

Seventh Circuit Affirms \$100,000 Penalty Against Parties That Started Construction of Power Plant without Permit

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The U.S. Court of Appeals for the Seventh Circuit recently issued an opinion in [*Sierra Club v. Khanjee Holdings \(US\) Inc., No. 09-4008*](#), in which the Court affirmed the trial court's assessment of a \$100,000 civil penalty, plus attorney's fees of the plaintiff, against the defendants that started construction of a power plant without a permit. This case involved an application to the Illinois EPA for a Prevention of Significant Deterioration ("PSD") permit needed to build a coal power plant in southern Illinois.

In an earlier opinion, the Seventh Circuit ruled that the defendants' PSD permit had expired and, therefore, it was proper for the trial court to grant summary judgment in favor of plaintiff and to enjoin the defendants from engaging in further construction activities until they obtained a new permit. After this ruling, the trial court assessed a penalty of \$100,000 against all of the defendants, jointly and severally, and awarded attorneys' fees to plaintiff.

The Seventh Circuit affirmed and held that the trial court correctly considered all of the factors that go into a penalty calculation, including the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The Seventh Circuit ruled: "In

light of the size of the project (\$600 million) and of the potential maximum penalty of \$41.7 million, we agree with the [trial court] that a relatively small penalty of \$100,000, imposed jointly and severally on all three defendants, was reasonable.”

The Seventh Circuit also agreed that the trial court correctly awarded attorney’s fees to the plaintiff, Sierra Club. The Seventh Circuit found that “Sierra Club prevailed and performed a public service by forcing the defendants to stop construction of their power plant until they have a PSD permit Sierra Club did not receive any direct financial benefit from the lawsuit, and it served the public interest.” Any increased charitable donations were irrelevant to this determination, and “that Sierra Club may be well-funded organization does not preclude an award of fees. There is nothing in the Clean Air Act that suggests that fees can only be awarded to indigent parties.”

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