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Atl. States Legal Found., Inc. v. Browner, No. 00-1947, 2000 U.S. Dist. LEXIS 12511 (S.D.N.Y. Aug. 31, 2000)

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water released by Purity was a pollutant.

TIG also claimed the water released by Purity was a pollutant, and such release barred coverage, at least for the 1998 occurrence. The court noted Freedom did not allege in its original complaint, that water released by Purity was either polluted or contaminated. Instead, Freedom claimed the flooding, stemming from Purity's water release, contaminated its springs with surface bacteria. Freedom also alleged other property damage caused by the flooding, unrelated to the bacterial contamination of the springs. The court determined the lake water was never alleged to be a pollutant, so Purity's release of the water, although deliberate, did not constitute release of a pollutant under the terms of the policy exclusion. Thus, TIG failed to show that it properly denied Purity coverage based on the policy terms. The court found Purity was entitled to summary judgment in its declaratory judgment action and held TIG liable to defend Purity in the suit brought by Freedom.

Alan Curtis

Atl. States Legal Found., Inc. v. Browner, No. 00-1947, 2000 U.S. Dist. LEXIS 12511 (S.D.N.Y. Aug. 31, 2000) (denying motion for an injunction to halt construction of a sewage treatment facility until an Environmental Impact Statement could be completed under the National Environmental Protection Act).

Atlantic States Legal Foundation ("ASLF"), as well as several other plaintiffs, filed suit requesting a temporary restraining order and preliminary injunction to halt construction of a sewage treatment plant by the City of Syracuse ("City"). The treatment plant was one of several abatement projects the City implemented in order to comply with the Clean Water Act ("CWA") for effluent discharges due to overflows caused by excessive rain. The treatment plant, referred to as the Midland Avenue Regional Treatment Facility ("Facility"), would remove sediment from the water, separate certain contaminants routed to another treatment facility, and then discharge the disinfected water into a nearby creek. The Facility would operate only during and after storm events.

The City submitted a draft and then final Environmental Impact Document ("EID"). The Environmental Protection Agency ("EPA") conducted an Environmental Assessment ("EA") and issued a preliminary Finding of No Significant Impact ("FONSI"). EPA received comments from the public, published responses to those comments, and issued a final FONSI.

ASLF filed suit in the Southern District Court of New York claiming EPA did not properly assess the impacts of the Facility on the local community and the environment. Among other claims, ASLF

argued EPA failed to consider the possible effects on the human environment, failed to properly assess all alternatives, and improperly segmented the impacts of the Facility therefore failing to consider the cumulative impacts. EPA moved for summary judgment.

The court noted the standard of review was whether EPA took a “hard look” at the environmental consequences of the Facility. The court needed to determine whether EPA had convincingly documented its determination of “no significant impact” so that its decision was not made arbitrarily or capriciously. After careful review of the record, the court determined EPA had considered all the environmental impacts adequately, and that the record was not so incomplete to support a FONSI. The court granted EPA’s motion for summary judgment.

The court concluded EPA considered the effects on the human population, the environment, and considered possible alternatives to the Facility. Thus, EPA had met its requirement to take a “hard look” at all the potential environmental impacts of the Facility. In addition, the court noted the lack of evidence presented by ASLF to show how EPA decisions were made in an arbitrary or capricious manner. Finally, the court agreed with EPA that, although the Facility was one of many projects implemented to improve water quality, the Facility had independent utility because the facility alone improved water quality. ASLF objected, arguing that since the Facility would not meet the CWA requirements alone, it was dependent on any other project implemented for that purpose. The court rejected this notion, stating that the Facility will improve water quality by its own operation. ASLF did not dispute this fact. The fact that other projects must be implemented to meet the CWA water quality standards did not diminish the independent utility of the Facility. Therefore, the scope of EPA review did need not to extend to the cumulative effect of the entire abatement project.

Patrick Nackley

Natural Res. Def. Council, Inc. v. Fox, 93 F. Supp. 2d 531 (S.D.N.Y. 2000) (holding (1) the Environmental Protection Agency (“EPA”) did not unreasonably delay a declaration of “constructive submission” of deficient New York State (“State”) total maximum daily loads (“TMDLs”); (2) EPA had no present duty to promulgate State TMDLs; (3) EPA did not breach its mandatory duty to manage the TMDL program in compliance with the Clean Water Act; (4) TMDLs submitted by the State and approved by EPA met substantive requirements; and (5) EPA’s decision to classify ten TMDLs as “informational” breached a nondiscretionary duty to either approve or disapprove all TMDLs submitted by the State for approval).

This case involved the alleged failure of New York State (“State”) to