

Lawsuit Commenced in Federal Court Against the U.S. Environmental Protection Agency to Vindicate Public Rights Afforded Under the Clean Water Act

On March 4, a law suit was commenced against the U.S. Environmental Protection Agency ("EPA") for its failure to take action to correct omissions by the Connecticut Department of Environmental Protection ("DEP"), which omissions have deprived Connecticut citizens of their right to participate in triennial public hearings concerning DEP's water quality standards.

Section 303(c)(1) of the federal Clean Water Act provides that at least every three years each state must hold a public hearing for the purpose of reviewing its current water quality standards and, as appropriate, modifying and adopting new standards. Section 303(c)(1) also provides that the results of such a review shall be made available to EPA. Since April 2000, a period of nine years, DEP has violated §303(c)(1) by not conducting any triennial reviews or public hearings in connection with its water quality standards, thereby depriving its citizens of valuable rights of participation in the determination of appropriate standards. In response, EPA, which has the legal obligation to assure state compliance with the Clean Water Act, and was aware of DEP's violations, has done nothing.

Due in part to the 11th Amendment of the Constitution, which prohibits law suits against states, or state agencies in federal court, the DEP could not be directly sued to remedy its violations. Consequently, EPA was sued for its failure to meet its obligation to correct DEP's noncomplying behavior. As for the remedy, the Court was asked: (1) to order EPA, within 90 days of the date of entry of the Court's judgment, to hold a public hearing, for the purpose of reviewing DEP's current water quality standards and, as appropriate, proposing new or revised standards; and (2) to order that EPA is relieved of the preceding obligation, if within the 90 day period following the date of entry of the Court's judgment, DEP complies fully with §303(c)(1).