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United States V. Deaton, 209 F.3d 331 (4th Cir. 2000)

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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

excavated material into those wetlands involved the discharge of a pollutant in violation of the CWA. The district court then vacated this determination based upon a subsequent decision and granted summary judgment for the Deatons. The government appealed. The Deatons cross-appealed the district court's original rulings.

The narrow issue in this case involved whether sidcasting, the deposit of dredged or excavated material from a wetland back into that same wetland, constituted the discharge of a pollutant under the CWA. The Fourth Circuit first assumed that the Deatons' property contained CWA protected wetlands. The court then resorted to the provisions of the CWA itself. The CWA prohibits the discharge, without a permit, of any pollutant into navigable waters, which includes wetlands. "Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." The CWA further defines "pollutant" to include "dredged spoil" that has been "discharged into water." The court found the piles of dirt dredged up by the Deatons' contractor were clearly "pollutants" within this definition.

The contested issue involved the meaning of "discharge of a pollutant." The Deatons argued the word "addition" in the phrase "addition of any pollutant" required the introduction of new material into the area. Thus, they argued they did not discharge a pollutant because sidcasting only deposited material that was already present in the wetland. The court rejected this contention and explained that once the Deatons removed the nonpollutant material by sidcasting it became dredged spoil, a statutory pollutant. Most importantly, the court stated the redeposit of the material excavated from the wetland into that same wetland added a pollutant where none had been before. The underlying rationale for defining dredged spoil as a pollutant as determined by Congress and the decisions of other jurisdictions supported the conclusion of the court. The court also determined it did not have jurisdiction to consider the issues raised by the Deatons in their cross-appeal because its disposition on the government's issue restored the case to the district court's original order, which was nonfinal and nonappealable. Therefore, the court held the CWA's definition of the discharge of a pollutant encompassed sidcasting in a wetland and remanded the case.

Vanessa L. Condra

SIXTH CIRCUIT

Adams County Reg'l Water Dist. v. Vill. of Manchester, 226 F.3d 513 (6th Cir. 2000) (holding one village's contract to sell water to another village violated the Farmers Home Administration's protection of rural water associations).