

## Leaking Pipeline May Subject Owner to RCRA Citizen Suit

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According to the United States District Court for the Northern District of Georgia leaking petroleum product constitutes “disposal” of “solid waste” which could present an imminent and substantial endangerment to health or the environment and form the basis of a claim under the Resource Conservation and Recovery Act (RCRA) citizen suit provision. In ‘Paper Recycling, Inc. v. Amoco Oil Company,’ 856 F.Supp. 671 (N.D. Ga. 1993), the court denied defendant Amoco Oil Company’s motion for summary judgment on the plaintiff’s RCRA citizen suit action.

The property of the plaintiff, Paper Recycling, Inc. (PRI), was contaminated in 1986 when petroleum product leaked from the defendant’s pipeline onto PRI’s property. As one of its causes of action the plaintiff asserted the RCRA citizen suit provision which provides that any person may commence a civil action “against any person ... including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” 42 U.S.C. 6972(a)(1)(B).

The defendant responded that even if the leaking petroleum product constituted a solid waste subject to RCRA that the associated contamination did not constitute an imminent and substantial endangerment. The defendant argued that it had substantially remediated the site and presented evidence that ground water and soil remediation was not required under Georgia law. However, the court in assuming the defendant’s allegations as true, held that compliance with Georgia remediation standards did not rule out the possibility that an imminent and substantial endangerment to health or the environment currently existed as a result of the petroleum leakage. An imminent and substantial endangerment to health and environment requires only a showing that risk of threatened harm is present not that actual harm will occur immediately.