Exhibit 24

Superior Court Opinion (Petition for Judicial Review)
(Oct. 23, 2015) (excerpted).

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 15 CVS 1438
WASCO LLC, Petitioner, v. N.C. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WASTE MANAGEMENT, Respondent.	**FINAL ORDER AND JUDGMENT ON RULE 56(f) MOTION AND PETITION FOR JUDICIAL REVIEW** Filed 23 October 2015

This matter came on for hearing 12 October 2015, before the Honorable G. Bryan Collins, Jr., Superior Court Judge presiding, on the Petition for Judicial Review ("PJR") filed by WASCO LLC ("WASCO"). Having considered the PJR, the briefs filed by the parties, the complete official record in this case, and the oral arguments of counsel for the parties, the Court hereby AFFIRMS (A) the 28 October 2014 interlocutory order of Administrative Law Judge J. Randolph Ward ("ALJ Ward") denying WASCO's Motion for Continuance Regarding Respondent's Summary Judgment Motion, and (B) ALJ Ward's 2 January 2015 final decision granting summary judgment in favor of Respondent, North Carolina Department of Environmental Quality ("the Department"),[1] Division of Waste Management, acting through its Hazardous Waste Section ("the Section"), and enters the following:

Procedural History

1. In a letter dated 16 August 2013, concerning the requirements of the State Hazardous Waste Program, the Section alleged that WASCO was an "operator" of a landfill for

[1] The North Carolina Department of Environment and Natural Resources has been renamed the Department of Environmental Quality effective 18 September 2015.

* * * *

[pages omitted]

compare with Mineral Springs's invoices, and annual cost projections (Exs L-9 p 847, L-24 p 885, L-41 p 977).

38. The Section has not alleged that WASCO ever owned the real property at 850 Warren Wilson Road, Swannanoa, NC; caused or contributed to the contamination associated with the Facility; or operated an active business onsite.

Conclusions of Law

39. The undersigned views as material the undisputed facts identified in paragraphs 19 to 37, above, concerning WASCO's involvement with the Facility following its divestiture of Culligan. Additional facts are cited to provide context. The Section has met its initial burden here of proving a lack of a triable issue of fact, as questions of statutory construction are questions of law "for the courts." Oxendine v. TWL, Inc., 184 N.C. App. 162, 164, 645 S.E.2d 864, 865 (2007) (quotation marks omitted). Viewing the evidence in the light most favorable to WASCO, WASCO has failed to produce a forecast of evidence demonstrating that it would be able to make out at least a *prima facie* case at trial that the Section erred under N.C.G.S. § 150B-23(a), as the alleged issues of fact identified by WASCO are immaterial to the resolution of this case. As a matter of law, WASCO is an operator of a landfill for purposes of the State Hazardous Waste Program's post-closure permitting requirement.

40. The "State Hazardous Waste Program" consists of the North Carolina Solid Waste Management Act ("the Act"), contained in Chapter 130A, Article 9 of the North Carolina General Statutes, and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code ("the Rules"). The Department is authorized to administer the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 to 6992k, as long as the State program remains equivalent to and consistent with the federal program. (Ex P-1 p 1154)

41. The Act instructs the Department to "cooperate . . . with . . . the federal government . . . in the formulation and carrying out of a solid waste management program," including a program for the management of hazardous waste "designed to protect the public health, safety, and welfare; [and to] preserve the environment." N.C.G.S. § 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program, which the Department "shall enforce." N.C.G.S. § 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference. The authority to enforce the State Hazardous Waste Program has been delegated to the Director of the Division of Waste Management. The Director has issued a sub-delegation of this authority to the Chief of the Section. (Ex P pp 1171-75)

42. Based on the federally delegated nature of the State Hazardous Waste Program, the Section's Memorandum of Agreement with the EPA, the fact that the obligation at issue arises under a federal regulation—40 C.F.R. § 270.1(c)—and not Chapter 130A, and because both parties have identified no state case law on point and have cited to federal law, the undersigned concludes it is appropriate here to look to federal case law and administrative EPA documents for guidance. See Air-A-Plane Corp. v. N.C. Dep't of Env't, Health & Natural Res., 118 N.C. App. 118, 454 S.E.2d 297, disc. rev. denied, 340 N.C. 358, 458 S.E.2d 184 (1995) (looking to definitions adopted by reference in 40 C.F.R. § 260.10 in a case involving the assessment of civil penalties under the State Hazardous Waste Program); Skinner v. Preferred Credit, 172 N.C. App. 407, 413, 616 S.E.2d 676, 680 (2005), aff'd, 361 N.C. 114, 638 S.E.2d 203 (2006) (stating for issues of first impression that it is proper to "look to other jurisdictions to review persuasive authority that coincides with North Carolina's law").

43. One requirement of the State Hazardous Waste Program is for "operators . . . of landfills" to obtain post-closure permits. 40 C.F.R. § 270.1(c) (adopted by reference at 15A NCAC 13A .0113(a)). Here, the former waste-PCE tank at the Facility is a "landfill." 40

C.F.R. § 265.197(b) (adopted by reference at 15A NCAC 13A .0110(j)). The post-closure permit requirement triggers liability for Facility-wide cleanup ("corrective action"), beyond the scope of the landfill. 40 C.F.R. §§ 270.1(c), 264.100 to .101 (adopted by reference at 15A NCAC 13A .0113(a) and .0109(g)).

44. Under federal regulations adopted by reference, an "operator" is "the person responsible for the overall operation of a facility," or the "operator of any facility or activity subject to regulation under RCRA." 40 C.F.R. §§ 260.10, 270.2 (adopted by reference at 15A NCAC 13A .0102(b), .0113(a)).[3] This Court construes the definitions of operator *in pari materia* with the post-closure permitting requirement at issue here. McGuire v. Dixon, 207 N.C. App. 330, 337, 700 S.E.2d 71, 75 (N.C. Ct. App. 2010).

45. The State Hazardous Waste Program provides for strict liability in enforcement matters, without regard to causation. United States v. Northeastern Pharm. & Chem. Co., 810 F.2d 726, 738 (8th Cir. 1986), cert. denied, 484 U.S. 848, 98 L. Ed. 2d 102 (1987); United States v. Production Plated Plastics, Inc., 742 F. Supp. 956, 960 (W.D. Mich. 1990), aff'd, 955 F.2d 45 (6th Cir. 1992).

46. There can be multiple owners and operators of a single Facility under the State Hazardous Waste Program. 45 Fed. Reg. 33153, 33169 (May 19, 1980). To ensure the Section is able "to gain compliance as quickly as possible," the State Hazardous Waste Program provides for joint and several liability. Id.; RO[4] No. 11005 (Nov. 18, 1980); see also RO 12703 (August 1986) ("EPA considers both the owner (or owners) and operator of a facility to be responsible for

[3] Even if this Court were to consider the definition of "operator" in N.C.G.S. § 130A-290(a)(21), the ALJ properly concluded that the result would be the same. WASCO's reliance on federal RCRA and CERCLA case law and guidance, including Bestfoods, in support of its defense against post-closure operator liability under the State Hazardous Waste Program, supports the conclusion that the State definition is ambiguous as construed *in pari materia* with the post-closure permit requirement.

[4] Citations to "RO" refer to documents contained in the RCRA Online database, maintained by EPA at http://www.epa.gov/epawaste/inforesources/online/index.htm.

regulatory compliance. For this reason, EPA may initiate an enforcement action against either the owner, the operator, or both.").

47. The Section has the right to rely on the representation of any one owner or operator, that it is "assum[ing] and perform[ing] the [regulatory] duties . . . on behalf of all of the parties," and to "look to that designated party" for compliance. 45 Fed. Reg. 72024, 72026-27 (Oct. 30, 1980) (emphasis added).

48. Due to the similarities between the definitions of "operator" under sections 260.10 and 270.2 and another pollution-control statute—the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 to 9675—it is proper to look to CERCLA case law as guidance here. RO No. 13071 (Oct. 28, 1987); Tanglewood East Homeowners v. Charles-Thomas, Inc., 849 F.2d 1568, 1574 (5th Cir. 1988).

49. The United States Supreme Court analyzed the meaning of the term "operator" under CERCLA, and unanimously concluded:

> [U]nder CERCLA, an operator is simply someone who directs the workings of, manages, or conducts the affairs of a facility. To sharpen the definition for purposes of CERCLA's concern with environmental contamination, ***an operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.***

United States v. Bestfoods, 524 U.S. 51, 66-67, 141 L. Ed. 2d 43, 59 (1998) (emphasis added); see also Richardson, 182 N.C. App. at 546-47, 643 S.E.2d at 420-21 (applying Bestfoods in a state case concerning corporate liability).

50. The District Court for the District of Puerto Rico applied Bestfoods to RCRA, finding an individual liable as a RCRA operator where (1) he acted as the facility's representative in discussions with the state regarding an air quality Notice of Violation; (2) a facility employee deferred to him when questioned by EPA inspectors and another employee

would not allow an inspection of the facility without his permission; (3) he authorized an inspection and spoke with EPA inspectors about environmental regulations and a RCRA Information Request; and (4) he signed and certified "under penalty of law" a "Notification of Regulated Waste Activity" form on behalf of the facility. United States v. JG-24, Inc., 331 F. Supp. 2d 14, 75 (D.P.R. 2004), aff'd, 8 F.3d 28 (1st Cir. 2007); see also United States v. Envtl. Waste Control, Inc., 710 F. Supp. 1172, 1202-04 (1989) (rejecting a claim pre-Bestfoods that a person's signature on an EPA compliance document that "affirmatively identifie[d]" him as an operator in three places "was simply [a] mistake," based on the person's role in the day-to-day operations and financial obligations of a RCRA landfill and because he agreed to indemnify a waste broker from Superfund or cleanup-order liability).

51. Examining the "broad, passive language" in Bestfoods that an operator "is one who is involved in operations '*having to do with* the leakage or disposal of hazardous waste,'" the Third Circuit held that a corporation and its sole shareholder were "operators" for purposes of CERCLA even though their only activities at the facility "[had] been those necessary to remove and remediate the soil and groundwater contamination." Litgo N.J. Inc. v. Comm'r N.J. Dep't of Envtl. Prot., 725 F.3d 369, 380-82 (3rd Cir. 2013). The Third Circuit noted that the shareholder-appellant had entered into an agreement with the prior owner to remediate the property in accordance with New Jersey's hazardous waste management program, and to accept financial responsibility for remediation beyond the first $100,000.00. The court emphasized that, "not only did the [operators] have the actual authority to make decisions about compliance with environmental regulations, they hired environmental consultants to conduct tests and remediation operations on the Litgo Property, and they oversaw that work." Id. at 381, 382 n.6.

52. In another decision applying Bestfoods, the Sixth Circuit held that a township which contracted with a landowner to use a waste dump was an "operator" under CERCLA

because, rather than "operating at arm's length with a contractor," it (1) "made repeated and substantial ad hoc appropriations"; (2) "made arrangements (including with the local Junior Fire Department) for bulldozing and other maintenance when [the owner] himself proved unequal to the task"; and (3) "took responsibility for ameliorating the unacceptable condition of the dump, before and after scrutiny from the state government," over a number of years. United States v. Township of Brighton, 153 F.3d 307, 315-16 (6th Cir. 1998).

53. The District of Kansas found that the president of a corporation, while "two layers removed from the day-to-day supervision of operations," was directly liable under Bestfoods as a CERCLA operator where he participated in weekly meetings that addressed environmental compliance issues, and where "no decisions were made at those meetings without [his] approval." City of Wichita v. Trs. of the Apco Oil Corp. Liquidating Trust, 306 F. Supp. 2d 1040, 1055-56 (D. Kan. 2003). The court emphasized "the frequency of those meetings, and the fact that [the president] was actively involved in deciding matters of environmental compliance." Id. at 1056.

54. Consistent with Bestfoods and its progeny, this Court determines that post-closure operatorship is based on an examination of the totality of the circumstances. The undersigned does not deem any one factor dispositive, but considers all indicia of operatorship in the record, which overwhelmingly supports the conclusion that WASCO "manage[d], direct[ed], or conduct[ed] operations specifically related to pollution" at the Facility, including making "decisions about compliance" with post-closure regulations. Bestfoods, 524 U.S. at 66-67, 141 L. Ed. 2d at 59. Based on the undisputed facts identified above, these indicia of operatorship can be categorized as follows:

55. WASCO "took responsibility for ameliorating the unacceptable condition" of the Facility through affirmative representations to the Section and by WASCO's conduct, as

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federal law, the Section's construction of 40 C.F.R. § 270.1(c) (adopted by reference in 15A NCAC 13A .0113(a)) was both "reasonable" and "based on a permissible construction" of that regulation, especially considering the Section's need to make a policy judgment as to operator liability, and to rely on such judgment in order to gain compliance as quickly as possible and prevent the kind of delays that have resulted from the present litigation. County of Durham, 131 N.C. App. at 396-97, 507 S.E.2d at 311 (quotation marks omitted); Morrell, 338 N.C. at 238, 449 S.E.2d at 180.

60. The undersigned has considered the five subsidiary issues raised by WASCO as identified in paragraph 6, above. The undersigned deems WASCO's protective filer argument abandoned, as it was not presented to the ALJ, Amanini v. N.C. Dep't of Human Res., 114 N.C. App. 668, 681; 443 S.E.2d 114, 121-22 (1994), but views this doctrine as inapplicable in any event. To the extent the conclusions of law herein do not already resolve WASCO's remaining issues, none of WASCO's arguments were sufficient to raise a genuine issue of material fact or provide a valid basis to support its claim that it is not an operator as a matter of law. In light of the undersigned's *de novo* review, ability to affirm on any ground supported by the record, and conclusion that the Section acted properly under the NCAPA and the undisputed material facts by characterizing WASCO as a post-closure operator as a matter of law, this Court deems it unnecessary to address WASCO's first five issues in further detail.

61. In sum, the undisputed facts identified above show that WASCO, through its hired environmental consultant, has been the only person supplying and maintaining post-closure financial assurance for the Facility, operating remediation systems onsite, performing groundwater sampling and reporting, and making decisions about compliance with the post-closure requirements of the State Hazardous Waste Program since 2004. WASCO is "responsible for the overall operation" of the Facility for purposes of the post-closure program.

62. Finally, while WASCO has raised a cursory challenge to ALJ Ward's 28 October 2014 interlocutory order denying WASCO's Motion for Continuance Regarding Respondent's Summary Judgment Motion, WASCO has failed to identify any legal grounds to support its bald claim that ALJ Ward's ruling on the Section's MSJ prior to the completion of discovery and the taking of the Section's deposition under N.C.G.S. § 1A-1, Rule 56 was error. The undersigned notes the substantial discovery exchanged by the parties prior to the filing of the Section's MSJ, as described in paragraph 2; the fact that the instant case had been in litigation for approximately one year prior to the filing of the Section's MSJ; WASCO's detailed legal arguments on the merits as supported by 7 affidavits—including a claim that it is entitled to reverse summary judgment—and the overwhelming nature of the evidence in the record in support of the Section's substantive arguments. WASCO has not been prejudiced by the timing of the Section's MSJ and ALJ Ward's final judgment.

Order

WHEREFORE, IT IS HEREBY ORDERED AND DECREED THAT ALJ Ward's 28 October 2014 interlocutory order in OAH Docket No. 13 EHR 18253, denying WASCO's Motion for Continuance Regarding Respondent's Summary Judgment Motion the Petition for Judicial Review, be and hereby is AFFIRMED, and the final decision ALJ Ward entered in the same matter on 2 January 2015, granting summary judgment in favor of Respondent, be and hereby is AFFIRMED. WASCO is an "operator" for purposes of 40 C.F.R. § 270.1(c) (adopted by reference in 15A NCAC 13A .0113(a)) and must comply with all attendant responsibilities and regulatory requirements. WASCO's PJR is DENIED.

This the 23rd day of October, 2015.

The Honorable G. Bryan Collins, Jr.
Superior Court Judge presiding

WASCO LLC v. N.C. Dep't of Envt. & Natural Res., Div. of Waste Mgmt. – 15 CVS 1438

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing FINAL ORDER AND JUDGMENT ON RULE 56(f) MOTION AND PETITION FOR JUDICIAL REVIEW entered by Judge Collins on 23 October 2015 has been served on the Petitioner in this action this the 30th day of October by depositing the same in the United States mail, first class and postage prepaid, and addressed to the Petitioner's counsel of record, as provided below.

The undersigned further certifies that a copy of the foregoing FINAL ORDER AND JUDGMENT ON RULE 56(f) MOTION AND PETITION FOR JUDICIAL REVIEW entered by Judge Collins on 23 October 2015 was served on the Petitioner in this action on 23 October 2015 by depositing the same in the United States mail, first class and postage prepaid, and addressed to the Petitioner's counsel of record, as follows:

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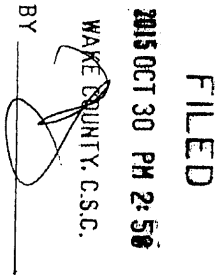

This the 30th day of October, 2015.

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