Pollution Lawsuit Against Pa. Plant Is Revived

JOE MANDAK, Associated Press

PITTSBURGH (AP) — A federal appeals court revived a lawsuit Tuesday against a western Pennsylvania power plant, ruling that two women who live nearby can sue over alleged fly ash pollution even though the plant meets state and federal air pollution standards.

The women, Kristie Bell and Joan Luppe, sued on behalf of all residents who live within a mile of the Cheswick Generating Station plant, which is about 15 miles northeast of Pittsburgh. They contend it emits fly ash and other waste particles onto their properties and allegedly contains cancer-causing chemicals. The women allege that the pollution was a nuisance, the plant was negligent in creating it and was effectively trespassing on their property whenever the waste accumulated.

Attorneys for the plant countered that the lawsuit was attempting to toughen air pollution standards without properly going through Congress or regulatory agencies.

Last fall, a federal judge in Pittsburgh ruled in favor of the plant. He said that allowing the women to sue over how the plant acted when it was meeting Clean Air Act standards would make it impossible for energy providers to know whether their actions are legal. At most, such allegations should be handled as pollution permit violations under federal law, the judge ruled.

But a three-judge 3rd Circuit Court of Appeals panel ruled unanimously to reverse that decision Tuesday. The federal Clean Air Act regulations are meant to impose minimum standards only, they wrote, adding that federal law doesn't preclude citizens from suing if their properties are affected.

"We see nothing in the Clean Air Act to indicate Congress intended to pre-empt" such lawsuits, the judges wrote in a 23-page opinion.

The lawsuit contends that despite the plant's claims to be operating within the law, the plant was violating its permit, which says the plant cannot emit fetid matter that is visible or otherwise perceptible outside its own boundaries.

"It's great," said James DePasquale, the plaintiffs' attorney. "I think that was always the law and it was clear from the arguments before the 3rd Circuit that they were going to reverse. ... All three judges were incredulous that the lower court dismissed the lawsuit in the first place."

The next step is for DePasquale to seek a class-action certification in the case, and then for both sides to begin the pretrial exchange of evidence.

The plant was owned by GenOn Power Midwest LP when the lawsuit was filed last

year, but that company has since been sold to NRG Energy Inc., of Princeton, N.J. NRG spokesman Dave Gaier says the company is reviewing the lawsuit.

DePasquale said he plans to file a similar lawsuit against FirstEnergy Corp.'s Hatfield's Ferry Power Station in Masontown, about 50 miles south of Pittsburgh, this month.

FirstEnergy has announced plans to shut down that plant Oct. 9, saying it would cost too much to add equipment to make the coal-fired plant meet toughening federal pollution standards.

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