

Seventh Circuit Rules That Clean Air Act's Citizen-Suit Provision Cannot Be Used To Enforce Illinois' "Prohibition Of Air Pollution" Or "Fugitive Particulate Matter" Regulations

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

(Originally published at: <http://illinoisenvironmentallaw.blogspot.com/2010/10/seventh-circuit-rules-that-clean-air.html>)

The U.S. Court of Appeals for the Seventh Circuit ruled, in *McEvoy v. IEI Barge Services, Inc.*, No. 09-3494, that the federal Clean Air Act's citizen-suit provision cannot be used to enforce Illinois' "Prohibition of Air Pollution" and "Fugitive Particulate Matter" regulations.

In this case, the defendant stored coal in outdoor piles and then loaded the coal onto river barges. As the defendant moved the coal around, coal dust was thrown into the air. One of the company's neighbors objected to the coal dust because it was drifting into his home. The plaintiff sued under the Clean Air Act's citizen-suit provision, which provides private citizens the right to bring civil actions in federal courts against, among others, violators of emission standards or limitations. Plaintiff sued under the theory that the defendant violated two Illinois regulations. The first is entitled "Prohibition of Air Pollution," which provides:

"No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard."

The second is the "Fugitive Particulate Matter" regulation, which states:

"No person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the source."

The trial court granted summary judgment to the defendant, concluding that the Clean Air Act did not provide a private right of action to enforce the two Illinois regulations. The Seventh Circuit affirmed and held that neither of the Illinois regulations was an "emission standard or limitation" that could be enforced through the Clean Air Act's citizen-suit provision. The Court reasoned that the regulations did not limit the quantity, rate, or concentration of emissions.

Stay tuned to the Illinois Environmental Law Blog for more news and developments.