

Workers also reported to the U.S. Environmental Protection Agency that they were ordered to dump thousands of gallons of contaminated water into Elliott Bay. EPA criminal investigators could not verify that allegation. Morrison Knudsen denies it.

Slater, 62, was unable to get another job as a construction supervisor after the state brought the charges against Morrison Knudsen. He eventually landed a spot as a heavy-equipment operator, he said, but was later hurt in a work-related accident that ended his career early.

Slater on Tuesday was doing work on property near Ellensburg that he said he is being forced to sell to keep himself financially solvent.

"That's the price you pay when you go against the grain," he said.

The key issue in the case before the appeals court was whether Morrison Knudsen's construction force was governed under state workplace rules governing an "uncontrolled hazardous-waste site."

Since the main cleanup already was done, the site was controlled, the company has argued.

No so, the court ruled.

"While the contract ... did not specifically require Morrison Knudsen to engage in a full-blown hazardous waste cleanup operation, the contract contemplated that hazardous waste would be handled," the court said.

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**Judge backs Harbor Island fine
He reverses Superfund site ruling in case involving worker safety**

By **ROBERT McCLURE**
SEATTLE POST-INTELLIGENCER REPORTER

A new court ruling backs a \$48,500 fine that state inspectors levied against a major construction firm for dozens of worker-safety violations at the Port of Seattle's Harbor Island Superfund site.

The ruling against Washington Group International comes more than four years after a construction foreman reported to authorities that workers' health was endangered and pollution had been unleashed into Elliott Bay. The company continues to deny the charges. It will appeal the ruling by King County Superior Court Judge John Erlick.

Erlick overruled a state administrative judge who had sided with the company, calling the previous ruling illogical.

"I'm healing, but it's been a long 4 1/2 years," said Ron Slater, the construction foreman who alerted government officials to problems at the job site but later saw his career sidelined. Slater said he doesn't regret his actions. "If I let them get away with what they did, I don't see how I can live with myself."

At the time of the citations, workers complained that they had been subject to headaches, fatigue and nosebleeds, but were ignored.

The state Department of Labor and Industries, which brought the charges, was represented by Assistant Attorney General Michael Hall.

"We're elated," Hall said. "The Superior Court's decision is unambiguous and strong."

Washington Group is one of the two biggest financial partners in a consortium of companies that is the lone bidder to design, build and operate Seattle's new monorail. The firm also is a key subcontractor on the plutonium-finishing plant on the Hanford Nuclear Reservation. The work at Harbor Island was done by Morrison Knudsen, a Washington Group subsidiary.

The state, in citations issued to the company, said workers were ordered to move "leaky drums of unknown materials"; that a worker was splashed with the chemicals; and that no decontamination showers were provided. The company denies all the charges.

The case turned on whether Harbor Island was an "uncontrolled hazardous-waste site" under state regulations at the time of the work. By then, other contractors had removed known pollution "hot spots" under a legal settlement between the port and the U.S. Environmental Protection Agency.

But, because wastes had been dumped for decades by a hodgepodge of companies on the island, it wasn't clear whether additional pollution hot spots would be encountered.

Slater says they were, and he and his men were ordered to cover up any problems. Washington Group denies this.

"The Port of Seattle had told us all the known hazardous waste had been removed. We said that's great and also, there might be a potential there could be more hazards ... and we had to be on our watch," said Aaron Owada, an attorney for Washington Group.

As a result, the company took pains to control dust at the site that could spread around contaminants and monitored levels of lead in workers, finding no problems, he said. The state never took samples of dirt or water, so it can't say how contaminated the property was before Washington Group laid asphalt over it as outlined in the cleanup plan, Owada said.

"We felt the case citations should never have been issued," Owada said. "We had demonstrated that we had everything under control."

Both sides agree that the case will set a precedent for how construction firms must operate in Washington on old waste sites.

Washington Group argued that much more was happening than fixing up an old waste site. A whole new batch of facilities were being built for unloading containers from cargo ships. The company said it was doing regular construction work, not hazardous-waste cleanup.

But the state argued that just because something more than the required cleanup work was going on didn't mean Washington Group had any less of an obligation to protect its workers.

"It is incongruous and illogical that (state regulations) should be interpreted such that two employees, engaging in the precise same work, exposed to the precise same hazards, mandated by the same consent decree, should have different protection," the judge ruled, overturning a decision by Assistant Chief Industrial Appeals Judge Mark Jaffe.

Among the evidence the state presented to show that the firm understood its obligations were statements the company made to the state Department of Revenue seeking tax breaks for doing environmental cleanup work.

For instance, a June 5, 2000, submission by the company states the site was contaminated by lead, arsenic, cadmium and other hazardous substances "and must be remediated under order of the EPA."

"I've only got a high school education, but I can read," said Slater, a former member of the Navy's Seabees battlefield-construction unit. "These hazardous-waste sites are very defined, very clear."

Slater, of Cle Elum, has since retired due to unrelated medical problems. But he says whistle-blowers like him are necessary to help the government keep an eye on firms doing its work.

"That is your river and your property, Terminal 18, and if somebody doesn't open their mouth, you're not going to hear about it," Slater said.

Monorail spokeswoman Natasha Jones declined to say whether her agency would require any more assurances about Washington Group's monorail bid before it awards the contract.

"At this point the (bid) has gone out, and the proposal has been received. We're going to evaluate it. I can't say any more beyond that," Jones said.

She also could not say whether the agency knew of the Harbor Island incident before Washington Group was qualified to bid and submitted its proposal.

"We can't respond to any projects that the contractor team may have worked on in the past."

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