Sixth Circuit Upholds County Sewer Discharge Limits

The Sixth Circuit Court of Appeals has upheld a lower court's ruling that a county's sewer ordinance that restricted the county's ability to treat wastewater discharged by industrial companies did not unconstitutionally interfere with the county's earlier agreement to provide maximum sewer services to an industrial company.

Muskegon County, Michigan (County) operated a sewage treatment system under a permit issued pursuant to the federal Clean Water Act (CWA). In 1992, the United States (U.S.) initiated an enforcement action against the County alleging violations of the permit, the CWA, and certain compliance orders issued by the U.S. Environmental Protection Agency.

S.D. Warren Company (S.D. Warren), a company that discharged wastewater into the County's system, had helped finance the initial construction and upgrading of the system. For many years S.D. Warren, other industries and municipalities in the County were parties to service agreements with the County that obligated the County to "provide the maximum possible service" to the contractees.

In settlement of the 1992 U.S. enforcement action, in 1994 the County revised its sewer ordinance in restricting the levels of pollutants that could enter the system. In 1995, S.D. Warren and other private users of the system sued in state court, alleging that the revised ordinance effectively mothballed a significant portion of the system's capacity, in violation of the service agreements. In 1996, the state court held in favor of the companies and issued an order preventing the County from enforcing the 1994 ordinance.

In 1997, while the County's appeal from the order was pending in a state appeals court, the U.S. initiated another enforcement action against the County in federal district court, alleging that the County did not have a proper industrial pretreatment program. S.D. Warren and other

companies intervened in support of the County. The state of Michigan and certain municipalities intervened in the litigation in support of the United States.

While both the state appeal and the federal enforcement action were pending, the County gave notice in 1997 that its sewer service agreements with the companies and municipalities would be terminated as of January 1, 2000, and in 1998 enacted a new ordinance that was substantially similar to the 1994 ordinance that had been enjoined by the state court.

After the termination notice was given, but before the effective date of termination, the federal district court entered two consent decrees. The first consent decree settled the municipalities' claims against the County based on the 1998 ordinance. The second consent decree settled the U.S.'s claims against the County and the state, and also incorporated the 1998 ordinance.

S.D. Warren appealed the consent decrees and related decisions by the federal district court. S.D. Warren contended that the district court abused its discretion in finding the consent decrees fair and reasonable and argued that the decrees unconstitutionally impaired and breached the service agreements with the County. S.D. Warren also argued that, given the proceedings in the state court, the federal courts lacked jurisdiction over the matter.

The Sixth Circuit rejected S.D. Warren's arguments, finding that the federal court had jurisdiction, that the County had lawfully terminated the service agreements, and that the consent decrees did not unconstitutionally impair contractual obligations.

The court first held that the federal court properly considered the question even though related litigation was pending in the state courts. The court noted that the state court's order applied to the 1994 ordinance, and that the federal consent decrees involved not the 1994 ordinance but the later 1998 ordinance. Although the two ordinances were alike, the court held,

the problem with the 1994 ordinance was that it was at odds with the service agreements. The court placed weight on the fact that the County gave notice terminating the service agreements in 1997 and later enacted the 1998 ordinance. Because the companies had not challenged the termination notice, the court saw no reason to delay adjudication of the questions brought before it on the 1998 ordinance.

The court also rejected the U.S.'s argument that the companies' appeal was moot because the County had terminated the service agreements effective back in 2000. The court held that S.D. Warren on appeal had raised a question whether the County's termination notice was effective. Nevertheless, on review, the court held that the termination notice was effective and did, in fact, terminate S.D. Warren's service agreement with the County.

Finally, the court held that the district court had correctly found that its grant of relief to the County had not unconstitutionally impaired pre-existing contractual obligations of the County. S.D. Warren's argument rested in part, on the Contract Clause of the U.S. Constitution, which states that "[n]o state shall … pass any … Law impairing the Obligation of Contracts." Citing U.S. Supreme Court precedent, the court stated that, to breach this provision, an impairment must be "substantial" and even if a "substantial impairment" exists, the court must still determine "whether the adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in the service of a legitimate and important public purpose."

In this case, the court agreed that some provisions of the 1998 ordinance were in conflict with the terms of the service agreements, and further agreed that the effect of the conflict was to impair the obligation of the contract between the County and S.D. Warren.

The court held, however, that the impairment was not "substantial." One test to gauge the substantiality of an impairment, the court stated, was whether the right abridged was one that

induced the parties to contract in the first place. In this case, the court found no evidence in the record that S.D. Warren would have rejected the service agreement had it incorporated the requirements of the 1994 or 1998 ordinances: "One can speculate that such an ordinance would have been a deal breaker, but speculation would not suffice; we need proof, and S.D. Warren has pointed to none."

In addition, S.D. Warren failed to show that enforcement of the 1998 ordinance resulted in any curtailment of the company's discharges prior to the date of termination of its service agreement. Nor did it show that the ordinance interfered with any planned expansion of the volume of pollutant discharges prior to the termination date.

Accordingly, the court upheld the district court's decision in favor of the government and against S.D. Warren.

United States v. County of Muskegon, 298 F.3d 569 (6th Cir. 2002).

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