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FOURTH CIRCUIT SUMMARY

The Fourth Circuit Summary provides a summary of prevailing environmental decisions decided by the United States Court of Appeals for the Fourth Circuit since the last issue of the *William and Mary Environmental Law and Policy Review*. It does not cover every environmental decision of the Fourth Circuit during that time period, but only those cases which the editors believe to be of the most interest to our subscribers.

ENVIRONMENTAL JUSTICE

Goshen Road Environmental Action Team v. United States Department of Agriculture, No. 95-3102, 1996 U.S. App. LEXIS 32909 (4th Cir. Dec. 16, 1986)

In December, 1996, the Fourth Circuit Court of Appeals upheld a ruling by the U.S. District Court for the Eastern District of North Carolina, Eastern Division, denying a motion to grant a preliminary injunction to the Goshen Road Environmental Action Team ("GREAT") and other Goshen Road areas residents who were seeking to halt the operation of a sewage plant built and operated in close proximity to their dwellings. The appellate court found persuasive the district court's assessment that the alleged injury to GREAT and other area residents ("Appellants") would not be irreparable and that an injunction would harm substantially the Town of Pollocksville ("Appellee") and its resident users of the facility.

GREAT is a community organization comprised of the residents of the Goshen Road area of Jones County, North Carolina, adjacent to the Town of Pollocksville. The residents of the Goshen Road area and the members of GREAT are predominantly African-American. Beginning in 1985, Appellee began to investigate and apply for the construction of a wastewater treatment plant in the Goshen Road area and sought funding from the Farmers Home Administration ("FmHA"), an administrative agency under the supervision of the United States Department of Agriculture ("USDA"). The plan for the facility called for a spray-irrigation system consisting of two parts: a three-stage treatment lagoon, where sewage sludge remains for treatment for a

period of several weeks, and the spray apparatus, which sprays the treated effluent across open fields. The lagoon is located on one side of Goshen Road, and a spray apparatus on the other. FmHA issued a report in 1986 concluding that the proposed Pollocksville facility complied with applicable environmental laws and that it would not have a significant negative impact on the environment. The original plan called for the discharge of the effluent into the nearby Trent River, however, in 1991, the river was declared a nutrient-sensitive waterway and the discharge design was abandoned in favor of the spray-irrigation system. A 1991 amendment to the 1986 FmHA report stated that the original report's conclusions were not affected by the facility's design changes.

FmHA approved a loan and a grant to the Town of Pollocksville for the construction of the facility in 1988. The North Carolina Department of Environment, Health, and Natural Resources issued a permit to the town in October, 1993, and construction began shortly thereafter. The facility began limited operations in April, 1995. Because the facility serves the Town of Pollocksville, and the Appellants live outside the town's limits, they are not eligible to use the sewage system that runs to the facility, even though some the Appellants' dwellings are within 500 feet of the treatment lagoon.

In November, 1994, the Appellants protested the location of the facility to the Environmental Protection Agency ("EPA") on the grounds that it was discriminatory. Appellants also filed an administrative complaint with USDA in January, 1995, alleging violations of Title VI of the Civil Rights Act of 1964. In May, 1995 a federal magistrate judge heard the GREAT plaintiffs' motion for a temporary restraining order and a preliminary injunction to halt the facility's operation until their petition for a permanent injunction and declaratory relief could be decided on the merits. The Appellants alleged that the placement, approval, and funding of the wastewater treatment facility infringed on their civil rights in violation of Title VI of the Civil Rights Act and violated the environmental impact statement provisions of the National Environmental Policy Act of 1969 ("NEPA").

In his Memorandum and Recommendation, the magistrate judge concluded that irreparable damage might result to the Appellants if the restraining order was not granted, but that the balance of hardships weighed in favor of the Appellee. Appellants had not offered proof of environmental hazards associated with the treatment facility; they presented only potential injuries associated with common law nuisance. Conversely, the Appellee

would have experienced severe hardship in the form of a default in payment of its loan to FmHA if the facility ceased to operate. Moreover, the public interest in the continued operation of the facility weighed against granting the restraining order.

The magistrate judge also expressed doubts about the likelihood of Appellants' success on the merits of the case. He found that they probably attempted too late to challenge the sewage treatment facility under both the Civil Rights Act, based on statute of limitations analysis, and under NEPA, based on the doctrine of laches. The magistrate judge also found that the Appellants had failed to produce the evidence of discriminatory intent on the part of the Appellee to sustain the civil rights claim. The magistrate recommended that the federal district court deny the restraining order, but that it reserve ruling on the motion for preliminary injunction until both parties could file more complete briefs.

The federal district court found that the Appellants failed to supply any relevant facts and law in opposition to the conclusions reached by the magistrate judge. The district court denied injunctive relief to the Appellants, but also denied the Appellee's Rule 12(b)(6) motion to dismiss and the Appellee's motion for summary judgment. In a succinct opinion, the Fourth Circuit Court of Appeals affirmed the judgment of the district court, denying the Appellants' motion for preliminary injunction, while allowing them to pursue legal action on the merits of their claim.