



*closed
& file*

04-16-414511

MAR 8 - 1976

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604



FEB 27 1976

Mr. David C. Mebane
United States Attorney
Western District of Wisconsin
241 Federal Building
215 Monona Avenue
Madison, Wisconsin 53701

RECEIVED
WI DEPT OF NATURAL RESOURCES
FEB - 5 2001
Rhineland Service Center
Northern Region

RE: The M/V Jalakanta
Paint Discharge
Superior, Wisconsin
November 13, 1975

Dear Mr. Mebane:

We are referring the above referenced matter for civil suit under Section 301 and 309 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1311 and 1319.

On November 13, 1975, members of the crew of the M/V Jalakanta, while painting the vessel, spilled one to two gallons of red paint at the Great Lakes Storage Pier. As a result of this discharge, the red paint spread around the harbor. Although the amount of the discharge was small, we feel that there was considerable environmental damage.

Three representatives from the Coast Guard investigated this incident. These investigators, Eric Young, Steve Opsahl, and Guy McArdle, could appear as witnesses should the case go to trial. Samples of the paint were taken, and photographs are enclosed which reveal the environmental damage. I would particularly like to call your attention to a letter from Thomas A. Clure, an attorney representing the vessel which states that they will file an appearance in the event of a civil suit and satisfy any penalty up to five-thousand dollars (\$5,000.00). In light of this letter we feel this would be a case which can be settled very rapidly.

I have enclosed the file on this matter and a sample Complaint and Consent Decree prepared by Mr. Kenneth A. Fenner, an attorney on my staff. Should you have any questions or need any further documents, please call Mr. Fenner at 8-353-8728.

Very truly yours,

ORIGINAL SIGNED BY JAMES O. McDONALD

James O. McDonald, Director
Enforcement Division

Enclosures

cc: Mr. Warren Wood
Assistant United States Attorney
Western District of Wisconsin

Mr. Andrew Damon, Deputy Secretary
Wisconsin Department of Natural Resources

Mr. Thomas G. Frangos
Acting Assistant Secretary for
Environmental Protection
Wisconsin Department of Natural Resources

Mr. Oliver D. Williams, Acting Administrator
Division of Environmental Standards
Wisconsin Department of Natural Resources

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil No.
)
vs.)
)
M/V JALAKANTA)
)
Defendant.)

On this day of , 1976, the Defendant agrees to pay one-thousand dollars (\$1,000.00) for dismissal of the above entitled action which was based on a two gallon paint spill by the Defendant into Lake Superior on November 13, 1975 in violation of 33 U.S.C. 1311.

Plaintiff, the United States Attorney, acting on behalf of the United States, upon receipt of the one-thousand dollars (\$1,000.00) shall agree to dismiss the above case and take no further proceedings based on this incident.

Warren Wood
Assistant United States Attorney

Attorney Representing M/V Jalakanta

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No.
)	
vs.)	
)	
M/V JALAKANTA,)	
)	
Defendant.)	

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General, alleges that:

I.

This is an action for civil penalty against Defendant's discharge of pollutants, including but not limited to paint into a navigable water of the United States in violation of Section 1311 of Title 33 of the United States Code (Section 301 of the Federal Water Pollution Control Act, 86 Stat. 844 as amended.) Authority to bring this action is vested in the Department of Justice by Section 1366 of Title 33 of the United States Code (Section 506 of the Federal Water Pollution Control Act, 86 Stat. 889 as amended.)

II.

This Court has jurisdiction of the subject matter of this section pursuant to Section 1345 of Title 28 of the United States Code.

III.

Defendant is a foreign registered vessel organized and existing under the laws India and is doing business in the State of Wisconsin within the Western District of Wisconsin.

IV.

On November 13, 1975, Defendant, in the operation of its vessel in Superior, Wisconsin, caused or allowed to be discharged pollutants including but not limited to, paint into Lake Superior, a navigable water of the United States, within the meaning of 33 U.S.C. 1311 as defined by Section 1362 of Title 33 of the United States Code.

V.

Defendant's discharge of pollutants, including but not limited to paint, into the navigable waters of the United States constitutes a prohibited discharge of pollutants within the meaning of Section 1311 as further defined by Section 1362 of Title 33 of the United States Code. Section 1311 provides:

"Except as in compliance with this Section and Sections 1312, 1316, 1317, 1328, 1342 and 1344 of this title, the discharge of any pollutant by any person shall be unlawful."

Section 1362 provides:

"(5) The term 'person' means an individual, corporation..."

"(6) The term 'pollutant' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

"(7) The term 'navigable waters' means the waters of the United States..."

"(12) The term 'discharge of a pollutant' and the term 'discharge of pollutants' each means (A) any addition of any pollutant to navigable waters from any point source,..."

"(14) The term 'point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

VI.

The acts of Defendant described in paragraph IV above constitute a violation of Section 1311 of the United States Code.

WHEREFORE, Plaintiff, the United States of America, demands judgment herein:

- a. That Defendant pay a civil penalty to the United States of America in an amount not to exceed \$10,000.
- b. Awarding the costs and disbursements of this action to Plaintiff;
- c. Granting such other and further relief as this Court may deem just and proper.

David C. Mebane
United States Attorney for the
Western District of Wisconsin

By: _____
Warren Wood
Assistant United States Attorney