

Clean Water Act's Citizen Suit Provision Cannot be Used for Enforcing Contracts with EPA

The United States Court of Appeals for the 6th Circuit has affirmed that private citizens have no right to sue under the Clean Water Act for matters that are not related to violations of effluent standards.

Seeking federal assistance in improving and expanding its wastewater treatment facilities, in 1974 the City of Painesville, Ohio (the City) applied to the United States Environmental Protection Agency (EPA) for a federal grant. As the agency responsible for administering federal subsidies under the Clean Water Act (CWA) for wastewater treatment projects, EPA approved the City's request for federal financial assistance, and agreed to subsidize the cost of improving the City's wastewater treatment facilities pursuant a proposed service plan (the Plan) submitted to EPA as part of the grant application.

The Plan included reference to a service area that included a large portion of Painesville Township (the Township), as well as land owned by a business called Mayridge Construction Company (Mayridge). Because the Plan incorporated parts of the Township and Mayridge's property, both parties believed that they were entitled to access to the City's improved wastewater treatment facilities. When the parties demanded access, the City refused to supply service to any areas outside the boundaries of the City, including the Township or the property owned by Mayridge. The Township and Mayridge (collectively, Plaintiffs) sued the City in federal district court under the CWA, seeking an order forcing the City to provide them with wastewater treatment service.

The City brought a motion to dismiss the suit because, it argued, the CWA does not, either expressly or impliedly, grant citizens a right to sue in federal court to enforce federal grant provisions. In addition, the City claimed that the Plaintiffs failed to comply with the 60-day notice requirement for citizen suits under the CWA.

The Plaintiffs argued that inclusion of the Plaintiffs' properties in the service area described in the City's federal grant application entitled them to use the wastewater facility because the federal grant was approved on the condition that the Plan provided for service to the entire service area. The City responded that, at the time the grant application was approved, the City was under no contractual obligation to provide wastewater treatment service to areas outside the City limits. Without deciding on the merits of Plaintiffs contentions, the district court dismissed Plaintiffs' claims, agreeing with the City that the Plaintiffs had no right to sue. Plaintiffs appealed to the 6th Circuit Court of Appeals.

Section 1365 is the CWA's citizen-suit provision, explicitly offering relief for private citizens seeking to enforce certain specific portions of the statute. Section 1365 allows private citizens to enforce certain provisions of the CWA by giving them the right to bring suit against parties alleged to be in violation of "(A) an effluent standard of limitation" or "(B) an order issued by the Administrator or a State with respect to such a standard or limitation." Plaintiffs admitted that their claims regarding the City's contractual obligations to the EPA were outside the scope of Section 1365, but maintained that they were seeking relief not under Section 1365,

but under Sections 1255, 1282 and 1284 – the provisions that govern the administration of grants under the CWA. The appeals court was unpersuaded by the Plaintiffs’ argument.

In two prior precedent-setting court decisions, the legislative history of the CWA was carefully analyzed to determine whether Congress ever intended to create an implied right to sue under any section of the CWA other than Section 1365. The court found that the Supreme Court’s decision in *Middlesex County Sewerage Auth. v. National Sea Clammers Ass’n* (1981), and the Sixth Circuit’s decision in *Walls v. Waste Resource Corp.* (1985) clearly precluded the court from implying a private right of action under any provision of the CWA other than Section 1365, including the provisions cited in the Plaintiff’s complaint. In both of these cases, it was held that there was no general federal jurisdiction outside of Section 1365, and that Congress did not intend to imply private remedies in addition to those expressly provided in the CWA’s citizen suit section. The court noted that “it is not the role of federal courts to articulate federal interests – but to enforce the federal interests identified by Congress.”

Because §§ 1255, 1282 and 1284 of the CWA do not give the Plaintiffs an implied right to enforce any contractual obligations of the City to the EPA, and also because the Plaintiffs did not observe the required 60 day notice provision for citizen suits, the Court of Appeals affirmed the district court’s order granting the City’s motion to dismiss.

Board of Trustees of Painesville Twp. v. City of Painesville, 200 F.3d 396 (6th Cir. 1999).

This article was prepared by Stuart J. Weiss, an associate in our Environmental Department, and previously appeared in the March, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.