

# Does an Anti-Duplication Provision Bar a Resource Conservation and Recovery Act Action Against a City System Supplying Water?: September 1st Federal Court Opinion



**Walter Wright, Jr.**

wwright@mwlaw.com

(501) 688.8839

10/10/2017

Co-Author: Allison Tschiemer

A United States District Court (Eastern District of California) in a September 1st Order addressed a motion to dismiss a Resource Conservation and Recovery Act (“RCRA”) action brought by a non-profit organization against a California City’s public water system. See *California River Watch v. City of Vacaville*, No. 2:17-cv-00524-KJM-KJN, 2017 WL 3840265, at \*1-4 (E.D. Cal. Sept. 1, 2017).

The non-profit organization, California River Watch, brought an action against the City of Vacaville alleging that the City’s public water system transported hexavalent chromium in excess of federal contaminant levels in violation of RCRA.

The City argued that the plaintiff’s suit should be dismissed as the RCRA’s anti-duplication provision bars the case and the plaintiff failed to adequately allege a RCRA violation.

The anti-duplication provision requires that when another act creates an inconsistency with adherence to the RCRA, then that statute yields to the other act. However, “when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”

The defendant must prove that “an inconsistency would result if plaintiff’s RCRA claims were to proceed and be enforced.” The City claimed that the Court is asked to enjoin their actions under RCRA which are permitted under the Safe Drinking Water Act (“SDWA”).

Despite the City’s claims that its activity is subject to the SDWA, the SDWA specifically lists hexavalent chromium as an “unregulated contaminant.” Therefore, the Court concluded that RCRA’s regulation of hexavalent chromium “poses no inconsistency with the SDWA.”

The City also argued that the case should be dismissed as the California River Watch failed to establish a violation under RCRA as no facts were alleged that the City’s “water was discarded.”

The Court identifies the three elements a citizen must allege to establish a RCRA violation:

(1) the defendant is a generator or transporter of solid or hazardous waste;

(2) the defendant has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and

(3) the solid or hazardous waste in question may present an imminent and substantial endangerment to health or the environment.

The Court rejected the City's argument as both EPA regulations and several courts have recognized hexavalent chromium as a hazardous waste within the meaning of the RCRA where the chromium concentration exceeds 5 parts per million regardless of whether or not it has been discarded.

Concluding that California River Watch stated a proper RCRA claim which would not result in any inconsistency with the SDWA, the Court denied the City's motion to dismiss.

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