

9-2200-8185-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Administrative
Penalty Order Issued to Dahlen
Transport, Inc., 1680 Fourth Avenue,
Newport, Minnesota 55055

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha on October 5 and 6, 1993 at the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota. The record closed on November 12, 1993 upon receipt of the Agency's Reply Brief.

Appearing on behalf of the Minnesota Pollution Control Agency staff was Assistant Attorney General Ann E. Cohen, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155-4199. Appearing on behalf of Dahlen Transport, Inc. was John C. Kiehlmeier, Attorney at Law, 2130 East Fourth Street, Suite 190, Santa Anna, California 92705.

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 116.072, subd. 6(e), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least five days. Within those five days, parties may comment to the Commissioner on the recommendations, and the Commissioner must consider the comments in making his final decision. Parties should contact Ann E. Cohen, Assistant Attorney General to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether the Respondent, Dahlen Transport, Inc. failed to immediately notify the Minnesota Pollution Control Agency of a gasoline spill that occurred at the Marty's Service Oil Company, a bulk storage facility in Anoka, Minnesota on November 23, 1992 in violation of Minn. Stat. 115.061 (1992).

2. Whether the Respondent failed to immediately hire an emergency response contractor and thereby failed to immediately begin actions to recover the spilled gasoline in violation of Minn. Stat. 115.061 (1992).

3. Whether Respondent Dahlen Transport, Inc. was the "responsible person" under Minn. Stat. DQG

4. Whether the proposed monetary penalty of \$4,000 is reasonable.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Finding and Background.

1. On May 27, 1993, the Minnesota Pollution Control Agency (MPCA) issued an Administrative Penalty Order (APO) to Dahlen Transport, Inc. (Dahlen or Respondent) for violation of Minn. Stat. 115.061 (1992).

2. The APO arose out of a spill of unleaded gasoline that occurred on November 23, 1992 at Marty's Service Oil Company, a bulk storage facility located in the City of Anoka. The spill flowed down a storm sewer and entered the Rum River.

3. The APO alleged that the following constituted a violation of Minn. Stat. 115.061 (1992):

On November 23, 1992, Dahlen Transport, Inc. (Company) was making a scheduled delivery of petroleum to Marty's Service Oil Company, 2706 6th Avenue North, Anoka, Minnesota. At about 7 p.m. a spill was discovered by the Company's driver near the bulk plant's loading rack. The incident was reported by the Company to the State of Minnesota at 8:09 p.m.

The APO further alleged:

As a result of the Company's delay in reporting and failure to immediately hire an emergency response contractor, it failed to immediately begin actions to recover the spilled gasoline.

4. The APO assessed a forgivable penalty of \$4,000 conditioned on the Company organizing a spill response training session for Anoka County Fire Departments and bulk plant customers in the Anoka County area, and updating the Company's spill contingency plan.

5. On June 25, 1993, the Respondent submitted a request for a contested case hearing. The request was received by the Agency on June 28, 1993. The grounds for the contest were summarized as follows:

1. Dahlen was not a "responsible person" within the meaning of M.S.A. 115.061, and was not, therefore, obligated to initiate or bear financial responsibility for recovery of the spilled gasoline which was released from Marty's "facility" over which Dahlen had no control.

2. Dahlen took all reasonable measures under the circumstances, which exceeded those which it was legally obligated to perform to arrange for action to minimize the pollution of land or waters of the state.

3. Dahlen did not "own or operate" the facility from which the discharge took place.

4. Dahlen did not "fail to immediately notify M.P.C.A. under M.S.A. 115.061 as charged. The spill was reported as soon as reasonably practical under the conditions existing at the time. By timely reporting the spill to the appropriate authorities, Dahlen's duty under the law was discharged.

5. The spill was caused by a rigged valve at Marty's Bulk Plant which Dahlen had no knowledge of, nor any legal duty to discover prior to making the subject delivery. Dahlen has no legal duty to inspect the property of customers receiving fuel deliveries absent prior notice of the existence of conditions on that property likely to result in an unintended release of pollutants. To hold otherwise would render Dahlen an insurer against its customers' careless or negligent acts, which would be fundamentally unfair and would increase our insurance costs beyond all reason.

(Emphasis in original)

6. At the hearing counsel stipulated that the following issues defined the scope of the hearing:

1. When did the spill occur?
2. Who controlled the substance that was discharged?
3. When was the spill reported?
4. Did Dahlen recover the materials rapidly and thoroughly as possible and take immediately such other actions as may be reasonably possible to minimize and abate pollution of the waters of the state?

The Incident

7. On the night of November 23, 1992, Larry Gherty, a driver for Dahlen arrived at Marty's Oil Service (hereinafter, "the Facility") with a load of approximately 5600 gallons of unleaded gasoline at approximately 6 p.m. The Facility is a 24-hour delivery location. No one was present at the Facility. The driver did not expect anyone to be present as it was common to

make deliveries when the Facility was unattended. Mr. Gherty had a key to the Facility.

8. Mr. Gherty entered the Facility with his key, adjusted two valves and examined the tank gauge for the tank that was to receive the unleaded gasoline. He then proceeded with other operations related to the unloading of the unleaded gasoline. The preparations for unloading took between 10 and 15 minutes.

9. Unloading a volume of 5600 gallons of gasoline takes between 45 minutes and one hour. Mr. Gherty does not recall the exact length of time it took to unload his tanker.

10. After making one adjustment to the pump to speed delivery, delivery was completed by approximately 7 p.m.

11. At the completion of the unloading procedure, Mr. Gherty noticed a dark stream of liquid in the gutter. He immediately moved to examine the liquid and discovered it was gasoline. He traced the gasoline to a sewer grate located 535 feet away. (Ex. 12). As he moved toward the grate, he scanned the area in an attempt to locate something that would stop the flow, but was unsuccessful.

12. He returned to the Facility and noticed gasoline leaking from the articulated loading arm at the pump house. Mr. Gherty then entered the pump house and closed the valve.

13. Mr. Gherty then went to the house of Craig Syring which is located approximately 156 feet from the Facility. (Ex. 12). Mr. Syring is the owner of the Facility. No one responded to Mr. Gherty's knocks at the Syring house.

14. Mr. Gherty then moved past the next house which was dark and appeared unoccupied and proceeded to the next closest residence which was the home of Mr. and Mrs. Maertens, located at 2808 Sixth Avenue in Anoka. The Maertens' residence is located approximately 177 feet from the Syring residence. (Ex. 12).

15. Mr. Gherty reached the Maertens' home prior to 7 p.m. Mrs. Maertens was watching the television program "Wheel of Fortune" when Mr. Gherty came to the door. "Wheel of Fortune" plays from 6:30 to 7 p.m. (Ex. 7).

16. Mr. Gherty was allowed to use the phone at the Maertens' residence. His first call was to Dan Gibson, the dispatcher located at Dahlen's Newport, Minnesota facility. He did not immediately contact 911 emergency or the police and fire department. Mr. Gherty remained on the phone with the dispatcher for a long time. On at least one occasion, he was put on hold while the dispatcher attempted to determine how to handle the emergency.

17. Mr. Gherty's phone conversation with the dispatcher in Newport lasted between 50 minutes and one hour. The duration of the telephone call was of concern to the Maertens because the Maertens' telephone service is metered and out-going calls that exceed a certain total amount of time are billed by the minute.

At the conclusion of the telephone call, Mr. Gherty left his name with the Maertens so they could be reimbursed for the cost of the telephone call. (Ex. 13).

18. During Mr. Gherty's call to the Dahlen dispatcher he also spoke with Duane Guse. Mr. Guse happened to be at the dispatch center and noticed the dispatcher filling out a spill report. Mr. Guse is a Dahlen mechanic whose duties include spill response. Mr. Guse then got on the phone with Mr. Gherty and discussed the spill with him. During this conversation Mr. Guse and Mr. Gherty determined that the spill involved a significant quantity of gasoline. After Mr. Guse learned that the spill had entered the sewer and 911 had not been contacted, he instructed Mr. Gherty to call 911.

19. After he got off the phone with the Dahlen dispatcher and Mr. Guse, Mr. Gherty called 911. The 911 operator alerted the fire and police department. The fire department received the 911 message at approximately 7:53 p.m. (Exs. 8 and 9). Thus, more than 50 minutes elapsed between the time Mr. Gherty placed his call to the Dahlen dispatcher and the time he placed the call to 911.

20. Chief R.E. Bickford of the Anoka-Champlin Fire Department responded to the scene of the spill. The Fire Department arrived at the scene at 8 p.m. (Ex. 9). After determining that the spill had entered the sewer, the firefighters radioed for information regarding the location of the sewer line and began to remove manhole covers to determine how far the spill had travelled. The firefighters determined that the spill had spread a considerable distance through the sewer system.

21. Chief Bickford then dispatched fire department personnel located at the fire station to the Rum River storm sewer outfall to determine if gasoline had entered the river. Gasoline was detected at the outfall. Firefighters were at the river outfall within 10 or 15 minutes of the time the Fire Department initially arrived at the scene.

22. Later in the evening, the sewer system was flushed with water from a fire hydrant to clear the sewer of petroleum. It required 20 minutes for the water to reach the river from a point near the spill site. Chief Bickford testified that if the fire department had received notice of the spill at the time it occurred, the fire department would have been able to prevent the spill from entering the river.

23. The MPCA received notice of the spill from the State Duty Officer. The State Duty Officer operates a 24-hour post in the State Capitol Building for receiving notice of spills and other emergencies. The MPCA receives a copy of the Duty Officer's log of emergency calls the next working day after the call is received. (Ex. 11). The Duty Officer's log indicates that Virginia Spence of Dahlen Transport had given notice of the spill at 2009 or 8:09 p.m. (Ex. 11). Virginia Spence is Dahlen's safety manager.

24. Dorene Fier-Tucker, the MPCA spills staff person "on call"

on November 23, 1992, received a call from the Duty Officer at 8:15 p.m. notifying her of the spill. Ms. Fier-Tucker made a written record of the time of the call. (Ex. 10).

25. Ms. Fier-Tucker returned the call to Virginia Spence at 8:20 p.m. The purpose of Ms. Fier-Tucker's call was to ensure that a proper response to the spill was occurring. If the responsible person is unable to respond adequately, the MPCA normally will require the responsible person to hire an emergency response contractor. If the person responsible is not willing to hire an emergency response contractor, the MPCA will send its own contractor.

26. Ms. Spence confirmed to Ms. Fier-Tucker in the telephone conversation that there was indeed a gasoline spill at the Marty's Facility in Anoka involving a spill of several hundred gallons of gasoline, and that Dahlen clean-up crews had been dispatched to the accident site. Ms. Fier-Tucker directed Ms. Spence to hire an emergency response contractor to deal with the clean-up.

27. At this point, Ms. Spence had already been informed that the spill had occurred through an open valve on the articulated loading arm at the Facility. The articulated loading arm valve had been wired open prior to Mr. Gherty's delivery. It was Ms. Spence's belief that Marty's Service Oil Company was the party responsible for the spill and not Dahlen. Thus, when Ms. Fier-Tucker directed Ms. Spence to hire an emergency response contractor to immediately begin clean-up, Ms. Spence was reluctant to hire a contractor and initially refused to do so. Ms. Fier-Tucker indicated that any further delay in hiring an emergency contractor was not acceptable and directed Ms. Spence to hire a contractor immediately. Ms. Fier-Tucker informed Ms. Spence that if Dahlen did not call a contractor, the MPCA would call a contractor and then recover all costs associated with the clean-up.

28. Immediately after the phone conversation with Mr. Fier-Tucker, Ms. Spence retained the services of Bay West, Inc, an environmental clean-up contractor, who contacted the Anoka Fire Department to ascertain what equipment would be required for the clean-up, and then immediately responded to the scene of the spill. Ms. Spence called back Ms. Fier-Tucker and told her that the Company had retained an emergency response contractor who was on the way to the accident site.

29. Bay West responded to the scene of the spill, as did Mr. Guse and Mr. Jarvis, Dahlen personnel. The Dahlen personnel and Bay West arrived at the scene sometime after 9 o'clock. None of the Dahlen or Bay West personnel had watches or made specific notations of the time of arrival. However, by the time they arrived at the scene of the spill, the fire department had already placed a boom at the sewer outlet and absorbent material at the location of the spill. It was decided that Bay West would place another boom down-stream approximately 1 mile from the sewer outlet.

30. At approximately 9:30 p.m. Bay West placed additional absorbent pads at the sewer drain and began placement of a boom

down stream. Sand and other absorbent material was placed in all of the manholes to help them further contain the product until it was effectively blocked, whereupon the sewer system was be systematically flushed to remove all contaminants.

31. Between 11 p.m. and 4:30 a.m. coordinated pumping, boom placement, placement of absorbent pads, and collection of absorbent material, and storm sewer system flushing continued until completion. Essentially all of the petroleum product was recovered as the result of these efforts.

32. The spill consisted of over 600 gallons of unleaded gasoline which was discharged into the sewer system. The spill constituted a major incident. The spill posed significant public safety and environmental threats. U.S. Highway 10 was closed for several hours due to the spill.

PERTINENT STATUTORY PROVISIONS

Minn. Stat. 115.061 provides as follows:

It is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person should recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

Minn. Stat. 115.01, subd. 4 (1992) defines "discharge" as follows:

"Discharge" means the addition of any pollutant to the waters of the state or to any disposal system.

Subdivision 5 defines "disposal system" as follows:

"Disposal system" means a system for disposing of sewage, industrial waste and other wastes, which includes sewer systems and treatment works.

Subdivision 22 defines "waters of the state" as follows:

"Waters of the state" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

Minn. Stat. 116.072 Administrative Penalties for Hazardous Wastes Violations, provides in relevant part as follows:

Subdivision 1. Authority to issue penalty order. The

commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for hazardous waste violations under sections 115.061 and 116.07, and Minnesota Rules, Ch. 7045. The order must be issued as provided in this section. Subdivision 2. Amount of penalty; considerations.

(a) The commissioner may issue an order assessing a penalty up to \$10,000 for all violations identified during an inspection.

(b) In determining the amount of the penalty, the commissioner may consider:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humes, animals, air, water, land or other natural resources of the state;
- (3) the history of past violation
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the Commissioner order. . .

Minn. Stat. 116.072, subd. 6(c) provides as follows:

The administrative law judge shall issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that based on the factors in subdivision 2, the amount of the penalty is unreasonable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

The Administrative Law Judge and the Commissioner of the Minnesota Pollution Control Agency have jurisdiction herein and authority to take the action proposed pursuant to Minn. Stat. 116.072, subs. 1 and 6 (1992), and Minn. Stat. 14.50 (1992).

2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of law and rule have been fulfilled. The matter is, therefore, properly before the Administrative Law Judge.

3. The MPCA has the burden of establishing the facts of the violations alleged by a preponderance of the evidence. Minn. Rules, pt. 1400.8608 (1991).

4. If the violations are established, the Administrative Law Judge may not recommend a penalty different in amount than that contained in the Administrative Penalty Order unless the amount of the penalty proposed is determined to be unreasonable. Minn. Stat. 116.07, subd. 6(c) (1990).

5. Dahlen Transport, Inc. was "in control" of the spilled petroleum and therefore had the duty to immediately report the spill to the MPCA.

6. The term "immediately" found at Minn. Stat. 115.061 must be interpreted in light of the circumstances of each particular case. U.S. v. Messer Oil Corp., 391 F.Supp. 557, 562 (Western District Pennsylvania 1975). (See Memorandum).

7. A delay of more than a hour between the discovery of a spill and the reporting of the spill to the MPCA does not constitute immediately reporting and is a violation of Minn. Stat. 115.061 (1992).

8. The term "responsible person" found at Minn. Stat. 115.061, although not defined in that statute, must be interpreted consistent with statutes in pari materia. Minn. Stat. 115C.02, subd. 13 defines "responsible person" as follows:

"Responsible person" means a person who is responsible for a release under section 115C.021.

Minn. Stat. 115C.021 RESPONSIBLE PERSON reads in relevant part as follows:

Subdivision 1. General Rule. Except as provided in subd. 2, a person is responsible for release from a tank if the person is a owner or operator of the tank at any time during or after the release.

Subdivision 2. Exception of Certain Tank Owners. An owner of a tank is not responsible for a release from the tank if the owner can establish that:

* * *

(2) the owner did not by failure to report under section 115.061 or other action significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

9. It was uncontested that the spill of unleaded gasoline at the Facility was caused by someone other than Dahlen personnel who had "wired open" a valve on the articulated loading arm attached to the pump house.

10. The MPCA has failed to prove by the preponderance of the evidence that Dahlen Transport, Inc. was the "responsible person" with a duty to recover the spill of gasoline pursuant to Minn. Stat. 115.061.

11. Any portion of the administrative penalty assessed to Dahlen as a result of its delay in recovering the spilled petroleum is unreasonable.

12. As a consequence of the foregoing Conclusions, the administrative penalty must be recalculated. Since only one of two violations have been established, it would be appropriate to reduce the penalty of \$4,000 by one half.

13. The Respondent has failed to establish that the MPCA staff were "biased" against Dahlen Transport, Inc. The MPCA did not act arbitrarily or improperly in deciding to issue the APO to Dahlen Transport, Inc.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

1. That the Commissioner recalculate the administrative penalty in a manner consistent with this report, and then proceed to collect that amount from Dahlen Transport, Inc.

Dated this day of December, 1993.

/s/ Phyllis A. Reha

PHYLLIS A. REHA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded; Cassettes No. 20,152; 20,141; 20,140;
20,103;
20,109; 20,150; 20,105; and 20,106.

MEMORANDUM

Minn. Stat. 115 is the Water Pollution Control Act. Section 115.061 was added to Chapter 115 in 1969. Minn. Stat. 115.061 describes two distinct duties with respect to the discharge, accidental or otherwise of any substance or material which may cause pollution of waters of the state. The first duty is to immediately notify the MPCA. The second duty is to recover as rapidly and as thoroughly as possible such substance or material and take immediately such other actions as may be reasonably possible to minimize or abate pollution of waters of the State.

The duty to notify under the statute is broad. It requires

"every person" to notify the Agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the State. "Under its control" is not defined in the statute. However, when a word is not defined in a statute, courts generally look to the ordinary meaning of the term. *Arlandson v. Humphry*, 224 Minn. 49, 27 N.W.2d. 819, 823 (1947). Webster's New Collegiate Dictionary defines the term "control" as the "power or authority to guide or manage." The verb of "control" is defined as "the ability to exercise restraining or directing influence over." Webster's New Collegiate Dictionary, (1975 Ed). It is clear under the circumstances of this case that the driver of the petroleum tanker that was unloading the gasoline at the Facility had the duty to immediately notify the MPCA of the accidental discharge of the substance under its control. Dahlen's driver was the only person present at the Facility. He had a key to the Facility. He adjusted a valve at the Facility. He turned on the pump. It is clear from the evidence in this case that the driver had the ability and certainly would have stopped the pump had he noticed the spill. The Dahlen employee was clearly in control of the product, and thus had a duty to notify the MPCA immediately upon discovery of the discharge.

With respect to the duty to notify, the significant issue is whether the reporting of the spill was immediate. The term "immediately" found at Minn. Stat. 115.061 must be interpreted in light of the circumstances of each particular case. *U.S. v. Messer Oil Company*, 391 F.Supp. 557, 562 (Western District Pennsylvania 1975). To determine the relevant circumstances, it is appropriate to consider the time of discovery, the amount of product involved, the type of product involved, the threat to human health posed by the release, and the threat of pollution of the waters of the State posed by the release.

At the hearing there was no dispute with respect to the type of product released. The substance was unleaded gasoline. There was also no dispute as to the quantity of product released. The quantity was approximately 600 gallons. Similarly, there was no dispute that the product entered a storm sewer and eventually outletted into the Rum River. Thus, the spill posed significant public health safety and environmental threats, and, which had it not been recovered, could have caused pollution of the waters of the State.

The major dispute was the time the release was discovered. The Findings of this Report reflect the Judge's careful scrutiny of the testimony and evidence introduced at the hearing to determine the sequence of events following the discovery of the spill. The Administrative Law Judge placed greater weight on the documentary evidence which reflected notations of time. Especially significant were the times that the 911 call was recorded by emergency personnel, and the time recorded by the State Duty Officer. These notations carry significant credibility as these two entities are trained to record such data. The testimony of Mrs. Maertens was also accorded significant weight. Ms. Maertens' testimony was straightforward and unequivocal. Thus, it is most likely that the spill was

discovered just prior to 7 p.m.; that the call to 911 was made at 7:53 p.m., more than 50 minutes following the discovery of the spill; and that the call to the State Duty Officer was made at 8:09 p.m. These times are significant in determining whether the Respondent acted reasonably and appropriately in light of the objective of the statute to avoid water pollution.

The Administrative Law Judge has determined that a delay of more than an hour between discovery and reporting does not constitute immediate reporting and is a violation of Minn. Stat.

115.061. During this hour, the Respondent had adequate opportunity to contact both local authorities and the MPCA, but did not do so. As a result, the spill was not contained in the sewer system and the substance reached the Rum River. Important to this analysis is the testimony of Fire Chief Bickford of the Anoka-Champlin Fire Department who responded to the scene of the spill after the 911 phone call was made. It took the fire department less than 10 minutes to respond to the scene, determine that the spill had entered the sewer, and begin activities to contain the movement of the spill. Unfortunately, by the time the fire department arrived, it was too late to prevent the spill from reaching the Rum River. Chief Bickford testified that if the fire department had received notice of the spill at the time it occurred, the fire department would have been able to prevent the spill from entering the river. Failure to notify 911 immediately of a spill of this nature is inconsistent with the Respondent's own contingency plan. (See Dahlen Ex. G).

The second issue is the second part of Minn. Stat. 115.061 which relates to the duty of the "responsible person" to recover as rapidly and as thoroughly as possible the spilled substance. The term "responsible person" is not defined in the statute. However, the Administrative Law Judge believes that it is significant that the duty to report is on "every person", but the duty to recover is on the "responsible person". Thus, it is logical, that "responsible person" must have a more specific meaning and is a "term of art" that is used in the context of environmental response and clean-up. The common meaning of the term "responsible" according to Webster's New Collegiate Dictionary, (1975 ed.) is defined as "liable to be called on to answer; liable to be called to account as the primary cause, motive, or agent; being the cause or explanation [mechanical defects were responsible for the accident]." Certainly under this definition, the Respondent would not be the responsible person because it was not the cause or explanation of the accident. The undisputed evidence indicates that the "cause" of the spill was the valve on the articulated loading arm that was "wired open" by someone other than a Dahlen employee, prior to the delivery of the substance of the Facility.

However, more persuasive is the fact that the term "responsible person" has been defined in two other Minnesota Statutes. Minn. Stat. 115B is the Environmental Response and Liability Act. Minn. Stat. 115C is the Petroleum Tank Release Clean-up Act. Minn. Stat. 115B was enacted in 1983. Minn. Stat. 115C was enacted in 1987. The statute under scrutiny

here, Minn. Stat. 115.061 was enacted in 1969. Minn. Laws 1969, Ch. 931, 4. The Agency argues that since the term "responsible person" was used before the term was defined in subsequent statutes, the legislature could not have intended that the definition found in Minn. Stat. 115B or 115C could apply. However, the Agency's argument fails to account for the fact that the legislature was aware of the usage in the earlier statute when it adopted the subsequent statutes making explicit what was implied by "responsible person" used in a statute in pari materia. It must be presumed that the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language. See, Minn. Stat. 645.17, subd. 4. With respect to the duty to recover discharged petroleum, the definition of "responsible person" in Minn. Stat. 115C.02, subd. 13 is the closest in subject matter to the duty imposed in Minn. Stat. 115.061. Under Minn. Stat. 115C, a person is responsible for a release from a tank if the person is an owner or operator of the tank at any time during or after release. That these two statutes should be construed together is further supported by the language in Minn. Stat. 115C.021, subd. 2(2) which cross-references a failure to report under 115.061. Subdivision 2(2) provides in part as follows:

. . . an owner of a tank is not responsible for a release from the tank if the owner can establish that: . . .

(2) that owner did not by failure to report under section 115.061 or other actions significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

In support of its argument that the definitions of "responsible person" found in Minn. Stat. Chs. 115B and 115C are not synonymous to the phrase "responsible person" in Minn. Stat. 115.061, the Agency cites two Minnesota District Court decisions. In a decision filed in 1981, the Honorable Richard J. Ahles, Judge of Benton County Court, adopted the Agency's interpretation of "responsible person" language. State of Minnesota v. James Matich, Matich Brothers and Cumming Brothers, Inc. In Matich gasoline was spilled as a result of a highway accident. In ruling on who is the "responsible person" within the meaning of Minn. Stat. 115.061, the court stated:

The hauler of gasoline should be required in the first instance to clean up gasoline which is spilled regardless of whether or not the spill came about through the negligence of the hauler. It is the court's opinion that this is exactly what the statute in question, M.S. 115.061 mandates. In other words, the term "responsible person" is not to be construed as relating to the person who ultimately becomes liable (for the cost of cleaning up the spill), but rather to the entity which hauls the gasoline. This position makes sense, as in many cases it would be difficult, if not impossible to assess liability on the spot or within a short period of time, and therefore to avoid permanent damages to the immediate environment it should be the responsibility of the hauler to clean up the spill and then later to seek reimbursement if appropriate.

(citation omitted).

However, the Matich case was decided prior to the adoption of Minn. Stat. 115B. and 115C. Neither the Minnesota Court of Appeals or the Minnesota Supreme Court has addressed this issue. The Agency also cites an Anoka County District Court decision which held that the definition of "responsible person" in Minn. Stat. 115B is not synonymous or identical to the phrase "responsible person" as used in Minn. Stat. 115.061. See, State by Boise Cascade Corporation v. Onan Corporation, court file no. B-46882 (Anoka County District Court 1984). However, in the Onan case the court determined Onan as having a "duty to notify" under Minn. Stat. 115.061, but held third-party defendants, Soo Line Railroad Company and Burlington Northern Railroad Company and the Plaintiff, Boise Cascade to be responsible for the discharge. The court distinguished causal fault from liability. (Onan at 15). Neither of the cases cited by the Agency are controlling in the case at bar. The Agency argues that the common sense interpretation of the statute should require Dahlen to be the "responsible person" because to hold otherwise, would "force the state to expend its own resources for spill clean-up, and then engage in long and expensive legal battles to determine who should pay the State's cost. This cannot be what the legislature intended". (Agency Reply Brief at pp. 13-14.)

The Administrative Law Judge disagrees with the Agency's argument. The language of the statute provides two separate duties. One is the duty to immediately notify and the second is the duty to immediately recover the spilled substance. As indicated earlier, the duty to immediately notify is broad, placing the duty upon "every person". The fact that the legislature placed the duty to recover the spilled substance on the "responsible person" clearly indicates that the legislature did not intend this portion of the statute to be as broad as the first portion. The legislature did not intend that all "potentially responsible" persons share joint and several liability for clean-up. To require any party in control of substance that's accidentally spilled to be responsible for arranging and paying for clean-up with no consideration of causation or fault, is contrary to fundamental principals of due process of law. Even the broadest interpretation of Minn. Stat.

115.061 does not indicate that the legislature intended the statute to impose strict liability upon haulers of polluting substances.

Finally, the Respondent attempted to establish at the hearing that the MPCA staff was biased against Dahlen Transport and, therefore, acted arbitrarily or improperly in deciding to issue the APO. Dahlen has failed to prove improper motive or arbitrary action by the MPCA. The Administrative Law Judge has concluded that the APO was properly issued and was not issued as a result of bias.

PAR