

Resource Conservation and Recovery Act/Mandamus: Federal Court Addresses Request for U.S. Department of Justice Enforcement



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A United States District (Connecticut) (“Court”) addressed in an April 28th Order an issue involving enforcement of the Resource Conservation and Recovery Act (“RCRA”). *See Zeil v. U.S. Department of Justice*, 2024 WL 1330812.

A *pro se* litigant sought a writ of mandamus against the United States Department of Justice (“DOJ”) seeking enforcement of alleged RCRA violations.

Donald J. Zeil (“Zeil”) purchased property in New Britain, Connecticut in 1988. Zeil alleged that nearly ten years after the purchase, the property underwent testing for hazardous waste. He alleged hazardous waste releases were discovered that rendered the property useless. This discovery is alleged to have exposed him to “liability costs of potentially several million dollars.”

Zeil contended that the hazardous waste was present prior to his purchasing the property. He further alleged that the property was fraudulently foreclosed and resold without disclosure of the hazardous waste releases by the successor-in-interest, Webster Bank, the bank held title to the property.

The Connecticut Department of Energy and Environmental Protection (“DEEP”) is stated to have issued a notice of violation. It submitted a letter to the Connecticut Attorney General alleging Webster Bank’s non-compliance. Zeil alleges that the letter was ignored. DEEP is stated to have taken no further enforcement action.

Zeil alleged fraud and claimed that the city of New Britain, Connecticut was collecting taxes on a property without a legal title holder. The hazardous waste issues were stated to have remained unaddressed.

Zeil subsequently filed a writ of mandamus seeking enforcement action by DOJ to address the alleged hazardous waste release.

DOJ filed a motion to dismiss.

As a *pro se* litigant, the Court has an obligation to provide some deference allowing borderline cases to proceed. *Perro v. Laird*, No. 07-CV-1123 (ARR), 2007 WL 1074929 at *1 (E.D.N.Y. Apr. 5, 2007).

A writ of mandamus seeks a judicial order requiring that a government official fulfill their official duties or correct an abuse of discretion. *See e.g. Cheney v. United States Dist. Court*, 542 U.S. 367 (2004).

Mandamus is an extraordinary remedy. It is only available in exceptional circumstances, such as situations involving an emergency or public importance. *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957).

A suit against the United States requires the demonstration of a cause of action, subject matter jurisdiction, and waiver of sovereign immunity. The waiver of sovereign immunity is a prerequisite to subject-matter jurisdiction. *Sanchez v. Homestead Funding Corp.*, No. 3:13-CV-01850 (MPS), 2014 WL 44145546 at *1 (D. Conn. Aug. 19, 2014) Title 28 of the United States Code, Section 1361 it does not by itself waive of sovereign immunity. See *Veale v. U.S.*, No. 1:05-CV-104, 2006 WL 751242 (D. Vt. Mar. 20, 2006).

To prevail on the mandamus claim, Zeil was required to demonstrate that DOJ had a nondiscretionary duty. He argued that the DOJ has a nondiscretionary duty to act on his behalf and enforce federal law (i.e., RCRA regulations) regarding the alleged hazardous waste violations and fraudulent foreclosure of his property.

United States Attorneys (a component of DOJ) do have a duty to “prosecute for all offenses against the United States.” 28 U.S.C. § 542 (1). However, the United States Supreme Court has recognized that whether or not an offense is prosecuted, whether civil or criminal, the decision is subject to an agency’s absolute discretion. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Therefore, § 1361 may not be used to compel investigations or prosecutions in violation of DOJ’s discretion. *Veale*, 2006 WL 751242 at *4.

The United States Attorney investigated Mr. Zeil’s claims. It determined they did not warrant action. Because that decision falls within the discretion of the United States Attorney’s office, § 1361 cannot be used to compel the DOJ to act on Zeil’s claims.

The Court dismissed Ziel’s claims with prejudice.

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