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COURT REPORTS

EIGHTH CIRCUIT

State of Missouri v. City of Glasgow, No. 97-2279, 1998 WL 459937 (8th Cir. Aug. 10, 1998) (holding that the City of Glasgow violated the federal Clean Water Act by discharging sludge from its waste water treatment plant without a municipal water treatment facility operating permit, and that the district court record was insufficient to support a finding that an increased permit fee violated the Missouri Constitution).

The City of Glasgow operated a water treatment facility that provided drinking water to Glasgow residents. The city's water came from the Missouri River. The facility discharged sludge—precipitated solids that resulted from the treatment process, into the river after treatment. Because it discharged sludge into the river, the facility was a "point source" as defined by the Clean Water Act ("CWA"). As such, the CWA required that the facility have a valid operating permit. Glasgow's permit expired in 1995. Before Glasgow's permit expired, the State of Missouri amended its permit statute to increase permit fees from \$75 to \$1,500. Upon application for a new permit, Glasgow refused to pay the increased fee. As a result, the state refused to issue Glasgow a new permit.

The state sued Glasgow in federal district court alleging that Glasgow violated federal law by discharging sludge into the Missouri River without a permit, and that Glasgow failed to pay permit fees as required by state law. In its counterclaim requesting that the court order the state to issue a permit, Glasgow answered that it did not have to pay the increased permit fee because the state statute requiring the fee violated the Hancock Amendment to the Missouri Constitution. The district court held, based on a recent Missouri Supreme Court decision, that the permit fee amendment violated the Hancock Amendment. The court also ordered the state to grant Glasgow's permit. The state appealed, alleging that the Hancock Amendment did not prevent the state from requiring Glasgow to pay the increased permit fee.

The 1980 Hancock Amendment states that "the state is prohibited from reducing the state financed proportion of the costs of any existing activity or service required of . . . political subdivisions." Before passage of the Hancock Amendment, and until the 1990 fee amendment, point source dischargers had to pay a \$75 fee every five years.

As of the 1990 amendment, all Missouri point source dischargers had to pay a \$1,500 annual fee to obtain a permit.

The circuit court found that the state required the permit fee, and that because the fee is a requirement of Missouri State law, it must conform to the Missouri Constitution. Thus, the question before the court was whether the state had decreased its proportion of funding for administration of its discharge permit program, resulting in a permit fee that violated the state constitution.

The court found that the state never funded all water pollution regulation costs, but that the filing fees paid by municipalities subsidized some of those costs. Applying a previous Missouri Supreme Court ruling, the court held that the state could lawfully increase fees if the state continued to fund the costs of administering state water pollution laws in the same proportion it did at the time of the Hancock Amendment's passage. Because the trial record did not provide enough evidence for the court to decide whether the amendment unlawfully decreased the state proportion, the court reversed the district court's ruling, and remanded for such a determination. The court also reversed the district court's ruling ordering the state to issue Glasgow a permit, and remanded for issuance of an order declaring Glasgow in violation of federal law and enjoining the city from discharging sludge into the river.

Debbie Eiland

FEDERAL DISTRICT COURT

OREGON

Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen Foods, Inc., 962 F. Supp. 1312 (D. Or. 1997) (holding groundwater not subject to a National Pollutant Discharge Elimination System permit under the Clean Water Act).

Plaintiff, Umatilla Waterquality Protective Association ("UWQPA"), is a nonprofit corporation composed of approximately twelve individuals whose goal is to protect the quality of water in several Oregon counties. Members of UWQPA owned property or lived near the Smith Frozen Foods operation on Pine Creek in Weston, Oregon. Plaintiff alleged that the wastewater pipelines sometimes discharged pollutants into the creek, which interfered with aesthetic enjoyment and water recreation in the area. Plaintiff also alleged that chemicals from Smith's old brine lagoon were leaching into the groundwater and then traveling to the creek, constituting an unpermitted continuous discharge of pollutants into the creek.

Both parties stipulated to three issues. First, whether the federal Clean Water Act ("CWA") applied to pollutants discharged into groundwater that is hydrologically connected to navigable waters.