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## Organic Techs. Corp. v. Iowa, 609 N.W.2d 809 (Iowa 2000)

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this action based on election-of-remedy. Christenson made three Constitutional arguments, all of which the court rejected.

Christenson first argued the condemnation violated his procedural due process rights because he could not have improved the land without a floodplain development permit, which the City could have simply denied. Further, he argued the condemnation was a condemnation for conservation purposes, and Iowa law expressly prohibits conservation easements. The court rejected this procedural due process argument reasoning that Christenson's argument assumed the City attempted to obtain a *de facto* conservation easement. Rather, the court found the City simply condemned the land for flood control purposes.

Christenson's substantive due process argument was similar. He argued, that instead of condemning the land, the City should have pursued city council resolution 94-72, under which the City would maintain the flood plain *status quo* by other measures, such as refusal to extend municipal services or restricting development permits. However, Iowa law grants cities the power of eminent domain, as long as such action both reasonably and necessarily is for public purposes. The court held the City condemned the property in order to maintain the floodplain and its water storage capacity, each of which was a reasonable and necessary public purpose.

Finally, Christenson contended the City denied him equal protection due to the disparate treatment between his land and that of another property located in the floodplain, which was not condemned. Because the case involved no fundamental right, the City's action needed only bear a rational relationship to the disparate treatment. While both properties were similarly situated for equal protection purposes, the owner of the non-condemned property agreed not to develop the land, an assurance Christenson did not give. Rather, Christenson intended to develop the property. Thus, the court concluded the City's decision to condemn his property bore a rational relationship to the city's interest in promoting flood control.

*Adam B. Kehrli*

**Organic Techs. Corp. v. Iowa, 609 N.W.2d 809 (Iowa 2000)** (affirming an administrative law judge's finding of a compost facility's water quality violations).

Beginning in 1992, Organic Technologies Corporation ("OTC") operated a composting facility in Warren County, Iowa. OTC composted yard waste and other organic waste materials. In June 1992, the Department of Natural Resources ("DNR") issued OTC a one-year developmental sanitary permit to experiment with compost enhancers. In May 1993, DNR issued OTC a permit for "storm water

discharge associated with industrial activity.” In June 1993, DNR issued OTC a new developmental permit that renewed the first developmental permit and allowed additional enhancers. This permit also exempted OTC from constructing a normally required composting/curing pad.

Iowa statute required OTC to submit a comprehensive solid waste management plan (“Plan”) in order to obtain a regular, as opposed to developmental, permit. OTC submitted a Plan to DNR in 1993. The Plan provided for the construction of a composting/curing pad and a covered facility. The Plan also gradually increased the composted waste amount and the covered facility size. DNR approved OTC’s Plan in November 1993, and issued OTC a regular permit in May 1994.

In June 1994, DNR received complaints from nearby residents concerning the facility’s offensive odors. DNR inspected the facility and issued an administrative order. The order required proper operation of the facility and compliance with both OTC’s permit conditions and DNR rules. Additionally, the order notified OTC of the DNR’s intent to restrict it to composting yard waste only. OTC appealed and began solution negotiations with DNR.

In September 1995, OTC’s owners sold the company. DNR issued a new permit reflecting the change in ownership and stated that the change did not affect the administrative order’s enforcement. DNR inspected the facility one month later and issued a report. The report determined the facility was neither being operated in accordance with the permit, the operating plan, nor the Iowa Administrative Code. Specifically, OTC had not built the Plan’s required covered facility. In addition, DNR noted OTC was not using the Plan’s required curing pad for composting, but instead for seed bale storage. The permit disallowed the “stockpiling” of wastes and, therefore, OTC’s seed bale storage on the curing pad violated the Iowa Administrative Code. The DNR report also noted the facility’s septic ponded water had produced the reported offensive odors.

OTC refuted each of DNR’s contentions and informed DNR that it sought an additional composting facility site. OTC stated that once it secured another facility, it would phase out its current site operations. DNR and OTC continued settlement negotiations, and OTC submitted a revised operating plan. DNR provided OTC with a list of recommendations for bringing the current facility into compliance. OTC then submitted a second draft of its revised operation plan. DNR agreed to OTC’s revised operating plan as an interim plan.

In August 1996, OTC informed DNR it had located another composting facility in Hardin County, Iowa, and that it intended to phase out its Warren County facility over the next two years. OTC applied for a disposal permit for the Hardin County facility.

DNR inspected the Warren County facility in September and October 1996. Based on these inspections, DNR determined OTC’s facility operation violated its permit, the Plan, the interim operating

plan, and the Iowa Administrative Code. DNR issued an administrative order. The administrative order ("Order") stated DNR intended to revoke OTC's permit, restrict OTC's operation to yard waste, and direct OTC to move mixed compost material already at the site. The Order required a fifty percent yard waste reduction and removal of all remaining waste by January 1998. The Order also rejected OTC's permit application for the proposed Hardin County facility and assessed OTC a \$10,000 civil penalty.

OTC appealed the Order to the Administrative Law Judge ("ALJ"). The ALJ affirmed the Order but reversed the denial of OTC's permit application for the Hardin County facility. OTC requested a hearing before the Environmental Protection Commission ("EPC"). EPC affirmed the ALJ's decision. OTC then petitioned the district court for review. The district court affirmed EPC's decision, and OTC appealed to the Supreme Court of Iowa.

The court first determined the appropriate scope of review. The court determined it could not interfere with an agency decision when a conflict in the evidence existed or when reasonable minds might disagree about the inference to be drawn from the evidence. Consequently, the court deferred to the agency's decision. The court then considered: (1) whether substantial evidence supported the finding of violations alleged in the Order; (2) whether substantial evidence supported the assessment of an administrative penalty; and (3) whether substantial evidence supported the revocation of OTC's permit.

The court first looked at the alleged water quality violations to address whether substantial evidence supported the Order's alleged violations. OTC's storm water permit required the development of both a pollution prevention plan and management practices intended to reduce the storm water runoff pollutant amount. In 1996, DNR informed OTC that the placement of compost curing piles within 100-feet of a creek violated its storm water pollution prevention plan. One month later, a DNR inspection of the facility revealed that septic ponded water was running off into the creek. DNR also noted OTC failed to modify its prevention plan according to the DNR's direction. The court determined the evidence of both the septic runoff and OTC's failure to modify its prevention plan substantially supported the Order's alleged violations. Therefore, the court affirmed the Order's water quality violations finding.

The court found substantial evidence to support the Order's violations based on inappropriate feedbag storage on the compost curing pad, failure to construct the required composting base, and failure to construct a covered facility. The court also concluded substantial evidence supported both the civil penalty assessment and the revocation of OTC's sanitary disposal permit. Accordingly, the court affirmed the district court's decision.

*Sarah E. McCutcheon*