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WHITMAN EXPERT TESTIFIES IN LANDMARK NATURAL RESOURCE DAMAGES CASE

NJDEP v. ExxonMobil et. al. Determines that NJDEP Formula for Calculating Financial Cost of Damages to Natural Resources is Not Supported

EAST BRUNSWICK, N.J. (March 20, 2008) –Whitman, one of New Jersey’s leaders in environmental, civil and structural engineering, played an important role in helping to strike down the New Jersey Department of Environmental Protection’s (NJDEP) formula for determining the monetary value of natural resource damages.

Founded in 1985, Whitman has emerged as a leading expert in environmental litigation cases, focusing on matters of cost allocation, liability, insurance and remediation. This landmark case requires NJDEP to re-evaluate its formula for determining how much natural resources are worth and prohibits the department from using a standard formula without ensuring that the formula stands up to scientific peer review.

Edward Sullivan, P.G., a senior project manager for Whitman, testified on behalf of one of the co-defendants in the case that the formula used by the department to calculate damages used values that are flawed, resulting in an over-estimation of the damages in this case. While the department continues to have the right to sue for loss of services and values in the event of contamination, it cannot do so without providing supporting evidence for a specific monetary amount.

DEP sought \$352,000 in damages for a spill that originated in Ewing, Mercer County, which resulted in groundwater contamination. While the judge in the case found that the DEP had the right to seek compensatory restoration damages, the formula used to determine the damages was viewed as being significantly flawed.

“NJDEP uses what they call a surrogate formula to calculate this type of damage,” Sullivan said. “Basically it’s a generic formula that can be applied to any site and includes a number of different input values including the contaminant plume size, the annual ground water recharge rate, the duration of the injury to natural resources and the value of the local water for a period of up to 30 years.”

The problem with the formula, however, is that the input is not site specific and default values, such as a 30-year period for restoration, are not accurate or defensible for many sites.

“For one, the formula used by the DEP is not peer reviewed,” Sullivan said. “In this instance, the department estimated a 24-acre area was affected by the contamination, but their expert could not verify that claim by any scientific means.”

The DEP also used the current cost for the value of water, even though the formula assumed a 30-year remediation duration. The remediation period for this particular site was also estimated by Whitman to be nine years, not 30 as assumed by NJDEP.

“The burden was on the Department to prove that the different aspects of the formula were viable for this case, and the judge found that they were not,” Sullivan said.

About Whitman

Whitman is New Jersey’s leading engineering and management firm, offering expertise in brownfield redevelopment, civil and geotechnical engineering, site assessment, remediation cost recovery, ground water

contamination and recovery, indoor air quality solutions, industrial hygiene and innovative remediation technologies. Since its founding in 1985, the East Brunswick based company has performed over 2,500 site assessments, remedial investigations and remediation designs for all types of development and redevelopment projects, including commercial, retail and residential properties in more than 12 states. Whitman has secured over \$30 million in state and federal reimbursements for environmental work for their clients.

In 2007, Whitman acquired Brownworth Engineering, a mechanical consulting and electrical engineering firm located in Piscataway, N.J. The acquisition has created one of the largest full-service firms in the state, providing expertise in all areas of mechanical, electrical and environmental engineering.

For more information about Whitman please call 732-390-5858 or visit www.whitmanco.com.