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S. Road Assocs. v. Int'l Bus. Machs. Corp., 216 F.3d 251 (2d Cir. 2000)

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claim-preclusive effect. However, the Court averred that settlements, generally, did not generate issue preclusion, unless the parties clearly intended their agreement to have such effect. The Court further stated that an issue preclusion argument was justified only when both a legal or factual issue was actually litigated and determined by a valid and final judgment, and such determination was essential to the judgment. Accordingly, the Court held the Docket No. 320 judgment did not preclude the United States and Reservation's claims for increased water rights regarding the Reservation's disputed boundary lands.

Finally, the Court approved the parties' proposed settlement concerning the Colorado River Indian Reservation.

The Court remanded the United States and Reservation's water rights claims, associated with the Reservation's disputed boundary lands claims, to the Special Master for determination on the merits. The Court declared that such claims were the last it would decide regarding the lengthy *Arizona v. California* litigation. The Court concluded that resolution of such claims allowed it to enter a final consolidated decree, thus concluding this litigation.

Sara Franklin

UNITED STATES CIRCUIT COURTS

SECOND CIRCUIT

S. Road Assocs. v. Int'l Bus. Machs. Corp., 216 F.3d 251 (2d Cir. 2000) (holding citizen suits under the Resource Conservation Recovery Act ("RCRA") alleging groundwater contamination must be brought against persons or entities currently engaged in the specific RCRA violations).

International Business Machines Corporation ("IBM") leased and occupied property ("Site") from South Road Associates ("SRA") starting in the mid-1950s for manufacturing, parts-cleaning, storage, shipping, and other commercial operations. SRA acquired the property around 1979 and continued leasing the property to IBM until the 1994 expiration of the lease. During this time IBM used and stored chemicals on the Site classified by the Resource Conservation and Recovery Act ("RCRA") as solid and hazardous wastes. In 1981, IBM became aware of potential environmental problems at the Site. Through an internal investigation, IBM discovered that chemicals stored in underground tanks leaked and contaminated the surrounding soil, bedrock, and groundwater. In 1987, the New York State Department of Environmental Conservation ("NYSDEC")

declared the Site a significant threat to the public health and environment and directed IBM to comply with state imposed environmental obligations. In March 1993, IBM successfully petitioned NYSDEC to lower the classification of the Site thereby releasing IBM from all state-imposed environmental obligations except for continued monitoring. At the time of this suit, IBM was monitoring the Site.

In December 1998, SRA sued IBM in the New York Supreme Court for violations of RCRA's statutory and regulatory prohibitions against "open dumping", common law breach of contract, and common law unjust enrichment. IBM removed the action to the United States District Court for the Southern District of New York. IBM moved to dismiss arguing SRA did not assert IBM was currently in the act of contamination, which is required to maintain citizen suits under RCRA. The district court granted IBM's motion and dismissed SRA's federal claims against IBM. SRA appealed.

The Second Circuit Federal Court of Appeals reviewed SRA's allegations that IBM's exceedances of maximum contamination levels ("MCLs") constituted violations of RCRA's "open dumps" and "open dumping" provisions. The Second Circuit reviewed the language of RCRA's citizen-suit provisions and concluded the provisions required that IBM be engaged in the act of open dumping to constitute a violation. The Second Circuit then reviewed the statutory definition of "open dumping" and "open dump." However, the wording of the statute did not specify whether an on-going violation of the open dumping provisions required on-going conduct. Therefore, to make the determination, the Second Circuit reviewed the regulatory criteria to classify solid waste disposal facilities and practices. The Second Circuit determined facilities automatically violate RCRA regulations, conditions, requirements, or prohibitions if facilities fail to follow any of the open dumping provisions. SRA contended IBM violated the open dumping provisions because IBM contaminated an underground drinking water source past the solid waste boundary. SRA specifically alleged IBM's past actions resulted in MCL exceedances in the groundwater, which remained and contributed to groundwater contamination. SRA contended that IBM's actions constituted a violation of the provision prohibiting contamination of groundwater.

The Second Circuit disagreed and determined the definition of "contaminate" means an act that introduces a substance that causes MCL exceedances, not the MCL exceedances themselves. The Second Circuit concluded the only way SRA could maintain the action was if its complaint had alleged IBM was currently introducing substances into the groundwater that caused the MCL exceedances. The Second Circuit court found SRA's complaint only referred to the past MCL exceedances. Additionally, the Second Circuit dismissed SRA's oral allegations that IBM's remediation activities, which involved the movement of contaminated soils, introduced wastes into the

groundwater. The Second Circuit determined the movement of soils pursuant to a state or federal remediation program does not constitute an introduction of substances under RCRA.

The Second Circuit affirmed the district court's dismissal of SRA's federal claims.

William H. Fronczak

FOURTH CIRCUIT

United States v. Deaton, 209 F.3d 331 (4th Cir. 2000) (holding sidecasting in a wetland is a discharge of a pollutant that violates the Clean Water Act).

The United States sued James and Rebecca Deaton ("Deatons") for allegedly violating the Clean Water Act ("CWA") by polluting a wetland. The Deatons purchased a twelve-acre parcel of land in Wicomico County, Maryland, to develop a residential subdivision. The Wicomico County Health Department denied the Deatons' request for a sewage disposal permit because the groundwater elevations were too high and the drainage on the majority of the parcel was too poor. The Deatons consulted the U.S. Department of Agriculture Soil Conservation Service ("SCS"). A site examiner suggested that digging a ditch through the middle of the property could correct the wetness problem.

Before commencing any ditching work, the District Conservationist at the SCS in Wicomico County further inspected the property. He saw evidence of wetlands, including hydric soils, areas of standing water, a large low wet area in the center of the parcel, and non-tidal wetlands. He advised the Deatons that since wetlands existed on their property, they would need to obtain a permit from the U.S. Army Corps of Engineers ("Corps") in order to begin digging. The Deatons ignored this advice and hired a contractor to dig a 1,240-foot ditch across the wetlands to drain the area. The contractor performed sidecasting, a practice where the excavated dirt is piled on either side of the ditch.

After learning of possible CWA violations on the Deaton property, a Corps ecologist inspected the site. He concluded that wetlands were present on the property and that all work should stop until the Deatons obtained the requisite permit. The Deatons unsuccessfully applied for a permit and thereafter spent three years working with consultants to examine the property, negotiate with the Corps, and prepare a remediation plan. With no remediation ever conducted on the property, the government filed a civil complaint against the Deatons for violation of the CWA for pollution of a regulated wetland.

The district court initially granted partial summary judgment to the government. The district court concluded that any wetlands on the Deatons' property were subject to the CWA and that sidecasting