United States obtained a temporary restraining order in federal district court and later sought summary judgment on supremacy-clause, commerce-clause, and sovereign-immunity grounds. The district court granted Ecology's motion to certify five state-law questions, and the Washington Supreme Court accepted review.

DISPOSITION

other

REMAND INSTRUCTIONS

The court answered the certified statutory questions as described above, declined to answer the generalized mixed-waste question as phrased and the fact-dependent severability question, and referred the federal district court to Washington severability precedent.

CASES CITED

- Hoffman v. Regence Blue Shield, 140 Wash. 2d 121, 128, 991 P.2d 77 (2000)
- W. Telepage, Inc. v. City of Tacoma Department of Finance, 140 Wash. 2d 599, 607, 998 P.2d 884 (2000)
- Agrilink Foods, Inc. v. Department of Revenue, 153 Wash. 2d 392, 396, 103 P.3d 1226 (2005)
- State v. Hahn, 83 Wash. App. 825, 831, 924 P.2d 392 (1996)
- Cowiche Canyon Conservancy v. Bosley, 118 Wash. 2d 801, 813, 828 P.2d 549 (1992)
- Port of Seattle v. Pollution Control Hearings Board, 151 Wash. 2d 568, 594, 90 P.3d 659 (2004)
- In re Parentage of C.A.M.A., 154 Wash. 2d 52, 67-68, 109 P.3d 405 (2005)
- State v. Anderson, 81 Wash. 2d 234, 236, 501 P.2d 184 (1972)
- Guard v. Jackson, 83 Wash. App. 325, 921 P.2d 544 (1996), aff'd, 132 Wash. 2d 660, 940 P.2d 642 (1997)