

appear unable to protect air quality in national parks, wilderness areas, and other parks, EPA should reconsider the possibility of listing.

PATRICK SHAW

*United States v. General Dynamics Corp.*, 755 F. Supp. 720 (N.D. Tex. 1991)

Plaintiff filed its original complaint under section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413 (1988), for permanent injunctive relief and civil penalties based on defendant's alleged violations of the Texas State Implementation Plan (SIP), promulgated pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7642 (1988). The defendant operates Air Force Plant No. 4 in Tarrant County, Texas, where F-16 aircrafts are produced. Plaintiff alleged that certain operations at the facility emitted volatile organic compounds (VOCs) in excess of the limits set by order of the Texas Air Control Board (TACB). As both parties agreed that the defendant had complied with the order, the issue was whether the order was a departure from the Texas SIP. The court concluded that TACB's order was inconsistent with the Texas SIP. First, the order allowed plant-wide averaging of emissions of VOCs to determine compliance with the SIP. Relying upon *American Cyanamid Co. v. United States EPA*, 810 F.2d 493 (5th Cir. 1987), the court concluded that TACB's interpretation of the Texas SIP was unreasonable because it contradicted the specific language of the SIP requiring each distinct surface coating operation to comply with VOC emission limits. Second, the order allowed washing solvent used in the operations to be included in determining the total quantity of surface coating applied. The court found this to be both contradictory to the language of the SIP (which specifically refers to "pounds of VOC emissions per gallon of coating applied") and contrary to the intent of the SIP (which encourages the running of solvents into closed containers).

Having determined that the board order did not meet the requirements of the Texas SIP, the court then concluded that the defendant's operations failed to comply with the SIP and that the plaintiff was therefore entitled to summary judgment of the issue of defendant's liability. The court ordered General Dynamics to comply within three years to the then applicable

its predictions of how states will respond to new standards in the future.

EDWIN P. GARRUBBO

*I. The Federal Insecticide, Fungicide, and Rodenticide Act*

*Wisconsin Public Intervenor v. Mortier*, 111 S. Ct. 2476 (1991)

A declaratory judgment action was brought in the Circuit Court of Washburn County, Wisconsin, by a property owner. The plaintiff alleged that a local ordinance, which required a permit for the aerial spraying of pesticides, was pre-empted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (1988). The circuit court found the ordinance to be invalid and the Supreme Court of Wisconsin affirmed. The United States Supreme Court granted certiorari and, holding that this local ordinance was not pre-empted by federal law, reversed and remanded the case.

FIFRA is a congressional statute originally enacted as a pesticide licensing and labeling law. It was amended, however, in 1972 to regulate pesticide use, and to grant more enforcement power to the Environmental Protection Agency (EPA). Petitioner, the town of Casey, passed an ordinance pursuant to its own police power, requiring a permit for the use of certain pesticides on private lands, and refused to grant a permit to respondent Mortier. Respondent argued that the town's action was explicitly pre-empted by Congress: because allowance was only made for "[a] State" to regulate pesticide use, no mention was made of any local regulation in this area. Additionally, respondent argued that this local regulation was also prohibited implicitly, because Congress intended FIFRA to be a "comprehensive regulatory statute," requiring no other regulation, except where explicitly provided for.

The Court dismissed the pre-emption argument on both grounds, stating that pre-emption will only be found if "that was the clear and manifest purpose of Congress." The Court found that this local ordinance was not explicitly prohibited just because FIFRA only provided for "state" regulation of pesticide use. Instead, the use of this term was found not to be self-limiting, as "political subdivisions are merely subordinate components of the very entity the statute empowers." Hence, whether or not a particular state allows an individual town to participate