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Cases to Watch

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Cases to Watch

Laguna Gatuna, Inc. v. Browner, 58 F.3d 564 (10th Cir. 1995), *petition for cert. filed*, 64 U.S.L.W. 3250 (Sept. 18, 1995) (No. 95-465)

Under prior ownership, the waste water disposal company Laguna Gatuna, Inc. (Laguna Gatuna) filed an inquiry with the Environmental Protection Agency (EPA) to determine if the EPA, under the Clean Water Act (CWA), had jurisdiction over its water disposal dump site. The EPA replied by letter that the Laguna Gatuna sinkhole did not fall under EPA jurisdiction, since the site was not connected to other water ways and did not affect interstate commerce. Some time later, the EPA discovered dead migratory birds at the sinkhole, which prompted it to issue a compliance order to Laguna Gatuna that halted further dumping.

Laguna Gatuna filed suit for declaratory relief, which the district court dismissed. On appeal, the Tenth Circuit Court of Appeals affirmed the lower court and held that the court did not yet have jurisdiction to review this EPA action. The court looked to other circuits that had previously addressed this specific issue to determine that legislative history suggested that courts were precluded from reviewing EPA pre-enforcement orders. The court held that only a violation of the EPA order would provide Laguna Gatuna with the opportunity for judicial review of the EPA's

asserted jurisdiction over its dumping activities.

On appeal to the United States Supreme Court, Laguna Gatuna brings the issue of the reviewability of EPA compliance orders brought under the CWA. Petition for certiorari was filed with the United States Supreme Court on September 18, 1995.

Hopkins v. United States, 53 F.3d 533 (2d Cir. 1995), *petition for cert. filed*, 64 U.S.L.W. 3298 (Oct. 16, 1995) (No. 95-609)

The Connecticut Department of Environmental Protection (DEP) issued the Spirol International Corp. (Spirol) a fine and compliance order for discharge of toxic wastewater. Robert Hopkins, a Spirol vice president, agreed to be responsible for compliance with the order, which required Hopkins to file discharge reports and have wastewater samples independently tested. After several years of alleged noncompliance, DEP filed suit against Hopkins. The district court found that he had falsified information, that he had violated discharge permit requirements, and that he had conspired to commit both acts.

Appealing to the Second Circuit Court of Appeals, Hopkins argued that contrary to the district court's jury instructions, actual knowledge of the acts illegality was necessary to commit these

violations, rather than only the "conscious avoidance" of the fact that the tampering occurred. The court of appeals upheld the lower court, finding that Congress anticipated a presumption that individuals would be aware of these particular regulations, due to the seriousness of the offenses. The court found that legislative history did not suggest the government must show the defendant knew his actions to be illegal. The "conscious avoidance" instruction was appropriate, the court held, since the defendant's actual knowledge was not at issue. Further, the court stated that a defendant need not have knowledge that the Clean Water Act (CWA) required those regulated to have an accurate system of wastewater monitoring. Finally, the court stated that Hopkins' negligence alone could not be grounds for finding him liable for tampering and record falsification.

Hopkins' appeal to the United States Supreme Court presents four issues: whether a defendant must know a particular act is a violation of the CWA to be found liable; whether a defendant must be aware that the CWA requires accurate maintenance of testing methods; whether the jury could convict Hopkins on the basis of negligence alone; and whether a "conscious avoidance" level of knowledge would be sufficient to commit these violations, rather than actual knowledge. Petition for certiorari was filed with the United States Supreme Court on October 16, 1995.