

FOR IMMEDIATE RELEASE

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**WLF SUES EPA FOR
MALICIOUS PROSECUTION***(Riverdale Mills Corp. and James M. Knott, Sr. v. United States, et al.)*

The Washington Legal Foundation (WLF) filed a complaint late yesterday 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 agents of the Environmental Protection Agency (EPA) who are sued individually 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 against RMC and Knott because of their outspoken criticism of EPA. The complaint seeks damages of \$12.85 million for RMC and \$2.5 million for Knott for all the claims, and an additional \$1 million in punitive damages against the EPA agents for each of the constitutional claims.

RMC, 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 commercial purposes. In the 38-page complaint, *Riverdale Mills Corp. v. United States*, No. CV 0040137, RMC and Knott recount EPA's malicious, vexatious, and selective criminal investigation and felony indictment against RMC and Knott for allegedly violating an EPA regulation by discharging wastewater from RMC's plant on October 21, 1997 and November 7, 1997 with a pH 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 wastewater (which, by volume, is less than six percent of the amount allowed by EPA, 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 wastewater caused the POTW to violate any EPA regulations governing the POTW's discharge of wastewater into the Blackstone River. In short, even if there were violations of the pH levels as alleged by the EPA, they were technical infractions with no accompanying harm to the environment.

In the course of defending themselves against the unprecedented felony criminal charges for the alleged minor infractions, Knott and RMC demanded that Assistant United States Attorney William Stimson turn over to the defense the original log books of the EPA agents who took pH readings on October 21 and November 7, 1997. Despite Stimson's unequivocal statement that the United States was unaware of any exculpatory evidence, the log books show that a lawful pH reading of 7 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 pipe begins.

U.S. District Court Judge Nathaniel M. Gorton suppressed the evidence of pH readings of wastewater 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, the United States dropped all charges against RMC and Knott.

On July 27, 2000, Judge Gorton granted RMC's and Knott's subsequent request filed under the 1997 Hyde Amendment for reimbursement of attorneys' fees for defending what Judge Gorton found to be a "vexatious" criminal prosecution against RMC and Knott, one that was harassing in nature and without probable cause. Judge Gorton described the November 7, 1997 raid 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." A supposed "true" copy of the videotape taken during the raid by the EPA was released, but the tape is extensively and crudely edited. Judge Gorton also noted that Knott suffered great humiliation by the criminal charges and the Press Release issued by EPA and the U.S. Attorney's Office. The release falsely branded Knott as a water polluter, and boasted that Knott was facing six years in prison and that Knott and RMC were facing \$1.5 million in fines.

"EPA has never filed felony criminal charges for such trivial infractions," commented Paul D. Kamenar, WLF's Senior Executive Counsel. "Even cases of serious pollution involving hazardous, carcinogenic, and toxic pollution are routinely handled in administrative and civil proceedings. We intend to put the EPA on trial to expose its abuse of power," Kamenar added. WLF is a pro-free enterprise public interest law and policy center based in Washington, D.C., that promotes business civil liberties and provides legal assistance to small businesses challenging excessive and unwarranted regulatory actions. WLF is working with local counsel Warren G. Miller of Boston who represented Knott and RMC in the criminal proceedings, along with Henry T. Dunker of Weymouth and Jamy B. Buchanan of Boston.

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