

must prevail on any significant issue in the litigation which brings about some degree of success. Because the plaintiffs succeeded in proving that the city was in violation of RCRA and CWA provisions, which resulted in the closing of the landfill, the court held that the plaintiffs had achieved adequate success and deserved compensation. Additionally, because plaintiffs' attorneys faced the risk of nonpayment unless they prevailed in the lawsuit, the court awarded a twenty-five percent fee enhancement for contingency risk.

JULIE HARMS

*Hazardous Waste Treatment Council v. Reilly*, 938 F.2d 1390 (D.C. Cir. 1991)

The Resource Conservation and Recovery Act (RCRA), Solid Waste Disposal Act, section 3006, as amended, 42 U.S.C. § 6926, provides a comprehensive federal program aimed at the management of hazardous wastes. Under RCRA, a state is permitted to administer its own program with the authorization of the Environmental Protection Agency (EPA). Hazardous Waste Treatment Council, a company which proposed to develop a waste treatment facility in North Carolina, petitioned EPA to withdraw approval of North Carolina's hazardous waste treatment management program.

EPA may withdraw approval of a state program where that program is found: (1) Not equivalent to the federal program, (2) the program is inconsistent with the federal program or the federally approved programs of other states, or (3) the program does not provide adequate enforcement with RCRA. Petitioners argued, under category (2), that the North Carolina program was indeed inconsistent with federally approved programs, because that program required the thousand-fold dilution of discharges from commercial hazardous waste treatment facilities in the surface waters above public drinking water intakes. This acted as a ban on the treatment of hazardous wastes on the proposed site.

The circuit court ruled that state law is inconsistent with RCRA where it effects a total ban on a particular waste treatment technology within that state. The court found, however, that the North Carolina treatment program was not inconsistent with RCRA since it allowed location of the facility in the areas

of the state other than the site in question. Specifically, the court found that 485 riparian miles were available in the state for a facility of the kind proposed and that a smaller plant could be built on the proposed site. Thus, the court concluded, the North Carolina Program does not effect a total ban on the waste treatment facilities.

JIM SIEMENS

*D. The Clean Water Act*

*Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co.*, 933 F.2d 124 (2d Cir. 1991)

Atlantic States Legal Foundation (ASLF) appealed the lower court's dismissal of their citizen's suit brought against Eastman Kodak Company (the Company), under section 505 of the Federal Water Pollution Control Act (FWPCA), because the Company entered into an agreement with the State of New York to pay civil and criminal fines in exchange for release from further liability for the same cause of action.

The Second Circuit upheld the district court's ruling on the grounds that although ASLF could not pursue their cause of action merely to challenge the settlement terms reached by the Company and the State, ASLF was entitled to attorney's fees as a prevailing party.

The court held that a state enforcement proceeding, which caused violations to cease, would eliminate the basis for the citizen's suit. The suit must supplement, not simply supplant, state enforcement of the FWPCA. Therefore, the court concluded, there must be a "realistic prospect" that the violations would recur notwithstanding the settlement.

Attorney's fees were awarded because the court found that the existence of the citizen's suit was a motive for the settlement agreement, and that the citizen suit plaintiff was therefore a prevailing party.

RUTH WALKER

*Carr v. Alta Verde Industries, Inc.*, 931 F.2d 1055 (5th Cir. 1991)

Plaintiffs filed suit against a cattle feedlot for civil penalties