

Citizen Suit Action/RCRA: Federal Court Addresses Request to Enjoin Dredging Contaminated Sediment



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Edison Wetlands Association, Inc. and Raritan Baykeeper, Inc. (collectively “Plaintiffs”) filed a Resource Conservation and Recovery Act (“RCRA”) citizen suit action in United States District Court (New Jersey) which includes a Motion for Preliminary Injunction (“Motion”). See *Raritan Baykeeper, Inc., et al. v. NL Industries, Inc., et al.*, 2018 WL 4509496 (September 20, 2018).

The Motion argues that the construction of a marina by North American Properties (“NAP”) through dredging will:

... bring historical sediment that contains “higher levels of contamination” to the surface, thereby “exacerbating” harm to “the public, construction workers, and the environment.”

Plaintiffs’ Motion asked that the Court issue:

1. A preliminary injunction “preserving the status quo pendente lite” and enjoining SSA, SERA, and NAP from commencing construction of the marina, and
2. A mandatory preliminary injunction ordering the NL Defendants to conduct a remedial investigation pursuant to N.J.A.C. 7:26E-3.6(c)(3)-(4).

The Court describes the standard for granting preliminary injunctive relief, noting:

- Extraordinary remedy granted only in limited circumstances
- Burden on Plaintiff to establish “likely to succeed on the merits”
- Likely to suffer irreparable harm in absence of preliminary relief
- Balance of equities tip in Plaintiffs’ favor, and in public interest

To prevail under RCRA citizen suit provision, the Court notes it must be proven:

1. that the defendant is a person, including, but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facility;
2. that the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and
3. that the solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment

The Court states the “operative word . . . [is] “may”

Plaintiffs contended that NAP proposes to expand the original development plans for the site to create a 200 slip marina. Referenced is an allegation that states contamination will cause imminent and irreparable injury and that no trial date has been set in a case “pending for years.” The Motion is further described as arguing pendente lite support is needed to halt allegedly harmful construction activities.

The Court holds Plaintiffs failed to carry their burden because:

- proof that construction will occur is speculative
- conceded that start date is unknown

The motion is denied.

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