Portsmouth, Virginia: Oil in - or Coal out?

Mark J. LaFratta

Follow this and additional works at: https://scholarship.law.wm.edu/wmelp

Part of the Energy and Utilities Law Commons

Repository Citation
Mark J. LaFratta, *Portsmouth, Virginia: Oil in - or Coal out?*, 6 Wm. & Mary Env'tl. L. & Pol'y Rev. 7 (1981), https://scholarship.law.wm.edu/wmelp/vol6/iss2/5

Copyright c 1981 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository. https://scholarship.law.wm.edu/wmelp
PORTSMOUTH, VIRGINIA: OIL IN--OR COAL OUT?

After six long years of litigation and hearings before state and federal agencies, the proposed Portsmouth Oil Refinery has now cleared the last environmental hurdle blocking construction. Though the Chesapeake Bay Foundation and Citizens Against the Refinery's Effects (CARE) have petitioned for certiorari to the United States Supreme Court, the probable end of environmental litigation over pollution permits for the Refinery occurred March 5, 1981 with a victory for the Refinery, the State Air Pollution Control Board (SAPCB), and the Environmental Protection Agency (EPA).

Two opinions were issued, both by Judge Hall. One case challenged the Prevention of Significant Deterioration (PSD) permit from EPA and the Non-Attainment Offset authorized by the SAPCB and approved by EPA. The key to both cases is the standard of review. These cases were not decided on the basis of the complex facts involved. Simply, the petitioners were unable to overcome the "arbitrary, capricious, or an abuse of discretion" standard. Judge Hall properly found that the actions of EPA were clearly within its discretion.

Despite a loss in the 4th Circuit Court of Appeals, the petitioning environmental groups may get the last laugh. The site of the proposed Refinery is still involved in litigation between Norfolk and Western Railroad and Hampton Roads Energy Company; the site is also the most likely location for what may be Governor Dalton's last hooraah, i.e., the proposed state-owned coal loading facility. It now appears that the Refinery will probably never be built at all. The General Assembly passed legislation to allow the state to condemn the site for a coal pier. See Senate Bill 793.

Even if the coal pier is built, thereby making construction of the Refinery unlikely or even impossible, it will be years before the coal facility could be operating. Perhaps we may see a new citizens group spring forth from the ranks of CARE. At any rate, it appears that any new construction in Portsmouth of an energy facility will put the Commonwealth of Virginia into the Coal Business.

There is some possibility that these opinions could present significant questions in the future, i.e., Can the SAPCB "bank" the emission offset for future industry in Tidewater, if the Refinery is not built? Can the State Highway Department return to the use of cutback asphalt, now that the Refinery is probably not going to be built? The Highway Department is now using water-based asphalt to reduce hydrocarbon emissions, so that the Refinery could be awarded a permit to emit hydrocarbons. See C.A.R.E. et al. v. EPA et al., Nos. 80-1223, 80-1222 (4th Cir. March 5, 1981).

M.J.L.