

Journal of Environmental and Sustainability Law

Missouri Environmental Law and Policy Review
Volume 9
Issue 1 2001-2002

Article 7

2001

Environmental News

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Recommended Citation

Environmental News, 9 Mo. Envtl. L. & Pol'y Rev. 41 (2001)
Available at: <http://scholarship.law.missouri.edu/jesl/vol9/iss1/7>

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ENVIRONMENTAL NEWS

AG Sues Hazardous Waste Facility to Ensure Proper Closure

On June 14, 2001, Missouri Attorney General Jay Nixon filed a lawsuit against a hazardous waste facility in Scott City, Missouri. The purpose of the lawsuit was to revoke the state permit and close the financially troubled facility. The facility, operated by Millennium Environmental of Missouri, Inc., is located at 3100 Industrial Fuels Drive. The facility accepts a variety of hazardous waste for the purpose of storage and treatment, including some wastes that were toxic, corrosive, or ignitable.

The Attorney General cited three violations of the state's Hazardous Waste Management Law found through inspections conducted by the Department of Natural Resources (DNR). First, the facility allegedly stored hazardous waste in a non-permitted area and stored incompatible wastes together. Second, the facility allegedly failed to store hazardous wastes in containers in good condition. Third, the facility allegedly stored approximately 15,000 more gallons of hazardous waste than allowed by the permit.

The DNR analysis also found that Millennium's current financial assurance instrument, which provides a guarantee that the facility can cover the costs of a proper closure, was over \$50,000 short. Additionally, a check written by Millennium to the DNR in March for inspection fees and engineering review costs was returned for insufficient funds, as was a check written by Millennium to its local utility company.

Nixon is requesting the Scott County Circuit Court to order the facility to be closed and to revoke Millennium's hazardous waste permit. Nixon also asked the Court to order Millennium to (1) have an employee present at all times in case of an emergency at the facility; (2) stop accepting additional hazardous waste; (3) remove all hazardous waste to another facility; and (4) pay all fees and costs due to the state. The Attorney General is also requesting that Millennium pay civil penalties of up to \$10,000 per day per violation, as provided by Missouri law.

M. KATHERINE FREED

State Has Power to Regulate Factory Farm Odor

On April 17, 2001 the Missouri Court of Appeals for the Western District ruled that the State has the ability to regulate odors emanating from factory farms located throughout the state. The Friends of Agriculture for the Reform of Missouri Environmental Regulations ("FARMER") argued that regulations adopted by Missouri's Air Conservation Commission were illegal because, *inter alia*, they were stricter than federal guidelines. The State countered that the EPA and Congress had not propagated any odor regulations on farming operations thereby leaving it for the state to set standards.

Missouri Revised Statutes § 643.055.1 prohibits the Missouri Air Conservation Commission from adopting environmental regulations that are either stricter than those required by federal law or enforceable earlier than federal law. FARMER argued that because the federal government had not regulated odors from farm operations, then the state was precluded from doing so. The Attorney General's office argued that because there are no federal odor controls, the state's regulations did not violate § 643.055.1.

The court noted that the EPA had recommended to Congress that it leave the creation of odor regulation to the states. Quoting an earlier decision, the court said, "[i]t is only in areas where Congress has acted that the Commission will be implementing the EPA programs; in all other areas of air quality, the Commission will still act independently." The court held that because the federal government had not regulated odor emissions the state was free to do so. Under the Missouri Air Conservation Commission's rule, concentrated animal feeding operations ("CAFOs") have until January 1, 2002 to implement plans to control the odors emanating from their farms.

GARY TROXELL