

# Petroleum Storage Tank Terminal/Federal Citizen Suit Action: Federal Appellate Court Addresses Doctrine of Primary Jurisdiction



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The Court of Appeals for the 1st Circuit (“Court of Appeals”) addressed an issue arising out of a Clean Water Act (“CWA”) and Resource Conservation and Recovery Act (“RCRA”) citizen suit action. See *Conservation Law Foundation, Inc. v. ExxonMobil Corporation*, 3 F.4th 61 (1st Cir. 2021).

The issue considered was whether a motion to stay proceedings under the doctrine of primary jurisdiction was appropriate.

The Conservation Law Foundation, Inc. (“Foundation”) alleged that ExxonMobil Corp. (“ExxonMobil”) violated the CWA and RCRA. The action was filed against an ExxonMobil petroleum storage and distribution terminal in Boston, Massachusetts. The terminal held a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit that allowed it to discharge stormwater, groundwater, and certain other waters into a tributary of the Mystic River.

The NPDES permit expired in 2014. However, the permit remained in effect until EPA issued a renewal because ExxonMobil had submitted a timely application. EPA had not acted on ExxonMobil’s application so the permit remained in effect.

The federal district court (“District Court”) denied ExxonMobil’s motion to dismiss. However, it granted a motion to stay the proceedings under the doctrine of primary jurisdiction until the U.S. Environmental Protection Agency could issue a new CWA NPDES permit for ExxonMobil’s operations. The issuance of the permit was expected to resolve various pending issues.

Primary jurisdiction is a doctrine whose objective is to promote relationships between courts and administrative agencies with certain regulatory duties. It applies where a claim is originally brought in a court and is instituted when enforcement of the claim requires resolution of issues that fall within the special knowledge of an administrative body.

The Court of Appeals first determined whether it had jurisdiction to review the District Court’s grant of the stay. Appellate Court jurisdiction is generally limited to review of final decisions of the District Courts. An order is final if it ends litigation on the merits and there is nothing left for the court to do but execute the judgement.

A stay is usually a postponement of a hearing. However, the stay in this case was deemed to involve special characteristics that made it more than an ordinary postponement. The matter had been pending since 2016. Further, the stay had been in effect for about a year. The stay was for an indefinite amount of time. This effectively moved the case out of court. Therefore, the Court of Appeals was held to have jurisdiction.

The Court of Appeals addressed the entry of the stay under the doctrine of primary jurisdiction. The Foundation's action was brought under the CWA and RCRA citizen suit provisions. Federal citizen suit actions can be filed when the federal environmental statutes allow individuals to bring suit. Such actions may be filed in appropriate circumstances even where an agency has concurrent enforcement authority. Primary jurisdiction is a form of abstention that allows federal courts to weigh significant and possibly conflicting interests not foreseen by Congress when it granted jurisdiction.

Citizen suits and abstentions have inherent conflict. Federal courts have an obligation to exercise the jurisdiction given to them. Abstention allows federal courts to defer to an administrative body. The citizen suit provision specifically gives federal courts jurisdiction. Nevertheless, the Court of Appeals declined to rule out abstentions in RCRA suits. Instead it held circumstances in which abstentions are justified would be rare.

The Court of Appeals determined that an abstention was improper in this case. Three factors are considered when deciding whether to defer a matter to an agency. First, whether the agency determination lies at the heart of the task assigned to it by Congress. Second, whether agency expertise is required to understand technical facts. Finally, the third factor is whether the agency determination would materially aid the court.

The Court of Appeals held that the first and second factors weighed in favor of abstention. However, it reasoned that the District Court did not give proper weight to the third factor. This final factor has potential to outweigh both of the other factors because if the case could be decided on a controlling legal issue that is unrelated to the determinations to be made by the agency, then there is no need to ask the agency's opinion.

The third factor was deemed to outweigh the first and second. Whether the EPA issues the new NPDES permit for the ExxonMobil terminal is wholly unrelated to whether it would violate current permit conditions.

The Court of Appeals then balanced the factors against the potential for delay if the decision were referred to an administrative agency. It reasoned that because the factors do not weigh in favor of a stay at all, any potential delay only reinforces the decision the view that the stay was unjustified.

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