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Snohomish County v. Pollution Control Hearings Bd.

Court of Appeals of Washington, Division 2 - January 19, 2016 - P.3d - 2016 WL 225256

Counties and building industry association appealed Pollution Control Hearings Board's order holding that Department of Ecology's permit condition, which required counties to apply new stormwater regulations to certain property development applications, did not violate vested rights of property developers. The Superior Court consolidated the appeals, and counties and association sought direct review, which the Court of Appeals granted.

The Court of Appeals held that:

- Stormwater regulations conflicted with vested rights doctrine and were invalid, and
- Clean Water Act (CWA) did not preempt vested rights doctrine.

Department of Ecology's stormwater permit condition, which required counties to apply new stormwater drainage regulations to previously submitted development applications if construction was not started by future deadline, conflicted with statutory vested rights doctrine, and therefore permit condition was invalid. Development rights vested upon filing completed building or land division application, and permit condition could have required counties to enforce land use control ordinances and development standards or regulations adopted after development rights had vested.

Federal Clean Water Act (CWA) did not preempt state's statutory vested rights doctrine, which required that certain land development applications be processed under land use regulations in effect when application was submitted, based on Department of Ecology's requirement, issued under CWA's delegation of permit authority, that counties apply new stormwater regulations to previously submitted applications. Even though vested rights doctrine may have delayed application of Department's requirements, nothing in CWA directly conflicted with vested rights statutes, CWA only required pollutant discharge controls to maximum extent practicable, and statutes did not prevent accomplishment of Congress's broad purposes and objectives.