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Am. Canoe Ass'n v. City of Louisa Water & Sewer Comin'n, 389 F.3d 536 (6th Cir. 2004)

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SIXTH CIRCUIT

Am. Canoe Ass'n v. City of Louisa Water & Sewer Comm'n, 389 F.3d 536 (6th Cir. 2004) (holding environmental groups had standing to sue on behalf of themselves and their individual members under the Clean Water Act, based on the Clean Water Act's citizen-suit provision).

The American Canoe Association and the Sierra Club, on behalf of themselves and their individual members (collectively "ACA"), alleged the City of Louisa Sewer and Water Commission ("Commission") failed to comply with the terms of its National Pollution Discharge Elimination System ("NPDES") permit and, thus, violated the Clean Water Act ("CWA"). The United States District Court for the Eastern District of Kentucky dismissed ACA's suit for lack of standing. ACA appealed to the United States Court of Appeals for the Sixth Circuit, arguing ACA had standing to sue the Commission under the citizen-suit provision of the CWA.

The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of United States waters. To reach this goal, the Kentucky Department of Environmental Protection issues NPDES permits that restrict the type and amount of pollutants released into the environment. As such, NPDES permit holders must monitor and report pollution discharges. NPDES permit holders who fail to monitor or report pollution discharges subject themselves to federal, state, and citizen suits. To establish standing in a citizen-suit pursuant to the CWA, the complainant must show an injury in fact, that the injury suffered is fairly traceable to the unlawful conduct, and that redress is possible through the requested relief.

Under the citizen-suit framework, ACA alleged the Commission's failure to adequately report and monitor city pollution discharges caused ACA recreational and informational injuries that constituted injuries in fact. The court determined ACA suffered an injury in fact because, as ACA argued, the Commission acted unlawfully by not providing requested pollution reports. Had ACA alleged the Commission was simply not complying with the terms of the Commission's NPDES permit, only an unrecoverable abstract injury, as opposed to an injury in fact, would result. The court held ACA suffered injuries in fact, that the injuries were fairly traceable to the Commission's failure to comply with the Commission's NPDES permit, and that the redress sought was an appropriate remedy.

After finding ACA suffered an injury in fact, the court addressed the Freedom of Information Act and the Federal Advisory Committee Act to determine whether ACA had standing. Under these statutes, litigants achieve standing when an agency denies a request for information. Accordingly, the Commission's refusal to honor ACA's re-

quest for the pollution reports granted ACA standing. The court reversed the district court's decision and remanded the case for further proceedings.

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Citizens Coal Council v. United States Env'tl. Prot. Agency, 385 F.3d 969 (6th Cir. 2004) (holding the Environmental Protection Agency's Final Rule adding new subcategories to the Coal Mining Point Source category under the Clean Water Act exceeded the Agency's statutory mandate).

The Kentucky Resources Council and the Citizens Coal Council (together "Councils") petitioned the United States Court of Appeals for the Sixth District to review an Environmental Protection Agency ("EPA") rule ("Final Rule") propagated under the Clean Water Act ("CWA") that applied to the effluent emissions from coal mining operations.

The CWA assigned EPA the duty to identify pollution control measures and practices for various pollution point sources. EPA created categories of pollution point sources so that EPA could establish effluent limitation guidelines for various industries. Within the Coal Mining Point Source Category, EPA created four subcategories. EPA did not create a subcategory for remining operations on previously mined, but then abandoned, land. As technology for remining improved, which made remining a feasible option, the costs associated with complying with EPA effluent regulations under the existing categories prevented miners from engaging in remining activities.

In response to the need for legislation to allow remining, Congress passed the Rahall Amendment to the CWA. This amendment created a modified permit for remining operations and required only that pollution emissions not exceed levels present before commencement of the remining operation.

EPA created two new subcategories for remining operations under the Coal Mining Point Source category: the Coal Remining Subcategory and the Western Alkaline Coal Mining Subcategory. The Councils claimed both new subcategories were inconsistent with the CWA and the Rahall Amendment and were therefore invalid.

The court first considered whether EPA had the authority to create subcategories inconsistent with the Rahall Amendment. The Rahall Amendment authorized remining permits only when effluent emissions from the remining activity would be less than pre-remining emissions. The Final Rule allowed a permitting authority to grant a Coal Remining permit in situations where that authority could not collect baseline measurements but concluded that remining would reduce effluent emissions. A permitting authority could issue these permits at its discretion, bypassing the Rahall Amendment's requirement of base-