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COURT DENIES EPA MOTIONS TO DISMISS BUSINESS CIVIL LIBERTIES LAWSUIT *(Riverdale Mills Corporation v. United States)*

In a major victory for the Washington Legal Foundation (WLF), a federal judge in Massachusetts denied the Environmental Protection Agency (EPA)'s motions for summary judgment seeking dismissal of a malicious prosecution lawsuit against the EPA and claims against two EPA agents for violating a company's business civil liberties. The favorable ruling by U.S. District Court Judge Nathaniel M. Gorton means that the four-year old lawsuit against the EPA and its agents can proceed to trial. The Justice Department has not decided whether it will appeal this major defeat for the EPA.

WLF filed the lawsuit in late 2000 in federal court in Worcester, Massachusetts, on behalf of the Riverdale Mills Corporation (RMC) and its owner and president, James M. Knott, Sr., against the United States under the Federal Tort Claims Act for malicious prosecution of RMC and Knott for allegedly violating the Clean Water Act in late 1997. The complaint also names three EPA agents who were sued individually in a so-called "*Bivens*" action for violating RMC's and Knott's constitutional rights under the Fourth and Fifth Amendments for conducting unlawful searches and seizures, and for selectively enforcing EPA regulations.

RMC, a small business located in Northbridge, Massachusetts, is an environmental award-winning, energy efficient facility that manufactures galvanized and plastic-coated welded steel wire mesh used for lobster traps, aquaculture, erosion control, and other purposes. The complaint recounts EPA's malicious and selective criminal investigation and felony indictment against RMC and Knott for allegedly violating an EPA regulation by discharging rinsewater from RMC's facility on October 21, 1997 and November 7, 1997, with a pH level of less than 5.0 standard units, into the public sewer. The sewer eventually reaches the Town of Northbridge's publicly owned treatment works (POTW).

There were no allegations by the EPA that the POTW was damaged in any way by RMC's rinsewater (which, by volume, is less than six percent of the amount RMC is allowed by EPA to discharge, and which accounts for less than two-tenths of one percent of the capacity of the POTW). Nor were there any allegations that RMC's rinsewater caused the POTW to violate any EPA regulations governing the POTW's discharge of rinsewater into the Blackstone River. Thus, even if there were violations of the pH levels as alleged by the EPA, they were technical infractions with no accompanying harm.

In the course of defending themselves against the unprecedented felony criminal charges for the alleged trivial infractions, Knott and RMC demanded that the government turn over the original log books of the EPA agents who took pH readings on October 21 and November 7, 1997. The log books revealed that a lawful pH reading of 7 taken during the initial raid was altered so that the 7 was made to look like a 4, and that other 7s were altered to look like 2s. The pH readings taken by the EPA during the November 7, 1997 raid on RMC all show pH readings of 5 or above in compliance with EPA regulations where the public sewer line actually connects to RMC's discharge pipe.

Judge Gorton suppressed the evidence of pH readings of rinsewater taken on October 21, 1997, because EPA agents had violated RMC's and Knott's Fourth Amendment rights against unreasonable searches and seizures when it took tests and readings without any RMC employee present to witness the testing, as expressly required by Knott as a condition for the consensual search. A week before the scheduled trial in May 1999, all charges against RMC and Knott were suddenly dropped.

On July 27, 2000, the court granted RMC's and Knott's subsequent motion filed under the Hyde Amendment for reimbursement of attorneys' fees for defending what the court found to be a "vexatious" criminal prosecution. Judge Gorton described the November 7, 1997 raid by EPA agents on RMC as *"a virtual `SWAT team' consisting of twenty-one EPA law enforcement officers and agents, many of whom were armed, [who] stormed the RMC facility to conduct pH samplings. They vigorously interrogated and videotaped employees causing them great distress and discomfort."* EPA and the U.S. Attorney's Office had also issued a press release falsely branding Knott and RMC as a water polluter, and boasting that Knott was facing six years in prison and \$1.5 million in fines. CBS's "60 Minutes" produced a featured segment about this case critical of EPA. Unfortunately, the court's fee award was reversed by the First Circuit on appeal.

Nevertheless, WLF pressed on with the civil lawsuit in the district court and successfully opposed the EPA's efforts to block the taking of depositions of the EPA agents. In his 21-page landmark ruling, Judge Gorton rejected the government's contention that the reversal of the attorney fee application by the First Circuit precluded the plaintiffs from showing that the government had no probable cause to bring the case in the first place. He also ruled that the EPA agents were not entitled to qualified immunity because it was clear that Mr. Knott's terms for the consent for the initial search were violated. The court, however, did grant the government's motion to dismiss claims against a third EPA investigator who was found to have qualified immunity in obtaining a search warrant of the business premises.

WLF is working closely with attorney Warren G. Miller of Boston who represented Mr. Knott and RMC in the original criminal proceedings.

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