

Haynes and Boone in Law360: Texas Appeals Court Favors Exxon, Shell In Superfund Suit

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A Texas appeals court on Friday rejected a state environmental agency's claims that a cleanup order for a Superfund site in the eastern part of the state should only be reviewed for arbitrariness, saying the agency must prove that ExxonMobil and others are liable.

In a case of first impression, the panel shot down the Texas Commission on Environmental Quality's contention that the trial court need only determine whether the Voda Petroleum State Superfund Site cleanup order was arbitrary or unreasonable. Under the Solid Waste Disposal Act, the agency must show by a preponderance of evidence that Exxon Mobil Corp., ExxonMobil Oil Corp., Pennzoil-Quaker State Co. and Shell Oil Co. are liable for the cleanup costs, the appeals court concluded.

The litigation centers around a six-acre site in Gregg County, Texas, that Voda Petroleum Inc. used as an oil blending and recycling facility from around 1981 to 1991. In 2000, the predecessor agency to the Commission on Environmental Quality proposed that the site be listed on the state Superfund registry based on suspected hazardous-substance release and informed parties it thought had shipped materials to the site that they could make an offer to conduct an investigation, according to the opinion.

The commission allegedly received no offers and conducted its own investigation and feasibility study, proposing a remedial action. Following a comment period, the commission held a public meeting on a proposed final administrative order, the opinion said ...

The companies are represented by [John R. Eldridge](#), [Kent Rutter](#) and [Adam Sencenbaugh](#) of Haynes Boone.

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