



## Virginia Local Government Law

# State Water Control Law and Virginia Waste Management Act, Two Statutory Schemes with \$9 Million in the Balance: Campbell County v. Royal

By: Andrew McRoberts. Monday, January 16th, 2012

In the trial court, Campbell County lost, and lost big. The judgment appealed to the Virginia Supreme Court included \$ 9 million in damages, plus another \$600,000 in attorneys' fees and costs. On appeal, the County won just as big. *Campbell County v. Royal*, No. 101168 (January 13, 2012).

On its face, the law applied by the trial court seemingly supported the judgment. A county like Campbell is a "person" to whom the "Discharge of Oil into Waters" law (part of the State Water Control Law) applies. See Virginia Code sections 62.1-44.34:14 through 62.1-44.34:23 (the "Oil Discharge Law"). Also, what occurred there, the "passive, gradual seepage of leachate and landfill gas" appears (in isolation, at least) to fit the definitions of "oil" and "discharge" making the person liable for damages, attorneys' fees and costs under the Oil Discharge Law.

However, the Virginia Supreme Court's majority looked beyond the statutory language in the Oil Discharge Law that the trial court used to find the County liable. The Court held that there is another statutory scheme that comprehensively addressed prevention, remediation and penalties associated with slow seepage of landfill leachate and gasses from a landfill: the Virginia Waste Management Act ("VWMA"), see Virginia Code sections 10.1-1400 through 10.1-1457, and the Virginia Solid Waste Management Regulations ("SWMR") adopted pursuant thereto, 9 VAC section 20-81-10, et seq.

The plaintiffs (the Royals) could not point to another provision of the Water Discharge Law that applied to a landfill operation. Given the "larger legislative context" of the VWMA and SWMR, and the apparent lack of a General Assembly intent that the Oil Discharge Law apply to a landfill operation, the Virginia Supreme Court held the VWMA and its SWMR "exclusively applied" as the General Assembly intended them to occupy the entire field. The Oil Discharge Law simply did not apply.

This analysis and finding lead to the reversal of the \$9.6 million judgment and final judgment for the County for several additional reasons.

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First, the only damages instruction offered to the jury was nearly word-for-word from the Oil Discharge Law. This instruction was the “law of the case” and binding on the parties and even the Virginia Supreme Court. Since the Oil Discharge Law did not apply, the liability under the law was reversed. Second, although the Royals had a second claim for inverse condemnation, the damages instruction did not contain the legal standard for damages under inverse condemnation. Finally, because there was no further basis for liability and the trial had been concluded using the jury instructions given, a remand was not appropriate, and final judgment for the County followed.

The dissent strongly disagreed.

The dissent (Justice Lemons and Justice Powell) asserted that the definitions and the other wording of the Oil Discharge Law plainly applied. They pointed out that the scope of the Oil Discharge Law was broad and apparently intended by the General Assembly to “supplement” other, existing laws for the purposes of the statute. The dissent adopted the reasoning of a federal district court decision, *Gallobin v. Air Distributing Co.*, 838 F.Supp. 255 (E.D. Va. 1993), which concluded that “the statute’s purpose is to provide the Commonwealth of Virginia or any political subdivision thereof or any person with a remedy when a discharge of oil causes harm to human health or welfare, harm to the environment, or damage to personal or real property.” That being the case, the dissent would have held the Oil Discharge Law applied to make Campbell County liable and upheld the trial court.

This opinion shows that “plain meaning,” while very important in the interpretation of statutes, must sometimes take a back seat to an overall intention of the Virginia General Assembly when a statutory scheme is involved that occupies the entire field. This time, it worked to the benefit of Campbell County. Big time.

Tags: [Discharge of Oil into Waters](#), [General Assembly](#), [inverse condemnation](#), [law of the case](#), [occupy the field](#), [State Water Control Law](#), [Virginia Supreme Court](#), [Virginia Waste Management Act](#)

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