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## Or. State Pub. Interest Research Group v. Pac. Coast Seafoods Co., 374 F.Supp. 2d 902 (D. Or. 2005)

Alexandra Farkouh

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court then dismissed a claim by private citizens under the Statute, since the Statute only provided for a utility to bring a civil action for damages, which did not include owners of a mobile home park that provide water service. Thus, the district court granted the Companies' motion to dismiss California Cities' cause of action under the Statute and granted Companies' motion to strike California Cities' prayers for treble damages and attorney's fees.

*Stacy Hochman*

**Or. State Pub. Interest Research Group v. Pac. Coast Seafoods Co., 374 F.Supp. 2d 902 (D. Or. 2005)** (enjoining Pacific Surimi from processing food due to the irreparable harm pollutant discharges cause to the Skipanon River until Pacific Surimi could obtain a NPDES permit).

On March 15, 2004, the United States District Court for the District of Oregon held Pacific Coast Seafoods Company, Inc., Pacific Surimi Joint Venture, LLC, and Pacific Surimi Co., Inc. (collectively "Pacific Surimi") in violation of the Clean Water Act ("CWA") for discharging pollutants into the Skipanon River. Oregon State Public Research Group ("Group") conducted an on-site inspection of Pacific Surimi and took wastewater samples. The Group filed a motion for a preliminary injunction seeking to enjoin Pacific Surimi from beginning summertime processing until Pacific Surimi either obtained a National Pollutant Discharge Elimination System ("NPDES") permit or treated the water to reduce pollutant discharges.

The court found Pacific Surimi's discharge harmful to both aquatic life and humans due to the exacerbation of already dangerous amounts of ammonia and sulfides, low levels of oxygen, and high levels of bacteria in the Skipanon River. Furthermore, the court found Pacific Surimi in violation of the CWA for each day Pacific Surimi discharged without an NPDES permit. The court ordered a preliminary injunction because Pacific Surimi could not provide credible assurance that they could reroute discharges and not cause irreparable harm.

The CWA authorizes the district court to grant preliminary injunctions to redress violations of the CWA. For the court to grant a preliminary injunction, the Group must show either a likelihood of success on the merits and the possibility of irreparable injury, or that there are serious questions based on the merits, the balance of hardships tips sharply in the Group's favor, and that there is no adequate remedy at law. The court found the Group sufficiently demonstrated a risk of irreparable harm and demonstrated likely success on the merits. Additionally, the court found an equitable balancing analysis unnecessary because the CWA violations were willful.

The court enjoined Pacific Surimi from beginning summertime production until Pacific Surimi could obtain a NPDES permit allowing discharges to the Columbia River.

*Alexandra Farkouh*

**N. Penn Water Auth. v. BAE Sys., No. 04-4446, 2005 U.S. Dist. LEXIS 14773 (E.D. Pa. July 19, 2005)** (holding section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act prevents an injunction under the Resource Conservation and Recovery Act for treatment of a public well when the Environmental Protection Agency considered and rejected installing treatment in their Record of Decision).

The United States District Court for the Eastern District of Pennsylvania reviewed BAE Systems's motion to dismiss all claims brought by North Penn Water Authority ("NPWA"). BAE Systems argued that the court lacked subject matter jurisdiction over NPWA's claims because section 113(h) of CERCLA eliminates the court's ability to review federal government response actions until the cleanup is complete. The Environmental Protection Agency ("EPA") had ongoing activities at the North Penn Superfund Site; therefore, section 113(h) would prohibit any challenge to the EPA's activities at that site.

The court found no jurisdiction under section 113(h) of CERCLA over NPWA's RCRA claim. NPWA sought a declaration of liability under RCRA that BAE Systems's contamination of groundwater created an imminent and substantial endangerment to the public health. NPWA also sought an injunction requiring BAE Systems to abate the violations and provide treatment of a public well to put it back into service for public water. The court determined that subject matter jurisdiction over the RCRA claim depended on whether the claim was a challenge to the ongoing federal cleanup at the North Penn Superfund Site. The EPA's Record of Decision, issued before cleanup began at the site, showed that the EPA considered and rejected installing a treatment system on the public well. The EPA's ongoing cleanup activities included restoration of the groundwater quality in the public well. The court noted that although treatment on the public well may not obstruct the EPA's clean up activities, the section 113(h) prohibition of judicial review is not dependent on the facts of each case. Since the EPA considered and rejected treatment of the well, an injunction issued by the court for treatment of the public well would be a challenge to the current cleanup of the Superfund site. The court found it lacked subject matter jurisdiction and dismissed the RCRA claim. The court also dismissed NPWA's claims under Pennsylvania state hazardous waste laws seeking treatment of the public well. The court found these claims were also challenges to the current cleanup of the Superfund site, and therefore the court lacked subject matter jurisdiction.