

February 25, 2002

SUPREME COURT DECLINES TO REVIEW EPA VEXATIOUS PROSECUTION CASE *(Riverdale Mills Corporation v. United States)*

The United States Supreme Court declined last week to review a court of appeals decision denying an award of attorney's fees to a small business that had been unfairly targeted for criminal prosecution by the Environmental Protection Agency (EPA). That denial paves the way for further litigation in federal district court in a separate lawsuit against the EPA for malicious prosecution and violation of the company's business civil liberties.

In *Riverdale Mills Corporation v. United States*, the EPA originally brought felony criminal charges in 1998 against Riverdale Mills Corporation (RMC) and its President, James M. Knott, Sr., alleging that the company's rinsewater was more acidic than EPA regulations allow. In late 1997, some 21 EPA and law enforcement agents, many of them armed, had raided the company to seize records and to test the rinsewater for the alleged regulatory offense. Shortly before trial, the government requested the court to dismiss the case because of lack of evidence. Evidence uncovered by RMC revealed that EPA agents altered the pH reading levels in their log books, changing neutral readings of "7" to a "4" and "2" to indicate acidic levels. The trial court had also thrown out other EPA evidence because the sampling violated the company's fourth amendment rights against unreasonable searches.

After the charges were dropped, the company filed a motion for attorney's fees under the Hyde Amendment. Sponsored by Congressman Henry Hyde and enacted into law in 1997, the amendment provides that defendants who prevail in a criminal proceeding and can show that the prosecution was frivolous, vexatious, or in bad faith, may be awarded reasonable attorney's fees and litigation expenses. The district court granted RMC's motion, finding that the prosecution was vexatious because it lacked probable cause, and noting that the raid by a "virtual SWAT team" and other misconduct constituted harassment. The U.S. Court of Appeals for the First Circuit reversed. The court devised a new definition of "vexatious" that differed from that enunciated by other courts of appeals, and wrongly rejected the trial court's factual findings.

The denial of the petition by the Supreme Court does not mean that the court of appeals decision is correct or that it has been approved by the Court. Rather, the Court may have declined to review the case because the Hyde Amendment is a relatively new law and has not been the subject of appellate review by a sufficient number of circuit courts to warrant Supreme Court review.

"While we are disappointed with the Court's denial of the petition, we are moving ahead in related litigation in federal district court to get to the bottom of the altered entries in EPA's logbooks," said Paul D. Kamenar, WLF's Senior Executive Counsel who is working with Riverdale's Mills' local counsel in the case.

There were no allegations by the EPA in the criminal action that the publicly owned treatment works (POTW) was damaged in any way by RMC's wastewater (which, by volume, is less than six percent of the amount allowed by EPA, and which accounts for less than two-tenths of one percent of the capacity of the POTW). Nor were there any allegations that RMC's wastewater caused the POTW to violate any EPA regulations governing the POTW's discharge of wastewater into the Blackstone River. In short, even if there were violations of the pH levels as alleged by the EPA, they were technical infractions with no accompanying harm to the environment. Such technical violations are regularly handled by administrative proceedings. Indeed, WLF's investigation of EPA's practices discovered that companies that dump hazardous waste and chemicals into the water are routinely dealt with in administrative proceedings by the EPA rather than by felony criminal prosecutions.

In addition to its malicious prosecution claim against the EPA, RMC and Mr. Knott have charged individual agents with violating the company's constitutional rights, including conducting water sampling without the presence of an RMC employee as Mr. Knott directed so that RMC could ensure the accuracy of the testing.

The RMC case has received widespread media attention, including being featured on CBS's "60 Minutes" last spring along with a similar case of EPA harassment of another small business.

* * *

For information, contact Paul D. Kamenar, WLF Senior Executive Counsel, at 202-588-0302.