

Court Holds That Neighbors Have Legal Standing To Challenge Wetland Permit

An Ingham County Circuit Court judge has held that four local residents have standing to challenge a wetland, stream and floodplain permit for development of a site.

Eyde Construction Company (Eyde) proposed to develop a site in Meridian Township for a Wal Mart store and other retail buildings. Eyde applied to the Michigan Department of Environmental Quality (MDEQ) for a permit to construct part of the project in wetlands, a drainage ditch, and a floodplain area. After MDEQ granted the permit, four local residents who objected to the project challenged the permit before MDEQ's Office of Administrative Hearings.

When Eyde began construction on the site before the MDEQ administrative law judge (ALJ) could hear the case, the residents filed an emergency lawsuit in Ingham County Circuit Court. The judge ordered construction halted until the administrative hearing was concluded, and also ordered the MDEQ ALJ to decide Eyde's motion to dismiss the residents' case because, Eyde argued, they had no legal standing to challenge the permit.

MDEQ's ALJ granted the motion, holding that the residents had no standing because they could not show that MDEQ's issuance of the permit would harm them economically.

The residents appealed to the circuit court. In a ruling from the bench, Judge Lawrence Glazer held that the residents did have standing to challenge the permit. The judge considered evidence presented by the residents that a stream ran through the construction site and, further downstream, through three local parks. In written statements, the residents claimed that they used the parks and stream for recreational purposes. The judge found that the planned wetland and floodplain construction could adversely affect the parks by causing flooding, erosion and water pollution.

Citing a recent decision by the U.S. Supreme Court, *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, the judge held that recreational activities were a sufficient interest to confer standing to challenge a state-issued permit. The judge interpreted *Laidlaw* as meaning that "a plaintiff who lives in the area, who asserts past recreational use and the expectation of future recreational use, and who asserts that a negative impact upon the natural resources will deprive him or her of that future recreational use does have standing."

Eyde argued that *Laidlaw* was distinguishable because the environmental harm in that case was undisputed, whereas in the present case it was prospective and disputed. The judge rejected this as "not a legally significant distinction" because "in an analysis of standing, the focus is on the harm to the plaintiff, not the harm to the environment." Thus, "under the *Laidlaw* analysis," the residents "have asserted a sufficient interest to attain standing to challenge the permit."

The *Laidlaw* decision was discussed in the March 2000 edition of the *Michigan Environmental Compliance Update*.

Hearing Record, *Hagen v. Eyde Construction Company*, (Ingham County Cir. Ct. No. 00-91779-CE) (June 2, 2000)

This article was prepared by Kenneth C. Gold, a partner in our Environmental Department, and previously appeared in the November, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.