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Caprio v. Upjohn Co., 148 F. Supp. 2d 168 (D. Conn. 2001)

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requested formal consultation. Although it was engaged in discussions with the NMFS on April 26, 2000, these discussions were about the future flow rates on the Klamath River in general; they did not afford the NMFS the opportunity to approve or evaluate the operations plan for the year 2000. The court held these actions were clearly in violation of the ESA, and granted Pacific Coast's motion for summary judgment. The judge granted the Bureau's and the interpleader's motions as to Pacific Coast's second charge maintaining the Bureau had taken irrevocable action before completing the formal consultation. The court held the issue not yet reviewable since the formal consultation had not begun.

In light of these judgments, the court enjoined the Bureau from making water deliveries when the flow rates below Iron Gate Dam were below scientific estimates of levels needed for restoration and maintenance of Coho salmon habitats on the Kalmath River.

James Siegesmund

Caprio v. Upjohn Co., 148 F. Supp. 2d 168 (D. Conn. 2001) (holding under the Connecticut Clean Water Act ("CCWA"), which states that "pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state" and that "no persons or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes," residents who have suffered injury due to pollution or hazardous waste discharged into the waters of Connecticut may bring a negligence per se action against the polluters).

The plaintiff ("Caprio") brought this action against the Upjohn Company ("Upjohn") claiming that Upjohn had exposed him to hazardous chemical substances contained in toxic sludge, which led to his developing bladder cancer. Upjohn filed a motion to dismiss Caprio's second cause of action, which alleged that Upjohn violated the Connecticut Clean Water Act ("CCWA").

Upjohn's manufacturing of chemicals generated industrial toxic waste in the form of sludge. Upjohn transported the toxic sludge by truck and railroad car to open ponds to release the waste into the environment. Caprio alleged in his second cause of action that he suffered injury as a result of Upjohn releasing these hazardous chemical substances. Caprio further alleged that Upjohn was negligent, in that releasing the harmful sludge caused the cancer.

Upjohn filed a motion to dismiss the second and third counts for failing to state a claim and further argued that the statute of limitations had run on Caprio's negligence claim. The trial court dismissed the second count based on the fact that the Comprehensive Environmental Response Compensation Liability Act ("CERCLA")

only covers hazardous substances that are considered “waste.” Caprio failed to state that the sludge that Upjohn was releasing into the environment was “waste” or that the expulsion of the sludge was a “release into the environment.” The court also dismissed the third negligence count against Upjohn, finding that under section 52-577 of the Connecticut General Statutes (“C.G.S.”), Upjohn’s activities “did not involve the release of hazardous material from industrial waste streams or toxic waste dumps in the ambient environment that would potentially affect groundwater and drinking water.”

Caprio then filed a motion seeking relief from the dismissal of counts two and three based on newly discovered evidence supporting allegations that the hazardous material was in “waste” form. The district court granted Caprio’s motion and ordered Caprio to file an amended complaint stating that Caprio brought the action under C.G.S. section 52-577 of CCWA. The amended complaint alleged that Upjohn violated the CCWA by “releasing into the environment the sludge from an industrial waste stream or toxic waste dump in a manner that would potentially affect ground water and drinking water as well as ambient air, land surfaces and surface waters.”

Upjohn claimed that this amended complaint failed to identify a legal basis and that there was no right to a private action under C.G.S. section 52-577 of the CCWA. Caprio countered that his second cause of action alleged negligence per se based on Upjohn’s violation of the standards set forth under the Connecticut Water Pollution Control Act (“CWPCA”). CWPCA states that the “pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state” and that “no person or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes.”

The court found that Caprio, as a resident of Connecticut, was within the class of persons that the statute was intended to protect and that Caprio’s allegations established that he was a potential victim of pollution or hazardous waste discharged into the water of Connecticut. Therefore, this court dismissed Upjohn’s motion to dismiss the second cause of action.

Colleen M. Cooley

Idaho Rural Council v. Bosma, 143 F. Supp. 2d 1169 (D. Idaho 2001) (holding that “navigable waters” as defined in the Clean Water Act (“CWA”) include non-navigable waters that are tributary to navigable waters and that the CWA extends federal jurisdiction over groundwater that is hydrologically connected to surface waters that are themselves waters of the United States).

The Idaho Rural Council (“IRC”) brought this action against Jacob and Henry Bosma (“Bosmas”), owners and operators of Grand View