[J-81-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

YOUNG'S SALES AND SERVICE,	:	No. 6 MAP 2011
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered on July 20,
	:	2009 at No. 58 C.D. 2009 vacating and
v.	:	remanding the decision of the
	:	Underground Storage Tank
	:	Indemnification Board dated December
UNDERGROUND STORAGE TANK	:	15, 2008 at No. UT06-12-014
INDEMNIFICATION BOARD AND	:	
UNDERGROUND STORAGE TANK	:	978 A.2d 1051 (Pa. Cmwlth. 2009)
INDEMNIFICATION FUND,	:	
	:	ARGUED: November 29, 2011
Appellants	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MADAME JUSTICE TODD **DECIDED: June 17, 2013**

Following the release of regulated substances from four underground storage tanks located on its property, Appellee Young's Sales and Service submitted a claim with Appellant Underground Storage Indemnification Fund (the "Fund") seeking reimbursement of the remediation costs it incurred. We granted review to consider whether the Commonwealth Court correctly held that Section 706(2) of the Storage Tank Spill Prevention Act ("Spill Act" or the "Act"),[1] which conditions eligibility for reimbursement on tank fees having been paid, applies on a per tank basis. For the

[1] Act of July 6, 1989, P.L. 169, No. 32, as amended, 35 P.S. § 6021.706.

reasons that follow, we conclude it does not. Accordingly, we reverse the order of the Commonwealth Court, and we reinstate the order of Appellant Underground Storage Indemnification Board (the "Board") denying Appellee's claim.

In 1999, Appellee purchased property located at 12 Capitol Hill Road in Dillsburg, Pennsylvania (the "Property") from Wicker Enterprises ("Wicker"). Wicker used the Property as an automotive service station until 1995, when it ceased operations of the service center. In connection with Wicker's operation of the service station, the Property contained four underground storage tanks, three of which were located in the same excavation and used to store gasoline, and one of which was located in a separate excavation some 90 feet away and was used to hold kerosene. Wicker emptied all four tanks in 1995 when it ceased operation of its automotive service center; however, several inches of residual product remained in each of the four tanks. Upon purchasing the Property from Wicker, Appellee registered each of the tanks with the Pennsylvania Department of Environmental Protection for removal, and, in 2000, hired a contractor and consultant to remove the tanks. During the removal process, Appellee and the contractor discovered soil contamination around each tank. As a result, Appellee incurred substantial costs to remove the tanks and rectify the soil contamination. Because no holes were observed in the tanks or lines at the time of removal, it was considered likely that the release was the result of leaks at pipe junctions between the tanks and the product dispensers.

On September 15, 2000, Appellee thereafter submitted a claim to the Fund seeking reimbursement for the costs of remediation associated with the four tanks. Jennifer Goodyear, a claims investigator for the Fund, sent a letter to Appellee requesting the information the Fund needed to determine Appellee's eligibility for claim

payment, including proof that the tank fees the Spill Act requires had been paid.[2] Not having received all of the information requested, on November 17, 2000, Goodyear sent another letter informing Appellee that its claim was not eligible for coverage because records revealed that capacity fees owed on the kerosene tank and throughput fees owed on the gasoline tanks were not paid. The Fund closed Appellee's claim file, but, thereafter, reopened it twice to receive proof from Appellee of tank fee payment. Appellee produced checks from 1994 and 1995 establishing that Wicker paid $8,040.73 to the Fund while Wicker was still operating its service station on the Property. In the Fund's view, however, Appellee did not establish that tank fees were paid in full, and on that basis, again denied Appellee's claim in August 2006. Appellee sought review from the Executive Director of the Fund, who affirmed the Fund's denial of Appellee's claim. Appellee filed an appeal with the Board and requested a formal administrative hearing.[3]

Following the hearing, the Presiding Officer issued a report and recommendation, in which he assessed Appellee's eligibility for recovery against the several criteria listed in Section 706 of the Spill Act. See 35 P.S. § 6021.706. With regard to Section 706(2), which mandates that "[t]he current fee required under Section 705 has been paid," the

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[2] Section 705 of the Spill Act requires an owner of an underground storage tank to pay a fee. 35 P.S. § 6021.705(d)(1). A capacity fee is assessed and paid with respect to tanks containing heating oil, diesel fuel or other regulated substance such as kerosene, and is calculated based on the gallon capacity of the tank, regardless of the amount of product actually in the tank. 35 P.S. § 6021.705(d)(2); 25 Pa. Code § 977.12(d); 25 Pa. Code § 977.12(d); 25 Pa. Code § 977.12(b)(2). By contrast, throughput fees are assessed on tanks holding gasoline and calculated based on the amount of product actually contained in the tank at the time the fee is assessed. 25 Pa. Code § 977.12(b)(2).

[3] The appeals process for claims submitted with the Fund is governed by 25 Pa. Code § 977.61. If a claim is denied, the tank owner may appeal to the Executive Director of the Fund. 25 Pa. Code § 977.61(a). A further appeal may be taken to the Board. 25 Pa. Code § 977.61(b). An appeal of the Board's decision is taken to the Commonwealth Court in accordance with 2 Pa.C.S.A. § 702. 25 Pa. Code § 977.61(c).

Presiding Officer noted that delinquent tank fees will disqualify a claimant from eligibility for reimbursement. He reviewed the evidence of record to determine whether Appellee proved, as it asserted, that all applicable fees had been paid on its tanks, and found that Appellee did not sustain its burden of proof with regard to fee payment. See 35 P.S. § 6021.706(2). Specifically, the Presiding Officer found that only some of the tank fees had been paid in 1994 and 1995, a tank fee delinquency existed at the time Appellee's claim arose in 2000, and that $4,504.37 in tank fees, interest, and late charges remained outstanding. Accordingly, under Section 706(2), the Presiding Officer recommended that the Fund's determination that Appellee was ineligible for coverage of its claim due to its failure to pay tank fees in full be affirmed. In so doing, however, the Presiding Officer did not specify whether the fees that Appellee owed were throughput and/or capacity fees, nor did he specify the tank or tanks on which fees were outstanding.

Appellee filed exceptions to the Presiding Officer's report and recommendation with the Board. The main thrust of the exceptions was that Appellee remained eligible for coverage of the clean-up costs related to the gasoline tanks on its Property because, under the circumstances, no throughput fees were outstanding and only capacity tank fees that related to the kerosene tank were at issue.

The Board rejected Appellee's exceptions. It accepted the Presiding Officer's findings and concluded that Appellee did not prove its eligibility for recovery from the Fund by demonstrating that all outstanding tank fees were paid at the time the release was discovered and presented no evidence to support its contention that, since Wicker Enterprises stopped using the gasoline tanks in 1995 and the tanks were empty at the time of their removal in 2000, there could be no unpaid fees properly attributable to the gasoline tanks. The Board further observed that, even if it accepted Appellee's

contention that Section 706(2)'s eligibility requirement is written in terms of individual tanks, the evidence indicated that the contamination which was remediated was related to all four of Appellee's tanks. Accordingly, the Board adopted the Presiding Officer's report and recommendation and affirmed the Fund's denial of Appellee's claim.

Appellee thereafter appealed to the Commonwealth Court. On appeal, Appellee reiterated its argument that, since the record demonstrated that no throughput fees were assessable on the gasoline tanks after 1995, and that it did not incur throughput fees of its own, it was eligible to recover the costs associated with the remedial efforts it took as to the gasoline tanks, even if capacity fees on the kerosene tank were outstanding. Stated differently, Appellee maintained that Section 706(2) does not preclude eligibility for recovery on a claim as to one tank, for which all fees are current, even if fees on other tanks are owed. Accordingly, Appellee urged the court to reject the contention put forward by the Fund and the Board that, under Section 706(2), coverage of its claim depended on its showing that both the throughput and capacity fees owed as to all four of the tanks had been paid.

In a published, unanimous opinion, a panel of the Commonwealth Court agreed with Appellee that the Spill Act "does not state that the fees on all tanks on all properties owned by a claimant must be current before any claim may be presented." Young's Sales and Serv. v. Underground Storage Tank Indem. Bd., 978 A.2d 1051, 1055 (Pa. Cmwlth. 2009). The court reasoned that, since Section 706 of the Spill Act refers to "the tank" in the singular when setting forth the requirements of eligibility for recovery from the Fund, and does not refer "to a 'site' on which multiple tanks owned by a claimant are located[,] [i]t follows that the legislature intended for 'the current fee required under Section 705' to apply per tank." Id. (quoting 35 P.S. §§ 6021.706, 6021.706(2)) (emphasis original).

Despite its construction of Section 706(2), however, the court determined it could not resolve the issue of Appellee's eligibility for claim payment. While acknowledging that the Fund's witnesses at the administrative hearing testified as to the amount in tank fees which had not been paid, the court observed that the witnesses did not specify which fees on which tanks were delinquent. Id. As a result, the court further noted that the Presiding Officer, in his report and recommendation, found only that all fees were not current and did not specify whether the unpaid fees were capacity or throughput. Id. Concluding that the administrative adjudication was, therefore, incomplete, the court vacated the Board's order and remanded the case for more specific findings on which fees were owed, and on which tank, and for what time-period. Id. In the court's view, such findings were essential to its ability to address Appellee's argument that, in the event all throughput fees were paid, then it is eligible for Fund reimbursement of the costs associated with the cleanup caused by gasoline contamination. Id.

The Board and the Fund (collectively "Appellants") petitioned this Court for allocatur, seeking our review of the Commonwealth Court's ruling that Section 706(2)'s eligibility requirement applies on a per tank basis. We granted review. Young's Sales and Serv. v. Underground Storage Tank Indem. Bd., 609 Pa. 500, 17 A.3d 331 (2009) (order).

As reflected in the General Assembly's legislative findings that accompany the Spill Act, the Act is premised on the recognition that: Pennsylvania's lands and waters "constitute a unique and irreplaceable resource from which the well-being of the public health and economic vitality of this Commonwealth is assured;" these resources have been contaminated by releases from both active and abandoned storage tanks of

regulated substances;[4] contamination of this sort threatens the well-being of affected residents and must be prevented through improved safeguards on storage tank construction and installation; complete restoration of contaminated resources is difficult; and corrective action, when required, is costly. 35 P.S. § 6021.102(a)(1)-(6). In addition, the Act is founded on the General Assembly's declaration that storage tank releases of regulated substances pose a threat to the public health and safety of the Commonwealth and that a legislative response geared toward preventing, detecting, and providing for the prompt remediation of such releases is essential. Id. § 6021.102(b).

To these ends, the Spill Act sets forth a scheme for the regulation of both aboveground and underground storage tanks that hold regulated substances. See 35 P.S. § 6021.103 ("Storage tank" is "[a]ny aboveground or underground storage which is used for the storage of any regulated substance."). In the Act, "underground storage tank" is a defined term, which means: "Any one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground." Id.

To encourage remedial efforts when leaks from underground storage tanks occur, Section 704 of the Spill Act created the Fund and directs it to reimburse owners,

[4] Under the Spill Act, a "regulated substance" is: "An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment," and which is a hazardous substance under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a petroleum product, or another substance whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, as determined by the Commonwealth's Department of Environmental Resources. 35 P.S. § 6021.103.

operators, and certified installers of such tanks who incur costs in taking corrective action. 35 P.S. § 6021.704(a)(1). For the most part, the Fund consists of the fees that Section 705 of the Act authorizes the Board to assess against and collect from underground storage tank owners. Id.[5] Under Section 705, the Board administers the process by which claims for reimbursement from the Fund are made and paid. Id. § 6021.705(b). As to the payment of claims by the Fund, Section 705 states: "Claims determined to be eligible shall be paid upon receipt of information clearly showing that reimbursable claim costs are reasonable, necessary and directly related to the release from the storage tank that is the subject of the claim." Id.

The eligibility requirements a claimant must meet for payment from the Fund are set forth in Section 706, which provides:

> In order to receive a payment from the Underground Storage Tank Indemnification Fund, a claimant shall meet the following eligibility requirements:
>
> (1) The claimant is the owner, operator or certified tank installer of the tank which is the subject of the claim.
>
> (2) The current fee required under section 705 has been paid.
>
> (3) The tank has been registered in accordance with the requirements of section 503.
>
> (4) The owner, operator or certified tank installer has obtained the appropriate permit or certification as required under sections 108, 501 and 504.
>
> (5) The claimant demonstrates to the satisfaction of the board that the release that is the subject of the claim

[5] In addition to these fees from underground tank owners, monies flow into the Fund through the imposition of penalties for non-payment of fees or fraudulent reimbursement claims, as well as investment returns. 35 P.S. § 6021.704(a)(1).

> occurred after the date established by the board for payment of the fee required by section 705(d).
>
> (6) Additional eligibility requirements which the board may adopt by regulation.

35 P.S. § 6021.706 (footnotes omitted) (emphasis added).[6]

Turning to the arguments of the parties, Appellants observe that Section 706(2) does not provide that a claimant's eligibility is determined on a per tank basis, but, rather, conditions eligibility on the payment of the fees Section 705 requires. Thus, Appellants argue, because both gallon and capacity fees were assessed under Section 705 in the instant case, Appellee must pay the payment of both types of fees, if it is to be deemed eligible for recovery under Section 706(2). Further, Appellants challenge what they see as the premise of the Commonwealth Court's decision: that, due to the presence of the singular term "tank" in Section 706 and the absence of any reference therein to a "multi-tank site," Section 706(2)'s must be construed to apply on a per tank basis. See 35 P.S. § 6021.706. Appellants claim the fundamental error in this approach is its disregard for the Spill Act's definition of underground storage tank. Based on that portion of the definition that describes such a tank as "[a]ny one or combination of tanks (including underground pipes connected thereto)," Appellants contend it plainly demonstrates that any reference to "tank" in Section 706 is not limited to the singular sense and includes more than just the vessel that holds the regulated substance. See 35 P.S. § 6021.103. Therefore, Appellants maintain, where, as in the instant case, "the current fees are not paid on any tank in a multi-tank site, the owner is not eligible under the Act for recovery of remediation expenses stemming from a leak

[6] Section 706(2)'s requirement of tank fee payment is the only eligibility requirement among the several requirements listed in Section 706 at issue in this appeal.

from a single tank, from two or more tanks, or from piping and dispensers common to all tanks." Brief of Appellants at 28.

Appellants also offer that the Commonwealth Court's construction, if permitted to stand, essentially permits underground storage tank owners to forgo the payment of fees on newer tanks that have manufacturer warranties that will cover the costs of leaks without risking eligibility for coverage from the Fund on tanks that are older and more susceptible to releases. The resulting decrease in fees, Appellants contend, will adversely impact upon the ability of the Fund to function and pay claims, and thereby impede the Spill Act's goal of encouraging tank owners to take corrective action. Appellants also assert that, if Section 706(2)'s eligibility requirement is deemed to be on a per tank basis, in cases where a leak emanated from several tanks, or from, as here, leaks from pipe junctions between tanks or product dispensers, it will be necessary to determine which, and how much, contamination originated from only those tanks on which the fees are current in order to properly apportion the costs of remediation and reimbursement. As this, Appellants submit, is an insurmountable task, the amount of reimbursement due on any number of claims will not be rightly calculated.

Lastly, Appellants point out that the Board is vested with the authority to handle claims and adopt regulations accordingly. As such, Appellants maintain, the Board is entitled to deference regarding its interpretation of Section 706(2) and its determination regarding the Spill Act's eligibility criteria. See Street Road Bar & Grille, Inc. v. Pa. Liquor Control Bd., 583 Pa. 72, 86 n.8, 876 A.2d 346, 354 n.8 (2005) (noting that administrative interpretations are entitled to deference as long as they are consistent with legislative intent).

In response, Appellee argues the Commonwealth Court correctly concluded that Section 706(2)'s fee payment requirement is determined on a per tank basis, noting

there are no "site fees" under the Spill Act, only "tank fees." Echoing the Commonwealth Court's reasoning, Appellee observes that, since Section 706 uses the term "tank" rather than "tanks," or "site," the Spill Act cannot be construed to base a tank owner's eligibility for recovery on a claim on the payment of the fees owed under Section 705 on multiple tanks. See 35 P.S. § 6021.706. Conceding the Spill Act defines "underground storage tank" to include a "combination of tanks," Appellee nonetheless contends this language does not refer to a multi-tank site, as Appellants assert, but refers to an inter-connected series of tanks holding the same type of substance. See 35 P.S. § 6021.103. Finally, Appellee argues our Court's holding herein will have no impact on whether future tank owners will choose to pay fees on only some of their tanks because the Property was purchased only after Wicker ceased its operations and after the spill had occurred. Ostensibly, Appellee believes the facts of this case present limitations on Appellants' concern for the Fund's economic survival.

As the instant appeal requires us to construe Section 706(2) of the Spill Act, we are guided by the rules provided in the Statutory Construction Act of 1972. 1 Pa.C.S.A. §§ 1501 *et seq.* Thereunder, "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." Id. § 1921(a). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Id. § 1921(b); Colville v. Allegheny County Retirement Bd., 592 Pa. 433, 444, 926 A.2d 424, 433 (2007). When, however, the words of the statute are not explicit, the General Assembly's intent is to be ascertained by considering matters other than statutory language, like the occasion and necessity for the statute; the object it seeks to attain; the consequences of a particular interpretation; and administrative interpretations of its provisions. 1 Pa.C.S.A. § 1921(c); Commonwealth v. Packer, 568 Pa. 481, 488-89, 798

A.2d 192, 196 (2002). Where the General Assembly defines words that are used in the statute, those definitions are binding. See Commonwealth v. King, 595 Pa. 685, 689, 939 A.2d 877, 880 (2007). Otherwise, we are to construe the words and phrases in a statute "according to rules of grammar and according to their common and approved usage." 1 Pa.C.S.A. § 1903(a). Further, we presume that, in enacting legislation, "the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable." Id. § 1922(1).

In addition and importantly, in the Spill Act itself, the legislature gave this Court the following instruction regarding its construction: "This act . . . shall be liberally construed in order to fully protect the public health, welfare and safety of the residents of this Commonwealth." 35 P.S. § 6021.109.

Our analysis begins with Appellants' focus on the Spill Act's definition of underground storage tank and their assertion it demonstrates that Section 706(2) is intended to apply to multiple tanks where, as here, the circumstances warrant it. In our view, the definition, by referring to "[a]ny one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances," reveals the legislature's intent that an underground storage tank is not only a single tank that contains a regulated substance, but is also two or more tanks that serve the same function of containing regulated substances.[7] Also, in our view, Appellee's argument that a "combination of tanks" can refer only to two or several tanks that are connected by pipes and which hold the identical regulated substance is unavailing since the definition does not impose these additional qualifiers as to what

[7] The dictionary definition of "combination" is "the act of combining or the state of being combined" or "a number of things combined." The dictionary definition of "combined" is "taken as a whole or considered together; in the aggregate." Webster's Unabridged Dictionary, 408, 409 (2d. ed. 1998).

constitutes a tank "combination." Therefore, given the Spill Act's definition of underground storage tank, Appellants are correct that Section 706(2)'s fee payment requirement may be construed to apply to all of Appellee's tanks, *i.e.*, the "combination of tanks" located on its Property.

That said, the definition of "underground storage tank," is not, as Appellants argue, presently dispositive. As Appellee aptly observes, in specifying the eligibility requirements for recovery from the Fund, Section 706 does not include that phrase, but rather, uses the term "tank" throughout. See 35 P.S. § 6021.706. Thus, whether, in this context, the legislature intended for the word "tank" in Section 706 to be taken literally or to be understood as an abbreviated reference to the term "underground storage tank" and, by necessary implication, its definition, is an open question that renders Section 706(2) ambiguous. Accordingly, we turn our attention to the factors we are permitted to consider when construing a statutory provision that is less than clear. See 1 Pa.C.S.A. § 1921(c).

In this regard, we find the consequences of not construing Section 706(2) with the Spill Act's definition of underground storage tank in mind, and adopting, instead, the Commonwealth Court's per tank construction, problematic. As Appellants point out, if Section 706(2) is construed to apply per tank, owners could decide not to pay the fees they owe on newer tanks and rely on manufacturer warranties for said tanks, should leaks occur, knowing they will be remain eligible for at least some recovery from the Fund on their older tanks that fail. As a result, payouts from the Fund could exceed its funding and impact the Fund's financial security. In turn, the critical role the Fund is to play in advancing the Spill Act's aims of encouraging the prompt remediation of underground storage tank releases and protecting the Commonwealth's citizens from the adverse effects of such releases could be impeded. We recognize that the

consequences the Spill Act imposes on unpaid fee balances aim to deter such conduct by owners. See, e.g., 35 P.S. § 6021.705(e) (imposing a monetary penalty on unpaid fee balances); id. § 6021.1301 (withholding or revoking permits to applicants who violate the Spill Act); id. § 6021.1306 (providing for criminal penalties for violations of the Spill Act). However, Appellants, who administer both the Fund's sources of revenue and the claims it pays out, have persuaded us that the Commonwealth Court's per tank construction of Section 706(2) poses a threat to the Fund's long-term solvency. Further, were we to agree with the Commonwealth Court and conclude that recovery from the Fund is on a per tank basis, it opens up the possibility that, for a given claim, some tanks will be covered and some tanks will not. In these circumstances, for the Fund to make payments for only those tanks that are covered, it would be necessary to apportion the costs of remediation between or among tanks. Appellants have also persuaded us that the accurate allocation of the cleanup costs associated with one tank, as opposed to another, would be a difficult and time-consuming endeavor, if not, practically speaking, an impossible task, and one likely to undermine the Fund's efficient and fair functioning. In point of fact, the Spill Act has no provisions for allocating the costs of cleanup between or among different tanks, or assigning the burden of proving such allocations — it simply does not contemplate such an effort. And, last, we give due credit to the Board's view of Section 706(2), as it is the entity the legislature has entrusted with claim administration.

Thus, based on the consequences of the alternative constructions of Section 706(2) here presented, the occasion for the Spill Act's passage, the aims of the Act, the Board's administrative interpretation, and the legislature's stated preference for a liberal construction of the Act that protects the public health, safety, and welfare, we read Section 706 as including the Spill Act's definition of underground storage tank for

purposes of construing Section 706(2). Accordingly, we hold that the tank fee payment eligibility requirement in Section 706(2) does not apply on a per tank basis. We further hold that, in the instant case, Section 706(2) requires the payment of the fees owed on the four underground storage tanks Appellee owned.[8]

For these reasons, we reverse the Commonwealth Court. Moreover, in light of our holding that Section 706(2) does not apply on a per tank basis, there is no need for the remand the Commonwealth Court ordered to determine which fees on which of Appellee's tanks are outstanding. Rather, because it has been conclusively determined that Appellee did not pay all of the tank fees owed, we reinstate the order of the Board denying Appellee's claim.

Jurisdiction relinquished.

Former Justice Orie Melvin did not participate in the decision of this case.

Messrs. Justice Baer and McCaffery join the opinion.

Mr. Justice Saylor files a concurring opinion in which Mr. Chief Justice Castille joins.

Mr. Justice Eakin files a concurring opinion.

[8] The claim Appellee submitted to the Fund asked for the reimbursement of remediation costs associated with all the tanks it owned. We do not today consider whether Section 706(2) conditions an owner's eligibility for reimbursement from the Fund on the payment of the fees on tanks that are not part of its claim.