

Businesses Hail Court Ruling that Relaxes `Extraneous' Clean Water Act Issues

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WASHINGTON - Environmentalists vowed Thursday to challenge a federal appeals court ruling that could make it easier for businesses and governments to defend themselves against pollution charges.

A three-judge panel for the 4th U.S. Circuit Court of Appeals ruled that Carroll County's Hampstead Wastewater Treatment Plant did not violate the Clean Water Act by discharging warm water into Piney Run.

The Wednesday decision reversed a lower court ruling that had fined the county \$400,000 for the pollution violations, in a case in which the county was joined by a score of government and industry groups.

Those groups hailed the decision, saying it will provide clear guidance for courts and will keep businesses from being "needlessly penalized for extraneous kinds of issues" tied to their wastewater permits.

Linda Woolf, an attorney for Carroll County, said the ruling could set precedent in an area where there has been little case law, by affirming the authority of state environmental agencies to issue permits and decide what needs to be included in them.

"The courts shouldn't be second-guessing (state agencies)," she said. "I think the decision provides a lot of guidance as to the provisions to the Clean Water Act, and relation of the federal act to the state agencies."

G. Macy Nelson, the attorney for the Piney Run Preservation Association, the group that charged the treatment plant with pollution, said it is "not backing down."

"This federal case is a small but important part of our attack on Carroll County," he said. "We've suffered minor setbacks in the past, and this was a setback, but we're going to continue."

He could not say Thursday whether the association would ask the full circuit court to review the ruling or appeal directly to the Supreme Court.

The suit was filed in 1998, when neighbors of the wastewater plant charged the county with fouling Piney Run. Specifically, they said, treated water from the plant was warmer than water in the creek, which encouraged algae growth.

The plant's permit, issued by the Maryland Department of Environment, regulated several different pollutants but did not specifically mention heat. But a footnote to the permit said it prohibited the discharge of any pollutants not specifically listed in the permit.

U.S. District Judge Joseph Young in February 2000 agreed with the Piney Run Association that heat is a pollutant and that it was covered by the footnote to the Hampstead plant's permit. He ordered the county to pay \$400,000 in fines.

The county agreed that heat is a pollutant, but argued on appeal that it could only be held accountable for pollutants that were listed in the permit.

The appellate judges met the county halfway. They said the county could be held accountable for some unlisted pollutants, but not for those that can reasonably be expected to come from a wastewater treatment plant and which the state chose not to regulate in the permit.

In this case, the judges said, the county reported at the outset that it expected to discharge warm water and it reported the temperature of the effluent to the state daily. Because it otherwise complied with the permit and did not discharge water that was unreasonably hot, they said, it could not be sued for violating the Clean Water Act.

"It's a win," said Jan Amundson, general counsel for the National Manufacturers Association, which filed a friend of the court brief on behalf of Carroll County. She said the ruling would give manufacturers "a bit of latitude" when discharging amounts of pollutants "not outside what the permit would allow."

Nuclear Energy Institute spokesman Steve Kerekes said the ruling "clarifies what the rules are." Facilities "won't have to needlessly be penalized for extraneous kinds of issues, the permit you receive is appropriate and is all that is needed," he said.

But Woolf said facilities will have to be careful to disclose everything when they apply for a wastewater discharge permit to take advantage of this ruling. It will guide them through the "esoteric nuances of these particular statutes," she said.