Citizen Suit Action/Clean Water Act/RCRA: Federal Court Addresses Jurisdictional Issues

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/21/2025

Co-Author Sawyer Swaim

The United States District Court for the Middle District of Tennessee ("Court") in a March 6th Opinion addressed an issue arising out of a citizen suit action filed under the Clean Water Act, 33 U.S.C. §§ 1251-1389 ("CWA") and the Resource Conservation and Recovery Act 42 U.S.C. §§ 6.901-6992 ("RCRA") involving the discharge of pollutants into the Stones River located in the eastern portion of Nashville's Basin region. *See Tennessee Riverkeeper v. Waste Connections of Tennessee, Inc.*, 2025 WL 726584.

The issue addressed was whether the citizen suit action brought by the environmental organization Tennessee Riverkeepers ("Plaintiff") against Waste Connection's of Tennessee Inc. ("Defendant") lacked standing under the CWA and RCRA for failure to allege violations were ongoing and not "wholly in the past."

Before the Court was a Motion to Dismiss the Complaint for lack of subject matter jurisdiction filed by Waste Connections.

Defendants operate a landfill. On June 6th, June 27th, and September 22nd, 2023, a Tennessee Riverkeeper scientist is stated to have observed a discharge of discolored water into Stones River arriving from a seep or spring on the bank of the river on the Defendant's property. The scientist collected a sample of the discolored water observed on September 22nd.

Laboratory tests were stated to indicate the presence of pre- and polyfluoroalkyl substances ("PFAS") in the water sample.

Riverkeeper sent Waste Connections a Notice of Intent to Sue letter alleging violations of the CWA and RCRA. The Tennessee environmental agency was alleged to have subsequently failed to bring an enforcement action. Further, the violations were alleged to have not ceased and ongoing or likely to recur. These are required prerequisites to prosecuting CWA and RCRA citizen suit actions.

Both the CWA and the RCRA contain similar provisions allowing for "citizen suits," which authorize enforcement by citizens after notice and when the government has failed to bring an enforcement action. 33 U.S.C. § 1365 (CWA); 42 U.S.C. § 6972 (RCRA). However, both statutes "do[] not permit citizen suits for wholly past actions." In other words, citizen plaintiffs must prove "a state of either continuous or intermittent violation to prevail."

Riverkeeper did test the discolored water observed in September. However, their scientist did not test the previous observations. Further, there was stated to be no indication that the discharges from Waste Connections' landfill sites continued following the citizen suit notice.

Defendant argued that Riverkeeper only had concrete evidence of one instance of pollution in the 10 months prior to filing of this lawsuit. Although the citizen suit provisions in both the CWA and the RCRA are designed to take allegations of violation in good faith, these allegations must be supported by well-grounded facts indicative of said violation.

The Court held that Riverkeeper's Complaint did not contain the required good faith allegation of ongoing violations by Waste Connections. Further, it found that the Plaintiff had alleged a wholly past violation. Therefore, Riverkeeper was held to lack evidence to support a claim of ongoing or intermittent violation.

Riverkeeper also filed a standalone RCRA claim alleging Waste Connections operation of an of an open dump. While Plaintiff observed three discolored water discharges, only one was tested. The fact that the other two discharges were discolored was not accepted as a factual allegation of PFAS water pollution. The alleged contaminated water discharge was deemed not proof of a violation of RCRA.

The Court dismissed this claim holding that while the RCRA citizen suit notice sent to Waste Connections mentioned their lack of permit, it did not state or give notice that Waste Connections was violating the statute because it did not have a permit. The Plaintiff abandoned this claim by failing to defend it in its response to Waste Connections' motion to dismiss.

The Court granted Waste Connections' Motion to Dismiss in its entirety based on lack of subject matter jurisdiction, dismissing Riverkeeper's Complaint without prejudice.

A copy of the Opinion can be downloaded here.