

appear unable to protect air quality in national parks, wilderness areas, and other parks, EPA should reconsider the possibility of listing.

PATRICK SHAW

United States v. General Dynamics Corp., 755 F. Supp. 720 (N.D. Tex. 1991)

Plaintiff filed its original complaint under section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413 (1988), for permanent injunctive relief and civil penalties based on defendant's alleged violations of the Texas State Implementation Plan (SIP), promulgated pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7642 (1988). The defendant operates Air Force Plant No. 4 in Tarrant County, Texas, where F-16 aircrafts are produced. Plaintiff alleged that certain operations at the facility emitted volatile organic compounds (VOCs) in excess of the limits set by order of the Texas Air Control Board (TACB). As both parties agreed that the defendant had complied with the order, the issue was whether the order was a departure from the Texas SIP. The court concluded that TACB's order was inconsistent with the Texas SIP. First, the order allowed plant-wide averaging of emissions of VOCs to determine compliance with the SIP. Relying upon *American Cyanamid Co. v. United States EPA*, 810 F.2d 493 (5th Cir. 1987), the court concluded that TACB's interpretation of the Texas SIP was unreasonable because it contradicted the specific language of the SIP requiring each distinct surface coating operation to comply with VOC emission limits. Second, the order allowed washing solvent used in the operations to be included in determining the total quantity of surface coating applied. The court found this to be both contradictory to the language of the SIP (which specifically refers to "pounds of VOC emissions per gallon of coating applied") and contrary to the intent of the SIP (which encourages the running of solvents into closed containers).

Having determined that the board order did not meet the requirements of the Texas SIP, the court then concluded that the defendant's operations failed to comply with the SIP and that the plaintiff was therefore entitled to summary judgment of the issue of defendant's liability. The court ordered General Dynamics to comply within three years to the then applicable

SIP provision, or suffer a permanent injunction of those operations which remain in violation of the SIP.

DONALD LINKE

H. The Safe Drinking Water Act

National Wildlife Federation v. United States EPA, 925 F.2d 470 (D.C. Cir. 1991)

Petitioner sought review of an order by the Environmental Protection Agency (EPA) concerning the primacy regulations of the Safe Drinking Water Act of 1974.

The Safe Drinking Water Act of 1974 (the Act) established a two-tier system for regulating drinking water quality. On the national level, EPA is to set national drinking water standards. States are responsible for local enforcement. A qualified state enforcement power, known as "primacy," follows requirements set by Congress, but is granted and withdrawn by EPA regulation. EPA revised its primacy regulations in 1989 to allow a temporary stay of the withdrawal of a state's primacy for failure to conform to national standards when the state acts in good faith to conform but cannot do so for reasons beyond its control and agrees to take interim corrective action. 40 C.F.R. section 142.12(b)(2) (1990). During this temporary period of primacy withdrawal, EPA enforces a new or revised standard, and the state continues to enforce standards according to local law. The National Wildlife Federation claims that this sharing of primacy is prohibited by the Act.

The D.C. Circuit held that EPA's revision of its regulation is not violative of the Act, but rather is a rational response to the practical difficulties of enforcement. The court found no direct congressional intent behind section 1413 of the Act that would eliminate a state's primacy upon failure to meet the deadline for the adoption of a new standard. There is also nothing in the legislative history of the Act to support such a harsh interpretation. Therefore, section 142.12 is a narrow extension of the general EPA policy that the states retain primacy. The D.C. Circuit found that the EPA revision is rational in that it allows a state to retain permanent control of drinking water only if it is temporarily unable, despite effort, to meet the standards. EPA's decision to allow temporary extensions involves issues that are best decided by EPA, including EPA's allocation of its resources and

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