S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-007

Exemptions Under the Tennessee Oil Spill Cleanup and Environmental Preservation Act

QUESTION

Does the exemption from liability in the Tennessee Oil Spill Cleanup and Environmental Preservation Act, set out at Tenn. Code Ann. § 68-216-103, apply to adjacent landowners who are not responsible for causing a discharge of oil?

OPINION

It is the opinion of this Office that, under the limited facts presented, the exemption provision in Section 68-216-103 would not apply to an adjacent landowner who is not responsible for causing a discharge of oil, unless he can establish that he participated in some response activities as contemplated in Section 68-216-103(a) and that he otherwise meets the criteria outlined in subsection (b).

ANALYSIS

The Tennessee Oil Spill Cleanup and Environmental Preservation Act of 1995, set out at Tenn. Code Ann. §§ 68-216-101, *et seq.*, is brief in scope, containing only two substantive sections. The first section, Tenn. Code Ann. § 68-216-102, includes definitions and the second, Tenn. Code Ann. § 68-216-103, creates an exemption from liability for cleanups related to an oil spill. This request seeks an interpretation of the application of the exemption provision in Section 68-216-103, which provides, in pertinent part:

> (a) . . . a person is not liable for removal costs or damages which result from actions taken or omitted to be taken *in the course of rendering care, assistance, or advice* consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response.

> (b) Subsection (a) does not apply:
> (1) To a *responsible party*;
> (2) With respect to personal injury or wrongful death; or
> (3) If the person is grossly negligent or engages in willful misconduct.
>
> (c) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (a).

(Emphasis supplied).

A "responsible party" is defined at Tenn. Code Ann. § 68-216-102(9) by reference to the definition for the same term under the federal Oil Pollution Act of 1990, which is limited primarily to owners and operators of vessels and facilities that produce, store, process or transport oil. 33 U.S.C. § 2701 (32). Therefore, the exemption in Section 68-216-103 from removal costs and damages comes into play if the person seeking its coverage meets the following criteria: (1) he is not a responsible party; (2) he rendered some "care, assistance or advice" in responding to an oil spill, in accordance with the National Contingency Plan or as directed by a federal or state on-scene coordinator; and (3) he did not commit gross negligence or willful misconduct in the course of his response activities.

The express language of the Oil Spill Cleanup Act leads us to believe that the exemption from removal costs and damages was intended to protect those contractors, consultants and government technicians who participate in an oil spill response. Unless an adjacent landowner participated in some response activities as contemplated in Section 68-216-103(a) and otherwise meets the criteria outlined above, we do not believe he can avail himself of the exemption.

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