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Texas Indep. Producers and Royalty Owners Ass'n v. Env'tl. Prot. Agency, 435 F.3d 758 (7th Cir. 2006)

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trict court's determination that the Corps's decision to permit the project was neither arbitrary nor capricious.

For the above reasons, the court affirmed the district court's judgment in favor of the Corps.

Christopher Jensen

SEVENTH CIRCUIT

Texas Indep. Producers and Royalty Owners Ass'n v. Env'tl. Prot. Agency, 435 F.3d 758 (7th Cir. 2006) (holding Texas Independent Producers and Royalty Owners Association lacked standing to challenge permits for uncontaminated discharge pursuant to the Clean Water Act because the Energy Policy Act of 2005 exempted the organization from the permitting requirements).

In 2005, the Texas Independent Producers and Royalty Owners Association ("Producers") challenged the Environmental Protection Agency's ("EPA") issuance of general permits for storm water discharge from construction activities pursuant to the Clean Water Act ("CWA"). The Producers challenge only the application of the general permits to uncontaminated discharge. The Producers argued that the EPA's definitions of "common plan" and "final stabilization" in the general permit requirements are overly broad. They argued that these broad terms violated their right to due process because they could not tell if they were required to obtain general permits based on the definitions. They also argued that these definitions are arbitrary and capricious because the EPA failed to consider the differences between various construction activities.

The United States Court of Appeals for the Seventh Circuit stayed these arguments pending a Fifth Circuit Court of Appeals decision determining if oil and gas producers were required to obtain general permits. The Fifth Circuit held that the issue was not ripe for review, and the Seventh Circuit ordered the parties to file a supplemental brief addressing the significance of the finding. While completing the brief, Congress passed the Energy Policy Act of 2005 ("Act"), which expressly exempts construction activities of oil and gas companies from the CWA permitting requirements for uncontaminated waste.

The Producers submitted a motion to dismiss without prejudice in light of the Act, suggesting that the matter was not completely resolved until the EPA responded to the Act. The court held that although the issue was ripe for review, the Producers no longer had standing to challenge the issues involving general permits because the Act expressly exempted them from the permitting requirements. The court dismissed the case for lack of standing.

Diane O'Neil