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**N.W. Envtl. Def. Ctr. v. Blue Heron Paper Co., No. 00-1201-KI, 2000 U.S. Dist. LEXIS 17848 (D. Or. Nov. 30, 2000)**

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the environment. The court reasoned that adding parkland to the area would have only a benign effect on the environment and, therefore, a failure to specify its location could not undercut the conclusion of the Area-Wide EA. Moreover, D'Agnillo failed to explain why the location of the parkland had to be included in the Area-Wide EA.

Fourth, the court found that even though the original Area-Wide EA failed to evaluate impacts on wetlands located in one of its site areas, such failure did not warrant another area-wide EA. The court found the City did not issue a FONSI for this site because of the presence of wetlands. Instead, the City had commissioned a more comprehensive environmental impact statement ("EIS") to evaluate any impacts to the wetlands. Although the Area-Wide EA contained a statement indicating no wetlands would be affected by the development project, this factual inaccuracy was due to prior court orders on the scope of the Area-Wide EA. In order to correct this inaccuracy, the court indicated the Area-Wide EA would have to be updated. However, the court felt that because the wetlands area was a self-contained environmental matter, failing to discuss it in the Area-Wide EA was not grounds for its invalidation, a new area-wide EA, or an injunction to prevent construction by the City.

Fifth, the court found D'Agnillo had no basis to seek to enjoin HUD from dispersing funds to the City. According to the court, HUD could withhold funds only if it rejected a potential recipient's environmental findings on limited procedural grounds spelled out in its regulations. The court found the deficiencies alleged by D'Agnillo in the EAs did not fall within these HUD regulations.

For the reasons stated, the district court denied D'Agnillo's motion.

*Matthew J. Costinett*

**N.W. Env'tl. Def. Ctr. v. Blue Heron Paper Co., No. 00-1201-KI, 2000 U.S. Dist. LEXIS 17848 (D. Or. Nov. 30, 2000)** (holding: (1) environmental group's activities created sufficient constitutional standing to bring suit against a paper mill under the Clean Water Act based on allegations that the mill harmed fish populations in the Willamette River; and (2) Oregon Revised Statute section 468.025(1)(b) regulating discharge of wastes into state waters created no private cause of action to enforce the statute, but damages could be sought by pleading the claim as a common-law tort).

Blue Heron Paper Co. ("BHPC") operated a recycling mill that discharged high-temperature wastewater into the Willamette River. Northwestern Environmental Defense Center ("NEDC") sued BHPC under both the Clean Water Act ("CWA") and Oregon statutes. NEDC alleged high-temperature water release adversely affected fish in the river and the rights of NEDC members who fished those waters.

NEDC further alleged heat discharges from the mill by BPHC's predecessor, Smurfit Newsprint Corp. ("Smurfit"), violated the terms of a National Pollution Discharge Elimination System permit.

BHPC argued the United States District Court for the District of Oregon lacked subject-matter jurisdiction to hear the claim under the CWA. BHPC claimed NEDC failed to allege constitutional standing requirements, specifically a concrete and particularized injury-in-fact fairly traceable to the challenged actions of BHPC. Further, because NEDC alleged only specific violations by Smurfit in its complaint, NEDC failed to provide BHPC sufficient notice under the CWA. Finally, BHPC argued NEDC had no cause of action under Oregon Revised Statutes section 468.025(1)(b), as no provision created private enforcement of the statute.

The court found NEDC's complaint alleged sufficient injury-in-fact based on the group's professed interest in the health of fish in the Willamette River. The court found NEDC also provided BHPC sufficient notice, as NEDC's complaint specifically alleged BPHC violated the CWA by discharging waste heat into the river. Information regarding Smurfit's prior, identical operation merely clarified NEDC's allegations. BHPC argued NEDC's notice did not allege specific dates on which BPHC violated the CWA, and was therefore insufficient. However, BHPC took possession of the mill on May 9, 2000, and NEDC sued on June 26, 2000. Thus, the court found the notice effectively alleged BPHC's violations within a relatively short time, and was therefore sufficient.

The court dismissed NEDC's claims under Oregon Revised Statute section 468.025(1)(b) because, where a statute is silent on private enforcement rights, a court considers private claims only when necessary to carry out state policies. In this case, Oregon's Department of Environmental Quality enforced the statute, thereby precluding NEDC's claims. The court granted NEDC leave to amend its complaint, and to plead the claim as a common-law tort.

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## STATE COURTS

### CALIFORNIA

**Equilon Enters., L.L.C. v. Consumer Cause, Inc.**, 102 Cal. Rptr. 2d 371 (Cal. Ct. App. 2000), *reh'g granted*, 21 P.3d 758 (Cal. 2001) (holding: (1) dismissal of plaintiff oil company's action against consumer group under California's "SLAPP" statute was proper where consumer group's notices of intent to sue under Proposition 65 (formerly know as the Safe Drinking Water and Toxic Enforcement Act of 1986) fell