

# Alabama Court Allows Taxpayer to Challenge Ruling

*Ex Parte Chemical Waste Management*, 2005 WL 3083492 (Ala. Nov. 18, 2005)

*Benjamin N. Spruill, 3L, Roger Williams University School of Law*

In 2005, the Supreme Court of Alabama upheld a taxpayer's challenge to a revenue ruling issued by Alabama's Department of Revenue. The revenue ruling reassessed the tax structure and fees a landfill operator was required to pay for disposal of certain hazardous and non-hazardous waste.

## Background

Operators of hazardous waste treatment, storage, and disposal facilities are assessed fees for waste received for disposal. Chemical Waste Management (ChemWaste), an operator of a facility, was levied \$51 per ton for hazardous materials and \$21 per ton for non-hazardous materials pursuant to Alabama Code § 22-30B-2(c)(1). The statute is enforced by the Alabama Department of Revenue (Department).

ChemWaste petitioned the Department to reassess the fee structure because some of the hazardous material ChemWaste received was treated at the facility and rendered non-hazardous. ChemWaste sought a revenue ruling that would decrease the fees imposed on this reclassified "decharacterized" waste to \$21 per ton, instead of \$51 per ton.<sup>1</sup> The Department agreed on this fee reduction and used the non-hazardous tax rate for the decharacterized waste. An Alabama taxpayer, John Nichols, challenged the Department's fee reduction and sought a declaration by the Montgomery Circuit Court that the reduction was a wrongfully granted tax abatement and should be declared void.

## Legal Standing

A plaintiff can assert a claim only when he or she has a "real, tangible, legal interest in the subject matter of the lawsuit,...the party has been injured in fact, and...the injury is to a

legally protected right."<sup>2</sup> Similarly, *taxpayer* standing requires that a taxpayer "can demonstrate a probable increase in his tax burden from the challenged activity" in order to challenge a tax abatement given to another.<sup>3</sup>

Nichols asserted a claim in the circuit court alleging that the Department's revenue ruling violated Alabama Code § 22-30B-2(c)(1), which sets fees for the disposal of hazardous waste. ChemWaste's motion to dismiss the charge was denied by the circuit court. ChemWaste then petitioned the Supreme Court of Alabama to review the lower court's denial of the motion to dismiss and determine whether Nichols had standing to bring a claim.

The court agreed with the lower court and found that Nichols satisfied the elements of standing. First, the court determined that Nichols was challenging an unlawful tax abatement, not charging that the Department has failed to carry out its collection duties. Under Alabama law a taxpayer has standing to challenge a tax abatement if the taxpayer can prove that his taxes will likely increase as a result of the abatement. However, a taxpayer does not have standing to force the state to collect taxes owed by a third party.

Next, the court determined that Nichols' complaint satisfied the burden of proving an increase in his taxes. The following language in the complaint was sufficient to prove the likelihood of injury: "[a]s a tax-

*See Chemical Waste, page 11*



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*City of Oxford, from page 7*

for other complaining parties and since the court must defer to the agency's judgment unless it appears to lack a rational basis, the FAA's actions were justified and the project could go forward.

### Challenge Five

Oxford asserted that the methodology the FAA utilized to assess noise impacts was insufficient. The agency used a day-night average sound level (DNL) of 65 dB as the standard; noise levels below 65 dB would thus be acceptable. The 65 dB DNL is generally considered adequate for all land uses. However, FAA regulations allow for a stricter standard if local conditions demand one. Oxford argued that the FAA should have used a stricter DNL in this case because of the town's historic character. The court refused to substitute its judgment for that of the agency and rejected Oxford's plea.



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### Conclusion

The City of Oxford raised multiple challenges to the FAA's approval of the Covington Municipal Airport's renovation plan, but the court deferred to the agency's judgments and rejected Oxford's petition for review. ✓

### ENDNOTES

1. *Water Log* editor Josh Clemons contributed additional material to this article.

*Chemical Waste, from page 3*

payer [Nichols] is liable to replenish the public treasury for the tax reduction that was wrongfully granted to ChemWaste. The tax reduction has resulted in a probable net increase in [Nichols'] taxes since the reduction went into effect."<sup>4</sup> With the alleged injury, the court found that Nichols had standing and ChemWaste's motion to dismiss was properly denied by the lower court.

### Separation of Powers

Arguably, the characterization of the fee reduction as a tax abatement has expanded the ability of a taxpayer to challenge the policy and practices of the Department. The court granted Nichols standing to challenge the Department's interpretation of another's tax liability; however, Nichols was not a party to the revenue ruling and language in the complaint stated above is not specific.

The dissenting justice explained that because these challenges will be carried out through the courts, the judiciary could exercise oversight over the collection of taxes, a function that is traditionally held by the execu-

tive branch of government. Where there is no actual injury to another, this judicial review is inappropriate as an interference into the affairs of the Department, an agency of the executive branch.

### Conclusion

The extent to which the court's decision expands taxpayer standing and operates as a precursor to the disregard of the separation of powers doctrine is unknown. However, because the court did not require a showing of specific facts indicating a likelihood of a tax increase, taxpayers seem able to better withstand a motion to dismiss for lack of standing when challenging a tax abatement. ✓

### ENDNOTES

1. *Ex Parte Chemical Waste Management*, 2005 WL 3083492, at \*1 (Ala. Nov. 18, 2005).
2. *Id.* at \*2.
3. *Id.* at \*3.
4. *Id.* at \*5.