

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Larry Askins
6335 Solether Road
Cygnet, Ohio 43413

And

Vickie Askins
6335 Solether Road
Cygnet, Ohio 43413

Plaintiffs,

vs.

Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068

And

Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216

And

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 3101A
Washington D.C. 20460

Defendants.

Case No.

Judge

Magistrate Judge

Jury Demand Endorsed Hereon

COMPLAINT

INTRODUCTION

1. This is a claim filed under the Clean Water Act (CWA), 33 U.S.C. §1251 et seq. and its accompanying regulations to enjoin the Defendant Ohio Department of Agriculture (ODA) from issuing any further permits for Concentrated Animal Feeding

Operations (CAFOs) under the CWA and the National Pollutant Discharge Elimination System (NPDES) Permit Program, and for the U.S. Environmental Protection Agency (U.S. EPA) to restore all authority to issue permits for CAFOs to Defendant Ohio Environmental Protection Agency (OEPA) which is the authorized State agency to administer the NPDES Permit Program for CAFOs pursuant to 40 C.F.R. § 123.62(c).

PARTIES

2. Plaintiffs are citizens of the United States of America, State of Ohio, County of Wood and Township of Bloom and are the owners of a residence and appurtenant real estate located in the Township of Bloom, County of Wood and State of Ohio. Plaintiffs have testified at numerous public hearings, appealed ODA CAFO permits, and filed complaints with numerous State and Federal agencies and boards, over the past ten years. Plaintiffs have exhausted all administrative appeals under C.F.R. 123.64(b), and have petitioned Defendant U.S. EPA on issues concerning the transfer of authority from Defendant OEPA to Defendant ODA to administer the NPDES Permit Program for CAFOs.

3. Defendant ODA is a department of the State of Ohio and duly organized, existing and operating under the Constitution and statutes of Ohio.

4. Defendant OEPA is an agency of the State of Ohio and duly organized, existing and operating under the Constitution and statutes of Ohio.

5. Defendant U.S. EPA is an agency of the United States of America and duly organized, existing, and operating under the statutes of the United States.

JURISDICTION AND VENUE

6. This action arose under the provisions of the citizen suit provision of the CWA and this Court is vested with jurisdiction of this action under 33 U.S.C. §1365 (a) (1) and (2) and 28 U.S.C. § 1331.

7. The claims alleged herein arose within the Northern District of the State of Ohio, Western Division and Plaintiffs reside within the Northern District of the State of Ohio, Western Division.

8. All Defendants are present and doing business within the Northern District of the State of Ohio, Western Division, for the purpose of venue.

9. Venue is proper in this Court under the provisions of 28 U.S.C. §1391.

10. Plaintiffs have given the 60-day notice required by 33 U.S.C. § 1365 (b), (See Exhibit 1), and have received no formal response to said notice.

FACTS

11. The CWA was enacted in 1972, 33 U.S.C. §1251 et seq., with the purpose “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”.

12. The CWA prohibits the discharge of any pollutant, including agricultural waste, into the navigable waters of the United States except by a permit.

13. The permit system under the CWA is the NPDES Permit Program, which controls water pollution by regulating point sources of pollution that discharge into the waters of the United States.

14. CAFOs are point sources of pollution for which an NPDES Permit may be required. 33 U.S.C. § 1362 (14), 40 C.F.R. Chapter 412.

15. Defendant U.S. EPA is the administrator of the CWA, however a state may seek approval from the U.S. EPA to administer the CWA and the NPDES Permit Program within that state pursuant to 33 U.S.C. § 1342(b) and 40 C.F.R. § 123.42.

16. In 1974, Defendant OEPA, pursuant to 33 U.S.C. § 1342 (b) and 40 C.F.R. § 123.24(a), signed a Memorandum of Agreement (MOA), in which the Defendant U.S. EPA approved Defendant OEPA to administer the CWA and the NPDES Permit Program in Ohio. (See Exhibit 2).

17. In order to obtain Defendant U.S. EPA approval of the MOA, Ohio enacted changes to its administrative regulations to regulate water pollution.

18. Defendant OEPA's NPDES Permit Program for administering the CWA with regards to CAFOs consisted of a three (3) permit process: a Permit to Install (PTI), a Permit to Operate/Wastewater Management Plan (PTO), and an NPDES Permit.

19. Defendant OEPA administered the entire CWA NPDES Permit Program in Ohio from 1974 to 2002 for CAFOs and during this time issued over one hundred (100) permits.

20. In 1995, Defendant OEPA issued a draft interim policy which recognized that PTIs, PTOs and NPDES Permits were all part of the NPDES Permit Program to regulate CAFOs in Ohio.

21. In 2000, the State of Ohio enacted Senate Bill 141, effective March 15, 2001, codified at Chapter 903 of the Ohio Revised Code, which transferred the authority for issuing permits under the NPDES Permit Program for CAFOs to Defendant ODA from Defendant OEPA.

22. In 2002, Defendants ODA and OEPA entered into a MOA for the purpose of transferring from the OEPA to ODA the authority under the CWA to administer the NPDES Permit Program for CAFOs.

23. Not until 2006 did Ohio notify Defendant U.S. EPA of transferring the authority to administer the NPDES Permit Program for CAFOs from Defendant OEPA to Defendant ODA.

24. In 2006, Ohio first sought the approval of Defendant U.S. EPA to transfer authority to administer the NPDES Permit Program for CAFOs from the Defendant OEPA to Defendant ODA.

25. Since 2006 Defendant U.S. EPA has known that Defendant ODA has been administering the NPDES Permit Program for CAFOs, including issuing permits, but the Defendant U.S. EPA has refused to grant the authority to Defendant ODA to administer the NPDES Permit Program for CAFOs despite the passage of Senate Bill 141 more than thirteen (13) years ago and despite Ohio seeking approval of the transfer of authority more than seven (7) years ago.

26. Defendant U.S. EPA has failed to return all authority to administer the NPDES Permit Program for CAFOs to Defendant OEPA or to withdraw approval under 40 C.F.R. § 123.63 when Ohio failed to comply with the terms of the 1974 MOA.

27. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

First Claim:

28. 40 C.F.R. § 123.62 (c) requires states to notify Defendant U.S. EPA when the state proposes to transfer all or part of the authority to administer the NPDES Permit Program from the approved state agency to any other state agency.

29. Despite knowing about the transfer of authority to administer the NPDES Permit Program for CAFOs in 2001, Ohio and Defendant OEPA waited until 2006 to notify the Defendant U.S. EPA of the transfer of authority to administer the NPDES Permit Program for CAFOs to Defendant ODA.

30. Defendant OEPA has violated 40 C.F.R. § 123.62 (c) by failing to inform Defendant U.S. EPA of the transfer of authority to administer part of the NPDES Permit Program for CAFOs.

Second Claim:

31. Plaintiffs incorporate paragraphs one through thirty as if rewritten herein.

32. 40 C.F.R. §123.62(a) and (c) prohibit states from transferring all or part of any NPDES Permit Program from one state agency to another state agency unless the transfer of authority is approved by Defendant U.S. EPA.

33. Despite the lack of an approval from Defendant U.S. EPA, Defendant ODA has issued permits for CAFOs under the NPDES Permit Program since 2002 and continues to do so.

34. Defendant ODA has knowingly violated 33 U.S.C. § 1342(b) and 40 C.F.R. § 123.62 (c) by administering part of the NPDES Permit Program without getting the approval of Defendant U.S. EPA prior to issuing those permits.

Third Claim:

35. Plaintiffs incorporate paragraphs one through thirty-four as if rewritten herein.

36. 33 U.S.C. § 1342 (c) requires the U.S. EPA to suspend a state's ability to administer the NPDES Permit Program when it is determined that the state is not administering the program in accordance with 33 U.S.C. § 1342.

37. Defendant U.S. EPA has allowed Defendant ODA to administer part of the NPDES Permit Program for CAFOs without approving the transfer of authority from Defendant OEPA to Defendant ODA.

38. Defendant U.S. EPA has knowingly violated 33 U.S.C. § 1342 (c) by allowing the transfer of authority and subsequent administration of the NPDES Permit Program for CAFOs by Defendant ODA without approving said transfer of authority.

Fourth Claim:

39. Plaintiffs incorporate paragraphs one through thirty-eight as if rewritten herein.

40. 40 C.F.R. § 123.24(a) requires that states must submit a MOA which must be executed by the State Program Director and the Regional Administrator and this MOA will become effective when approved by the Administrator of Defendant U.S. EPA.

41. Defendant U.S. EPA has allowed Defendant ODA to administer part of the NPDES Permit Program for CAFOs despite the absence of a new MOA approving a transfer of authority from Defendant OEPA to Defendant ODA.

42. Defendant U.S. EPA has knowingly violated 40 C.F.R. § 123.24 (a) by allowing the transfer of authority and subsequent administration of part of the NPDES Permit Program for CAFOs by Defendant ODA when the 1974 MOA is the existing MOA which provides that Defendant OEPA is the authorized State agency. (See Ex. 2).

WHEREFORE, Plaintiffs pray that they be granted judgment in the following manner:

- A. This Court issue a preliminary and permanent injunction enjoining Defendant ODA from issuing permits under the NPDES Permit Program for CAFOs.

- B. This Court issue an Order directing that Defendant OEPA is the only State agency to administer the NPDES Permit Program for CAFOs in compliance with 40 C.F.R. § 123.24.
- C. This Court issue an Order holding that Defendant U.S. EPA violated 33 U.S.C. § 1342 when it gained knowledge in 2006 that there had been a transfer of authority from the Defendant OEPA to Defendant ODA to administer part of the NPDES Permit Program for CAFOs and Defendant U.S. EPA failed to suspend the authority of Ohio to administer the CWA and the NPDES Permit Program for CAFOs.
- D. The Court issue an Order holding that Defendant OEPA violated 40 C.F.R. § 123.62 (c) when it failed to notify Defendant U.S. EPA of the transfer of authority in 2002 from Defendant OEPA to Defendant ODA to administer part of the NPDES Permit Program for CAFOs.
- E. For reasonable attorney's fees, interest and other litigation costs pursuant to 33 U.S.C. § 1365 (d).
- F. For all other relief deemed appropriate, in law or in equity, by this Court.


Respectfully Submitted,



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JURY DEMAND ENDORSED HEREON

Plaintiffs hereby demand a trial by jury on all issues.



Steve J. Edwards