

# NORTH CAROLINA LAWYERS WEEKLY

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## Front Page Stories

### State, Federal Actions Used In Water Contamination Case

Morrisville landowners have settled state and federal environmental suits against a wood treatment facility they say polluted their surface and groundwater resources.

The cases illustrate the alternatives available to parties in environmental disputes. Property owners in the Wake County town sought to recover for property damage and personal injuries allegedly caused by contamination from the neighboring treatment plant. A federal claim was brought for surface water contamination, while a state claim alleged damages from groundwater pollution.

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Attorneys for the plaintiffs were Anna Neal Blanchard and Howard Twiggs of Raleigh, and David Pope of Atlanta.

#### First Case

In the federal case, filed in U.S. Eastern District Court, the landowners alleged that contaminated waste water from an unlined pond on the adjoining property had flowed into their 1/2 acre pond. Contaminants, which included dioxin and pentachlorophenol (PCP), reached the plaintiffs' property by a connecting stream. Chemical testing of fish in the landowners's pond showed significant dioxin levels. The landowners were told by the Environmental Protection Agency to limit the amount of fish they ate from the pond.

The federal claim was based in part on Superfund laws. The plaintiffs alleged a decrease in their property value, clean-up costs and personal injuries, including increased risk of disease and fear of cancer.

'Under Superfund, we felt like we had a better shot at clean-up costs, or remediation and response costs,' Blanchard said. 'The estimated cost for cleaning up the pond was tremendous. The water would have to be pumped out and the soil and sediment removed.'

'It was a major clean up,' she added. 'In federal law, we believed we could get the clean-up costs. We were not so sure under state remedies.'

The federal case was settled for \$550,000, with the landowners deeding their pond and the stream bed to the plant owners. Settlement was reached during a court-ordered settlement conference six months before the scheduled May 1992 trial date.

"Our clients were happy to get rid of the property with all its potential liabilities," Blanchard said. "If you own the contaminated property, you are a 'potentially responsible party' (PRP) under federal law. To get out of paying the clean-up costs as a PRP, you have to prove who actually polluted the land. That can involve a lot of litigation. Our clients were worried about that, so they felt they should limit their liability by deeding the property to the defendants.

### Second Case

In the state claim, the plaintiffs alleged that dioxin and PCP from the treatment plant had seeped into their groundwater. The case was filed in Wake County Superior Court on theories of negligence, nuisance, trespass and strict liability. The plaintiffs also alleged a violation of N.C.G.S. § 143-215.75, the Oil Pollution and Hazardous Substances Control Act.

"Our clients weren't able to use their water," Blanchard said. "Before they were getting water free. They've since been hooked up to city water. They have a monthly bill now and have incurred some tax assessments as a result."

The settlement in the state claim was confidential. Blanchard said the value of each claim was not individually apportioned.

The plaintiffs used the following experts in preparing their claims:

Chapel Hill appraiser Mike Day discussed diminution of the property value because of the contamination.

A lawyer with the environmental section of First Union Bank in Charlotte addressed the potential liability for the owner of contaminated land.

Two out-of-state doctors and a toxicologist from North Carolina State University prepared information regarding the risk of cancer to the clients from the levels of exposure they received.

Westinghouse Environmental gathered data on the concentrations of dioxin and the cost of clean-up of the property.

Raleigh attorney William Joslin was used as an expert on what a potential buyer must be told regarding contaminated property.

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