

# William & Mary Environmental Law and Policy Review

---

Volume 6 (1981)  
Issue 1 *Environmental Practice News*

Article 5

---

March 1981

## Orders Issued In *United States v. City of Hopewell*

John M. Jeffords

Follow this and additional works at: <https://scholarship.law.wm.edu/wmelpr>



Part of the [Environmental Law Commons](#)

---

### Repository Citation

John M. Jeffords, *Orders Issued In United States v. City of Hopewell*, 6 Wm. & Mary Envtl. L. & Pol'y Rev. 8 (1981), <https://scholarship.law.wm.edu/wmelpr/vol6/iss1/5>

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/wmelpr>

## ORDERS ISSUED IN UNITED STATES V. CITY OF HOPEWELL

In orders dated 26 November 1980 and 4 December 1980 in the *United States v. City of Hopewell*, the United States District Court for the Eastern District of Virginia dismissed a complaint against Continental Forest Industries, Inc. (CFI) that they had discharged excessive quantities of pollutants into the Hopewell (POTW) and dismissed the Commonwealth of Virginia as a party plaintiff to the suit and joined them as a party defendant.

At the initiation of the Environmental Protection Agency (EPA), the United States had filed a complaint against the City of Hopewell, Va., and two industrial concerns, CFI and Hercules, Inc., for violations of EPA regulations pertaining to the discharge of waste into POTWs. The Commonwealth joined the action as a party plaintiff against the City of Hopewell.

In the 26 November order, the Court discussed the applicability of the various regulations to CFI. The EPA contends that although 40 C.F.R. § 4030.14 promulgates specific regulations applicable to unbleached kraft paper mills, the type of facility operated by CFI, and CFI's discharges do not violate 40 C.F.R. § 430.14, CFI must also comply with the more general provisions of 40 C.F.R. § 430.5 and 40 C.F.R. § 128.131, which prohibit discharge of waste into a POTW which shall "inhibit or interfere with the operation or performance of the works." The Court held that the EPA interpretation of the regulations under which an industry can be in compliance with specific discharge tables but violate generalized language in another regulation "is strained, contrary to logic and reason, contrary to the general rules of statutory construction, and, if credited, in all likelihood renders the regulations unconstitutional." The more logical interpretation is that the specific limitations of 40 C.F.R. § 430.14 are the "administratively determined numerical limit on discharges which 40 C.F.R. § 128.131 and 40 C.F.R. § 430.5 require."

In the 4 December order the Court agrees with the Commonwealth "that 33 U.S.C. § 1319(e) requires that the Commonwealth 'be joined as a party,' whenever a municipal subdivision is sued by the United States under any of the provisions of 33 USC § 1319," but not as a party plaintiff. That provision of the statute is intended to make "the State liable for any judgment or expenses a municipality is prevented by State law from being able to pay." Consequently, the appropriate posture is for the state to be joined as a defendant. If the Commonwealth wants to take action against the city, the appropriate place to file the action is in its own courts. The Court rejected arguments that the Commonwealth should be able to sue in Federal court as a "citizen" or that pendant party jurisdiction should be asserted by the Court.

J.M.J.