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Puget Soundkeeper Alliance v. Wash., 9 P.3d 892 (Wash. Ct. App. 2000)

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WASHINGTON

Puget Soundkeeper Alliance v. Wash., 9 P.3d 892 (Wash. Ct. App. 2000) (holding the Department of Ecology properly imposed a combination of conditions that furthered the purposes of the federal Clean Water Act and Washington's Water Pollution Control Act more effectively than numeric conditions alone and the numeric limits were reasonable).

The Department of Ecology ("DOE") issued a wastewater discharge permit to Tesoro Northwest Co. ("Tesoro") that included a combination of numeric effluent limits and narrative conditions. Puget Soundkeeper Alliance ("Soundkeeper") appealed the permit issuance to the Pollution Control Hearings Board ("PCHB"). Soundkeeper claimed the permit issuance violated state law standards, which require using all known, available, and reasonable methods of prevention, control, or treatment ("AKART"). Soundkeeper argued DOE violated applicable statutes by using a combination of numeric limits and narrative conditions because only numeric limits satisfied AKART requirements. PCHB concluded the combination of numeric discharge limits and the narrative requirements in the permit satisfied the AKART requirements and upheld the permit.

Soundkeeper claimed the permit failed to comply with Washington's AKART statutory requirements because AKART mandated that permits contain only numeric effluent limits. The court relied on the interpretation of the "all known available and reasonable" language used in *Weyerhaeuser Co. v. Southwest Air Pollution Control Authority* in the context of air pollution emission requirements. The *Weyerhaeuser* court held that while the statutory language was clearly meant to foster the use of new emission control technology, it did not necessarily require using the best control technology. The *Weyerhaeuser* court identified two reasons for its holding. First, the "known" and "available" language did not require applicants to develop new technology to advance emission controls. Second, the term "reasonable" limited DOE to require a system that was both economically and technically feasible. The *Weyerhaeuser* court also held the "known, available and reasonable" language did not require DOE to use only numeric limits. In conjunction with *Weyerhaeuser*, the court held that the AKART requirement was to be similarly construed. AKART neither required applicants to develop new technology nor limited DOE to numeric conditions on permits.

In addition, Soundkeeper argued Washington's AKART provision required that the permit's discharge limits disallowed discharges at higher levels than the actual levels. Because the numeric limits in the permit were higher than the refinery's actual discharge levels, and the

narrative conditions could not make up for the discrepancy, Soundkeeper contended the permit violated the statute. Noting that the AKART provision required using reasonable "methods" to control toxicants, the court concluded the permit's conditions, which directly addressed the refinery's pollution control methods, better satisfied AKART than numeric limits alone. The court reasoned that the limits only indirectly related to the pollution control methods. Thus, the court found the permit both implemented the AKART requirements and did not violate either the federal Clean Water Act or Washington's Water Pollution Control Act.

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WISCONSIN

Danielson v. Sun Prairie, 619 N.W.2d 108 (Wis. Ct. App. 2000) (holding that (1) a sewage interceptor, by nature of design, was not subject to Wisconsin law because it was not a part of a sewer system to which an abutting property owner can connect, and (2) pursuant to Wisconsin law, a relocation order is not a required first step in the condemnation process).

Norman Danielson ("Danielson") owned property in the Town of Burke ("Town"). Danielson brought an action challenging the City of Sun Prairie's ("City") condemnation of his property in order to obtain an easement and place a sewer interceptor for the City's sewer system on his property. Danielson argued both that the City did not obtain the Town's approval pursuant to Wisconsin law before condemning his property and that the City did not adopt a relocation order as its first step in the condemnation process as required under Wisconsin law. The Town intervened against the City, claiming the City erroneously did not obtain the Town's approval before constructing the interceptor. The circuit court entered judgment in favor of the City. Danielson and the Town appealed.

Wisconsin statutory law required the town board's approval when a joining city proposed to construct and maintain extensions of its sewer or water system in the town. Further, such approval was subject to the rights of abutting property owners who were permitted to connect with and use the sewer or water system. Danielson and the Town contended the Wisconsin law referred to any part of a sewer system within the physical perimeter of the Town. The City maintained the same law was meant to include only the part of the sewer system that extended sewer service in town.

The court looked to the statute's plain meaning and determined it was ambiguous. The court then turned to the statute's legislative intent. The court concluded the legislative history supported the statute's construction, which did not include interceptors as extensions