

Post-Closure/Landfill: North Carolina Appellate Court Addresses RCRA Compliance Issue



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The Court of Appeals of North Carolina (“Court”) addressed in a January 7th opinion a Resource Conservation and Recovery Act (“RCRA”) closure issue. See *State ex. rel. Regan v. Wasco, LLC*, No. COA19-355, 2020 WL 63913 (N.C. Ct. App. Jan. 7, 2020)

WASCO, LLC appealed a decision granting summary judgement to the North Carolina Department of Environmental Quality, Division of Waste Management. (“NCDEQ”) regarding a company’s obligations involving a RCRA post-closure Part B permit.

WASCO is the operator of a former textile manufacturing facility which closed in 1993. “In 2007, [WASCO] received a letter from [the NCDEQ] indicating that the facility required corrective action to develop a groundwater assessment plan to address the migration of hazardous waste in the groundwater.” A consultant was hired to prepare a plan.

In 2008 the owner of the facility sold the property. At that point WASCO disclaimed responsibility for post-closure activities. This led to a lawsuit, at the conclusion of which the court held that WASCO remained responsible for post-closure. See *WASCO LLC v. N.C. Dept of Env’t & Nat. Res.*, 253 N.C. App. 222, 799 S.E.2d 405 (2017) (“WASCO I”).

Judgment was entered in WASCO I. However, WASCO did not apply for a post-closure permit as required by statute, but “instead filed a Petition for Rule Making before the Environmental Management Commission, seeking to change the definition of the word “operator” in the North Carolina Administrative Code.” This petition was denied.

In 2018 the NCDEQ filed for an injunction against WASCO. It sought an Order requiring WASCO to submit an application for a post-closure permit within 90 days. The trial court determined that there was no genuine issue of material fact. WASCO had a duty to secure a post-closure permit for the landfill. This was the holding in WASCO I.

The trial court issued an injunction requiring WASCO to “in good faith make best efforts to submit [the post-closure] application in an approvable form” within ninety (90) days of the Order.

WASCO appealed the Order.

The Court notes that it was a landfill operator’s duty to acquire a post-closure permit (as opposed to owner’s). Further, changes to the Hazardous Waste Generator Improvement Rule provided greater

flexibility to hazardous waste generators. The rule did not, however, affect the duties of a landfill operator.

The Court also noted that because it was not impossible for WASCO to comply with the ordering requiring it to make good faith efforts to obtain the post-closure permit, this was not an abuse of the trial court's discretion. Accordingly, the Court affirmed the trial court's ruling on all counts.

A copy of the decision can be downloaded [here](#).