

SC Landfill Odor Case Alleges Trespass; Could Have Profound Effect

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The outcome of a South Carolina lawsuit involving landfill odors could have wide ranging implications for the waste industry. As a result, various industry trade groups have filed a brief with the state's high court to answer questions about whether and to what degree landfill odors constitute negligence, trespass or nuisance and the extent of damages to which a plaintiff may be entitled. The issue could dramatically impact hundreds of South Carolina businesses, including the owners and operators of landfills, transfer stations, recycling centers and other solid waste management facilities. The case, "Perrin Babb, et al. v. Lee County Landfill," involves the state's largest landfill, operated by Republic Services, and its impact on local residents.

The National Solid Wastes Management Association (NSWMA), was joined by the American Forest & Paper Association of North America (AF&PA), the Institute of Scrap Recycling Industries (ISRI), and the Solid Waste Association of North America's South Carolina Chapter (SWANA) in submitting an Amici Curiae brief to the South Carolina Supreme Court.

PRESS RELEASE

March 13, 2013

NSWMA Files Amicus Brief with South Carolina Supreme Court

- South Carolina Chapter Seeks to Limit Damages in Trespass and Nuisance Cases

The South Carolina Chapter of the National Solid Wastes Management Association (NSWMA) recently submitted an Amici Curiae brief to the South Carolina Supreme Court in response to five certified questions submitted by the federal district court in South Carolina. The certified questions - involving negligence, trespass and nuisance - could dramatically impact hundreds of South Carolina businesses, including the owners and operators of landfills, transfer stations, recycling centers and other solid waste management facilities.

NSWMA partnered with the American Forest & Paper Association of North America (AF&PA), the Institute of Scrap Recycling Industries (ISRI), and the Solid Waste Association of North America's South

Carolina Chapter (SWANA) in filing the brief. The amicus brief was filed in support of defendant Lee County Landfill. The brief is available for download [here](#).

NSWMA's amicus brief in connection with a related lawsuit in federal court concerning nuisance and trespass issues associated with a South Carolina landfill. According to NSWMA General Counsel David Biderman, oral argument before the South Carolina Supreme Court is scheduled to take place on March 19. A decision on the issues addressed in NSWMA's amicus brief is not expected for several months.

NSWMA argued the South Carolina Supreme Court should answer the federal district court's certified questions as follows:

1. Under South Carolina law, when a plaintiff seeks recovery for a temporary trespass or nuisance, damages are limited to the lost rental value of the property.
2. South Carolina law does not recognize a cause of action for trespass solely from invisible odors rather than a physical invasion such as dust or water.
3. The maximum amount of compensatory damages a plaintiff can receive in any trespass or nuisance action (temporary or permanent) where no claim for restoration or cleanup costs has been alleged is the full market value of the plaintiff's property.
4. When a plaintiff contends that offensive odors have migrated from a neighbor's property onto the plaintiff's property, the plaintiff may not maintain an independent cause of action for negligence but is limited to remedies under trespass and nuisance.
5. If an independent cause of action for negligence exists under South Carolina law when a plaintiff contends that offensive odors have migrated from a neighbor's property onto the plaintiff's property, the standard of care for a landfill operator and breach thereof must be established through expert testimony.

NSWMA - a sub-association of the Environmental Industry Associations - represents for-profit companies in North America that provide solid, hazardous and medical waste collection, recycling and disposal services, and companies that provide professional and consulting services to the waste services industry.

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