**TERRIS, PRAVLIK & MILLIAN, LLP (TPM)**

**A PUBLIC INTEREST LAW FIRM**

# ENVIRONMENTAL RESUME
# CITIZEN SUITS AND OTHER ENVIRONMENTAL CASES HANDLED BY TPM

**Updated June 2023**

Since 1970, when our firm was founded, we have demonstrated extraordinary success in pursuing the rights of citizens to protect the environment under the environmental laws in the federal courts. In the 1970s, many cases were brought on behalf of environmental organizations such as Sierra Club and the National Audubon Society. Since the early 1980s, we have represented individuals and organizations in over one hundred citizen suits under various environmental statutes, many of which have involved years (and often decades) of litigation. This work has helped to end continuing environmental degradation, to remedy environmental damage that has already occurred, and to punish and deter polluters. As a result, our work has contributed to the development of the caselaw supporting environmental citizen suits in important respects. Our success spans numerous federal district courts, federal circuit courts, and the Supreme Court of the United States.

Listed below are many of the significant citizen suits and other related environmental matters handled by our firm, along with a brief summary of their legal importance.

## STANDING OF CITIZENS TO SUE POLLUTERS IN FEDERAL COURT

We succeeded in reversing the trend of courts barring environmental citizen suits on standing grounds through our landmark victory before the Supreme Court in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000). The Court held that the citizen groups—Friends of the Earth, Sierra Club, and Citizens Local Environmental Action Network—could sue to enforce the National Pollutant Discharge Elimination System (NPDES) permit issued to Laidlaw without being required to show harm to the waterway. The citizens only need to show harm to their interests in the waterway to enforce the environmental laws. The Court also clarified the distinction between standing and mootness. Of major significance is the Court's related holding that courts may not "raise the standing hurdle higher than the necessary showing for success on the merits in an action." *Id.* at 181. This is of particular importance in Resource Conservation and Recovery Act (RCRA) cases because liability is established there when the contamination "may present" an imminent and substantial endangerment.

In *Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals, Inc.*, 913 F.2d 64 (3d Cir. 1990), *cert. denied*, 498 U.S. 1109 (1991), the Third Circuit held that the "fairly traceable" prong of the constitutional standing test does not require tort-like causation. It only required the plaintiff citizen groups "to demonstrate that they are more than 'concerned bystanders,'" by showing "that there is a 'substantial likelihood' that defendant's conduct caused plaintiffs' harm." *Id.* at 72 (citation omitted). The court explained exactly what evidence the plaintiff would need to provide in a Clean Water Act (CWA) case to satisfy this standard. *Id.* All circuit courts that have considered the issue have adopted that analysis to satisfy the fairly traceable prong of the standing test.

In *American Canoe Ass'n, Inc. v. Murphy Farms, Inc.*, 326 F.3d 505 (4th Cir. 2003) and 412 F.3d 536 (4th Cir. 2005), the Fourth Circuit upheld the district court's findings that the plaintiffs had constitutional standing to sue a hog farm that was discharging without a permit and that the violations were ongoing at the time of the complaint as required by *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987).

In *American Canoe Ass'n, Inc. v. City of Louisa Water & Sewer Commission*, 389 F.3d 536 (6th Cir. 2004), the Sixth Circuit reversed the district court's finding that the plaintiffs lacked standing. The Sixth Circuit found that Sierra Club had standing to sue as the representative of its members for both aesthetic/recreational and informational injuries. The Court further held that both Sierra Club and the American Canoe Association had organizational standing in relation to the defendants' reporting and monitoring violations.

In *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp*., 204 F.3d 149 (4th Cir. 2000) (*en banc*), the Fourth Circuit found that Friends of the Earth and Sierra Club had standing to proceed with their suit under the CWA. Plaintiffs' standing was affirmed after a second appeal, but the penalties awarded by the district court were significantly reduced. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp*., 629 F.3d 387 (4th Cir. 2011).

In *Friends of the Earth, Inc. v. Chevron Chemical Co.*, 129 F.3d 826 (5th Cir. 1997), the Fifth Circuit reversed the district court which had dismissed the case on the grounds that Friends of the Earth lacked associational standing. The *Chevron* case was ultimately settled with, among other things, a significant land donation to the Big Thicket National Preserve located in Hardin County, Texas.

## HAZARDOUS WASTE REMEDIATION

We represent citizens in suits under the provision of RCRA designed to require the remediation of soil, groundwater, surface waterways, and sediments contaminated with solid or hazardous waste that may present an imminent and substantial endangerment to human health and/or the environment.

We represent PennEnvironment and Sierra Club in a citizen suit brought under RCRA and the CWA to remediate contaminated water and soil and to stop the discharge of pollutants into the Allegheny River from a waste site formerly owned by PPG Industries, near Ford City, Pennsylvania. *PennEnvironment v. PPG Indus., Inc*., W.D. Pa., Civ. No. 12-342.

The district court ordered PPG to obtain an NPDES permit to address its discharges to the Allegheny River. *PennEnvironment v. PPG Indus., Inc.*, No. 12-342, 2014 WL 6982461, at *17-18 (W.D. Pa. Dec. 10, 2014). The court found PPG liable for violations of the CWA for discharging pollutants to the Allegheny River without an NPDES permit from 1973 to 2019. *PennEnvironment v. PPG Indus., Inc.*, 127 F. Supp. 3d 336, 385-86 (W.D. Pa. 2015); *PennEnvironment v. PPG Indus., Inc*., 587 F. Supp. 3d 286, 304-05 (W.D. Pa. 2022). And the court further ruled PPG liable under RCRA because its contamination of water and soils may present an imminent and substantial endangerment to human health or the environment. *PennEnvironment*, 127 F. Supp. 3d at 386; *PennEnvironment v. PPG Indus., Inc.*, No. 12-342, 2018 WL 1784555, at *25 (W.D. Pa. Apr. 13, 2018).

A partial settlement was reached requiring PPG to implement a remedy for the contaminated soils and water and to provide financial assurances for perpetual operation of the remedy. The settlement left open for trial plaintiffs' claim that PPG should pay significant civil penalties to the U.S. Treasury for its decades of violating the CWA. The trial is expected to be held in 2023.

We represent the Raritan Baykeeper and Edison Wetlands Association in a citizen suit brought under RCRA to address the sediments of the Raritan River near Sayreville, New Jersey, which are contaminated with heavy metals from a former titanium dioxide operation. After the case was dismissed on abstention grounds, we prevailed on appeal. That decision set an important precedent when it emphasized that "the circumstances justifying abstention will be exceedingly rare" and "abstention in RCRA ordinarily would amount to 'an end run around the RCRA.'" *Raritan Baykeeper v. NL Indus., Inc.*, 660 F.3d 686, 694-95 (3d Cir. 2011) (citation omitted). Abstention was particularly inappropriate because, as the Third Circuit held, the New Jersey Department of Environmental Protection was not taking any enforcement action. *See id.* at 691-94.

On remand, litigation of the claims related to the defendants responsible for clean-up of the adjacent contaminated land—the Sayreville Economic Redevelopment Administration and its partners—was stayed as they remediate those areas in order to control the sources of contamination of the river sediments. In the meantime, the plaintiffs and NL Industries (NL) continued to litigate the remainder of the case. In 2018, the plaintiffs were found to have standing to litigate their RCRA claims after an evidentiary hearing. In June 2022, after 13 years of litigation, the New Jersey Department of Environmental Protection directed NL to address the river sediments. As the first step in that process, NL is required to conduct a remedial investigation to determine, among other things, the extent of sediment contamination. NL has agreed to begin that investigation. The district court has stayed part of the case (it did not dismiss it pursuant to the abstention doctrine) while the remedial investigation is being performed because the results of the investigation have the potential to affect the litigation.

We represent the Interfaith Community Organization (ICO) (now merged with New Jersey Together), the Hackensack Riverkeeper, and several individual plaintiffs in a citizen suit brought under RCRA that resulted in the excavation and removal of 1.5 million tons of toxic hexavalent chromium residue from a 34-acre site in Jersey City, New Jersey, a pump-and-treat remedy for the deep groundwater, clean-up of the sediments in the Hackensack River, and the establishment of financial assurances to secure the remedial work and future monitoring and maintenance. *ICO v. Honeywell Int'l, Inc.*, 263 F. Supp. 2d 796 (D.N.J. 2003), *aff'd*, 399 F.3d 248 (3d Cir. 2005), *cert. denied*, 545 U.S. 1129 (2005).

The U.S. Court of Appeals for the Third Circuit affirmed the district court's injunction, noting that the citizen-plaintiffs had met a higher than necessary standard in proving Honeywell's liability and that "the time for a clean-up has come." *ICO*, 399 F.3d at 268. We continue to represent the plaintiffs in proceedings before Special Master Robert G. Torricelli, appointed to oversee the implementation of the injunction. The excavation has been completed but other remedial efforts continue.

In *ICO v. Honeywell Int'l, Inc.*, 426 F.3d 694, 707 (3d Cir. 2005), the court of appeals explained that "the Terris firm is a 'rare bird'" because it was willing to advance out of pocket costs to prosecute the case that foreseeably amounted to over one million dollars in such costs.

In January 2006, to expand the relief obtained in the *ICO* case, we brought a second RCRA citizen suit against Honeywell on behalf of the Hackensack Riverkeeper (*Hackensack Riverkeeper, Inc. v. Honeywell Int'l, Inc.*, D.N.J., Civ. No. 06-22 (DMC)), seeking remediation of chromium contamination to soils, groundwater, surface waters, and Hackensack River sediments associated with approximately one hundred acres adjoining the site involved in the *ICO* lawsuit. The case settled and Honeywell was required to remediate the contamination to protect human health and the environment. As part of the institutional controls layered into the settlement, the capped areas are to become parks owned by the City of Jersey City. The City of Jersey City later decided to buy most of the remediated land and will conduct the redevelopment of the area now known as Bayfront, which will include residential development, 35% of which will be affordable housing. Remediation of one portion of land allowed for the development of the New Jersey City University (NJCU) Westside Campus. Under the settlement, NJCU has the option to compel Honeywell in 2030 or later to excavate the soil contamination remaining under a cap installed on part of the campus.

In *Interfaith Community Organization v. Shinn* (D.N.J.), we represented ICO, which sued the State of New Jersey under RCRA alleging that the soil at Liberty State Park is contaminated with chromium and various other chemicals. In November 1998, a federal judge entered a preliminary injunction against New Jersey, ordering it to fence the areas in question or apply one foot of clean fill. This was the first time that a court applied New Jersey's risk remediation standard of a cancer risk of 1 in 1,000,000 persons to arrive at an appropriate remediation solution. *ICO v. Shinn*, D.N.J., Civ. No. 93-4774, Slip. Op., (Nov. 24, 1998) (unpublished).

ICO also alleged CWA violations including an unpermitted discharge from the park and the illegal filling of a saltwater marsh in violation of Section 404 of the CWA. After issuance of the preliminary injunction and a successful motion to enforce that injunction, the parties reached a settlement that imposes requirements to address the contaminated soils and other issues related to the restoration of the land.

In 2022, New Jersey made the decision to remediate and renovate this portion of Liberty State Park. Once completed, the planned remediation will allow for the removal of the fence from the contaminated area and use of the area by park visitors. On a pro bono basis, the firm continues to monitor New Jersey's implementation of and compliance with the agreement.

We also have in-depth experience with institutional controls, which are necessary when contamination is left in place. Institutional controls are the legal and administrative methods to ensure the long-term protection and maintenance of engineering controls such as a cap or a groundwater extraction system used to control the spread of contamination over the long term. In *ICO v. Honeywell Int'l, Inc.*, Honeywell was ordered to implement financial assurances (a type of institutional control) to ensure that funds would be available to monitor and maintain the remedy in perpetuity in the form of a letter of credit (rather than an unsecured corporate

assurance of Honeywell that would have been accepted at the time by the New Jersey Department of Environmental Protection). *ICO*, 263 F. Supp. 2d 796 (D.N.J. 2003), *aff'd*, 399 F.3d 248 (3d Cir. 2005), *cert. denied*, 545 U.S. 1129 (2005). Likewise, pursuant to the settlement of *Hackensack Riverkeeper v. Honeywell Int'l, Inc.*, Honeywell is required to create, maintain, and implement a system of institutional controls, including financial assurances and legal assurances such as deed notices, to ensure that there is no exposure to remaining contamination. We are actively involved in the creation, establishment, and monitoring of the required system of institutional controls.

The partial settlement in *PennEnvironment v. PPG Indus., Inc.* addressed above similarly requires the establishment of financial assurances through letters of credit and a standby trust in favor of the Pennsylvania Department of Environmental Protection in order to secure the operation, maintenance, and replacement of the agreed remedy in perpetuity. Issues related to the establishment of these financial assurances are currently in litigation before the Pennsylvania Environmental Hearing Board (EHB Docket No. 2022-032-B).

To improve upon institutional controls in New Jersey, a state with a significant legacy of industrial contamination, we have recommended legislative changes. In 2009, we submitted comments and proposed language to the New Jersey Law Revision Commission urging it to recommend that the legislature adopt the Uniform Environmental Covenants Act (UECA) to improve the system of available institutional controls for long-term protection of properties where contamination is left in place as part of the implemented remediation. Carolyn Smith Pavlik testified before the Commission regarding the importance of adopting UECA and the need to modify provisions regarding citizens' standing to enforce various environmental requirements, particularly the deed notices New Jersey uses to protect engineering controls. In 2015, we also proposed changes to the New Jersey One Call statute, which were adopted. The statute now requires the One Call system to recognize the transponders that are placed as part of engineering controls at contaminated sites as utilities, thereby requiring pre-digging notifications to ensure that the contamination remains isolated and workers protected.

## PROTECTION OF WATERWAYS

Under the CWA, a discharge to navigable waters requires a permit, and permittees must monitor and report their discharges on a regular basis and are strictly liable for any violations of discharge limits and monitoring and reporting requirements. We have represented the American Canoe Association (ACA), the Atlantic States Legal Foundation, Florida Public Interest Research Group, Friends of the Earth, Louisiana Environmental Action Network, New York Public Interest Research Group, NY/NJ Baykeeper, the North Carolina Conservation Council, the Public Interest Research Group of New Jersey (referred to as NJPIRG, SPIRG,[1] or PIRG below), Pennsylvania Public Interest Research Group, PennEnvironment, the Professional Paddlesports Association, Sierra Club, the South Carolina Coastal Conservation League, Trout Unlimited, and other individuals and groups in over one hundred citizen suits brought under the CWA to enforce discharge permits in Alabama, Kentucky, Louisiana, New Jersey, New York,

[1] NJPIRG was also known as the Student Public Interest Research Group of New Jersey (SPIRG).

North Carolina, Pennsylvania, South Carolina, Tennessee, Florida, Louisiana, Texas, and West Virginia. These suits have requested civil penalties and injunctive relief to ensure future compliance. Most of these citizen suits have been successful.

We have obtained court decisions on a number of issues of first impression in citizen suits under the CWA, including:

1. the first decision awarding summary judgment on liability issues (*SPIRG v. Monsanto Co*., 600 F. Supp. 1479 (D.N.J. 1985));

2. the first decision upholding the constitutionality of the citizen suit provisions of the CWA (*SPIRG v. Monsanto Co*., 600 F. Supp. 1474 (D.N.J. 1985));

3. the first decision holding, prior to the 1987 amendments to the CWA, that only judicial, not administrative, actions by government agencies can preclude a citizen suit for the same violations (*SPIRG v. Fritzsche, Dodge & Olcott, Inc*., 759 F.2d 1131 (3d Cir. 1985));

4. the first decision granting a preliminary injunction against further permit violations (*PIRG v. Top Notch Metal Finishing Co., Inc*., Civ. A. No. 87-3894, 1987 WL 44393 (D.N.J. Nov. 6, 1987));

5. the first decisions imposing the then statutory maximum civil penalty of $10,000 per violation (*SPIRG v. Monsanto Co.*, Civ. No. 83-2040, 1988 WL 156691 (D.N.J. Mar. 24, 1988); *SPIRG v. Hercules, Inc.*, 29 ERC 1417 (D.N.J. 1989); *PIRG v. Powell Duffryn Terminals, Inc.*, 720 F. Supp. 1158 (D.N.J. 1989), *aff'd*, 913 F.2d 64 (3d Cir. 1990), *cert. denied*, 498 U.S. 1109 (1991));

6. the first decision imposing contempt penalties for violation of a consent decree (*PIRG v. Ferro Merchandising Equip. Corp.*, 680 F. Supp. 692 (D.N.J. 1987));

7. the first injunction obtained by citizens against a federal facility for violations of the CWA (*PIRG v. Rice*, 774 F. Supp. 317 (D.N.J. 1991)); and

8. the first decision requiring a concentrated animal feeding operation (CAFO) to apply for an NPDES permit (*American Canoe Ass'n v. Murphy Farms, Inc*., Civ. No. 7:98-CV-4-F(1), 1998 U.S. Dist. LEXIS 21402 (E.D.N.C. Dec. 22, 1998)).

In addition to enforcing the CWA, the *American Canoe Ass'n v. Murphy Farms* case was brought to address the fact that North Carolina, with its significant hog industry, was not requiring or issuing NPDES permits to CAFOs. The federal government intervened in the suit, supporting the plaintiffs' position that CAFOs were required to have NPDES permits to discharge. North Carolina submitted amicus briefing arguing that it did not issue such permits to CAFOs because they were being regulated under a no-discharge system established by the state. In December 1998, the district court concluded that the facility was a CAFO requiring an NPDES permit and ordered it to apply for the permit. The Fourth Circuit dismissed the subsequent appeal as moot because the State of North Carolina informed the court that it had agreed to issue NPDES permits. *American Canoe Ass'n v. Murphy Farms, Inc.*, 210 F.3d 360

(4th Cir. 2000). In 2001, North Carolina issued its first NPDES permit to a CAFO as a result of this case.

Beyond the more common relief against private entities, we have obtained relief against federal, state, and municipal facilities. As referenced above, in *PIRG v. Rice,* we obtained an injunction requiring compliance with the CWA at McGuire Air Force Base near Trenton, New Jersey. We also secured consent decrees ensuring permit compliance at two Army facilities and four state facilities, and litigated cases involving six additional government facilities, including three facilities at the federal government's massive nuclear research complex at Oak Ridge National Laboratories in Tennessee. Citizen enforcement against federal and state facilities is particularly important because the federal and state governments are unlikely to enforce against their own facilities.

We also represented the Deep River Citizens' Coalition, the Deep River Coalition, Inc., and the American Canoe Association, Inc., in a suit against the North Carolina Department of Environment and Natural Resources regarding its issuance of a Section 401 Certification under the CWA for a dam and reservoir. The North Carolina Environmental Management Commission and the Superior Court granted summary judgment upholding the certification. On appeal, the North Carolina Court of Appeals held that the certification did not violate water quality standards and that the issue as to preparation of an Environmental Impact Statement (EIS) after the approval of the project was moot since the statement was subsequently prepared. *Deep River Citizen's Coalition v. North Carolina Dep't of Env't and Nat. Res.*, 598 S.E. 2d 565 (N.C. Ct. App. 2004).

In *NJPIRG v. Hercules, Inc.*, 830 F. Supp. 1525 (D.N.J. 1993), *rev'd in part and remanded*, 50 F.3d 1239 (3d Cir. 1995), we obtained a ruling from the court of appeals that the district court's reading of the CWA pre-suit notice letter requirements was too narrow and that the suit could proceed for all violations later identified, including monitoring and reporting violations, so long as the pollutant involved was identified in the notice letter.

## PROTECTION OF WETLANDS

In *Alliance for Legal Action v. United States Army Corps of Engineers*, we represented a homeowner group that sued to stop the filling of wetlands for the expansion of the Greensboro, North Carolina, airport. The suit was based on CWA's Section 404 Guidelines prohibiting the filling of wetlands unless there is no practicable alternative and requiring mitigation measures. The district court found that no practicable alternatives existed and that the ratio of new wetlands to the destroyed wetlands was adequate. *Alliance for Legal Action v. United States Army Corps of Engineers*, 314 F. Supp. 2d 534 (M.D.N.C. 2004).

In 1996, we brought a suit on behalf of a community organization challenging the construction of a Target store in Burke, Virginia, where the construction would result in the filling of a wetland and destruction of a spring. The district court denied the pre-construction relief sought and the clients decided not to pursue further litigation.

## PROTECTION OF AIR QUALITY

In *State of New York v. Thomas*, 613 F. Supp. 1472 (D.D.C. 1985), *rev'd*, 802 F.2d 1443 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987), we represented Ontario, Canada, as an intervenor in a case brought by the northeastern states to force the United States Environmental Protection Agency (EPA) to require states to revise their Clean Air Act (CAA) implementation plans to eliminate pollution causing acid rain in Canada. The district court ordered EPA to issue notices to the polluting states, but the court of appeals reversed on the ground that the notices could not issue unless EPA first conducted a rulemaking proceeding on the issue of whether the states' pollution was endangering Canada. We then petitioned EPA to conduct this rulemaking proceeding. After EPA refused to do so, we petitioned the court of appeals to require EPA to begin the rulemaking process. The court of appeals held that EPA was not required to make findings as to the endangerment to Canada because the agency lacked adequate information. *Her Majesty the Queen in Right of Ontario v. U.S. EPA*, 912 F.2d 1525 (D.C. Cir. 1990). The Court further held that, even though 10 years had elapsed since the first petition to EPA, EPA's failure to act on the petitions was not arbitrary and capricious. However, the court suggested that EPA might have to act after issuance of the report of the Natural Acid Precipitation Assessment Program in late 1990. Before that occurred, Congress enacted a comprehensive acid rain program in the CAA Amendments of 1990.

We also represented Ontario by intervening in support of EPA's NOx State Implementation Plan (SIP) Call Rule, which required the Midwestern states and electrical utilities to reduce nitrogen oxide emissions that lead to ground-level ozone and smog in the northeastern United States and Ontario through amendments to their state implementation plans (SIPs). The NOx SIP Call Rule was substantially upheld by the court. *Michigan v. U.S. EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 904 (2001).

We also represented Ontario before EPA in a proceeding under Section 126 of the CAA to consider claims by New York, Pennsylvania, and Maine that midwestern pollution is being transported long distances and is causing acid rain in the northeast. The sources at issue in that proceeding were the same as those that were causing acid rain in Ontario. EPA denied the petition.

In general, we advised Ontario as to legislative, administrative, and litigation strategies to deal with the acid rain problem, including the acid rain regulations issued under the 1990 CAA amendments.

Jones & Laughlin Steel applied to EPA in November 1981, under the Steel Industry Compliance Extension Act of 1981, for an extension of the deadline stipulated in its consent decree for repairing its coke oven gas desulfurization system at its Pittsburgh Works plant. On behalf of Group Against Smog and Pollution (GASP) in Pittsburgh, we submitted comments to EPA opposing the deferral of Jones & Laughlin Steel's obligation. EPA denied Jones & Laughlin Steel's application and filed a contempt action against the company for its failure to comply with the consent decree. *U.S. v. Jones & Laughlin Steel Corp*., 804 F.2d 348 (6th Cir. 1986).

We achieved a favorable settlement under the CAA for citizen groups in 1997 in their challenge to air emissions in *Public Interest Research Group of New Jersey, Inc. v. Warren Energy Res. Co*., L.P., D.N.J., Civ. No. 94-6380.

## NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

*North Carolina Alliance for Transportation Reform, Inc. v. United States Department of Transportation* involved a challenge to the construction of the western section of a proposed beltway around Winston-Salem on the ground that the EIS required by NEPA was inadequate and did not properly assess the environmental effects of the proposed highway. We brought the suit in 1999 on behalf of the North Carolina Alliance for Transportation Reform and Friends of Forsyth. Shortly after we filed the complaint and a motion for preliminary injunction and/or temporary restraining order, the Federal Highway Administration withdrew the Record of Decision due to the lawsuit and problems with Winston-Salem's air compliance. The Federal Highway Administration also determined that additional environmental analysis would be considered before the Record of Decision would be reissued. The parties voluntarily dismissed the case. The court then held that our client was entitled to its attorneys' fees under the Equal Access to Justice Act because the government's position was in bad faith and not substantially justified. 151 F. Supp. 2d 661 (M.D.N.C. 2001).

In *Alliance for Legal Action v. Federal Aviation Administration*, an organization of homeowners challenged the approval of plans to expand the Greensboro, North Carolina, airport for a FedEx facility. The challenge was based on the adequacy of the EIS and particularly its treatment of alternative sites and the effects of noise. The Fourth Circuit held that the EIS was "not perfect," but was adequate to support the agency decision. *Alliance for Legal Action v. Federal Aviation Administration*, 69 Fed. Appx. 617 (4th Cir. 2003).

## OIL DEVELOPMENT

In *North Slope Borough v. Hodel*, we filed suit on behalf of the North Slope Borough of Alaska challenging decisions by the Secretary of Interior to authorize exploratory drilling operations in the Beaufort Sea during the fall bowhead whale migration. The suit contended that noise from the drilling operations would constitute takings of bowhead whales by harassment, in violation of the ESA and the Marine Mammal Protection Act (MMPA). The suit also raised claims under the Outer Continental Shelf Lands Act, the Coastal Zone Management Act, and the Alaska National Interest Lands Conservation Act. The case was dismissed pursuant to a settlement agreement in which the drilling companies agreed to additional restrictions on drilling during the whale migration.

We intervened on behalf of the Alaska Eskimo Whaling Commission and the North Slope Borough in *Conoco Phillips Alaska, Inc. v. National Marine Fisheries Service*. Conoco Phillips challenged conditions of its Incidental Harassment Authorization, which was issued by the National Marine Fisheries Service under the MMPA. The conditions placed restrictions on the use of seismic exploration and were designed to prevent harassment of marine mammals, including bowhead whales. The Alaska Whaling Commission and the North Slope Borough sought to uphold the conditions of the permit, arguing that they were required by the MMPA, the ESA, and NEPA. Conoco Phillips's permit expired at the end of 2006 and, in early 2007, it

withdrew its application for a similar permit for work in 2007. The district court dismissed the case on mootness grounds.

## RELEVANT PRESENTATIONS AND ACTIVITIES

Carolyn Smith Pravlik served on the Advisory Panel to the United States Sentencing Committee for review of the United States Sentencing Guidelines on environmental crimes.

Ms. Pravlik has written articles on compliance with NPDES permits under the CWA and she is frequently asked to speak about citizen suits at legal conferences and seminars. She has made many presentations at the Public Interest Environmental Law Conference at the University of Oregon.

Kathleen L. Millian spoke on environmental citizen suits at the 1993 American Law Institute/American Bar Association's annual course on Environmental Law. Ms. Millian testified before EPA in 1996 on behalf of environmental groups concerning EPA's method for calculating the economic benefit resulting from the failure to comply with pollution control laws. Ms. Millian has also presented at the 2013 Waterkeeper Annual Conference and was a panelist at the Environmental Law Institute in 2015 on RCRA enforcement and citizen suits. In 2018, she spoke on the future of environmental citizen suits at Georgetown University's law school.

## HONORS

The firm received the Law Conservationist of the Year Award from the National Wildlife Federation for 1982.

The firm was awarded the 1999 J. Henry Rushton Award for the Advancement of Paddlesports by the American Canoe Association for the firm's litigation on behalf of the Association to protect waterways in West Virginia and North Carolina.