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## US JUDGE RULES EPA HARASSED MILL OWNER

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In a harsh rebuke to the federal Environmental Protection Agency's pursuit of criminal polluters, a judge has ruled the government unnecessarily harassed a Northbridge mill owner and pursued a case against him even though it didn't have any credible evidence.

The case marks the first time in the region that a judge has ruled in favor of an application of the Hyde Amendment, a three-year-old federal law that allows an exonerated defendant to seek legal fees from the government if the criminal prosecution was "frivolous, in bad faith or vexatious."

Nationally, only seven defendants had successfully pursued Hyde Amendment complaints as of October 1999, according to the Department of Justice.

"It's a very high standard," said Pace University professor of law Bennett Gershman, an expert on prosecutorial misconduct. "There have only been a handful of successful applications. It's very infrequent and very rare."

The ruling by US District Court Judge Nathaniel Gorton follows complaints detailed by the Globe in a series last fall that criminal investigators working for the EPA have bullied people they were investigating and unfairly targeted small businesses for enforcement action.

As a result of Gorton's decision, the government must pay \$68,726 to Riverdale Mills, a manufacturer of wire mesh used for lobster traps, to reimburse the company for expenses and legal fees. The company is owned by **James Knott**.

"The American system worked today," said attorney Jamy Buchanan, who assisted Boston lawyer Warren Miller with Knott's Hyde Amendment complaint. "The courts pointed the finger back at the real criminals - the people hiding behind a government agency misusing their considerable power."

An EPA spokesman said yesterday that the agency believes it acted appropriately in the Knott case and is considering an appeal of the decision.

In his decision dated Friday, Gorton ruled not only that the government lacked evidence to prosecute Knott and his company, but that it failed to reveal evidence that would have cleared Knott.

The judge condemned the behavior of investigators.

"The court is also troubled by the government's unnecessary harassment of defendants and their employees during" a 1997 search warrant, Gorton wrote. "At that time, a virtual 'SWAT team' consisting of 21 EPA law enforcement officers and agents, many of whom were armed, stormed the [mill] facility to conduct pH samplings. They vigorously interrogated and videotaped employees, causing them great distress."

In 1998, Knott and his company were indicted on two counts of violating the Clean Water Act. In a press release

announcing the indictment, US Attorney Donald Stern and former EPA regional administrator John DeVillars said that Knott faced a jail term of six years and fines of up to \$1.5 million if convicted.

The case was dropped in 1999, however, when a federal prosecutor revealed that critical information was withheld from a search warrant application. It showed Knott's company was not in violation of the Clean Water Act.

The case against Knott began with an anonymous tip to the EPA by a former employee, alleging that highly acidic wastewater was being illegally discharged into the town sewerage system.

When EPA inspectors tested the wastewater in a manhole outside the plant in 1997, they confirmed the employee's allegation. Knott, however, urged the inspectors to test the wastewater at a second manhole that was closer to the point where the mill water entered the town system.

The results at the second manhole revealed the wastewater was within legal limits. It was those results that were withheld.

In addition, an expert hired by Knott determined that other test results were altered, so that passing scores were changed to results indicating a criminal violation.

Gorton said the government's conduct was "clearly vexatious," meaning it was without probable cause and calculated to harass or annoy.

EPA spokesman Peyton Fleming said agency officials "vigorously disagree with the judge's ruling.

"We continue to believe that on both the facts and the law, the government had very legitimate reasons for initiating this case," Fleming said. "To this day, the government has substantial basis to believe that the defendants committed the environmental crimes they were indicted for in 1998."

Justice Department officials in Boston and Washington declined comment yesterday.

Knott yesterday said he believes he was targeted because he owns a small manufacturing business that is easy prey for regulators. He said most businessmen in his situation accept a settlement offer instead of going through the expense of fighting the government - even if they are innocent.

"Most people settle and I think they [the EPA] bank on that," Knott said.

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