Water Law Review

Volume 4 | Issue 1 Article 31

9-1-2000

Save the Valley, Inc. v. United States Envt'l Prot. Agency, 99 F. Supp. 2d 981 (D. Ind. 2000)

Julie E. Hultgren

Save the Valley, Inc. v. United States Envt'l Prot. Agency, 99 F. Supp. 2d 981 (D. Ind. 2000)

the proposed project site. The court determined that because every alternative identified required similar discharges, the fact that the selected site had the most practicable characteristics justified the Corps' limited consideration of other alternatives.

Additionally, the court noted that when an EA confirms the non-significance of impacts of a proposed project, federal regulations do not require the Corps to discuss alternatives if there are no unresolved conflicts about resource use and the activity is water dependent. Thus, because the court upheld the Corps' analysis under NEPA, the CWA, and RHA, and the riverboat facility was water-dependent, and no issue as to resource conflict had been raised, the court found the Corps' alternatives analysis more than adequate.

HEC also challenged as insufficient the Corps' public interest review completed prior to issuance of the permits. The court noted that plaintiffs hold the burden of proving an agency abused its discretion in the performance of a public interest review. Absent affirmative evidence of such an abuse of discretion, an agency's decision cannot be disturbed. Thus, in a reiteration of its reasoning earlier in the opinion, the court upheld the Corps' methodical public interest review.

Finally, HEC claimed the Corps erred in not completing an EIS for the proposed project. The court rejected the notion that a lengthy EA signifies an EIS is necessary. Instead, the court pointed to the Corps' findings that reflect an "awareness and acknowledgment" of the comments and concerns of other agencies through the consultation process. The court found the Corps took a "hard look" at the impacts of the proposed project, but nonetheless rationally disagreed with the other agencies. Having based its FONSI on a rational, complete analysis in the EA, the Corps' was not obligated to prepare an EIS. Thus, the court granted summary judgment in favor of the Corps.

Lucinda Henriksen

Save the Valley, Inc. v. United States Envt'l Prot. Agency, 99 F. Supp. 2d 981 (D. Ind. 2000) (holding the Clean Water Act imposed a mandatory duty upon the Environmental Protection Agency Administrator to notify Indiana of problems with the State's National Pollutant Discharge Elimination System ("NPDES") program and to assume enforcement of NPDES permits upon the State's failure to remedy the problems).

Save the Valley, Inc. ("Save the Valley") filed for injunctive relief against the Environmental Protection Agency ("EPA") under the citizen suit provision of the Clean Water Act ("CWA") and the Federal Mandamus Statute. Save the Valley alleged that Indiana violated the CWA by failing to require industrial hog farms (confined or

concentrated animal feeding operations ("CAFOs")) to acquire permits under Indiana's National Pollutant Discharge Elimination System ("NPDES") program. Save the Valley sought to compel EPA to assume enforcement of Indiana's NPDES program and to initiate proceedings to withdraw Indiana's authority to enforce NPDES permits under section 1319(a)(2) of the CWA. EPA filed a motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim.

The court held the language of the CWA imposed a mandatory duty upon the EPA Administrator ("Administrator") to issue a compliance order notifying Indiana that widespread problems in the enforcement of the State's NPDES program existed. In addition, the court held the Administrator was required to enforce NPDES permits until Indiana remedied its NPDES program.

In reaching its holding, the court reviewed the plain language and legislative history of the CWA to determine whether the CWA imposed a mandatory duty upon the Administrator to issue a compliance order. The court held, based on well-established rules of statutory construction, that the use of the word "shall" in the phrase "the Administrator shall so notify the State" imposed a mandatory duty upon the Administrator to notify Indiana of the problems with its NPDES program. The court also determined the legislative history imposed a mandatory duty upon the Administrator to act upon discovering problems with Indiana's NPDES program. The court rejected EPA's argument that the Administrator was first required to make a "finding" and "determination" before notification duties were triggered. The court held EPA's interpretation of the finding and determination requirements were inconsistent with the congressional intent of the CWA and would frustrate the CWA's citizen enforcement provision.

Therefore, the court denied EPA's motion to dismiss and denied Save the Valley's request for a hearing on mootness.

Julie E. Hultgren

United States v. Alcoa, Inc., 98 F. Supp. 2d 1031 (N.D. Ind. 2000)
(holding a mandate to clean up contaminated sediment as a result of a permit violation is an appropriate remedy under the Clean Water Act).

Alcoa, Inc. ("Alcoa") discharged a number of regulated substances into tributaries of the Wabash River while manufacturing aluminum products. Alcoa received a permit in 1985 pursuant to the National Pollutant Discharge Elimination System ("NPDES") to discharge several substances subject to strict limitations. The Government alleged between 1993 and 1999, Alcoa exceeded its discharge limit concerning polychlorinated biphenyls ("PCBs") on sixty-three separate occasions. The Government filed suit in the Northern District Court