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Environmental Defense Fund v. City of Chicago, 985 F.2d 303 (7th Cir. 1993) — The City of Chicago successfully defended an action brought against it for allegedly mishandling waste fly ash generated by a city waste incinerator, which plaintiff claimed should be treated as hazardous waste. The plaintiff appealed and won a reversal. 948 F.2d 345 (7th Cir. 1991). The Supreme Court granted certiorari, then vacated and remanded the case for reconsideration. 113 S.Ct. 486 (1992) On remand, the Seventh Circuit Court of Appeals stood by its previous decision that fly ash was not exempt from the hazardous waste handling requirements imposed by the Resource Conservation and Recovery Act (RCRA). 42 U.S.C. § 6921(i) (1993). In reaching its conclusion, the court expressly ignored a 1992 EPA memorandum declaring that fly ash is exempt from RCRA upon the grounds that the EPA had changed its mind too many times to be entitled to the traditional level of deference given to agency opinions. The Supreme Court has granted certiorari once again.

Public Citizen v. United States Trade Representative, 1992 WL 371802 (D.C. Cir.) — The Office of the United States Trade Representative (OTR) unsuccessfully defended against an action seeking an environmental impact statement (EIS) for the North American Free Trade Agreement (NAFTA). 822 F.Supp. 21 (D. D.C. 1993). The OTR appealed. The D.C. Circuit Court of Appeals reversed the district court, holding that NAFTA is not a final agency action until the President submits NAFTA to Congress. At that point, the action will have been taken by the President and therefore will not be subject to an EIS. Therefore, NAFTA is free from any EIS requirement. Plaintiffs presently are considering seeking certiorari from the Supreme Court.

Gilliam County v. Department of Envt'l Quality of Or., 849 P.2d 500 (Or. banc 1993) — The state of Oregon, on appeal, successfully defended against a challenge claiming that rules requiring landfills to charge out-of-state trash a higher fee than in-state trash violated the federal Commerce Clause. 837 P.2d 965 (Or. App. 1992). The Oregon Supreme Court affirmed the Oregon Court of Appeals. In reaching its conclusion, the court held the additional charge did not violate the federal Commerce Clause as the fee compensates the state for additional costs involved in inspecting out-of-state trash to insure conformity with Oregon requirements. Further, since in-state trash has been subject to regulation prior to reaching landfills, out-of-state trash does differ from in-state trash in some manner other than origin. The U.S. Supreme Court has granted certiorari for this case. 1993 WL 275198 (U.S.Or.)

Missouri Hosp. Ass'n v. Air Conservation Comm'n, No. CV 191-1098CC, Slip Op. (Cir. Ct. Cole County, Mo. March 11, 1993) — The Missouri Hospital Association and Associated Industries of Missouri successfully sought an injunction from the Cole County Circuit Court against the Air Conservation Commission (Commission) preventing the Commission from enforcing 10 C.S.R. § 10-6.160 and 10 C.S.R. § 10-6.190 (regulations). The court enjoined the regulations, affecting industrial waste, medical waste and sewage sludge incinerators, on the grounds they were barred by §643.055(1) RSMo Supp. 1992 (statute) and they were published without satisfying the requirements of §§ 536.200 and 536.205, RSMo 1986. The statute authorizes the Commission to establish standards which keep Missouri in compliance with the federal Clean Air Act but bars the Commission from enacting standards stricter than or prior to those required by the federal Clean Air Act. The court found the regulations were enacted prior to being required by the federal Clean Air Act. Sections 536.200 and 536.205 require publication of a proposed rule. The court also found the fiscal notes did not comply with the statutory requirements. The Missouri Court of Appeals for the Western District recently heard the appeal of the circuit court's decision.

Missouri Senate Bill 80, 100, 140 & 17 — The Missouri General Assembly passed and Governor Carnahan signed into law Senate Bill 80, 100, 140 & 17 (SB 80). The bill's most important aspects include substantially strengthening the Department of Natural Resources (DNR) and related commissions' ability to levy administrative penalties and creating a voluntary clean-up program for environmentally contaminated sites not subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

Senate Bill 80 removes parties' ability to have appeals of administrative penalties tried as a trial de novo. This ability had effectively hamstrung agencies' administrative enforcement powers in the past by allowing all penalties to be contested in court just like civil penalties. Administrative penalties now will be appealed to the Administrative Hearing Commission and, upon receiving a final decision, to the circuit courts for judicial review. In hearing an administrative appeal, courts look to whether a penalty:

- violates constitutional provisions or exceeds the agency's statutory authority,
- is not supported by competent and substantial evidence upon the whole record,
- is otherwise not authorized by law, was made without a fair trial, and
- is arbitrary or unreasonable, or involves an abuse of discretion.

Once an administrative penalty is imposed, additional civil monetary penalties are barred. Minor violations are not subject to administrative penalties. "Minor violations" are defined as violations not knowingly committed which have a small potential to harm the environment, hurt human health or cause pollution and are not defined by the EPA as greater than minor. Affected sections are: §§ 260.200-.345 RSMo, Solid Waste Disposal; §§ 260.350-.430 RSMo, Hazardous Waste Management; §§319.100-.139 RSMo, Underground Storage Tanks; §§ 444.350-.380 RSMo, Metallic Minerals Waste Management; §§ 643.020-.210 RSMo, Air Conservation Generally; and §§ 644.006-.141 RSMo, Missouri Clean Water Law.

Further, a definition of "conference, conciliation and persuasion" is provided for each affected section requiring the DNR to make at least one offer to meet with an alleged violator and negotiate in good faith to remove the violation and agree upon a compliance plan. If the violation is removed, no administrative penalty will be imposed unless the violation has actually caused or has the potential to cause harm to people or the environment.

Sections 260.565, .567 RSMo establish a voluntary clean-up program for environmentally contaminated sites not subject to CERCLA or RCRA.

Senate Bill 80 also provides for evaluating the energy efficiency of state buildings, retrofitting them where necessary and practical, and establishing inspection fees for infectious waste incinerators and hazardous waste facilities.