

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Violet v. United States Environmental Protection Agency

654 F. Supp. 56 (D.R.I. 1987) · Decided January 22, 1987

SUMMARY

The court granted the EPA's motion to dismiss as moot a challenge by Rhode Island to the proposed on-site disposal of PCB-contaminated soil at the Picillo hazardous waste site. The court held that the Superfund Amendments and Reauthorization Act of 1986 specifically required the remedial action to conform to the state's standard, thereby eliminating the controversy concerning the challenged remedial plan. The court alternatively concluded that any remaining issues were not ripe because the EPA had not yet adopted a new remedial plan.

CASE DETAILS

COURT	United States District Court for the District of Rhode Island
WRITING FOR THE COURT	John R. Pettine, Senior District Judge
JURISDICTION	Rhode Island
DECIDED	January 22, 1987
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State of Rhode Island and its Attorney General sought declaratory and injunctive relief challenging the EPA's proposed disposal of PCB-contaminated soil at the Picillo hazardous waste site. The EPA moved to dismiss, arguing that the Superfund Amendments and Reauthorization Act of 1986 had rendered the controversy moot; alternatively, the EPA argued that the remaining issues were not ripe for review.
STANDARD OF REVIEW	For mootness, whether a live controversy and a legally cognizable interest in the outcome remained under Article III. For ripeness of administrative action, the court applied the Abbott Laboratories inquiry concerning statutory reviewability, fitness for judicial decision, and hardship from withholding review.
PRECEDENTIAL VALUE	Published federal district court memorandum and order; persuasive authority within the District of Rhode Island and nonbinding authority elsewhere.

TOPICS

hazardous waste

cercla

environmental law

judicial review of agency action

administrative law

PRACTICE AREAS

environmental law

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federal civil procedure

QUESTIONS PRESENTED

1. Whether the Superfund Amendments and Reauthorization Act of 1986 rendered moot the State's challenge to the EPA's original remedial plan for disposal of PCB-contaminated soil at the Picillo site.
2. Whether any issues allegedly remaining concerning the precise remedy, funding, cost allocation, or consistency with the National Contingency Plan were ripe for judicial review before the EPA adopted a new remedial plan.

HOLDINGS

1. The 1986 Superfund Amendments rendered the controversy moot because they supplanted the statutory basis for the original Record of Decision and required the remedial action at the Picillo site to conform to Rhode Island's applicable standard, thereby granting the relief sought by the State.
2. The court could not adjudicate the State's asserted remaining issues because they were not ripe; the Superfund Amendments invalidated the basis for the original Record of Decision as to the PCB-contaminated soil, and the EPA had not yet taken new administrative action that could be challenged.

KEY QUOTATIONS

“There can be no doubt that Congress intended this amendment to govern the selection of remedial action at the Picillo site, and to the extent that the plaintiffs’ suit challenges the ROD which the EPA issued in connection with such action, the Superfund Amendments have rendered the litigation moot.” (60)

“Until the EPA makes such a decision or refuses to make a decision with regard to the Picillo site which the law requires it to make, there is no administrative action which the State may challenge.” (61)

FACTUAL BACKGROUND

The EPA issued a 1985 Record of Decision for the Picillo hazardous waste site in Coventry, Rhode Island, proposing to dispose of PCB- and phenol-contaminated soil in an on-site landfill. Rhode Island challenged that aspect of the remedial plan, asserting that groundwater conditions made on-site disposal inappropriate and that the plan was technologically unreliable and insufficiently protective of public health and the environment. While the litigation was pending, Congress enacted the Superfund Amendments and Reauthorization Act of 1986, including a provision requiring conformity with the Rhode Island standard for the remedial action addressed by the lawsuit.

PROCEDURAL HISTORY

The State challenged the EPA's 1985 Record of Decision selecting on-site disposal of PCB-contaminated soil at the Picillo site. While the action was pending, Congress enacted the Superfund Amendments and Reauthorization Act of 1986, which required the President to conform the remedial action at issue to the applicable Rhode Island standard. The district court held that the amendment granted the relief sought and eliminated the live controversy; it further held that any remaining issues were not ripe because the EPA had not yet taken new agency action.

DISPOSITION

dismissed

CASES CITED

- *Flast v. Cohen*, 392 U.S. 83, 95 (1968)
- *United States Parole Commission v. Geraghty*, 445 U.S. 388, 395-96 (1980)
- *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)
- *Boston Chapter, NAACP v. Beecher*, 716 F.2d 931, 932 (1st Cir. 1983), vacated and remanded, 468 U.S. 1206 (1984), reaff'd, 749 F.2d 102 (1st Cir. 1984), cert. denied, 471 U.S. 1075 (1985)
- *Abbott Laboratories v. Gardner*, 387 U.S. 136, 139-40, 148-49 (1967)
- *Alascom, Inc. v. FCC*, 727 F.2d 1212, 1217 (D.C. Cir. 1984)