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Iberville Parish Waterworks Dist. No. 3 v. Novartis Crop Protection, Inc., 45 F. Supp. 2d 934 (S.D. Ala. 1999)

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limited to, any pipe, ditch, channel, tunnel, conduit . . ." Here, Adams constructed pipes and other means by which stormwater was transported into the streams which the court held to be a point source. Finally, the CWA defines "navigable waters" as "waters of the United States, including territorial seas." The court held that the Act makes it clear that Congress intended to include ditches, canals, as well as streams and creeks, under the term "waters of the United States." Thus, the court found that the Spiva Branch stream fell within the definition.

The appellate court reversed the district court's grant of summary judgment in Adams' favor on the CWA claim and vacated the district court's dismissal of the state law claims. The case was remanded for further proceedings.

Kimberley Crawford

UNITED STATES DISTRICT COURTS

Iberville Parish Waterworks Dist. No. 3 v. Novartis Crop Protection, Inc., 45 F. Supp. 2d 934 (S.D. Ala. 1999) (holding that water systems lacked standing to bring claims against herbicide manufacturer absent current or imminent injury).

Two waters systems, one in Iberville Parish, Louisiana and the other in Bowling Green, Ohio, ("Water Systems") sued Novartis, the manufacturer of Atrazine. Deemed an environmental hazard by the Environmental Protection Agency ("EPA"), Atrazine is a herbicide that corn, sorghum and sugar cane farmers use to control pre–emergence broad leaf weeds. The EPA had set limits on the levels of this contaminant for drinking water and also certified that the best way to remove it from water was to use a granular activated carbon ("GAC") filtration system. The plaintiffs, like many other water systems, did not have permanent GAC systems and the cost to install them was significant. Unfortunately, conventional water treatment systems could not remove Atrazine without great difficulty. Therefore, the Water Systems wanted Novartis to pay for both the costs of testing raw water for Atrazine and the resulting removal.

Because it found the Water Systems lacked standing, the district court did not reach the merits of their claims of strict products liability, negligence, strict liability for abnormally dangerous activities, trespass, nuisance, or unjust enrichment. In order to having standing to sue, the plaintiffs needed to show an injury in fact, a causal connection between the injury and the manufacturing of Atrazine, and finally, a likelihood that the injury was redressable by a favorable decision. Because the Water Systems invoked federal jurisdiction, they assumed the burden of establishing these elements.

The court found that neither Water System had suffered injury

because the levels of Atrazine in each system never violated the mandates of the Safe Drinking Water Act. The court reasoned that there was no harm because the EPA only required water systems to meet an annualized average for Atrazine levels. Thus, the fact that the Iberville Parish system experienced peaks each spring that exceeded regulation levels did not amount to an injury. In addition, the Water Systems could not show that there was any imminent danger of Atrazine exceeding these yearly limits.

The court also found no harm with respect to testing raw water. EPA regulations did not require raw water testing for Atrazine, only pre–distribution testing. Iberville Parish did not pay for the Atrazine testing on its raw water, and Bowling Green voluntarily tested its water to determine which source to draw from, not just to determine Atrazine levels. Therefore, because there was no EPA mandate to test, the Water Systems suffered no injury.

Finally, the Water Systems argued their claims should stand by virtue of the jurisprudential tradition allowing pre–enforcement suits to enjoin statutory enforcement. The court held that such actions could be entertained only when three conditions were met: (1) where the constitutionality of the statute was put in issue; (2) where plaintiffs were under a concrete threat of prosecution under the statute; and (3) where there was strong public interest in resolving the constitutionality of the statute before enforcement. The Water Systems met none of these conditions. The Water Systems could not show their claims were ripe for adjudication. As an alternative holding, the court stated that even if the Water Systems had standing to sue, their claims were not ripe because they were based upon contingent and speculative future events.

Susan P. Klopman

United States v. Massachusetts Water Resources Auth., 48 F.Supp.2d 65 (D. Mass. 1999) (holding that the utility violated the Safe Drinking Water Act and the EPA's Surface Water Treatment Rule).

In 1974, Congress passed the Safe Water Drinking Act ("SWDA"). The SWDA charged the United States Environmental Protection Agency ("EPA") with the overall responsibility for protecting the nation's public water supply. A 1986 amendment to the SDWA reflected Congress' judgment that filtration was the best technology for removing bacterial and viral contaminants from water. The EPA later promulgated drinking water regulations, referred to as the Surface Water Treatment Rule ("SWTR"). The "self–implementing" SWTR required non–compliant water systems to install treatment facilities by June 29, 1993. The issue in this case was whether or not the Massachusetts Water Resources Authority ("MWRA") violated the SWDA and the SWTR by not implementing filtration technology and continuing to operate its facilities using another method.