

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