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Judge says environmental groups can join Maryland suit against landfill operator

By Zoe Tillman

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Environmental groups are claiming victory after a federal judge ruled Sept. 8 that they can join a Maryland Department of Environment lawsuit against a Brandywine landfill operator accused of polluting local waterways.

Mirant Maryland Ash Management, which runs the Brandywine Coal Combustion Waste Landfill, filed a motion in U.S. District Court for the District of Maryland in June to dismiss charges brought by MDE that the company violated the federal Clean Water Act.

Judge Peter J. Messitte denied Mirant's motion to dismiss the suit, as well as another motion Mirant filed that requested several local environmental groups not be allowed to join MDE as co-plaintiffs in the case.

Although no court date had been scheduled in the case, lawyers on both sides will begin gathering evidence in preparation for trial. State environment officials think more testing is needed to determine the scope of the alleged pollution, but residents are not in danger as long as they do not drink from water wells, MDE spokeswoman Dawn Stoltzfus has said.

In the complaint filed in March, MDE accused Mirant of discharging toxic pollutants at levels greater than what are allowed by Mirant's discharge permit, which was issued by the state.

MDE said it found high levels of pollutants, including arsenic, cadmium and selenium, in ponds that eventually discharge into the Mataponi Creek. The creek flows into the Merkle Wildlife Sanctuary, which flows into the Patuxent River.

The department is calling on Mirant to stop the discharge of pollutants, treat existing contamination and submit reports that detail the extent of contamination, among other things, according to the complaint. If the court were to rule against Mirant, the company could face penalties of \$122 million for federal violations and \$22 million for state violations, which are based on a daily rate for each offense.

In the company's motion to dismiss the case, Mirant said that MDE failed to provide enough proof of Mirant's alleged pollution to merit charges and that the company was and still is in compliance with its permits. It also accused MDE of failing to follow the proper procedures for filing a lawsuit under the Clean Water Act.

Fred Tutman of Patuxent Riverkeeper -- one of the four environmental advocacy groups Messitte said could join MDE in the lawsuit -- said the decision opens the door for more public involvement in the case.

"It cements our bona fide role for participation," he said. "We don't have to be onlookers and sit on the sidelines."

The other environmental advocacy groups involved in the case are the Chesapeake Climate Action Network, Defenders of Wildlife and the Sierra Club.

Mirant spokeswoman Misty Allen declined to comment on the judge's order, citing pending litigation, but has said Mirant is in compliance with its permits. Mirant Maryland, which has offices in Landover and Washington, is a subsidiary of Mirant Mid-Atlantic, which is based in Atlanta. Messitte offered no reason in his written order for his decisions and declined to comment.

However, Tutman, who was in court, said the judge offered some insight during the hearing. According to Tutman, Messitte said he thought that Mirant was arguing for a dismissal based, in large part, on disputed facts of the case, which Messitte said should be resolved during a trial, not a motions hearing.

The Brandywine landfill stores the waste byproducts of coal combustion from Mirant's Chalk Point Generating Plant in Aquasco. Coal combustion waste byproducts have been stored at the landfill since 1970, but Mirant did not buy the landfill from another regional power company, Pepco, until December 2000.