

## Resource Conservation and Recovery Act Citizen Suit: Federal Court (Oklahoma) Addresses Standing Issue



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A United States District Court (Northern District Oklahoma) addressed in a March 21st opinion procedural issues associated with a Resource Conservation and Recovery Act (“RCRA”) citizen suit action. See *Krause v. General Electric Company*, 2018 WL 1413191.

The focus of the Court’s analysis was whether the RCRA citizen suit plaintiff established Article III standing.

*Krause* (“Plaintiff”) filed a RCRA citizen suit against General Electric Company (“Defendant”). Plaintiff alleged that Defendant violated Subtitle C of RCRA by adding a mercury antioxidant to its Ecolux line of fluorescent lamps.

The Defendant argued that the citizen suit action should be dismissed because:

- The pre-suit notice violated 40 C.F.R. § 254.3(a) by failing to contain “dates, specificity, or a time-frame for the alleged violations.”
- Plaintiff failed to establish standing because an injury in fact was neither alleged nor demonstrated.

The Court held that Plaintiff failed to establish Article III standing. As a result, it did not address Defendant’s argument concerning 40 C.F.R. § 254.3(a).

The Court’s analysis notes to have standing the Plaintiff must show that:

1. An “injury in fact” has been suffered that is concrete and particularized and actual or imminent, not conjectural or hypothetical
2. The injury is fairly traceable to the challenged action of the defendant
3. It is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision

The party invoking federal jurisdiction is stated to bear the burden of establishing such elements.

Satisfying the first prong (i.e., “1”) for Article III standing requires an injury to the plaintiff as opposed to the environment.

The Court notes that if the alleged harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, this will suffice to satisfy the first prong. However, it further states that “neither a ‘bald assertion’ of aesthetic or recreational harm ‘nor a purely subjective fear that an environmental hazard may have been created is enough to ground standing.’”

Analyzing Plaintiff's Amended Complaint, the Court states that only a few sentences of the document allege an injury in fact. The Plaintiff's Complaint stated:

OAC [Oklahoma Administrative Code] 252:205-3-2(c) protects [his] interest in being assured that the waste put in landfills in Tulsa is not hazardous, and that GE's practice of adding a mercury antioxidant to Ecolux lamps is an invasion of Krause's legally protected interest in being assured that the waste put in landfills in Tulsa is not hazardous.

The Court states that the cited Oklahoma Administrative Code incorporates by reference Part 261 (Identification and Listing of Hazardous Waste) of the United States Environmental Protection Agency regulations concerning solid waste. However, it further states that Oklahoma's adoption of these regulations does not "imbue Plaintiff with standing to bring this RCRA claim." It concludes that the Plaintiff did not show any concrete or particularized injury.

The Court dismisses the claim for Lack of Subject Matter Jurisdiction.

[A copy of the opinion can be downloaded here.](#)