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United States v. Alcoa, Inc., 98 F. Supp. 2d 1031 (N.D. Ind. 2000)

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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

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(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

of Indiana under the Clean Water Act ("CWA") asking for several remedies that included an injunction requiring Alcoa to develop and carry out a plan for remediation of the contaminated sediments in the subject watershed. Alcoa challenged the remedy as unavailable under the statute. Alcoa subsequently filed a 12(b)(6) motion to dismiss the Government's claim. The court held that authority to grant an injunction under the "require compliance" language of the CWA was broad enough to mandate the clean up of contaminated sediments as a result of a NPDES permit violation, and denied Alcoa's motion.

The CWA authorizes an agency to "require compliance" when violations of a NPDES permit have occurred. The Government argued this language covered remediation actions for contaminated sediments released in violation of an NPDES permit. The Government showed the discharges of PCBs violated Alcoa's permit, and that the presence of PCBs in the sediment created a risk to human health. PCBs are toxic and do not break down naturally in the environment, but instead spread throughout the sediment over time. Therefore, the Government reasoned the presence of PCBs in the sediment created a continuing violation of the NPDES permit. The Government asserted the "require compliance" language was broad enough to cover this kind of continuing violation where an entity exceeded its NPDES permit discharge limitations. Although no case law existed to support the notion, the Government likened this situation to the illegal filling of wetlands and introduced a number of cases in which courts had ordered restoration of natural resources as a means of "enforcing compliance."

Alcoa disagreed, stating the statutory scope of the enforcement provision limited the Government to fines and an injunction to ensure future permit compliance. Alcoa argued restoration actions in wetlands do not apply to NPDES permits, and contended wetland remediation was governed by a different section of the CWA statute. Alcoa distinguished a violation of an NPDES permit from the illegal filling of a wetland by focusing on the action the permit granted. Section 404 of the CWA grants a party with a permit the ability to fill a wetland. To order compliance for a violation of Section 404, the party would have to remove the improperly deposited fill. On the other hand, in Section 402, Alcoa argued, the onus of the permit is on the discharge itself, not the pollutant. Once a discharge is complete, the enforcement provision of the CWA authorizes fines to be levied and requires compliance with the permit for future discharges. No specific language authorizes remediation of contaminated sediments from any given pollutant once it had been discharged.

The court held the authority to grant an injunction to "require compliance" is broad enough to include mandated clean up of contaminated sediments as a result of a NPDES permit violation. The court rejected Alcoa's argument that Congress intended to create two different remedial actions concerning NPDES permit violations and

the illegal filling of wetlands. The court limited the scope of the remediation action by establishing a number of criteria to be met by the Government. First, the court required the Environmental Protection Agency ("EPA") establish the sediments were contaminated with a substance that was released by Alcoa in an amount exceeding the NPDES permit. Second, the court held EPA must show that the substance is hazardous to human health and the environment, and that it will not break down over time. Third, EPA must demonstrate the contaminant will continue to be released into the waters of the United States at such a level as to contaminate the water and make it unsafe for designated uses. Finally, the court stated there must be a rough proportionality between the Alcoa's permit violations and the relief sought by the Government.

Patrick Nackley

United States v. Metalite Corp., NA 99-008-CR-B/N, 2000 U.S. Dist. LEXIS 11507 (S.D. Ind. July 28, 2000) (holding an indictment under the Clean Water Act was sufficient because the relevant provision clearly stated the scienter requirement, knowingly, and not a specific intent, and the defense was not substantially prejudiced by undue delay).

A federal grand jury indicted defendant Metalite Corporation ("Metalite"), including Marvin Friedman, the owner and president of Metalite, and Wayne Friedman, the vice-president of Metalite, for violating the Clean Water Act ("CWA") by knowingly discharging pollutants into waters of the United States without a permit. Metalite made aluminum reflector lighting fixtures and generated wastewater in the aluminum anodizing process. This wastewater contained lead and other metals, as well as phosphoric, nitric, and sulphuric acids. The wastewater, along with its pollutants, was discharged through an underground storm water drain pipe behind the Metalite building and eventually into the Ohio River. Metalite moved to dismiss this indictment based on three issues: the CWA's scienter requirement, the CWA's alleged vagueness, and the Government's alleged undue delay in returning the indictment.

Under CWA section 1319(c)(2)(A), to knowingly violate CWA section 1311 is a felony. Section 1311(a) "effectively prohibits discharging any pollutant from a point source into the navigable waters of the United States without a permit." Metalite argued the word "knowingly" in section 1319(c)(2)(A) required the Government to prove that Metalite acted with specific intent and thus, knew its acts violated the law. In contrast, the Government argued the court should apply the Supreme Court's statutory interpretation utilized in a previous case, where the Court held a "knowing" violation of regulations applies even where the defendant had no knowledge of