Federal Court Rules That Public Water Suppliers Have Standing To Sue Herbicide Manufacturer

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The U.S. District Court for the Southern District of Illinois recently resolved a motion to dismiss in *City of Greenville v. Syngenta Crop Protection, Inc.*, Case No. 10-cv-188, which is an action filed by providers of water to the public against a manufacturer of atrazine, a herbicide used by farmers, and the manufacturer's parent company.

Plaintiffs are obligated under the Safe Drinking Water Act to test the finished water (*i.e.*, the water after Plaintiffs have processed it from their raw water) they provide to the public to ensure it does not contain contaminants in concentrations that exceed maximum contaminant levels ("MCLs") set by the United States Environmental Protection Agency. Plaintiffs alleged that Defendants manufactured atrazine and sold it to farmers knowing it had great potential to run off of crop land and into bodies of water, including the bodies of water from which water providers like Plaintiffs draw their raw water. Plaintiffs seek to hold Defendants liable for the costs they have incurred to test and monitor levels of atrazine and to remove it from their raw water. They also seek to recover the costs that will be required for each Plaintiff to construct, install, operate, and maintain a system to filter atrazine from its raw water in the future, and to collect punitive damages.

Defendants filed a motion to dismiss. Part of the motion asserted that Plaintiffs do not have standing to sue, because Plaintiffs have not alleged that their raw water sources or the finished water they provide to the public contain atrazine above the MCL. The Court held that Plaintiffs do have standing to sue:

"Clearly, if a contaminant manufacturer creates a need (not just a desire) to monitor or remediate raw water for the particular contaminant that it would not otherwise monitor or remediate in order to satisfy its duty to the public, it has made more difficult and more costly the job of the water supplier to use the water to meet its statutory obligation to provide clean water. Thus, the public water provider has suffered a specific and concrete injury to its protected interests because of the manufacturer's actions. It is illogical to state that because a public water supplier successfully removes a contaminant from raw water and delivers potable water to the public, the supplier's excess costs – no matter how large – caused by a product manufacturer's indiscriminate disregard for the impact of its product on raw water sources cannot be an injury in fact. . . . Furthermore, it seems an extremely bad rule to require a public water supplier to provide overly contaminated water to the public before it can seek redress from one responsible for the contamination. Thus, the Court agrees . . . that a water provider may demonstrate an injury in fact even if its finished water does not exceed an MCL if its use of the water to meet its statutory obligations to the public becomes more costly because of a defendant's conduct."

The Court concluded that the "allegations that the presence of [Defendants'] atrazine in their water sources has forced them to incur additional expenses in order to provide potable water to the public is sufficient to establish an injury in fact and to demonstrate -- at the motion to dismiss stage, at least -- that they have standing to sue."

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