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United States v. Bay-Houston Towing Co., Inc., 197 F. Supp. 2d 788 (E.D. Mich. 2002)

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United States v. Bay-Houston Towing Co., Inc., 197 F. Supp. 2d 788 (E.D. Mich. 2002) (holding civil penalties were not warranted for failure to obtain permits before discharging peat bog drainage water where pollutant was a natural result of legitimate commercial activity, discharge did not exceed appropriate effluent limitations, authorities were aware of activity, peat harvester made application for permit and proceeded diligently to obtain permit, and authorities did not tell harvester to cease mining pending approval of permit).

The United States brought a Clean Water Act (“CWA”) action against Michigan Peat in the United States District Court for the Eastern District of Michigan, claiming: (1) discharge of pollutants by peat bog drainage water without National Pollutant Discharge Elimination System (“NPDES”) permits; (2) discharge of dredged or fill material into wetlands without permits; and (3) violation of an administrative compliance order issued by the Environmental Protection Agency (“EPA”). The EPA sought to impose a three million dollar civil penalty against Michigan Peat. The EPA alleged that Michigan Peat discharged peat bog drainage water containing pollutants through ditch outfalls into the Black River Drain without an NPDES permit required under the CWA. After denying Michigan Peat’s motion for summary judgment, the district court found Michigan Peat was obligated to obtain permits but the imposition of civil penalties for failure to obtain permits was not warranted.

The EPA asserted that Michigan Peat should be penalized for its long-time failure to report its effluent discharges to the state as required by the CWA, which warranted the penalty based on the quantity of pollutants that Michigan Peat discharged.

The court held civil penalties were not warranted for Michigan Peat’s failure to obtain the permit before discharging the pollutant because: (1) the pollutant was a natural result of legitimate commercial activity; (2) the discharge did not exceed appropriate effluent limitations; (3) the permitting authorities were fully aware of the activity; (4) Michigan Peat applied for a permit and proceeded diligently to obtain the permit once they found out they needed one; and (5) the licensing agencies did not tell Michigan Peat to stop mining or to change its current method of peat mining pending approval of the permit.

The court first found that peat was a commercially useful product found only in peat bogs and, therefore, mining a peat bog was a legitimate commercial activity. Because peat mining was a legitimate commercial activity, the digging of drainage ditches and construction of haul roads was a legitimate activity as part of a peat mining activity. Discharge was part of the peat mining process and the court found the discharge did not exceed effluent limitations. Michigan Peat discharged no more than normally produced from mining a great deal

of peat. The court found no substantive harm to the environment.

During the period that Michigan Peat operated without a permit and during the permit application process, the permitting authorities became fully aware of the activity. As soon as the permitting authority notified Michigan Peat, it filed for, and diligently pursued, a permit. In its 1994 permit application to the state of Michigan, Michigan Peat presented a plan to return the mined areas to a wetland state containing large bodies of open water. The process of reclamation occurs when human intervention replaces one type of wetland with another type of wetland that provides different functions and values than the original wetland. The EPA, however, disagreed and requested restoration of the area to the extent practicable to the original bog-like condition with the same functions and values. The court held that disagreement with a regulatory demand was not an avoidance of the permitting authorities.

The EPA, during the application process and fully aware of Michigan Peat's activities, never advised Michigan Peat to close down, never suggested modification in the peat mining activities, and never sought a court order to close down Michigan Peat's operations. The court found that because no governing agency attempted in any way to alter or stop Michigan Peat's operations during the application process Michigan Peat should not be penalized for its activities.

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Little Traverse Bay Bands of Odawa Indians v. Great Spring Waters of Am., Inc., 203 F. Supp. 2d 853 (W.D. Mich. 2002) (holding the Water Resources Development Act of 1986 does not imply, either explicitly or implicitly, a private right of action to enjoin the diversion or exportation of Great Lakes waters outside the Great Lakes basin).

Little Traverse Bay Bands of Odawa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, and Little River Band of Ottawa Indians ("Tribes") brought suit against Great Spring Waters of America, Inc. ("GSWA") and John M. Engler, Governor of Michigan ("Engler"), in the United States District Court for the Western District of Michigan to enjoin GSWA from exporting waters from the Sanctuary Springs ("Springs") in Mecosta County, Michigan under a provision of the Water Resources Development Act ("WRDA"). GSWA and Engler moved for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). The court granted the dismissal, concluding the WRDA provision disfavors a creation of a private cause of action.

The Michigan Department of Environmental Quality ("MDEQ") granted GSWA a license to pump 400 gallons of water per minute from the Springs. GSWA maintained two wells on the Springs site, each capable of pumping up to 200 gallons per minute. The Springs