By Dan Farber

A Typical Day of Environmental Suits

This column on environmental law in the courts is obviously shaped by the perspective of the author. I thought it would be a good idea to get a broader look at what the courts are doing, less filtered by my own perspective as to what is significant. In search of a fuller view of environmental law in the courts, I did a computer search for all the environmental cases decided by the federal courts on a single typical day, leaving myself out of the selection process. The results were intriguing.

The day I picked was Thursday, November 18, 2010. I wanted a day that was before the holiday season and in the middle of the week; apart from that, the choice was arbitrary. Thus this is obviously not at all a scientific sample of litigation, but it does give a sense of the kinds of cases the federal courts are confronting on a daily basis. My search produced four cases that are worth describing.

The first decision was *Wyoming v. U.S. Department of the Interior,* 2010 WL 4814950, a very lengthy district court opinion. This case involved the Fish and Wildlife Service's refusal to delist the gray wolf as an endangered species in the state. The issue was whether Wyoming's wolf management plan provided sufficient protection for the wolf population. The Service had previously agreed to delist the wolf but then changed its mind.

The core issue was whether the plan was sufficient to protect the wolves in the area of Yellowstone, in the upper left hand corner of the state, where about a third of them are located, or whether statewide protection was required. The court remanded to the agency to reconsider "whether the proposed size of the trophy game management area in northwestern Wyoming is sufficient to allow the state to meet and maintain recovery goals." Most of the court's opinion consists of extended quotes from the records or summaries of contending positions, leaving the analysis a bit hard to follow. The main takeaway is how complex the issues are that we ask our courts to resolve.

The second decision, *St. Croix Renaissance Group v. St. Croix Alumina,* 2010 WL 4723897, came from the district court in the Virgin Islands. The opinion was about an evidence dispute in a real estate case. The suit involved various claims of nondisclosure, including "failure to alert plaintiffs to hazardous materials on the property" and "claims for fraud in the inducement for failing to disclose various environmental violations."

A look at how four federal courts wrangled with the law on a single date in November

The issue before the court was whether evidence about the financial state of the defendant's parent company would be relevant in determining punitive damages. The court rejected the testimony because the parent company was not a party to the case. Perhaps the most significant aspect of this decision is simply that it illustrates how much environmental issues have become a part of real estate practice.

The third case, *Sierra Club v. Powellton Coal Co.*, 2010 WL 4791590, was a Clean Water Act citizen suit — the kind of case that I most expected to find. Before the district court was a consent decree requiring the defendant to implement a treatment plan to reduce aluminum discharges from its coal mining facilities, including some studies, use of a third-party consultant, providing compliance training, and assigning a full-time employee for CWA compliance. The decree requires a $134,000 civil penalty payment to the U.S. government. It also provides, as a supplemental environmental project, for a payment of $1,212,000 to the West Virginia University College of Law to create a Land Use and Sustainable Development Law Clinic. The court concluded that the proposed consent decree was "fair, adequate, and reasonable," and that it "serves the public interest."

The fourth case, *City of Greenville, Illinois v. Syngenta Crop Protection, Inc.,* 2010 WL 479164, was decided by the Southern District of Illinois. The suit was an action by cities and other drinking water providers against the manufacturer of atrazine. The plaintiffs alleged that the manufacturer sold this herbicide to farmers knowing that runoff could contaminate water supplies. The plaintiffs sought to recover damages for the costs of monitoring atrazine levels and removing it from their water, plus punitive damages. The court threw out one claim under Indiana law but upheld the remaining claims, including recovery of the costs for monitoring atrazine even when the level turned out to be below regulatory limits.

On this particular day, there were no CERCLA decisions or reviews of EPA regulations, but the cases were varied and interesting. I'd encourage you to pick another day and look yourself. If you do, let me know what you find.

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