



Fall 1984

Recent Developments

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Recommended Citation

S. Gregory Jones, *Recent Developments*, 24 Nat. Resources J. 1147 (1984).
Available at: <https://digitalrepository.unm.edu/nrj/vol24/iss4/14>

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RECENT DEVELOPMENTS

Hawaii Housing Authority v. Midkiff, ___U.S.___, 104 S. Ct. 2321, 52 U.S.L.W. 4674 (May 30, 1984).

The United States Supreme Court upheld the constitutionality of Hawaii's Land Reform Act of 1967 which provides for the condemnation of large private estates and the redistribution of the land to single-family tenants. The Act was aimed at reducing the great concentration of land ownership in Hawaii, a situation historically traceable to the feudal land tenure system of the early high chiefs of the islands. Under the condemnation scheme, the Hawaii Housing Authority buys land from the landowners and resells it for the same price to individual tenants living thereon. The government is also authorized to lend the tenants up to 90 percent of the purchase price.

The Court rejected the landowners' argument that the Public Use Clause of the Fifth Amendment prohibits the taking of one person's property for the benefit of another. The judiciary must defer to the legislature's judgment as to what constitutes a public use. Where a state's exercise of its eminent domain power is rationally related to a conceivable public purpose a compensated transfer to a private beneficiary is not prohibited by the Fifth Amendment. The Court found that the regulation of the land oligopoly is a classic exercise of the state's police powers and that the Act's approach to the problem is comprehensive and rational.

Penn Terra Ltd., v. Pennsylvania Dept. of Environmental Resources, ___F.2d ___, 52 U.S.L.W. 2637 (3d Cir., April 30, 1984).

The Pennsylvania Department of Environmental Resources (DER) brought an action to compel a coal company in the midst of bankruptcy proceedings to correct environmental damage caused by the coal company's violation of state anti-pollution laws. The Court of Appeals held that DER's action was exempt from the automatic stay provisions of the Bankruptcy Code which generally halt all legal actions against the debtor while the bankruptcy administration is pending. Although the stay provisions of the Bankruptcy Code apply to governmental entities, they allow an exception for governmental actions to prevent or fix damages for violation of state environmental laws or other police and regulatory laws. This exception does not apply to actions which attempt to enforce a money judgment even if they are otherwise within the furtherance of the state's police powers.

The court found that the injunction ordering the coal company to perform reclamation work was an action to prevent future harm to, and to restore, the environment. The remedy sought was not the enforcement of a money judgment because it was not intended to compensate for past injuries; nor could it be reduced to a sum certain. Although the corpus of the debtor's funds will be

affected by the injunction, the general policy of the bankruptcy proceedings must yield to the higher priority of environmental protection as set forth in the statute.

Chevron, U.S.A. Inc. v. Natural Resources Defense Council Inc., ___U.S.___, 104 S. Ct. 2778, 52 U.S.L.W. 4845 (June 25, 1984).

In 1981, the Environmental Protection Agency (EPA) changed its interpretation of certain provisions of the 1977 Clean Air Act Amendments as part of the new administration's "Government-wide reexamination of regulatory burdens and complexities." The EPA regulation which the Natural Resources Defense Council (NRDC) challenged here allows states to adopt a plantwide definition of the term "stationary source" of emissions for purposes of the nonattainment program. The effect of the regulation is that states may, in considering construction permit requests, treat all pollution-emitting devices within an industrial grouping as if they were encased in a single "bubble" with one emission outlet and measure the overall change in pollution output. This definition allows a plant to install or modify pollution-emitting devices without meeting the stringent permit requirements as long as there is no increase in total emissions from the plant.

The NRDC argued that the definition was inappropriate in view of the non-attainment program's purpose of improving rather than maintaining air quality. The United States Supreme Court rejected this argument, holding that the EPA has broad discretion in implementing the policies of the Clean Air Act. The Court found that the definition is a reasonable construction of the Act which seeks to accommodate the competing interests of clean air and economic progress.