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Drinking 'bad' water not necessary for standing

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A husband and wife who allege that carcinogens from a nearby landfill contaminated their drinking water may pursue a claim under the Resource Conservation and Recovery Act even though they found a new source of water, a federal judge has ruled.

In an opinion made available Monday, U.S. District Judge William J. Hibbler rejected the argument that Tyanna and Jeff Cannata's decision to stop drinking water from their well deprived them of standing on the RCRA claim.

Hibbler said the Cannatas were not required "to continuously consume what they believe to be contaminated water" in order to maintain a case or controversy as defined by Article III of the U.S. Constitution.

"The Supreme Court has remarked that the Constitution is not a 'suicide pact,'" Hibbler wrote, quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). "In this court's view, neither is the doctrine of standing."

In 2006, the Cannatas filed a lawsuit alleging that the water beneath their home had become contaminated with vinyl chloride and other carcinogens from the Mallard Lake Landfill near Hanover Park.

The suit alleged that the drinking water of as many as 150 other people also might be contaminated as a result of the alleged mishandling of waste.

The suit included claims brought under the RCRA and the Comprehensive Environmental Response Compensation and Liability Act.

The suit also alleged state-law claims that included negligence, trespass, private nuisance and willful and wanton misconduct.

Named as defendants in the suit were the Forest Preserve District of DuPage County, the owner of the land on which the landfill is located, and BFI Waste Systems of North America Inc., which operates the landfill.

Hibbler ultimately certified a class of plaintiffs that included individuals and non-governmental entities living or located on certain streets in Wayne Township.

Following the certification, the Cannatas sealed their well, began using a home water-filtration system and connected their home to a public source of clean water.

The defendants then sought summary judgment on the RCRA claim on the ground that the Cannatas no longer had standing on that count.

But Hibbler denied the motion.

Hibbler did reject the contention that the question of the Cannatas' standing could not be revisited once their standing was established.

Hibbler conceded that the general rule holds that "once jurisdiction is acquired, a change of circumstances will not strip the court of the ability to hear the case."

But there are exceptions to the rule, Hibbler continued.

Citing *Ganci v. Edgar*, 163 F.3d 430 (7th Cir. 1998), Hibbler said the 7th U.S. Circuit Court of Appeals has ruled that an actual case or controversy as defined by Article III must exist the entire time a case is pending.

Otherwise, Hibbler said, courts would waste their time with matters that had no impact on the parties.

"Federal courts have no business deciding hypothetical disputes," Hibbler wrote, citing *Wisconsin Right to Life Inc. v. Schober*, 366 F.3d 485 (7th Cir. 2004), and *U.S. v. 5 S 351 Tuthill Road*, 233 F.3d 1017 (7th Cir. 2000). "Accordingly, courts are obligated to

make sure that plaintiffs have standing during every stage of litigation."

And "a material change in the parties' circumstances" opens the way for the plaintiffs' standing to be challenged even after a class has been certified, Hibbler said.

But Hibbler held that the defendants named in the Cannatas' suit could not prevail on their challenge because the couple satisfied the three elements for standing set out in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1990).

Under *Lujan*, a plaintiff must have suffered "an injury in fact" that is "concrete and particularized" as well as "imminent as opposed to conjectural or hypothetical" in order to pursue a claim, Hibbler said.

Hibbler said *Lujan* also requires that there be "a causal connection between the plaintiff's injury and the defendant's alleged conduct."

And *Lujan* requires that "it must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision on behalf of the plaintiff," Hibbler wrote.

Hibbler said the Cannatas stated an injury when they claimed they were forced to stop using their well because the water allegedly was contaminated.

Hibbler also said that the injury the Cannatas claim they have suffered was anything but speculative.

"The fact that the Cannatas sealed their well at their own expense and connected their home to the public water supply lends credence to their claim that their alleged injury — being unable to use their well because of contaminated water beneath their home — is very real and concrete," Hibbler wrote.

Tyanna Cannata, et al. v. Forest Preserve District of DuPage County, et al., No. 06 C 2196.