



Walter Wright, Jr.

wwright@mwlaw.com

(501) 688.8839

Resource Conservation and Recovery Act: Federal Court Addresses Whether a Methane Gas Leak Constitutes Solid Waste/Citizen Suit Notification Requirements

Arkansas Environmental, Energy, and Water Law Blog

09/13/2016

Co-Author: Rachel Hildebrand

A federal district court (Northern District – Illinois) addressed whether methane gas leaking from a pipeline is “solid waste” as defined in Section 1004(27) of the Resource Conservation Recovery Act (“RCRA”). See *Northern Illinois Gas Co. v. City of Evanston, Illinois*. 2016 WL 521002 (Feb. 10, 2016).

The issue arose in a RCRA citizen suit action brought by the city of Evanston, Illinois, against two gas companies, Northern Illinois Gas Company and Commonwealth Edison.

The City of Evanston alleged that the companies improperly disposed of methane gas and waste oil in violation of RCRA. The statute addresses the treatment, storage, and disposal of solid and hazardous waste.

A gas company operated a plant from about 1910 until the 1950s. The plant manufactured gas using the “Lowe” process. The Lowe process utilized oil stored in above-ground tanks that eventually became waste oil. The waste oil had likely entered the environment by (1) leaking from the storage tanks, and ultimately biodegrading into methane; and (2) traveling through the pipelines that transported gas from the plant.

The substance eventually leaked into the soil forming a “black crust” within the pipes. The black crust “threaten[ed] to penetrate the water line” and contaminate Evanston’s drinking water.

The issues presented to the court were two-fold:

1. whether the leaked methane gas could be considered “solid waste” under RCRA, even though methane gas constitutes “an uncontained gaseous material”; and
2. whether Evanston’s notice of intent to file a citizen suit action under RCRA had properly apprised the gas companies of the endangerment posed by the waste oil.

The Court first addressed whether methane gas is a RCRA solid waste. The statute defines the term as:

... other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . .

The Court found that methane gas does not fit within the definition of “solid waste”.

The Court determined that this RCRA definition is ambiguous as to whether an uncontained gas, such as methane, should be considered a solid waste. However, it noted that the United States of Environmental Protection Agency (“EPA”), along with numerous courts, have concluded in rulemakings and judicial decisions, respectively, that uncontained gases do not fall within the scope of the RCRA term “solid waste”.

As to whether Evanston’s RCRA notice of intent sufficed, the statute requires that a plaintiff must notify a defendant of an alleged endangerment 90 days before filing a citizen suit action. Failure to provide the required notice mandates dismissal of the complaint.

The gas companies contended that the notice “did not even mention Lowe Process waste oil and did not ascribe the presence of methane [...] to any cause other than the leakage of natural gas from active pipelines.” Therefore, they argued, there was not sufficient notification of endangerment 90 days prior to commencement of the action.

Evanston contended in response that the notice was sufficient because it alerted the companies (1) that high levels of methane were present; and (2) that “coal tar” was coating a municipal water pipe and threatening to penetrate it. Evanston argued utilization of the term “coal tar” in the notice was a way of referring to Lowe Process waste oil.

The gas companies responded that a RCRA notice must identify the specific pollutant at issue. They argued that “coal tar” and Lowe Process waste oil are not the same substance.

The court acknowledged that not every source of pollution must be identified. However, it stated that a notice must be sufficiently specific to inform the alleged violator about what it is doing wrong. The purpose of such notice is to identify what corrective actions would avert a lawsuit.

The court held that “the mere absence of the term ‘Lowe Process waste oil’ in Evanston’s notice would not render it insufficient if the notice otherwise provided “sufficient information to permit the recipient to identify” the alleged endangerment. It concluded, however, that Evanston’s notice did not apprise the gas companies of the endangerment posed by Lowe Process waste oil because:

1. The allegations in the notice about “coal tar” emanating from a gas pipeline would not have alerted the companies to the widespread release of Lowe Process waste oil;
2. the notice said nothing about leakage from above-ground storage tanks; and
3. coal tar and waste oil are not the same substances, and thus using the term “coal tar” in the notice was not the equivalent of using the term “waste oil.”

The city’s notice to the gas companies was therefore determined insufficient to satisfy the notice requirements of RCRA and the claim was dismissed.

[The opinion can be downloaded here.](#)