

*Chevron, U.S.A., Inc. v. Yost*, 919 F.2d 27 (5th Cir. 1990)

Appellant, Chevron, sought judicial review of the United States Coast Guard's decision to impose civil penalties under the Clean Water Act (CWA), 33 U.S.C. §§ 1301-1362 (1988). On twelve separate occasions, Chevron accidentally discharged small quantities of oil into an open body of water. These spills were large enough, however, to cause an iridescent sheen. Accordingly, Chevron, in compliance with the CWA, reported each of the discharges to the United States Coast Guard, the enforcing agency.

At administrative hearings, Chevron asserted that despite any visible sheen, the impact on the ecosystem was de minimis. Nevertheless, the Coast Guard hearing officer assessed civil penalties for each of the twelve violations. On appeal to the Commandant of the Coast Guard, the penalties were upheld. Chevron then challenged the Commandant's decision in federal district court. The district court entered a summary judgment in favor of Chevron finding that, when spills did not cause actual injury to the environment, penalties were inappropriate. The court explained that it was bound by an earlier decision holding that, when applying the pre-1978 version of the CWA, the Environmental Protection Agency's (EPA) sheen test was a rebuttable presumption of harm to the environment. The Coast Guard appealed.

The Fifth Circuit held that civil penalties could be imposed under the amended version of the CWA for accidental discharges of small quantities of oil which violated EPA regulations, even if the spills did not cause actual injury to the environment. The 1978 amendments to the CWA gave EPA broader authority to extend its reach beyond actual injury to impose fines for discharges of oil in quantities large enough to create a sheen on the water that "may be harmful" to public health or welfare.

ALICIA M. MARTONE

*E. The National Environmental Policy Act*

*Coker v. Skidmore*, 941 F.2d 1306 (5th Cir. 1991)

Appellants and the United States Army Corps of Engineers (the Corps) appealed an order enjoining the construction of a levee on the Yazoo River and the condemnation of associated